



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

July 13, 2022

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

RE: AVU-E-22-07 – Reply Comments

Dear Ms. Noriyuki:

Enclosed for filing with the Commission pursuant to Order 35431 in Case No. AVU-E-22-07 is an electronic copy of Avista's Reply Comments regarding the Agreement between Ford Hydro Limited Partnership and Avista Corporation.

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 JUL 13 PM 1:55
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 THE JOINT PETITION)
OF AVISTA CORPORATION AND FORD) CASE NO. AVE-E-22-07
HYDRO LIMITED PARTNERSHIP)
) REPLY COMMENTS OF AVISTA
) CORPORATION
)
)
_____)

Pursuant to the Notice issued by the Idaho Public Utilities Commission (“Commission”) on June 17, 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 if it is updated to reflect certain changes recommended by Staff. Avista appreciates Staff’s comments and is working with the Project Developer and intends to submit a Second Amended and Restated Power Purchase Agreement (“Second Amended Agreement”) that includes most of Staff’s recommended changes. A draft of the Second Amended Agreement (redlined against the First amended Agreement) that is substantially the agreement that Avista expects to submit is attached hereto as Attachment A.¹ Avista anticipates filing the Second Amended Agreement within a week of this filing and will

¹ The draft Second Amended Agreement attached hereto as Attachment A has been sent to the Project Developer for review and execution, but the draft is subject to further review and revision. Avista does not anticipate any substantive changes to the draft Second Amended Agreement.

respectfully request that the Commission approve the Second Amended Agreement with an effective date of July 1, 2022.

I. Background

Avista and Ford Hydro Limited Partnership (“Ford Hydro” or “Project Developer”) entered into a power purchase agreement on May 11, 2022 (“Original Agreement”). At Ford Hydro’s request, the Original Agreement was for a one-year term commencing on July 1, 2022. The Original Agreement replaced an existing power purchase agreement under which Ford Hydro was compensated for both capacity and energy. Accordingly, consistent with Commission precedent, the Original Agreement included rates that compensated Ford Hydro for both capacity and energy.

On June 7, 2022, Commission Staff issued its first production request to Avista. Based on the Staff’s first production request, and Avista’s subsequent conversation with Commission Staff about the production request, Avista understood that Staff had certain concerns, including (i) use of rates in effect on the requested effective date of the Original Agreement instead of the rates in effect on the date the Original Agreement was signed, and (ii) payment for capacity for a power purchase agreement with a one-year term.

To resolve these issues without further litigation, Avista and Ford Hydro entered into an Amended and Restated Power Purchase Agreement on June 21, 2022 (“First Amended Agreement”). The First Amended Agreement terminated and replaced the Original Agreement in its entirety. To resolve the issue of whether the parties could agree that the Legally Enforceable Obligation (“LEO”) arose on a date other than the date they entered into the Original Agreement and, therefore, to resolve the issue of whether they could use the rates in effect on the requested effective date rather than the date the Original Agreement was signed, the

parties clarified that the LEO arose on the date the parties entered into the First Amended Agreement. To resolve the question of whether Ford Hydro is entitled to be compensated for capacity in a one-year contract, the parties agreed to a two-year term in the First Amended Agreement.

On July 6, 2022, Staff submitted comments on the First Amended Agreement (“Comments”). In its Comments, Staff recommends the following changes to the First Amended Agreement:

1. Inclusion of the monthly generation estimates in Table No. 1 included in Staff’s Comments;
2. Implement Staff’s wording changes clarifying provisions in Section 6.3.2 of the First Amended Agreement;
3. Inclusion of provisions to address potential modifications to the Facility that may require Commission approval;
4. Modification of Section 24 to reflect the need for Commission approval before an amendment to the First Amended Agreement is valid;
5. Both parties need to sign and date the Second Amended Agreement before submitting to the Commission for approval;
6. Use of Staff’s proposed avoided cost rates in Table No. 2;
7. Modification of the LEO clarification paragraph to reflect the different timing establishing the LEO for the first year and second year of the term;
8. Use of Staff’s proposed avoided cost rates for the first year for the lapse contract period.²

² Staff Comments at 11.

As discussed herein, Avista intends to submit a Second Amended Agreement substantially similar to Attachment A that adopts most of Staff's recommended changes. Avista does not agree with Staff that the LEO for the first year of the term should be based on the date the Original Agreement was entered by the parties. Even assuming that the LEO can only arise on the date when the parties enter into an agreement and that parties cannot mutually agree that the LEO arises on some other date as Staff appears to contend, the Original Agreement was terminated and superseded in its entirety by the First Amended Agreement and, therefore, the LEO for the entire two-year term arose when the parties entered into the First Amended Agreement. Avista intends to submit the Second Amended Agreement for approval within a week of this filing and will request that the Commission accept the Second Amended Agreement effective July 1, 2022.

II. Reply Comments

As discussed above, Commission Staff recommends eight amendments to the First Amended Agreement. Avista intends to incorporate most of Staff's recommendations in the proposed Second Amended Agreement, as more fully discussed below.

A. Inclusion of the Monthly Generation Estimates in Table No. 1 to Staff's Comments

In its Comments, Staff notes that the First Amended Agreement does not include monthly generation estimates for purposes of the 90/110 Rule.³ Avista provided monthly generation estimates in response to Staff's first production request. Staff recommends that the monthly generation estimates be included in the agreement.⁴

³ Comments at 3-4.

⁴ *Id.*

Staff's comments misunderstand the timing for providing monthly estimates. Specifically, under Section 6.3.1 of the First Amended Agreement, the Project Developer is to provide the estimates for the first twelve consecutive months to Avista "no later than five (5) calendar days prior to the Effective Date. . . ." The First Amended Agreement was executed on May 11, 2022. The requested Effective Date is July 1, 2022. Therefore, the Project Developer is to provide the monthly estimates for the first year on or before June 26, 2022—the monthly estimates are not typically included in Avista's power purchase agreements; but are provided to Avista prior to the Effective Date. To be sure, there is no practical reason to include the estimates in the agreement since the estimates may be updated or otherwise revised.⁵

Notwithstanding the foregoing, to resolve the issue raised by Staff, Avista intends to submit the preliminary monthly generation estimates in the Second Amended Agreement as Exhibit F.

B. Implement Staff's Wording Changes Clarifying Provisions in Section 6.3.2

Staff recommends language changes to clarify Section 6.3.2.⁶ Avista proposes to update Section 6.3.2 of the Second Amended Agreement to include Staff's recommended change in Section 6.3.2.

C. Inclusion of Provisions to Address Potential Modifications to the Facility that May Require Commission Approval

Staff asserts that the First Amended Agreement does not contain any provisions that address potential modifications to the Facility. That is incorrect. Section 6.2 of the First Amended Agreement states: "The maximum annual amount of electric power that Avista is obligated to purchase hereunder shall be 5,000 megawatt hours in any Operating Year. . . ." The

⁵ *E.g.* First Amended Agreement at Sections 6.3.2 and 6.3.5 (allowing Project Developer to update the monthly estimates).

⁶ Comments at 4-5.

5,000 megawatt hour limitation is intended to ensure that the Facility cannot be modified to increase its capacity, while ensuring sufficient operational flexibility of the existing Facility.

Notwithstanding the foregoing, to resolve the issue raised by Staff, Avista is proposing to include a provision in Section 9.7 of the Second Amended Agreement that expressly restricts the Project Developer from modifying the Facility from the as-built description of the Facility included in Exhibit D or from the capacity size of 1.499 MW without Avista's written consent and, if required, Commission approval. With that restriction, the recommended provisions for modifying with notice are unnecessary. If the Project Developer wants to modify the Facility in the future, it will need to work with Avista to enter into a new agreement for the modified facility and, of course, that new agreement will be subject to Commission approval.

D. Modification of Section 24 to Reflect Need for Commission Approval Before an Amendment to the Agreement is Valid

In its Comments, Staff expressed concern that Section 24 of the Original Agreement contemplated amendments may become effective without Commission approval.⁷ The intent of Article 24 is to state that both parties to the agreement must agree in writing to amend the agreement. However, the agreement, and any amendment to the agreement must be approved by the Commission⁸. Accordingly, in the Second Amended Agreement, Avista proposes to revise Section 24 consistent with Staff's Comments 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.

⁷ Comments at 7.

⁸ See First Amended Agreement at Section 5.2.

E. Legally Enforceable Obligation and Use of Avoided Cost Rates

In its Comments, Staff appears to assert that the LEO for the first year of the term of the agreement was established on the date that the Original Agreement was executed—i.e., May 11, 2022—and that the LEO for the second year of the term was established when the First Amended PPA was executed—i.e., June 21, 2022.⁹ Accordingly, Staff asserts that the avoided cost rates in effect on June 1, 2022 should apply to the first year of the term and the avoided cost rates in effect after June 1, 2022 should apply to the second year of the term.¹⁰ Avista disagrees.

As a threshold matter, in the Original Agreement the parties effectively agreed that the LEO would arise on the Effective Date of that agreement rather than the date the Original Agreement was executed. This was necessary to solve a practical issue. That is, since the prior agreement expired on June 30, 2022—shortly after the new avoided cost rates for 2022 were to become effective—to use the new rates the parties were faced with a choice: (1) they could wait until the 2022 avoided cost rates became effective to execute the Original Agreement, or (2) they could execute the Original Agreement before the avoided cost rates became effective and mutually agree to use the rates in effect on the Effective Date—effectively agreeing that the LEO arose on the Effective Date rather than the execution date. If the parties choose to wait until the 2022 avoided cost rates became effective, the Commission would not have time to review and approve the Original Agreement before the Effective Date. Accordingly, the parties choose to execute on May 11, 2022, to allow sufficient time for the Commission to review and approve the Original Agreement.

Avista agrees that, as a general rule, the LEO arises when the parties enter into a power purchase agreement. The general rule provides a backstop to determine when the LEO arises if

⁹ Comments at 8.

¹⁰ *Id.*

the parties cannot otherwise agree to the date when the LEO arises. Neither Commission precedent nor Idaho law prohibits the parties from mutually agreeing that the LEO arises on a date other than the execution date. In cases where an existing agreement expires shortly after new rates are to become effective, rigid adherence to the general rule that the LEO arises when parties execute the agreement is not practical. Such rigid adherence to the general rule forces developers to wait to execute the agreement until new rates become effective, which in turn will mean that the Commission will not have sufficient time to review and approve agreements before they become effective.

Even assuming rigid adherence to the general rule is required even when the parties mutually agree to an alternative date for the LEO, in this case the LEO for both years of the term arose when the parties entered into the First Amended Agreement. Staff fails to recognize that, by its terms, the First Amended Agreement “terminates, supersedes and replaces the [Original Agreement] in its entirety.”¹¹ That is, the First Amended Agreement terminates and supersedes the entire agreement, including the original execution date. Accordingly, the date that the parties executed the Original Agreement is irrelevant to the question of when the LEO arose.

Staff’s reliance on the Commission’s order in *Stimson* in AVU-E-19-16 (“*Stimson*”) is misplaced.¹² In *Stimson* the parties executed an amendment to the agreement that, among other things, extended the term. However, in contrast to the circumstances that exist here, that amendment did not terminate and supersede the underlying agreement. Rather, the amendment expressly stated:

¹¹ Original Agreement at Section 5.1.

¹² *See* Comments at 8-9.

Except as expressly amended by the provisions set forth in this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect following execution of this Amendment¹³

In Stimson, the original execution date was not terminated and superseded. In contrast, the First Amended Agreement does terminate the Original Agreement—including the original execution date—in its entirety. Accordingly, the LEO for the First Amended Agreement arose on June 21, 2022, when the parties executed that First Amended Agreement.¹⁴

Staff's remaining recommendations regarding the rates to be used during the first and second years of the term and during the lapse period appear to be based on its misunderstanding of when the LEO arose. As discussed above, the LEO arose for the First Amended Agreement when that agreement was executed. Accordingly, the avoided cost rates that were in effect when the First Amended Agreement was executed apply to both years of the term and the lapse period.¹⁵

III. Conclusion

Avista appreciates Staff's careful review. As discussed herein, the First Amended Agreement has been revised to incorporate most of Staff's recommendations. Avista respectfully requests that the Commission approve the Second Amended Agreement (attached hereto as Attachment A) with an effective date of July 1, 2022.

¹³ Amendment No. 1 filed in AVU-E-19-16 at Section 5.

¹⁴ The Second Amended Agreement also terminates and supersedes the First Amended Agreement in its entirety, so the LEO for the Second Amended Agreement arose on when the Second Amended Agreement was executed. However, the rates have not changed between the execution of the First Amended Agreement and the Second Amended Agreement and, therefore, there is no practical consequence as a result of the replacement of the First Amended Agreement with the Second Amended Agreement.

¹⁵ The Second Amended Agreement also terminates and supersedes the First Amended Agreement in its entirety, so the LEO for the Second Amended Agreement arises when the Second Amended Agreement is executed. However, the rates have not changed between the execution of the First Amended Agreement and the anticipated execution of the Second Amended Agreement and, therefore, there is no practical consequence as a result of the replacement of the First Amended Agreement with the Second Amended Agreement. That is, the rates that were in effect when the First Amended Agreement was executed are still in effect and, therefore, will apply to the Second Amended Agreement.

DATED this 13th day of July 2022.

 /s/ Michael G. Andrea
Michael G. Andrea
Attorney for Avista Corporation

ATTACHMENT A

Draft Proposed Second Amended Agreement

SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT

BETWEEN

FORD HYDRO LIMITED PARTNERSHIP

AND

AVISTA CORPORATION

I N D E X

1.	DEFINITIONS.....	3
2.	NO RELIANCE ON AVISTA.....	6
3.	WARRANTIES	6
4.	CONDITIONS TO ACCEPTANCE OF ENERGY	7
5.	TERM OF AGREEMENT.....	7
6.	PURCHASE AND SALE OF POWER.....	8
7.	INSURANCE	10
8.	CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY	11
9.	OPERATION	11
10.	METERING	13
11.	PURCHASE PRICES AND METHOD OF PAYMENT.....	14
12.	FORCE MAJEURE	15
13.	INDEMNITY	16
14.	ASSIGNMENT.....	16
15.	NO UNSPECIFIED THIRD PARTY BENEFICIARIES	17
16.	DEFAULT	17
17.	ARBITRATION	18
18.	RELEASE BY PROJECT DEVELOPER	19
19.	GOVERNMENTAL AUTHORITY	19
20.	EQUAL OPPORTUNITY	19
21.	SEVERAL OBLIGATIONS.....	19
22.	IMPLEMENTATION.....	20
23.	NON-WAIVER.....	20
24.	AMENDMENT.....	20
25.	CHOICE OF LAWS	20

Attachment A

DRAFT

26.	COMPLIANCE WITH LAWS.....	20
27.	VENUE	20
28.	HEADINGS	21
29.	NOTICES	21
30.	EXHIBITS	21
31.	USE OF FACILITIES.....	22

Exhibit A	Communication and Reporting
Exhibit B	Form of Engineer's Certification of Operations and Maintenance Policy
Exhibit C	Reserved
Exhibit D	Description of the Facility
Exhibit E	Purchase Prices
Exhibit F	<u>Preliminary Monthly Generation Estimates</u>

This Amended and Restated Power Purchase Agreement (“Agreement”) with an Effective Date as provided in Section 5.1 below is made by and between Avista Corporation, a Washington corporation (“Avista”), and Ford Hydro Limited Partnership (“Project Developer”). Avista and Project Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Project Developer plans to continue to operate a 1.499 MW hydroelectric generating unit(s) near Weippe, Idaho, as more fully described in Exhibit D (“Facility”); and

WHEREAS, Project Developer has obtained all necessary rights and authorities to own and operate the Facility; and

WHEREAS, the Facility may produce power, which Project Developer desires to sell to Avista; and

WHEREAS, Project Developer and Avista are parties to an agreement pursuant to which Avista purchases the capacity and energy of the Facility, which agreement expires by its own terms on June 30, 2022 (“Prior Agreement”); and

WHEREAS, Project Developer desires to sell and Avista desires to purchase output from the Facility pursuant to this Agreement, subject to approval of the Idaho Public Utilities Commission; and

WHEREAS, the Facility is or shall be a Qualifying Facility within the meaning of the Public Utility Regulatory Policies Act of 1978 and the rules and regulations thereunder; and

WHEREAS, on May 11, 2022, the Parties executed a Power Purchase Agreement (“May 11 Agreement”) where Avista was to purchase the output from the Facility for a one-year term commencing on July 1, 2022;

WHEREAS, the Parties have agreed to revise the May 11 Agreement to provide for a two-year term commencing on July 1, 2022 and to clarify that the Legally Enforceable Obligation under this Agreement shall be the date upon which the Parties execute this Agreement.

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

1. DEFINITIONS

Whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

- 1.1 **“Agreement”** means this Power Purchase Agreement, including all exhibits, and any written amendments.
- 1.2 **“aMW”** means average MW.
- 1.3 **“Avista”, “Project Developer”, “Party” and “Parties”** shall have their respective meanings set forth above.
- 1.4 **“Effective Date”** shall have the meaning provided in Section 5.1.
- 1.5 **“Environmental Attributes”** means all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Facility or the generation of energy by the Facility, and the delivery of such energy to the electricity grid, and include without limitation, any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view to the UNFCCC, 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. 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 (i) any energy, capacity, reliability or other power attributes from the Facility.
- 1.6 **“Facility”** means the electric generating facilities, including all equipment and structures necessary to generate and supply power, more particularly described at Exhibit D (Description of the Facility).
- 1.7 **“Facility Service Power”** means the electric power used by the Facility during its operation, including, but not necessarily limited to pumping, generator excitation, cooling or otherwise related to the production of electricity by the Facility.
- 1.8 **“FERC”** means the Federal Energy Regulatory Commission.
- 1.9 **“Independent Engineering Certification”** means certifications provided by a professional engineer registered in Washington or Idaho, who has no direct or indirect, legal or equitable, ownership interest in the Facility.
- 1.10 **“Reserved”**.

1.11- “Interconnection Facilities” means all facilities required to interconnect the Facility for delivery of Net Delivered Output to the Avista transmission system including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.12 “IPUC” means the Idaho Public Utilities Commission or its successor.

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

1.14 “Market Energy Cost” means eighty-five percent (85%) of the Powerdex Hourly Mid-Columbia Index (“Mid-C Index”), or its successor, or as agreed to by the parties where no successor exists; provided, however, if the Mid-C Index is less than zero, the Market Energy Cost shall be one-hundred and fifteen percent (115%) of the Mid-C Index.

1.15 “Net Delivered Output” means all electric energy generated by the Facility, net of Facility Service Power.

1.16 “Net Delivered Output Cost” means the rate in dollars per megawatt-hour, to be paid by Avista for all Net Delivered Output that is not Surplus Energy, subject to any limitations under this Agreement. The Net Delivered Output Cost is specified in Section 11.1.

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

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

1.19 “Operating Year” means each 12-month period from July 1 through June 30.

1.20 “Point of Delivery” means the location where the Facility is electrically interconnected with Avista's transmission system.

1.21 “Prudent Utility Practices” means the practices, methods, and acts, including but not limited to practices, methods, and acts engaged in or approved 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 “Scheduled Outage” means any outage which is scheduled by the Project Developer to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than its full tested capability.

1.23 **“Surplus Energy”** means: (1) Net Delivered Output produced by the Facility and delivered to the Avista electrical system during the month which exceeds 110% of the monthly Net Delivered Output estimate for the corresponding month specified in Section 6.3; or (2) if the Net Delivered Output produced by the Facility and delivered to the Avista electrical system during the month is less than 90% of the monthly Net Delivered Output estimate for the corresponding month specified in Section 6.3, then all Net Delivered Output delivered by the Facility to the Avista electrical system for that given month. For clarification, Net Delivered Output that is Surplus Energy pursuant to this definition shall be sold to Avista at the price set forth in Section 11.2.

1.24 **“Surplus Energy Cost”** means the rate in dollars per megawatt-hour, to be paid by Avista for all Surplus Energy, subject to any limitations under this Agreement. The Surplus Energy Cost is specified in Section 11.2 of this Agreement.

1.25 **“Term”** shall have the meaning provided in Section 5.5 of this Agreement.

2. NO RELIANCE ON AVISTA

2.1 **Project Developer Independent Investigation.** Project Developer warrants and represents to Avista that in entering into this Agreement and the undertaking by Project Developer of the obligations set forth herein, Project Developer has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement.

2.2 **Project Developer Experts.** All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Project Developer may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Project Developer.

3. WARRANTIES

3.1 **No Warranty by Avista.** Any review, acceptance or failure to review Project Developer's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by Avista, and Avista makes no warranties, expressed or implied, regarding any aspect of Project Developer's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

3.2 **Qualifying Facility Status.** Project Developer warrants that the Facility is a “Qualifying Facility”, as that term is used and defined in 18 C.F.R. §§ 292.101, 292.207. After initial qualification, Project Developer shall take such steps as may be required to adequately maintain the Facility’s Qualifying Facility status during the term of this Agreement and Project Developer’s failure to adequately maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Facility’s Qualifying Facility status and associated support and compliance documents at any time during the term of this Agreement.

4. CONDITIONS PRIOR TO EFFECTIVE DATE

Prior to the Effective Date, the following actions must have occurred:

4.1 Licenses, Permits and Approvals. Pursuant to applicable federal, state, tribal or local regulations, Project Developer shall maintain in good standing and effect all licenses, permits or approvals necessary for Project Developer's operation of the Facility including, but not limited to, compliance with Subpart B, 18 C.F.R. § 292.207. Licenses, permits and approvals shall include but shall not be limited to tribal, state and local business licenses, environmental permits approvals for fuel storage, water rights, and other necessary easements and leases.

4.3 Insurance. Project Developer shall have complied with Section 7, Insurance.

4.5 Initial Year Monthly Net Delivered Output Amounts. Project Developer shall have provided to Avista the Initial Year Monthly Net Delivered Output Estimates in accordance with Section 6.3.1.

5. TERM OF AGREEMENT

5.1 Subject to the provisions of this Section 5, this Agreement shall be effective at 0000 hours on July 1, 2022, or such other date as ordered by the IPUC, ("Effective Date"). Power purchases pursuant to this Agreement shall commence upon the Effective Date. This Agreement terminates, supersedes and replaces the May 11 Power Purchase Agreement in its entirety.

5.2 Project Developer and Avista shall jointly petition the IPUC for an order approving the Agreement. This Agreement is conditioned upon the approval and determination by the IPUC that the prices to be paid for electric power are just and reasonable, in the public interest, and that the costs incurred by Avista for purchases of electric power from Seller are legitimate expenses.

5.3 In the event that the IPUC fails to issue a final order approving this Agreement by September 1, 2022, neither Party shall have any further obligations to purchase or sell electric power hereunder, and this Agreement shall terminate on September 1, 2022.

5.4 In the event that this Agreement is terminated pursuant to Sections 5.2 or 5.3, except as otherwise provided, the Project Developer shall refund amounts to Avista. The refund amount for each month shall be equal to the amount previously paid by Avista for electric power received by Avista from the Facility during such month, less the arithmetic product that is obtained by multiplying the number of megawatt-hours during such month for which Avista has paid, by the lesser of: (i) the Net Delivered Output Cost set forth in Section 11.1 for such month, or (ii) the Market Energy Cost for such month. In the event that Avista has not paid for electric power delivered by Project Developer before this Agreement is terminated pursuant to Sections 5.2 or 5.3, Avista shall pay for such power at the lesser of: (i) the Net Delivered Output Cost set forth in Section 11.1 for such month, or (ii) the Market Energy Cost for such month.

5.5 The Term of the Agreement shall be for two (2) years following the Effective Date, unless terminated earlier by terms and conditions contained herein.

6. PURCHASE AND SALE OF POWER

6.1 Project Developer shall sell and deliver to the Point of Delivery and Avista shall purchase all Net Delivered Output.

6.2 The Facility is designed, and the Project Developer shall operate the Facility in a manner such that the hourly scheduled amount of Net Delivered Output does not exceed 1.499 MW in any hour. Avista shall have the right, but not the obligation, to purchase any Net Delivered Output from the Facility in excess of 1.499 MW in any hour. The maximum annual amount of electric power that Avista is obligated to purchase hereunder shall be 5000 megawatt-hours in any Operating Year which is a non-Leap Year, or 5000 megawatt-hours in any Operating Year which is a Leap Year.

6.3 Net Delivered Output Amounts.

6.3.1 Initial Net Delivered Output Estimates. Project Developer shall provide to Avista Net Delivered Output estimates for each of the twelve consecutive months that begin with the month containing the Effective Date, counting the month during which the Effective Date occurs as month one (Initial Year Monthly Net Delivered Output Estimates). Project Developer shall provide to Avista such Initial Year Monthly Net Delivered Output Estimates by written notice in accordance with Section 29 no later than five (5) calendar days prior to the Effective Date and shall provide estimates for each subsequent year for the Term no later than five (5) business days prior to each anniversary of the Effective Date.

6.3.2 Subsequent Monthly Net Delivered Output Estimates. Prior to the end of the first month following the Effective Date, and prior to the end of every month thereafter, Project Developer may provide to Avista updated monthly Net Delivered Output estimates for the month following the next month. For example, assuming that the Effective Date is July 1, 2022, prior to July 31, 2022, Project Developer may provide Avista revised monthly Net Delivered Output estimates for September 2022. Project Developer may provide such monthly Net Delivered Output estimates to Avista by written notice in accordance with Section 29, no later than 5:00 p.m. of the last business day of the month ~~during~~ by which they are required to be provided.

6.3.3 Content of Net Delivered Output Estimates. All Net Delivered Output estimates shall be expressed in kilowatt-hours by month.

6.3.4 Failure to Provide Net Delivered Output Estimates. If the Project Developer fails to provide to Avista Net Delivered Output estimates when required herein pertaining to any month or months, Avista shall determine the Net Delivered Output estimates pertaining to such month or months, and the Net Delivered Output estimates

shall be binding for purposes of the Agreement as though they were prepared by Project Developer and provided to Avista as required by the Agreement.

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

6.3.6 Avista Adjustment of Net Delivered Output Estimate. If Avista is excused from accepting the Project Developer's Net Delivered Output as specified in Section 9.2 or if the Project Developer declares a Suspension of Energy Deliveries as specified in Section 9.3 and the Project Developer declared Suspension of Energy Deliveries is accepted by Avista, the Net Delivered Output estimate as specified in Section 6.3.1 for the specific month in which the reduction or suspension under Section 9.2 or 9.3 occurs will be reduced in accordance with the following:

Where:

NDO =	Current Month's Net Delivered Output estimate
SGU = (a)	If Avista is excused from accepting the Project Developer's Net Delivered Output as specified in Section 9.2 this value will be equal to the percentage of curtailment as specified by Avista multiplied by the TGU as defined below.
(b)	If the Project Developer declares a Suspension of Net Delivered Output as specified in Section 9.3 this value will be the generation unit size rating of 1.499 MW,
TGU =	Generation unit size rating of 1.499 MW,
RSH =	Actual hours the Facility's Net Delivered Output was either reduced or suspended under Sections 9.2 or 9.3.
TH =	Actual total hours in the current month

Resulting formula being:

$$\text{Adjusted Net Delivered Output} = \text{NDO} - \left(\left(\text{SGU} \times \text{NDO} \right) \times \left(\text{RSH} \right) \right)$$

TGU

TH

This Adjusted Net Delivered Output estimate will be used in applicable Surplus Energy calculations for only the specific month in which Avista was excused from accepting the Net Delivered Output or the Project Developer declared a Suspension of Energy.

6.4 Environmental Attributes. Ownership of Environmental Attributes shall be determined consistent with applicable State and Federal law.

7. INSURANCE

7.1 Business Insurance. Prior to operating the Facility, Project Developer, 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. Avista's acceptance of the certificate of insurance is not intended to, and will not reduce, limit, affect, or modify the primary obligations and liabilities of Project Developer under the provisions of this Agreement. Project Developer must provide notice of cancellation or notice of change in policy terms at least sixty (60) days prior to any change or termination of the policies.

7.1.1 General Liability. Project Developer shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$2,000,000 per occurrence, including coverage of bodily injury, property damage liability, and contractual liability specifically related to the indemnity provisions of this Agreement. The deductible will not exceed the Project Developer's financial ability to cover claims and will not be greater than prevailing practices for similar operations in the State of Idaho.

7.1.2 Qualifying Insurance. The insurance coverage required by this Section 7.1.1 must be obtained from an insurance carrier licensed to conduct business in the state in which the Services are to be performed, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have less than an A.M. Best Rating of A-, Class VIII. The policies required under this Agreement must include (i) provisions or endorsements naming Avista and its directors, officers and employees as additional insureds, (ii) Avista as a loss payee as applicable, (iii) a cross-liability and severability of interest clause, and (iv) provisions such that the policy is primary insurance with respect to the interests of Avista and that any other insurance maintained by Avista is excess and not contributory.

7.2 Engineering Certifications. At Avista's reasonable written request, it may require the Project Developer to provide to Avista an Independent Engineering Certification, substantially in the form of Exhibit B, as to the adequacy of the Operation and Maintenance Policy for the Facility within sixty (60) days after such request. Failure to provide such documentation shall be deemed to be a default under Section 16.1.

8. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Project Developer to curtail, interrupt or reduce delivery of Net Delivered Output if, in accordance with Section 9.2, Avista determines that curtailment, interruption or reduction is necessary because of force majeure or to protect persons and property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use its reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Project Developer operations, Avista shall give Project Developer reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration.

9. OPERATION

9.1 Communications and Reporting. Avista and the Project Developer shall maintain appropriate operating communications through Avista's Designated Dispatch Facility in accordance with Exhibit A of this Agreement.

9.2 Excuse From Acceptance of Delivery of Power.

9.2.1 Avista may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of power if Avista reasonably determines consistent with Prudent Utility Practice that the failure to do so:

9.2.1.1 May endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

9.2.1.2 May cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers;

9.2.1.3 May 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.

9.2.2 Avista shall promptly notify Project Developer of the reasons for any such interruption, suspension or curtailment provided for in Section 9.2.1, above. Avista shall use reasonable efforts to limit the duration of any such disconnection, interruption, suspension or curtailment.

9.3 Project Developer Declared Suspension of Energy Deliveries.

9.3.1 If the Facility experiences a forced outage due to equipment failure which is not caused by an event of force majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Facility, Project Developer may, after giving notice as provided in Section 9.3.2 below, temporarily suspend all deliveries of Net Delivered

Energy to Avista from the Facility for from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition (“Declared Suspension of Energy Deliveries”). The Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Project Developer’s telephone notification to Avista as specified in Section 9.3.2 and will continue for the time as specified (not less than 48 hours) in the written notification provided by the Project Developer. In the month(s) in which the Declared Suspension of Energy occurred, the Net Delivered Energy Amount will be adjusted as specified in Section 6.3.5.

9.3.2 If the Project Developer desires to initiate a Declared Suspension of Energy Deliveries as provided in Section 9.3.1, the Project Developer shall notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Avista. The Project Developer shall, within 24 hours after the telephone contact, provide Avista a written notice in accordance with Section 29 that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused the Project Developer to initiate a Declared Suspension of Energy Deliveries. Avista shall review the documentation provided by the Project Developer to determine Avista's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in Section 9.3.1. Avista's acceptance of the Project Developer’s forced outage as an acceptable forced outage will be based upon the clear documentation provided by the Project Developer that the forced outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Project Developer's Facility.

9.4 Scheduled Maintenance. On or before January 31 of each calendar year, Project Developer shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Avista and Project Developer shall mutually agree as to the acceptability of the proposed schedule. The Parties determination as to the acceptability of the Project Developer’s timetable for scheduled maintenance shall take into consideration Prudent Utility Practices, Avista system requirements and the Project Developer’s preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule. The Parties shall cooperate in determining mutually acceptable Facility down times or maintenance shutdowns.

9.5 Compliance with Permits, Licenses, Authorizations and Other Rights. Project Developer shall obtain and comply with all permits, licenses, authorizations and other rights required to own, operate, use and maintain the Facility, as they may change from time to time. Project Developer shall furnish to Avista on request, copies of all documents granting, evidencing or otherwise related to such permits, licenses, authorizations and rights.

9.6 Project Developer's Risk. Project Developer shall own, operate, use 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.

9.7 Modifications to the Facility/Avista Right to Inspect. Project Developer shall not modify the Facility from the as-built description of the Facility in Exhibit D without Avista's written consent and, if required, Commission approval. Project Developer shall permit Avista to inspect the Facility or the operation, use or maintenance of the Facility. Project Developer shall provide Avista reasonable advance notice of any such test or inspection by or at the direction of Project Developer.

9.8 Project Developer Obligations in Accordance with Prudent Utility Practices. Project Developer shall own, operate and maintain the Facility and any Project Developer-owned Interconnection Facilities so as to allow reliable generation and delivery of electric energy to Avista for the full term of the Agreement, in accordance with Prudent Utility Practices.

10. METERING

10.1 A power meter currently located at the Point of Delivery at Project Developer's expense will register the Net Delivered Output generated and delivered to Avista on an hourly basis.

10.2 The power meter will record power, which flows from the Facility to Avista. Avista and Project Developer both shall have the right to read and receive readings from the power meter. Avista shall read the meter at least once a month to determine the amount of Net Delivered Output in each calendar month. Power deliveries in any month shall be calculated based on information from meter readings with the date adjustment made by prorating metered amounts to the number of days in such month. Actual monthly Net Delivered Output shall be determined from the record developed. Avista shall own and maintain all meters used to determine the billing hereunder. Such meter(s) shall be tested and inspected in accordance with Avista's meter testing program as filed with the Idaho Public Utilities Commission. If requested by Project Developer, Avista shall provide copies of applicable test and calibration records and calculations. Avista shall permit a representative of Project Developer to be present at all times the meters are being tested. Additionally, Avista shall test any or all of such meters as may be reasonably be required by Project Developer. Project Developer shall pay reasonable costs for such requested test unless any of the meters is found to be inaccurate in which case Avista shall pay for such test.

10.3 Adjustments shall be made in meter readings and billings for errors in a meter reading or billing discovered within twelve (12) months of the error. Avista shall notify Project Developer of any errors arising from meter calibration, reading or billing. Avista shall permit representatives of Project Developer to inspect all of Avista's records relating to the delivery of electrical energy to and purchase of electrical energy by Avista hereunder.

11. PURCHASE PRICES AND METHOD OF PAYMENT

11.1 Net Delivered Output Cost. For all Net Delivered Output received by Avista for each hour that is not Surplus Energy Avista shall pay the applicable rate based upon the following Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts per month - Non-Levelized. The anticipated applicable rates for such Net Delivered Output is shown in Exhibit E. Notwithstanding anything in Exhibit E, the applicable rate for Net Delivered Output that is not Surplus Energy shall be the Avoided Cost Rates for Non-Fueled Projects Smaller Than Ten Average Megawatts per month – Non-Levelized that are approved by the Commission and in effect on the Effective Date.

11.2 Surplus Energy Cost. For all Surplus Energy, Avista shall pay to the Project Developer the Surplus Energy Cost, which shall be the lesser of (i) current month's Market Energy Cost per megawatt-hour, or (ii) the Net Delivered Output Cost specified in Section 11.1.

11.3 Payments to Project Developer. For each month during the term of this Agreement, so long as there are energy deliveries made and/or payments due hereunder, Avista shall prepare a statement based upon Net Delivered Output and Surplus Energy delivered to Avista. Payments by Avista for amounts billed shall be paid no later than the 15th day of the month following the prior calendar month billing period. If the due date falls on a non-business day of either Party, then the payment shall be due on the next following business day.

11.4 Payments to Avista. If Project Developer is obligated to make any payment or refund to Avista, Avista shall bill Project Developer for such payments. Project Developer shall pay Avista on or before the 15th day of the month following the prior calendar month billing period or ten (10) days after receipt of the bill, whichever is later.

11.5 Interest. Any payments by Avista to Project Developer or by Project Developer to Avista, if not paid in full within the limitations set forth in Sections 11.3 and 11.4 above, shall be late. In addition to the remedies for such an event of default pursuant to Section 16, the late-paying Party shall be assessed a charge for late payment equal to the lesser of one and one half percent (1.5%) per month, or the maximum rate allowed by the laws of the State of Idaho, multiplied by the overdue amount.

11.6 Set-Off. Project Developer agrees that Avista may set off any and all amounts owed by Project Developer to Avista against any current or future payments due Project Developer under this Agreement.

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

12. FORCE MAJEURE

12.1 Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any delay in performance due to any of

the following events or any delay or failure to produce Net Delivered Output, or to, receive or accept Net Delivered Output due to any of the following events:

12.1.1 Any cause or condition beyond such Party's reasonable control which such Party is unable to overcome by the exercise of reasonable diligence (including but not limited to: fire, flood, earthquake, volcanic activity, wind, drought, pandemic or epidemic and other acts of the elements; court order and act of civil, military or governmental authority; strike lockout and other labor dispute; riot, insurrection, sabotage or war; breakdown of or damage to facilities or equipment; electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; and, act or omission of any person or entity other than such Party, and Party's contractors or suppliers of any tier or anyone acting on behalf of such Party); or

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

12.2 In the event of any Force Majeure occurrence, the time for performance thereby delayed shall be extended by a period of time reasonably necessary to compensate for such delay. Avista shall not be required to pay for Available Output which, as a result of any force majeure event, is not delivered. Nothing contained in this Section shall require any Party to settle any strike, lockout or other labor dispute. In the event of a force majeure occurrence which will affect performance under this Agreement, the nonperforming Party shall provide the other Party written notice within fourteen (14) days after the occurrence of the force majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the force majeure, and that best efforts are being used to remedy its inability to perform.

12.3 Force Majeure shall include an electrical disturbance that prevents any electric deliveries from occurring at the Point of Delivery.

13. INDEMNITY

13.1 Project Developer shall indemnify, defend and hold harmless Avista, its directors, officers, employees, agents, and representatives, against and from any and all losses, expenses, liabilities, claims or actions (hereafter "Loss"), based upon or arising out of bodily injuries or damages to persons, including without limitation death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with the construction, operation or maintenance of the Facility. Subject to Section 18 of this Agreement, Avista shall indemnify, defend and hold harmless Project Developer, its directors, officers, employees, agents, and representatives, against and from any Loss, caused by, arising out of or sustained in connection with the construction, operation or maintenance of its electrical system. In the event that any such Loss is caused by the negligence of both Project Developer and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by Project

Developer and Avista in the proportion that their respective negligence bears to the total negligence causing the Loss.

13.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PROJECT DEVELOPER AND AVISTA EACH WAIVE ANY IMMUNITY UNDER EXISTING WORKER'S COMPENSATION LAW APPLICABLE TO THE JURISDICTION WHERE THE FACILITY IS TO BE LOCATED AS NECESSARY TO INDEMNIFY AND HOLD HARMLESS THE OTHER FROM SUCH LOSS, TO THE EXTENT SET FORTH IN SECTION 13.1, ABOVE.

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

13.4 Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, 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 damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

14. ASSIGNMENT

14.1 Project Developer shall not voluntarily assign its rights or delegate its duties under this Agreement, or any part of such rights or duties without the written consent of Avista. Such consent shall not unreasonably be withheld. Further, no assignment by Project Developer shall relieve or release it to the extent of any of its obligations hereunder. Subject to the foregoing restrictions on assignments, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, heirs and assigns.

14.2 Project Developer shall have the right, subject to the obligation to provide security hereunder, without the other Party's consent, but with a thirty (30) days prior written notice to the other Party, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other long term financing. A collateral assignment shall not constitute a delegation of Project Developer'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 Project Developer shall be considered Project Developer's successor in interest and shall thereafter be bound by this Agreement.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

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

16. DEFAULT

16.1 In the event that either Party fails to perform the terms and conditions set forth in this Agreement (a breach of or default under this Agreement), including without limitation the failure to provide Net Delivered Output, when available and deliverable to Avista, at the times or in the amounts required by this Agreement, the following shall apply:

16.1.1 The non-defaulting Party shall give written notice to the defaulting Party of the breach of or default under this Agreement.

16.1.2 Where default is for failure to pay sums which are due and payable under this Agreement, then the defaulting Party shall have thirty (30) days following receipt of written notice to cure the default, after which period the non-defaulting Party may unilaterally terminate this Agreement.

16.1.3 Except as provided in Sections 16.1.2 and 16.1.4, in all other cases of breach or default, then the defaulting Party must begin to cure the breach or default within thirty (30) days and shall complete such cure within ninety (90) days of receipt of written notice, or else the non-defaulting Party may unilaterally terminate this Agreement.

16.1.4 If a breach or default occurs under Sections 16.2.1, 16.3.1, 16.3.2, 16.3.3, 16.3.4, then the non-defaulting party may terminate this Agreement after the respective cure period(s) as expressly provided for in such Sections.

16.2 Notwithstanding any claim of Force Majeure, Project Developer shall be in default, and Avista may immediately terminate this Agreement, if:

16.2.1 Project Developer has abandoned the Facility; or

16.2.2 There have been no energy deliveries to Avista from the Facility for a period of twelve (12) consecutive months; or

16.2.3 Facility ceases to be a Qualifying Facility.

16.3 For purposes of this Agreement, and without limiting the generality of section 16.1, a Party shall also be in default if it:

16.3.1 Becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets); or

16.3.2 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; or

16.3.3 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 (60) days after it is filed.

16.4 Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach of or default under this Agreement by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

17. ARBITRATION

Each Party shall strive to resolve any and all differences during the term of the Agreement. If a dispute cannot be resolved, each Party shall use arbitration before requesting a hearing before the IPUC. The arbitration shall be conducted pursuant to the Washington Uniform Arbitration Act RCW Chapter 7.04A. . The Parties agree that the IPUC shall have continuing jurisdiction over this Agreement.

18. RELEASE BY PROJECT DEVELOPER

Project Developer releases Avista from any and all claims, Losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

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

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

18.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or any applicable interconnection agreement.

18.4 Disconnection, interruption, suspension or curtailment of transmission service by a transmitting entity or any unforeseen cost or increase in costs to Project Developer imposed by a transmitting entity.

19. GOVERNMENTAL AUTHORITY

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

20. EQUAL OPPORTUNITY

Project Developer shall comply with all applicable equal opportunity laws, ordinances, orders, rules and regulations.

21. SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties 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 or to impose any partnership obligations or liability upon either Party. 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.

22. 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.

23. 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 to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

24. AMENDMENT

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

30. EXHIBITS

This Power Purchase Agreement includes the following exhibits which are attached and incorporated by reference herein:

- Exhibit A Communications and Reporting
- Exhibit B Form of Engineer's Certification of Operations and Maintenance Policy
- Exhibit C Reserved
- Exhibit D Description of the Facility
- Exhibit E Purchase Prices

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

FORD HYDRO LIMITED PARTNERSHIP

AVISTA CORPORATION

By: _____
Printed Name: Brenda J. Ford
Title: President Ford Hydro, Inc.
Date: _____

By: _____
Printed Name: Christopher Drake
Title: Wholesale Marketing Manager
Date: _____

Exhibit A

Communication and Reporting

(a) During normal business hours, all verbal communications relating to interruptions and outages:

Avista System Operator (509) 495-4105
 Alternate Phone Number: (509) 495-4934

Project Developer Russell Ford (208) 827-1041
 Alternate Phone Number: (360) 202-6363

(b) Outside of normal business hours (nights, weekends, and holidays), all verbal communications relating to interruptions and outages shall take place between the following personnel:

Avista System Operator (509) 495-4105
 Alternate Phone Number: (509) 495-4934

Project Developer Russell Ford (208) 827-1041
 Alternate Phone Number: (360) 202-6363

Exhibit B

Form of Engineer's Certification of Operations and Maintenance Policy

1. I, _____ am a Professional Engineer
 (Name of Engineer)
 registered to practice in the State of Idaho. I have substantial experience in the design,
 construction and operation of electric power plants of the same type as _____
 _____ (plant),
 (Title of QF)
 sited at _____
 (Description of Project Site)
 in _____ County, State of _____.

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

3. I have no economic relationship to the Designer of said plant and have made my analysis of the Plans and Specifications independently.

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

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

Signed and Sealed

DATE: _____

SIGNATURE: _____

Exhibit C

Reserved

Exhibit D

Description Of The Facility

Jim Ford Creek Hydroelectric Project Features	
Diversion Structure	52 ft. long, 5 ft. high concrete structure with automated rack rake, two 30" intakes and conduits leading to valve house
Valve House	Adjacent to the diversion and containing two 30" motorized valves and a bifurcation leading into the low pressure conduit
Low Pressure Conduit	7,126 feet of low pressure steel conduit buried in the Project access road
Penstock	914 feet of high pressure steel penstock
Powerhouse	A concrete substructure with three turbine bays and steel building measuring approximately 24 feet by 60 feet.
Turbines	(3) 600 rpm two-jet horizontal Pelton turbines manufactured by Canyon Industries rated at 600 kW under 480 ft of head
Generators	(3) 600 rpm, three-phase horizontal induction generators manufactured by Toshiba rated at 752 amps at 480 V
Switchgear	A fully automated switchgear and controls package manufactured by Sierra Electro Development (SEDCO)
Substation	A single 3 phase 480/13,800V pad mounted transformer rated at 2000 KVA
Transmission	8,000 ft of buried 13.8 kV transmission line following the conduit route, then overhead for a short distance to the utility interconnect
Access Road	9,000 of gravel access road, the majority of which shares the conduit alignment

Exhibit E**Purchase Prices****Avoided Cost Rates for Non-Fueled Projects Smaller Than Ten Average Megawatts per month – Non-Levelized**

The pricing information provided herein is based on current avoided cost rates in Idaho and is subject to change as provided in Section 11.1 of the Agreement.

Period	Season 1		Season 2	
	Heavy Load Hour (\$/MWh)	Light Load Hour (\$/MWh)	Heavy Load Hour (\$/MWh)	Light Load Hour (\$/MWh)
2022	65.38	59.98	50.85	46.65
2023	64.75	59.35	50.36	46.16
2024	63.12	57.72	49.09	44.89

Exhibit F

Preliminary Generation Estimates

<u>Month</u>	<u>Amounts in kWhs</u>
<u>January</u>	<u>438,000</u>
<u>February</u>	<u>520,000</u>
<u>March</u>	<u>648,000</u>
<u>April</u>	<u>664,000</u>
<u>May</u>	<u>248,000</u>
<u>June</u>	<u>75,000</u>
<u>July</u>	<u>0</u>
<u>August</u>	<u>0</u>
<u>September</u>	<u>0</u>
<u>October</u>	<u>0</u>
<u>November</u>	<u>0</u>
<u>December</u>	<u>180,000</u>