



Avista Corp.
1411 East Mission, P.O. Box 3727
Spokane, Washington 99220-0500
Telephone 509-489-0500
Toll Free 800-727-9170

Jan Noriyuki, Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8, Suite 201-A
Boise, ID 83714

RE: Avista – Reply Comments

Dear Ms. Noriyuki:

Enclosed for filing with the Commission is an electronic copy of Avista's Reply Comments in response to Comments of Commission Staff recommending approval of an amended agreement that includes certain changes to the Power Purchase Agreement Between Avista Corporation and the Regents of the University of Idaho.

Please direct any questions regarding this report to Michael Andrea at (509) 495-2564 or myself at 509-495-4584.

Sincerely,

/s/Paul Kimball

Paul Kimball
Manager of Compliance & Discovery
Avista Utilities
509-495-4584
paul.kimball@avistacorp.com

Enclosure

RECEIVED
2022 MAY 10 PM 3:22
IDAHO PUBLIC
UTILITIES COMMISSION

MICHAEL G. ANDREA (ISB No. 8308)
Avista Corporation
1411 E. Mission Ave., MSC-17
Spokane, WA 99202
Telephone: (509) 495-2564
michael.andrea@avistacorp.com

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA AND THE)
UNIVERSITY OF IDAHO'S JOINT) CASE NO. AVE-E-22-03
PETITION FOR APPROVAL OF A POWER)
PURCHASE AGREEMENT (STEAM) REPLY COMMENTS OF AVISTA
FACILITY)) CORPORATION
)
)
_____)

Pursuant to the Notice issued by the Idaho Public Utilities Commission (“Commission”) on March 25, 2022 in the above-captioned proceeding, Avista Corporation (“Avista”) respectfully submits the following reply comments in response to Comments of Commission Staff recommending approval of an amended agreement that includes certain changes to the Power Purchase Agreement Between Avista Corporation and the Regents of the University of Idaho (“University”) that was filed in this proceeding on February 23, 2022 (“Original Agreement”). Avista appreciates Staff’s comments and agrees with the changes to the Original Agreement recommended by Staff. Accordingly, Avista submits a First Amended and Restated Power Purchase Agreement between Avista and the University of Idaho (“First Amended Agreement”).¹ The University has authorized Avista to represent that the University agrees to the proposed changes in First Amended Agreement, as reflected in that agreement. The First Amended Agreement will supersede and replace the Original Agreement in its entirety. Avista

¹ The First Amended Agreement is attached hereto as Attachment A. A redline showing the changes to the Original Agreement is attached hereto as Attachment B for informational purposes only.

respectfully requests that the Commission approve the First Amended Agreement with an effective date of February 16, 2022.

I. Background

Avista and the Regents of the University of Idaho entered into the Original Agreement on February 16, 2022. Pursuant to the Original Agreement, the University intends to use its steam facility ("Facility") to serve University load. The parties anticipate that all of the Facility output will be used to serve University load and, therefore, little or no output from the Facility will actually be delivered to Avista. To the extent the output from the University's Facility exceeds the University's load, the University has elected to sell, and Avista will purchase, all such output from the Facility at the avoided costs calculated at the time of delivery, which shall be, for each hour in which the University delivers such output to Avista at the Point of Delivery the Market Energy Price for such hour expressed in \$ per kWh multiplied by the total kWh delivered to Avista at the Point of Delivery for such hour. On February 23, 2022, Avista and the University filed a joint petition requesting that the Commission accept the Original Agreement effective February 16, 2022.

On May 3, 2022, Staff submitted comments on the Original Agreement ("Comments"). In its Comments, Staff recommends the following five changes to the Original Agreement:

1. Remove the option of other mutually agreed-to index in the Agreement;
2. Set avoided cost rates in this Agreement at 85% of the PowerDex hourly Mid-Columbia ("Mid-C") index price;
3. Correct the mistaken Nameplate Size in Attachment 2 of Exhibit D;
4. Use 85% of the PowerDex hourly Mid-Columbia ("Mid-C") index price as avoided cost rates for the potential of a lapsed contract period; and

5. Update Article 21 in the Agreement to ensure any amendment or modification does not become valid without Commission authorization.

Staff Comments at 2.

Staff recommends approving an amended agreement that includes its recommended changes. *Id.* at 6.

As discussed herein, Avista agrees with Staff's recommended changes to the Original Agreement. Avista and the University have executed the First Amended Agreement, which incorporates the amendments recommended by Staff. Accordingly, Avista submits the First Amended Agreement for approval and requests that the Commission accept the First Amended Agreement effective February 16, 2022.

II. Reply Comments

As discussed above, Commission Staff recommends five amendments to the Original Agreement. Avista has revised the Original Agreement to incorporate Staff's recommendations as more fully discussed below.

A. Removal of the option of other mutually agreed-to index in the Agreement

Staff objects to language in the definition of Market Energy Price in the Original Agreement that states that such Market Energy Price is based on the hourly Mid-Columbia index price, "or other mutually agreed to index." Staff states "if the Parties decide to use another market price index in the future, they should file an amendment to the Agreement so that index can be reviewed and approved by the Commission." Staff Comments at 3.

The phrase "or other mutually agreed to index" was included to ensure that the parties could agree to an index other than the Mid-Columbia index if, for example, the Mid-Columbia index was not available. Avista does not, however, object to the removal of that phrase.

Accordingly, in the First Amended Agreement, the parties have deleted the phrase “or other mutually agreed to index” from the definition of “Market Energy Price.”

B. Set avoided cost rates in this Agreement at 85% of the PowerDex hourly Mid-Columbia ("Mid-C") index price

In the Original Agreement, the Market Energy Price was defined as the “hourly Mid-Columbia (“Mid-C”) index price” In its Comments, Staff stats that “the avoided cost rates used in this Agreement for non-firm energy generation should be 85% of the non-firm market rates. . . .” Staff Comments at 3. Staff therefore recommends, that “an 85% adjustment factor be applied to the PowerDex hourly Mid-Columbia ("Mid-C") index price.” *Id.*

Avista agrees with Staff that an 85 percent adjustment factor should be applied to the PowerDex hourly Mid-C index price. Accordingly, the definition of “Market Energy Price” in the First Amended Agreement has been revised so that “Market Energy Price” means:

. . . eighty-five percent (85%) of the PowerDex hourly Mid-Columbia index (“Mid-C Index”) price; provided, however, if the Mid-C Index price is less than zero, the Market Energy Price shall be one-hundred and fifteen percent (115%) of the Mid-C Index price.

First Amended Agreement at Section 1.16.

As revised, the avoided cost rate when the Mid-C index is positive will be 85 percent of the Mid-C index. To effectuate Staff’s recommendation that an 85 percent adjustment factor is to be applied to the Mid-C index, when the price is negative, the avoided cost rate when the Mid-C index is negative must be 115% of the Mid-C index. That is, under the proposed definition of the Market Energy Price, Avista will be in the same position regardless of whether the Mid-C index is positive or negative. If, however, the Market Energy Price was 85 percent of the Mid-C index regardless of whether the Mid-C is positive or negative, Avista would be adversely impacted when the prices are negative. That is, when the Mid-C index is positive, Avista would pay less than the Mid-C price for any output and, therefore, after transaction costs be roughly

whole if it sells such output to the market. In contrast, when the Mid-C index is negative, the QF would pay Avista less for the output than it would cost Avista to dispose of such output in the market and, therefore, Avista's customers would have to pay to dispose of such output. To ensure that Avista is in the same position regardless of whether the Mid-C index is positive or negative, the adjustment factor when the Mid-C index is negative must be 115 percent.

C. Correct the mistaken Nameplate Size in Attachment 2 of Exhibit D

Staff notes in its comments that "Attachment No. 2 of Exhibit D states the Facility's Nameplate Size is 1,050 kW", but the actual nameplate for the Facility is 825 kW. Staff Comments at 4. Exhibit D to the Original Agreement is the interconnection agreement for the Facility. The interconnection agreement is provided as an exhibit to demonstrate that the Facility has the ability to deliver output to Avista. As long as the nameplate capacity in the interconnection agreement is at least as large as the nameplate capacity in the power purchase agreement, the stated nameplate capacity in the interconnection agreement is of no consequence to the power purchase agreement.

In this instance, the applicable nameplate rating for the Facility is, as Staff correctly notes, 825 kW. The interconnection agreement provides a nameplate size of 1,050 kW, which is sufficient to allow the Facility to deliver the full 825 kW to Avista. Accordingly, Avista has revised the cover sheet for Exhibit D to expressly stated that, "[f]or purposes of this Amended and Restated Power Purchase Agreement, the Parties agree that the Nameplate Capacity Rating of the Facility is 825 kW Alternating Current (AC), as more fully described in Exhibit A." First Amended Agreement at Exhibit D.

D. Use 85% of the PowerDex hourly Mid-Columbia ("Mid-C") index price as avoided cost rates for the potential of a lapsed contract period

Staff noted that, because the parties requested a February 16, 2022 effective date, there is the potential for retroactive rates from February 16, 2022 through the date of a Commission order. Staff states that, if the final approved effective date results in a lapsed contract period, it “recommends that the Parties use 85% of the PowerDex hourly Mid-Columbia (“Mid-C”) index price for the energy delivered during the lapsed contract period.” Staff Comments at 5. To effectuate Staff’s recommendation, the following has been added to Section 5.2 of the First Amended Agreement:

For the avoidance of doubt, the rate to be paid to Seller for any Net Output Seller delivers to Avista at the Point of Delivery from the Effective Date through the date that the Commission issues an order (the “Lapse Period”) shall be the Market Energy Price. To the extent that Avista has paid Seller a price other than the Market Energy Price for any Net Output delivered to Avista, Avista shall issue an invoice or payment to Seller within 30 days of the Commission’s order approving this Agreement to correct any over or under payment.

First Amended Agreement at Section 5.2

To date, the University has not delivered any output from the Facility to Avista. Accordingly, Avista does not anticipate that any payment will be made for output prior to Commission approval of the First Amended Agreement. If, however, the output from the Facility is delivered to Avista during the Lapse Period, the avoided cost rate will be 85 percent of the Mid-C index, as recommended by Staff.

E. Update Article 21 in the Agreement to ensure any amendment or modification does not become valid without Commission authorization

In its Comments, Staff expressed concern that Article 21 of the Original Agreement contemplated amendments may become effective without Commission approval. The intent of Article 21 is to state that both parties to the agreement must agree in writing to amend the agreement. However, any amendment must be approved by the Commission. Accordingly, in the First Amended Agreement Article 21 has been revised to expressly state:

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 approved by the Commission.

First Amended Agreement at Article 21 (emphasis added to show revision).

III. Conclusion

Avista appreciates Staff's careful review of the Original Agreement. As discussed herein, the Original Agreement has been revised to incorporate Staff's recommended amendments. Accordingly, Avista respectfully requests that the Commission approve the First Amended Agreement (attached hereto as Attachment A) with an effective date of February 16, 2022.

DATED this 10th day of May 2022.

Michael G. Andrea
Attorney for Avista Corporation

**FIRST AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

BETWEEN

REGENTS OF THE UNIVERSITY OF IDAHO

AND

AVISTA CORPORATION

POWER PURCHASE AGREEMENT (STEAM)

This First Amended and Restated Power Purchase Agreement (“Agreement”) is made by and between Avista Corporation, a Washington corporation (“Avista”), and the Regents of the University of Idaho (“Seller”). Avista and Seller are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a Power Purchase Agreement (“Original Agreement”) that was submitted to the Idaho Public Utilities Commission for approval on February 23, 2022;

WHEREAS, Commission Staff recommended certain revisions to the Original Agreement;

WHEREAS, the Parties enter into this Agreement to amend the Original Agreement consistent with Commission Staff’s recommendation and intend this Agreement to supersede and replace the Original Agreement in its entirety;

WHEREAS, Seller will own, operate and maintain the electric power generating facility with a Nameplate Capacity Rating of 825 kW Alternating Current (AC), as more fully described in Exhibit A (“Facility”);

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

WHEREAS, Seller will use the Facility to serve Seller’s Load (as defined herein); and

WHEREAS, to the extent the output generated from the Facility exceeds Seller’s Load, Seller will deliver and sell to Avista on an as-available basis, and Avista will purchase, output generated from the Facility subject to the terms of this 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 First Amend and Restated Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 **"Avoided Cost Rates"** shall have the meaning provided in Section 5.2 of this Agreement.

1.3 **"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.

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

1.5 **"Commission"** means the Idaho Public Utilities Commission, or its successor.

1.6 **"Effective Date"** shall have the meaning provided in Section 4 of this Agreement.

1.7 **"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 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 investment tax credits, production tax credits, and cash grants associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Facility that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates ("RECs") associated with these Environmental Attributes. Environmental Attributes include without limitation all "Environmental Attributes" and all "Green Attributes" as those terms are defined in Appendix A-1 and Appendix A-2 of California Public Utilities Commission D. 08-08-028 in R. 06-02-012. RECS are accumulated on a MWh basis and one REC represents the

Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Facility.

1.8 Reserved.

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

1.10 “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.

1.11 “Force Majeure” shall have the meaning provided in Section 11 of this Agreement.

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

1.13 “Interconnection Agreement” the agreement between Seller and Avista which governs how the Net Output is delivered to Avista’s at the Point of Interconnection during the Term of this Agreement.

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

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

1.16 “Market Energy Price” means eighty-five percent (85%) of the PowerDex hourly Mid-Columbia index (“Mid-C Index”) price; provided, however, if the Mid-C Index price is less than zero, the Market Energy Price shall be one-hundred and fifteen percent (115%) of the Mid-C Index price.

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

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

1.19 “Net Output” means the capability and electric energy generated by the Facility, less Seller’s Load expressed in megawatt-hours (MWh) or kilowatt-hours (kWh).

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

1.21 “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.

1.22 “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.

1.23 “Seller’s Load” means Seller’s electrical load on Seller’s side of the retail meter(s) through which Avista delivers electric energy to Seller’s University campus, including Facility Service Power, to be served directly by the Facility. For the avoidance of doubt, Seller’s Load shall not include any third-party electrical load or any remote load that requires the output from the Facility to be delivered across Avista distribution or transmission facilities.

1.24 “Term” shall have the meaning provided in Section 4 of this Agreement.

1.25 “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.

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 any time during the Term of this Agreement.

3. CONDITIONS PRIOR TO DELIVERY OF NET OUTPUT

3.1 Seller Representation. Seller represents that, prior to the commencement of the first delivery of Net Output to Avista Seller's licenses, permits and approvals (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 other required approvals) are legally and validly issued, are held in the name of the Seller, and Seller is in substantial compliance with said permits.

3.2 Independent Engineering Certifications. Upon Avista's request, prior to the commencement of the first delivery of Net Output to Avista, Seller shall submit to Avista applicable Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility. The Independent Engineering Certification shall be signed by a licensed professional engineer in good standing and be submitted in a form specified in Exhibit C-1. Avista's acceptance of such forms shall not be unreasonably withheld. This Section 3.2 shall not apply to a Seller who has previously provided the certification required by this Section to Avista for the same Facility.

3.3 Interconnection Agreement. Seller shall provide Avista a copy of its Interconnection Agreement, which shall be attached hereto as Exhibit D.

3.4 Insurance. Upon Avista's request, Seller shall, to the extent applicable, submit to Avista evidence of compliance with Section 7.1.

3.5 Network Resource Designation. Upon 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.

4. TERM OF AGREEMENT

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 for twenty (20) years after the Effective Date (the "Term"), unless otherwise terminated as provided herein.

5. PURCHASE PRICES AND PAYMENT

5.1 Seller Election. To the extent that the Facility generates energy in excess of Seller Load, Seller elects to provide such energy generated by the Facility to Avista as Seller determines such energy generated by the Facility is available for sale to Avista (on an as-available basis)

5.2 Avoided Costs Calculated at the Time of Delivery. To the extent that Seller provides energy generated by the Facility to Avista pursuant to Section 5.1, the rate to be paid to Seller shall be the avoided costs calculated at the time of delivery ("Avoided Cost Rates"), which shall be, for each hour in which Seller delivers Net Output to Avista at the Point of Delivery after the Commercial Operation Date, the Market Energy Price for such hour expressed in \$ per kWh multiplied by the total kWh delivered to Avista at the Point of Delivery for such hour.

For the avoidance of doubt, the rate to be paid to Seller for any Net Output Seller delivers to Avista at the Point of Delivery from the Effective Date through the date that the Commission issues an order (the "Lapse Period") shall be the Market Energy Price. To the extent that Avista has paid Seller a price other than the Market Energy Price for any Net Output delivered to Avista, Avista shall issue an invoice or payment to Seller within 30 days of the Commission's order approving this Agreement to correct any over or under payment.

5.3 Payments to Seller. For any calendar month in which Seller has delivered Net Output from the Facility to Avista in accordance with this Agreement, Avista shall prepare and submit to Seller a monthly statement based upon Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 20th 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.

5.4 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 20th 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.

5.5 Interest. In addition to the remedies set forth in Section 15 of this Agreement, any amounts owing after the due date specified in Sections 7.3 and 7.4 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.

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

5.7 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the output from the Facility up to and until delivery to and receipt by Avista at the Point of Delivery and Avista shall be deemed to be in control of the Net Output delivered and received by Avista at the Point of Delivery.

6. ENVIRONMENTAL ATTRIBUTES

Seller shall retain and own all Environmental Attributes generated by the Facility.

7. INSURANCE; CONTINUING OBLIGATIONS

7.1 Insurance. Prior to the commencement of the first delivery of Net Output to Avista, 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 7 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.

7.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$1,000,000 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 Washington.

7.1.2 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.

7.1.3 Qualifying Insurance. The insurance coverage required by this Section 7 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.

7.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 7 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. 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

7.2 Self-Insurance. Notwithstanding the foregoing, Seller shall be entitled to self-insure through its self-funded liability program administered by the State of Idaho Office of Risk Management, which has a Combined Single Limit of \$500,000. Seller will provide a Certificate of Financial Responsibility upon request.

7.3 Continuing Obligations. For the Term of this Agreement, Seller will provide Avista with the following:

7.3.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 7.1. 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.

7.3.2 Engineer's Certification. If requested by Avista, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the state in which the Facility is located, which certification shall be in the form specified in Exhibit C-2. Seller's failure to supply the

certificate required by this Section 7.3.2 will be a material breach that may only be cured by Seller promptly providing the required certificate. Avista may request the Certification of Ongoing Operations and Maintenance required by this Section once in during the Term.

7.3.3 Licenses and Permits. During the Term of this Agreement, Seller shall comply with all applicable federal, state, and local laws and regulations. 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. At least every fifth year after the Effective Date, Seller will update the documentation described in Section 3.1. 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.

8. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Net Output if, in accordance with Section 9.2, 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 will 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 will, 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.

9. OPERATION

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

9.2 Excuse From Acceptance of Delivery of Energy.

9.2.1 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) prevent or interfere with Avista's compliance with any applicable law or regulatory requirement.

9.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 9.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension.

9.3 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.

9.4 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. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

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

9.6 Modifications. Seller shall notify Avista in writing of any material modifications to the Facility. Material modifications to the Facility include, but are not limited to, any modification that increases or decreases the Facility nameplate capacity rating, changes the primary energy source, and changes to the generator fuel. Any material modifications to the Facility, including but not limited to the generator or turbine, that (1) increases the Facility nameplate capacity rating, or (2) changes the primary energy source, or (3) changes to the generator fuel, will require a review of the Agreement terms, conditions and pricing and Avista, at its sole determination, may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any termination damages.

10. INTERCONNECTION, METERING AND TRANSMISSION

Seller shall make all necessary arrangements to interconnect its Facility with the electrical system of Avista. Any required metering for the Facility shall be pursuant to the Interconnection Agreement.

11. FORCE MAJEURE

11.1 Except as expressly provided in Section 11.6, 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; pandemic or epidemic; 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.

11.2 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.

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

11.4 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.

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

11.6 Notwithstanding anything to the contrary herein, Force Majeure shall not apply to, or excuse any default under, Sections 15.1(a), 15.1(b), 15.1(c), or 15.1(d). For the avoidance of doubt, Avista may declare Seller in Default if an event described in any of Sections 15.1(a), 15.1(b), 15.1(c), or 15.1(d), occurs and Avista may pursue any remedy available to it under this agreement.

12. INDEMNITY

12.1 Except as precluded by applicable law (including the limitations prescribed by the laws of the state of Idaho and, to the extent required by such laws, the lawful policies

promulgated by the University of Idaho's Board of Regents), the Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from such Party's action or failure to meet its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by the indemnified Party. This indemnity shall not extend the responsibility or liability of University of Idaho beyond that allowed by applicable law, including without limit and to the extent applicable, the Idaho constitution, the Idaho Tort Claims Act, and Idaho Code sections 59-1015, 1016, and 1017. Nothing herein shall obligate the Legislature of the State of Idaho to make future appropriations for any payment of any obligation of the University of Idaho, and any such obligation is an independent obligation of the University and not of the State of Idaho. Nothing herein shall be deemed a waiver of the University of Idaho's or the State of Idaho's sovereign immunity, which is hereby expressly reserved.

12.2 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.

12.3 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; PROVIDED, HOWEVER, THAT ANY AMOUNTS DUE TO SELLER AS PAYMENT FOR NET OUTPUT DELIVERED TO AVISTA PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL BE DEEMED TO BE DIRECT DAMAGES.

13. ASSIGNMENT

13.1 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.

13.2 Seller shall have the right 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.

14. 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 13.

15. DEFAULT AND TERMINATION

15.1 In addition to any other breach or failure to perform under this Agreement, each of the following events shall constitute a Default:

(a) The Facility ceases to be a Qualifying Facility;

b) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);

(c) 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;

(d) 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;

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

(f) 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 Agreement.

15.2 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 27. Except as provided in Section 15.1(d), 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 15.1(a) or 15.1(f), Seller shall not deliver any Net Output to Avista, and Avista shall have no obligation to accept any Net Output from the Facility, until such Default is cured.

15.3 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.

15.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Effective Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the applicable Avoided Cost Rate 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.

16. 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 the Parties may agree to mediate or arbitrate the dispute. In the event that the Parties do not agree to mediation or arbitration, either Party may, as applicable, request a hearing before the Commission or seek relief in a court of competent jurisdiction.

17. RELEASE BY SELLER

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

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

17.2 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;

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

18. 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.

19. 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.

20. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment 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.

21. 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 approved by the Commission.

22. CHOICE OF LAWS

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.

23. 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.

24. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

25. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original, and together shall constitute one and the same document.

26. TAXES

Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

27. NOTICES

Unless otherwise specified, all written notices or other communications required by or provided under this Agreement shall be mailed or delivered to the following addresses, and shall be considered delivered when deposited in the US Mail, postage prepaid, by certified or registered mail or delivered in person:

to Avista:	Director, Power Supply Avista Corporation P.O. Box 3727 Spokane, WA 99220
to Seller:	Director of Facilities University of Idaho 875 Perimeter Drive, MS2281 Moscow, ID 83844-2281

Either Party may change its designated representative to receive notice and/or address specified above by giving the other Party written notice of such change.

28. SURVIVAL

Rights and obligations which, by their nature, should survive termination or expiration of this Agreement, will remain in effect until satisfied, including without limitation, all outstanding financial obligations, and the provisions of Section 12 (Indemnity) and Section 16 (Dispute Resolution).

29. 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	Project Description and Point of Delivery
Exhibit B	Communications and Reporting
Exhibit C-1	Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility
Exhibit C-2	Independent Engineering Certifications for Ongoing Operations and Maintenance for a Qualifying Facility
Exhibit D	Interconnection Agreement

30. Authority

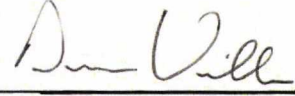
In entering this Agreement, the Seller's representative is acting under delegated authority under Board of Regents Policy V.I.

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

REGENTS OF THE UNIVERSITY OF IDAHO

AVISTA CORPORATION

By: 

By: 

Printed Name: Brian Foisy

Printed Name: Dennis Vermillion

Title: VP for Finance + Administration

Title: President and CEO

Date: 5.10.22

Date: 5/10/2022

Exhibit A

Project Description and Point of Delivery

Description of the Facility:

Seller's Facility is described as University of Idaho Micro-steam Turbine Installation and consists of:

- Three micro-steam turbine-generator sets, each designed to produce 275 kW, for total Facility design capacity of 825 kW
- Turbine-generators serve to offset campus power needs as well as reducing the pressure of steam from 170 psig down to 35 psig prior to campus distribution

Location:

Seller's Facility is located at the University of Idaho Energy Plant, at the northeast corner of 6th Street and Line Street, Moscow, Idaho 83844.

Point of Delivery: The Secondary terminals of the Transmission Provider's Distribution Transformer(s) where the Seller's secondary conductors are connected.

Exhibit B
Communication and Reporting

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

Avista: _____@avistacorp.com; or
 _____@avistacorp.com

Seller: johnsonb@uidaho.edu
Alternate: _ vineyard@uidaho.edu

(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) 885-5775
Alternate Phone: (208) 885-6246

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

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

Seller: (208) 874-7550
Alternate Phone: _____

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

Exhibit C-1

**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 _____ (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the construction in progress or 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 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: _____

Exhibit C -2

Independent Engineering Certification of Ongoing Operations and Maintenance for a Qualifying Facility

1. The undersigned is a duly authorized representative of _____, in its capacity as an independent engineer (the "Independent Engineer"). The Independent Engineer has substantial experience reviewing the design, construction, and operation of electric power plants of the same type as the University of Idaho's micro-steam turbine-generator sets ("Facility").
2. Independent Engineer has reviewed the operation and maintenance agreement ("O&M Agreement") for the Facility and it is the Independent Engineer's professional opinion that, provided the Facility has been designed and built to appropriate standards, the O&M Agreement is the same as the original O&M Agreement in place at COD, the is consistent with Prudent Utility Practices (as defined in the Agreement) and therefore is considered adequate to support the Facility's production of energy in accordance with the requirements of the Agreement, noting that the Independent Engineer makes no representation as to the amounts of energy that will be produced by the Facility.
3. Independent Engineer has no economic relationship to the designer or owner of said Facility and has made its analysis of the O&M Agreement independently.
4. Independent Engineer hereby confirms that the above statements are complete, true, and accurate to the best of its knowledge.

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

Exhibit D

Interconnection Agreement

The Parties acknowledge that Attachment 2 to the attached Interconnection Agreement states the nameplate capacity of the Facility is 1,050 kW. For purposes of this Amended and Restated Power Purchase Agreement, the Parties agree that the Nameplate Capacity Rating of the Facility is 825 kW Alternating Current (AC), as more fully described in Exhibit A.

FIRST AMENDED AND RESTATED

POWER PURCHASE AGREEMENT

BETWEEN

REGENTS OF THE UNIVERSITY OF IDAHO

AND

AVISTA CORPORATION

POWER PURCHASE AGREEMENT (STEAM)

This First Amended and Restated Power Purchase Agreement (“Agreement”) is made by and between Avista Corporation, a Washington corporation (“Avista”), and the Regents of the University of Idaho (“Seller”). Avista and Seller are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a Power Purchase Agreement (“Original Agreement”) that was submitted to the Idaho Public Utilities Commission for approval on February 23, 2022;

WHEREAS, Commission Staff recommended certain revisions to the Original Agreement;

WHEREAS, the Parties enter into this Agreement to amend the Original Agreement consistent with Commission Staff’s recommendation and intend this Agreement to supersede and replace the Original Agreement in its entirety;

WHEREAS, Seller will own, operate and maintain the electric power generating facility with a Nameplate Capacity Rating of 825 kW Alternating Current (AC), as more fully described in Exhibit A (“Facility”);

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

WHEREAS, Seller will use the Facility to serve Seller’s Load (as defined herein); and

WHEREAS, to the extent the output generated from the Facility exceeds Seller’s Load, Seller will deliver and sell to Avista on an as-available basis, and Avista will purchase, output generated from the Facility subject to the terms of this 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 First Amend and Restated Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 “**Avoided Cost Rates**” shall have the meaning provided in Section 5.2 of this Agreement.

1.3 “**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.

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

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

1.6 “**Effective Date**” shall have the meaning provided in Section 4 of this Agreement.

1.7 “**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 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 investment tax credits, production tax credits, and cash grants associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Facility that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates (“RECs”) associated with these Environmental Attributes. Environmental Attributes include without limitation all “Environmental Attributes” and all “Green Attributes” as those terms are defined in Appendix A-1 and Appendix A-2 of California Public Utilities Commission D. 08-08-028 in R. 06-02-012. RECS are accumulated on a MWh basis and one REC represents the

Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Facility.

1.8 Reserved.

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

1.10 “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.

1.11 “Force Majeure” shall have the meaning provided in Section 11 of this Agreement.

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

1.13 “Interconnection Agreement” the agreement between Seller and Avista which governs how the Net Output is delivered to Avista’s at the Point of Interconnection during the Term of this Agreement.

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

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

1.16 “Market Energy Price” means eighty-five percent (85%) of the PowerDex hourly Mid-Columbia (“Mid-C”) index (“Mid-C Index”) price, or the mutually agreed to index; provided, however, if the Mid-C Index price is less than zero, the Market Energy Price shall be one-hundred and fifteen percent (115%) of the Mid-C Index price.

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

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

1.19 “Net Output” means the capability and electric energy generated by the Facility, less Seller’s Load expressed in megawatt-hours (MWh) or kilowatt-hours (kWh).

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

1.21 **“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.

1.22 **“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.

1.23 **“Seller’s Load”** means Seller’s electrical load on Seller’s side of the retail meter(s) through which Avista delivers electric energy to Seller’s University campus, including Facility Service Power, to be served directly by the Facility. For the avoidance of doubt, Seller’s Load shall not include any third-party electrical load or any remote load that requires the output from the Facility to be delivered across Avista distribution or transmission facilities.

1.24 **“Term”** shall have the meaning provided in Section 4 of this Agreement.

1.25 **“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.

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 any time during the Term of this Agreement.

3. **CONDITIONS PRIOR TO DELIVERY OF NET OUTPUT**

3.1 Seller Representation. Seller represents that, prior to the commencement of the first delivery of Net Output to Avista Seller's licenses, permits and approvals (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 other required approvals) are legally and validly issued, are held in the name of the Seller, and Seller is in substantial compliance with said permits.

3.2 Independent Engineering Certifications. Upon Avista's request, prior to the commencement of the first delivery of Net Output to Avista, Seller shall submit to Avista applicable Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility. The Independent Engineering Certification shall be signed by a licensed professional engineer in good standing and be submitted in a form specified in Exhibit C-1. Avista's acceptance of such forms shall not be unreasonably withheld. This Section 3.2 shall not apply to a Seller who has previously provided the certification required by this Section to Avista for the same Facility.

3.3 Interconnection Agreement. Seller shall provide Avista a copy of its Interconnection Agreement, which shall be attached hereto as Exhibit D.

3.4 Insurance. Upon Avista's request, Seller shall, to the extent applicable, submit to Avista evidence of compliance with Section 7.1.

3.5 Network Resource Designation. Upon 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.

4. TERM OF AGREEMENT

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 for twenty (20) years after the Effective Date (the "Term"), unless otherwise terminated as provided herein.

5. PURCHASE PRICES AND PAYMENT

5.1 Seller Election. To the extent that the Facility generates energy in excess of Seller Load, Seller elects to provide such energy generated by the Facility to Avista as Seller determines such energy generated by the Facility is available for sale to Avista (on an as-available basis)

5.2 Avoided Costs Calculated at the Time of Delivery. To the extent that Seller provides energy generated by the Facility to Avista pursuant to Section 5.1, the rate to be paid to Seller shall be the avoided costs calculated at the time of delivery ("Avoided Cost Rates"), which shall be, for each hour in which Seller delivers Net Output to Avista at the Point of Delivery after the Commercial Operation Date, the Market Energy Price for such hour expressed in \$ per kWh multiplied by the total kWh delivered to Avista at the Point of Delivery for such hour.

For the avoidance of doubt, the rate to be paid to Seller for any Net Output Seller delivers to Avista at the Point of Delivery from the Effective Date through the date that the Commission issues an order (the "Lapse Period") shall be the Market Energy Price. To the extent that Avista has paid Seller a price other than the Market Energy Price for any Net Output delivered to Avista, Avista shall issue an invoice or payment to Seller within 30 days of the Commission's order approving this Agreement to correct any over or under payment.

5.3 Payments to Seller. For any calendar month in which Seller has delivered Net Output from the Facility to Avista in accordance with this Agreement, Avista shall prepare and submit to Seller a monthly statement based upon Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 20th 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.

5.4 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 20th 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.

5.5 Interest. In addition to the remedies set forth in Section 15 of this Agreement, any amounts owing after the due date specified in Sections 7.3 and 7.4 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.

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

5.7 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the output from the Facility up to and until delivery to and receipt by Avista at the Point of Delivery and Avista shall be deemed to be in control of the Net Output delivered and received by Avista at the Point of Delivery.

6. ENVIRONMENTAL ATTRIBUTES

Seller shall retain and own all Environmental Attributes generated by the Facility.

7. INSURANCE; CONTINUING OBLIGATIONS

7.1 Insurance. Prior to the commencement of the first delivery of Net Output to Avista, 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 7 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.

7.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$1,000,000 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 Washington.

7.1.2 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.

7.1.3 Qualifying Insurance. The insurance coverage required by this Section 7 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.

7.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 7 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. 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

7.2 Self-Insurance. Notwithstanding the foregoing, Seller shall be entitled to self-insure through its self-funded liability program administered by the State of Idaho Office of Risk Management, which has a Combined Single Limit of \$500,000. Seller will provide a Certificate of Financial Responsibility upon request.

7.3 Continuing Obligations. For the Term of this Agreement, Seller will provide Avista with the following:

7.3.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 7.1. 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.

7.3.2 Engineer's Certification. If requested by Avista, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the state in which the Facility is located, which certification shall be in the form specified in Exhibit C-2. Seller's failure to supply the

certificate required by this Section 7.3.2 will be a material breach that may only be cured by Seller promptly providing the required certificate. Avista may request the Certification of Ongoing Operations and Maintenance required by this Section once in during the Term.

7.3.3 Licenses and Permits. During the Term of this Agreement, Seller shall comply with all applicable federal, state, and local laws and regulations. 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. At least every fifth year after the Effective Date, Seller will update the documentation described in Section 3.1. 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.

8. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Net Output if, in accordance with Section 9.2, 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 will 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 will, 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.

9. OPERATION

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

9.2 Excuse From Acceptance of Delivery of Energy.

9.2.1 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) prevent or interfere with Avista's compliance with any applicable law or regulatory requirement.

9.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 9.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension.

9.3 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.

9.4 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. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

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

9.6 Modifications. Seller shall notify Avista in writing of any material modifications to the Facility. Material modifications to the Facility include, but are not limited to, any modification that increases or decreases the Facility nameplate capacity rating, changes the primary energy source, and changes to the generator fuel. Any material modifications to the Facility, including but not limited to the generator or turbine, that (1) increases the Facility nameplate capacity rating, or (2) changes the primary energy source, or (3) changes to the generator fuel, will require a review of the Agreement terms, conditions and pricing and Avista, at its sole determination, may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any termination damages.

10. INTERCONNECTION, METERING AND TRANSMISSION

Seller shall make all necessary arrangements to interconnect its Facility with the electrical system of Avista. Any required metering for the Facility shall be pursuant to the Interconnection Agreement.

11. FORCE MAJEURE

11.1 Except as expressly provided in Section 11.6, 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; pandemic or epidemic; 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.

11.2 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.

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

11.4 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.

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

11.6 Notwithstanding anything to the contrary herein, Force Majeure shall not apply to, or excuse any default under, Sections 15.1(a), 15.1(b), 15.1(c), or 15.1(d). For the avoidance of doubt, Avista may declare Seller in Default if an event described in any of Sections 15.1(a), 15.1(b), 15.1(c), or 15.1(d), occurs and Avista may pursue any remedy available to it under this agreement.

12. INDEMNITY

12.1 Except as precluded by applicable law (including the limitations prescribed by the laws of the state of Idaho and, to the extent required by such laws, the lawful policies promulgated by the University of Idaho's Board of Regents), the Parties shall at all times

indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from such Party's action or failure to meet its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by the indemnified Party. This indemnity shall not extend the responsibility or liability of University of Idaho beyond that allowed by applicable law, including without limit and to the extent applicable, the Idaho constitution, the Idaho Tort Claims Act, and Idaho Code sections 59-1015, 1016, and 1017. Nothing herein shall obligate the Legislature of the State of Idaho to make future appropriations for any payment of any obligation of the University of Idaho, and any such obligation is an independent obligation of the University and not of the State of Idaho. Nothing herein shall be deemed a waiver of the University of Idaho's or the State of Idaho's sovereign immunity, which is hereby expressly reserved.

12.2 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.

12.3 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; PROVIDED, HOWEVER, THAT ANY AMOUNTS DUE TO SELLER AS PAYMENT FOR NET OUTPUT DELIVERED TO AVISTA PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL BE DEEMED TO BE DIRECT DAMAGES.

13. ASSIGNMENT

13.1 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.

13.2 Seller shall have the right 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.

14. 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 13.

15. DEFAULT AND TERMINATION

15.1 In addition to any other breach or failure to perform under this Agreement, each of the following events shall constitute a Default:

(a) The Facility ceases to be a Qualifying Facility;

b) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);

(c) 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;

(d) 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;

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

(f) 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 Agreement.

15.2 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 27. Except as provided in Section 15.1(d), 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 15.1(a) or 15.1(f), Seller shall not deliver any Net Output to Avista, and Avista shall have no obligation to accept any Net Output from the Facility, until such Default is cured.

15.3 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.

15.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Effective Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the applicable Avoided Cost Rate 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.

16. 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 the Parties may agree to mediate or arbitrate the dispute. In the event that the Parties do not agree to mediation or arbitration, either Party may, as applicable, request a hearing before the Commission or seek relief in a court of competent jurisdiction.

17. RELEASE BY SELLER

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

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

17.2 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;

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

18. 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.

19. 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.

20. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment 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.

21. 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 approved by the Commission.

22. CHOICE OF LAWS

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.

23. 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.

24. **SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

25. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original, and together shall constitute one and the same document.

26. **TAXES**

Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

27. **NOTICES**

Unless otherwise specified, all written notices or other communications required by or provided under this Agreement shall be mailed or delivered to the following addresses, and shall be considered delivered when deposited in the US Mail, postage prepaid, by certified or registered mail or delivered in person:

to Avista: Director, Power Supply
Avista Corporation
P.O. Box 3727
Spokane, WA 99220

to Seller: Director of Facilities
University of Idaho
875 Perimeter Drive, MS2281
Moscow, ID 83844-2281

Either Party may change its designated representative to receive notice and/or address specified above by giving the other Party written notice of such change.

28. **SURVIVAL**

Rights and obligations which, by their nature, should survive termination or expiration of this Agreement, will remain in effect until satisfied, including without limitation, all outstanding financial obligations, and the provisions of Section 12 (Indemnity) and Section 16 (Dispute Resolution).

29. 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 Project Description and Point of Delivery
- Exhibit B Communications and Reporting
- Exhibit C-1 Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility
- Exhibit C-2 Independent Engineering Certifications for Ongoing Operations and Maintenance for a Qualifying Facility
- Exhibit D Interconnection Agreement

30. Authority

In entering this Agreement, the Seller's representative is acting under delegated authority under Board of Regents Policy V.I.

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

**REGENTS OF THE UNIVERSITY OF
IDAHO**

AVISTA CORPORATION

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit A

Project Description and Point of Delivery

Description of the Facility:

Seller's Facility is described as University of Idaho Micro-steam Turbine Installation and consists of:

- Three micro-steam turbine-generator sets, each designed to produce 275 kW, for total Facility design capacity of 825 kW
- Turbine-generators serve to offset campus power needs as well as reducing the pressure of steam from 170 psig down to 35 psig prior to campus distribution

Location:

Seller's Facility is located at the University of Idaho Energy Plant, at the northeast corner of 6th Street and Line Street, Moscow, Idaho 83844.

Point of Delivery: The Secondary terminals of the Transmission Provider's Distribution Transformer(s) where the Seller's secondary conductors are connected.

Exhibit B
Communication and Reporting

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

Avista: _____@avistacorp.com; or
 _____@avistacorp.com

Seller: johnsonb@uidaho.edu
Alternate: _ vineyard@uidaho.edu

(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) 885-5775
Alternate Phone: (208) 885-6246

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

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

Seller: (208) 874-7550
Alternate Phone: _____

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

Exhibit C-1

**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 _____ (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the construction in progress or 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 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: _____

Exhibit C -2

**Independent Engineering Certification of Ongoing Operations and
Maintenance for a Qualifying Facility**

1. The undersigned is a duly authorized representative of _____, in its capacity as an independent engineer (the "Independent Engineer"). The Independent Engineer has substantial experience reviewing the design, construction, and operation of electric power plants of the same type as the University of Idaho's micro-steam turbine-generator sets ("Facility").
2. Independent Engineer has reviewed the operation and maintenance agreement ("O&M Agreement") for the Facility and it is the Independent Engineer's professional opinion that, provided the Facility has been designed and built to appropriate standards, the O&M Agreement is the same as the original O&M Agreement in place at COD, the is consistent with Prudent Utility Practices (as defined in the Agreement) and therefore is considered adequate to support the Facility's production of energy in accordance with the requirements of the Agreement, noting that the Independent Engineer makes no representation as to the amounts of energy that will be produced by the Facility.
3. Independent Engineer has no economic relationship to the designer or owner of said Facility and has made its analysis of the O&M Agreement independently.
4. Independent Engineer hereby confirms that the above statements are complete, true, and accurate to the best of its knowledge.

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

Exhibit D

Interconnection Agreement

The Parties acknowledge that Attachment 2 to the attached Interconnection Agreement states the nameplate capacity of the Facility is 1,050 kW. For purposes of this Amended and Restated Power Purchase Agreement, the Parties agree that the Nameplate Capacity Rating of the Facility is 825 kW Alternating Current (AC), as more fully described in Exhibit A.