

**SPECIAL MEETING NOTICE OF THE
PUBLIC INFRASTRUCTURE, ENVIRONMENT &
SUSTAINABILITY COMMITTEE**

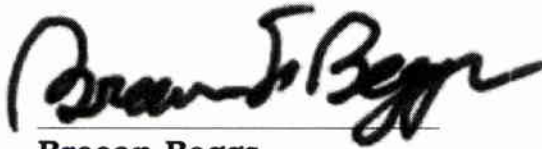
**A special meeting of the Public Infrastructure, Environment &
Sustainability (PIES) Committee will be held virtually on January 31,
2022, at 1:15 p.m.**

The Spokane City Council's PIES Committee meeting will be held virtually via WebEx at **1:15 p.m. on Monday, January 31, 2022.**

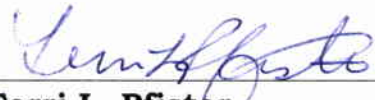
The meeting will be conducted in a standing committee format. The PIES Committee meeting is regularly held the 4th Monday of each month at 1:15 p.m. unless otherwise posted.

The public will be able to tune into the meeting by viewing the meeting live at Channel 5, or at <https://my.spokanecity.org/citycable5/live>, or by calling 1-408-418-9388 and entering the access code #2491 952 4023.

See attached agenda



**Breean Beggs
Council President**



**Terri L. Pfister
Spokane City Clerk**

Public Infrastructure, Environment, and Sustainability (PIES) Committee
Agenda for 1:15 p.m. Monday, January 31, 2022

The Spokane City Council's PIES Committee meeting will be held at **1:15 p.m. January 31, 2022**, streaming live online at <https://my.spokanecity.org/citycable5/live/> and airing on City Cable 5 or by calling 1-408-418-9388 and entering the access code #2491 952 4023; meeting password 0320.

The meeting will be conducted in a standing committee format. Because a quorum of the City Council may be present, the standing committee meeting will be conducted as a committee of the whole council. The PIES meeting is regularly held every 4th Monday of each month at 1:15 p.m. unless otherwise posted.

Notice is hereby given that, pursuant to Governor Jay Inslee's Proclamation 20-28, dated March 24, 2020, all public meetings subject to the Open Public Meetings Act, Chapter 42.30 RCW, are to be held remotely and that the in-person attendance requirement in RCW 42.30.030 has been suspended.

Temporarily and until further notice, the public's ability to attend City Council meetings is by remote access only. In-person attendance is not permitted at this time. The public is encouraged to tune in to the meeting noted above or by calling 1-408-418-9388 and entering the access code #2491 952 4023; meeting password 0320.

AGENDA

- I. **Call to Order**
- II. **Approval of Minutes**
 - [November 22, 2021 PIES Meeting](#)
- III. **Discussion Items**
 1. Arts Commission Interview – Audrey Overstreet (5min)
 2. [Department of Commerce Grant Acceptance for MLK Community Center – Cendy Ortiz \(5min\)](#)
 3. [Update to Link-Utilities Strategy for Spokane's Water System – Marcia Davis \(5min\)](#)
 4. [Review of Two Power Purchase Agreements \(PPAs\) and the Energy Strategic Initiative – Cadie Olsen \(10min\)](#)
 5. [Review of Transportation Grant Opportunities – Inga Note & Kevin Picanco \(10min\)](#)
 6. [6-Year Comprehensive Street Program \(2023-2028 Kickoff\) – Kevin Picanco \(10min\)](#)
 7. 2022 Construction Season Preview – Kyle Twohig (20min)
 8. [Fluoridation Contract Status Update – Katherine Miller \(10min\)](#)
 9. [West Plains PDA Utilities Discussion – Katherine Miller \(15min\)](#)
- IV. **Consent Items**
 1. [Master Value Blanket renewal with Connell Oil for Lubricants \(Fleet\)](#)
 2. [Renewal of Contract to Supply Polymer \(Waste Water Management\)](#)
 3. [Renewal of Contract to Supply Liquid Aluminum Sulfate \(Waste Water Management\)](#)
 4. [Geotechnical Engineering On-Call Contract \(Engineering\)](#)
 5. [Purchase of Tymco Air Sweeper \(Fleet\)](#)

6. Purchase of Scorpion ASL's (Fleet)
7. Value blanket renewal for the purchase of high calcium quicklime for the WTE (Solid Waste Disposal)
8. Compunet – Network Infrastructure Switch Upgrades (ITSD)

V. **Executive Session**

Executive Session may be held or reconvened during any PIES Committee meeting.

VI. **Adjournment**

Next PIES Committee meeting

The next meeting will be held at the regular date and time of 1:15 p.m. February 28, 2022.

STANDING COMMITTEE MINUTES
City of Spokane
Public Infrastructure, Environment, and Sustainability
November 22, 2021

Committee members present in person, phone or video

Council President Breean Beggs, Committee Chair
Council Member Michael Cathcart, Vice Committee Chair
Council Member Candace Mumm
Council Member Karen Stratton
Council Member Betsy Wilkerson
Council Member Lori Kinnear

Council President Beggs called the meeting to order at 1:17 p.m.

<https://vimeo.com/648811141>

Review and approval of minutes

Council President Beggs asked for a motion to approve the minutes of October 25, 2021 meeting.

- Action taken
- Council Member Wilkerson moved to approve the minutes of the October 25, 2021 meeting as presented; the motion was seconded by Council Member Mumm. Motion passed unanimously.

Discussion items - Items were presented in a different order than reflected in the agenda and minutes.

A. Council Requests

1. Consent items for discussion
2. Legislative Agenda update
Eric Poulsen shared the Council's 2022 State Legislative Agenda which was compiled through contributions by the Council's legislative team, policy team and city staff. Eric noted there are some carry over priority items from the 2021 agenda and the agenda is broken down by tiers and capital budget items. Councilmembers engaged in discussion on several items including affordable housing, traffic safety and transportation funding as well as the capital budget particulars.
3. S3R3 PDA Update - None
4. STA Fare Policy Update

Brandon Rapez-Betty shared information and public outreach materials regarding a policy relating to the “Modern Fares, Modern Systems” tool. This tool creates more access and better value for transit customers by allowing more payments options and easier ways to pay – such as a smart card and contactless payment based on feedback from those accessing public transit during the pandemic. The benefits to accessibility and maximizing ride times are also positively benefitted. Brandon further discussed implementation of the policy which will likely take place in October 2022.

5. Ordinance Updates

Council President Beggs shared three ordinance updates relating to the Downtown BID, SPD exempt positions and updates to the City’s apprenticeship ordinance. Downtown BID – slightly amended contract based on language that needed to be made more clear including reauthorization of the BID ordinance. This ensures the contract and the ordinance are in line. SPD Exempt Positions - once a year when the budget is completed, the Council does an annual update for ordinances and it was determined that four sub departments exist within SPD that should be updated to be in line with the departmental ordinance. Apprenticeship – hitting goal for apprentices working on public works projects but not hitting the goals for individual crafts even though we have approved programs in Spokane. This is an important component for training a new workforce. Updating this ordinance to allow more flexibility under the current law.

6. Beacon Hill Vista Development Agreement

This item was referred back from the November 15 City Council meeting for further Council discussion. Council President explained the deferment and asked for Councilmembers’ questions regarding building to current public street guidelines and the length of the extension. Councilwoman Kinnear also circulated information regarding the future potential of a park-and-ride for future residents to access transit options from STA

B. Staff Requests

1. High Drive 20MPH Pilot Program

Clint Harris briefed a one year update on the 2020 20MPH pilot program which expired on November 1, 2021. A speed study was completed on High Drive which resulted in significant noncompliance. Clint further explained how speed assessments are completed. It was recommended that a speed limit be set within 5 miles per hour of the 80th percentile from the study.

2. SBO for Year-End for Fire-EMS Fund

Tonya Wallace and Paul Ingiosi briefed this SBO which would provide 5 million to the Fire/EMS fund for overage costs related to operations, equipment and supplies throughout the remainder of the year. Wildfire season was cited as a reason for the overages.

Strategic Plan Session

A. Priority Strategy 1. Rapidly accelerating street pavement maintenance projects

- No report for this meeting.

B. Priority Strategy 2. Repurposing public property to stimulate private investment

- No report for this meeting.

C. Priority Strategy 3. Sustainable city

- No report for this meeting.

Executive session

None.

Adjournment

The meeting adjourned at 3:13PM

Prepared by:

Shae Blackwell

Approved by:

Chair

Committee Agenda Sheet

Public Infrastructure, Environment, and Sustainability Committee

Submitting Department	Office of Neighborhood Services
Contact Name & Phone	Cendy Ortiz, 625-6147
Contact Email	cortiz@spokanecity.org
Council Sponsor(s)	CW Betsey Wilkerson
Select Agenda Item Type	<input type="checkbox"/>
Agenda Item Name	Department of Commerce Grant for MLK Community Center
Summary (Background)	<p>The City of Spokane had a Capital Needs Assessment done for the MLK Community Center in which several items in the facility were addressed as needing attention. One of those items was the roof, which has been problematic for the operators of the community center for some time, causing several leaks in the interior facility, in which the operators have had to shut down rooms and sections of the community center due to water damage.</p> <p>A legislative ask was submitted in May 2021 for \$1.35 million dollars, with Senator Billig and Representative Riccelli as sponsors, to repair the roof. This grant was awarded to the City of Spokane in June 2021 in the amount of \$1,352,400. This project will include an asbestos survey and abatement if necessary, and a complete tear off and replacement of the roof at the MLK Community Center. This contract is to formalize the grant award and will be between the City of Spokane and the Washington State Department of Commerce in the amount of \$1,352,400.</p> <p>We anticipate going out to bid for the construction of the roof at the end of January or early February. A contract for the general contractor for the roof replacement will follow in February 2022, with an anticipated start of construction in the spring, and anticipated completion date around September 2022.</p> <p><u>Executive Summary:</u></p> <ul style="list-style-type: none"> • 2021 Legislative Ask was submitted to the State for roof repair at MLK Community Center • Senator Billig and Representative Riccelli were sponsors of the legislative ask • The award was granted for \$1,352,400 in June 2021 • This is to have City Council approve the contract between City of Spokane and Department of Commerce to formalize the acceptance of the grant funds. • <p>This will be followed with a contract for a general contractor for the construction and repair of the MLK Community Center Roof.</p>
Proposed Council Action & Date:	Proposed council action would be to approve the contract for signature, so we can move forward with a public works procurement.

Fiscal Impact:

Total Cost: \$1,352,400

Approved in current year budget? ☐ Yes ☐ No ☒ N/A

Funding Source ☒ One-time ☐ Recurring

Specify funding source: Department of Commerce

Expense Occurrence ☒ One-time ☐ Recurring

Other budget impacts: (revenue generating, match requirements, etc.):

Neutral expense. We will be fronting the cost of construction of the MLK Roof, but will be reimbursed with Dept. of Commerce dollars.

Operations Impacts

What impacts would the proposal have on historically excluded communities?

This would have a positive impact to the historically underserved community in the East Central neighborhood. Improvements to the roof would allow MLK Jr. Family Outreach to lease out more space in their center, to provide additional services to the community.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

A follow up meeting will be made with MLK Jr. Family Outreach post construction to discuss the positive impacts the roof repair has had at the community center and benefits it will have for the east central neighborhood residents.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

N/A

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This project aligns with the Capital Improvement Program, and furthermore, addresses the needs based on the Capital Needs Assessment that was completed for the MLK Community Center.



Grant to

City of Spokane

through

The 2022 Local & Community Projects Program

For

MLK Community Center Roof Replacement (Spokane) - Provide a new roof for the MLK Community Center.

Start date:

7/1/2021

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Attachment A, Scope of Work; Attachment B, Budget; Attachment C, Availability of Funds;
Attachment D Certification of Prevailing Wages; Attachment E, Certification of LEED

FACE SHEET

Grant Number: 22-96634-115

Washington State Department of Commerce Local Government Division Community Capital Facilities Unit

1. GRANTEE City of Spokane 808 W. Spokane Falls Blvd. Spokane, Washington 98201		2. GRANTEE Doing Business As (optional) 					
3. Grantee Representative Cendy Ortiz Community Engagement Program Manager (509) 625-6147 cortiz@spokanecity.org		4. COMMERCE Representative Chuck Hunter Project Manager (360) 764-3312 Fax 360-586-5880 chuck.hunter@commerce.wa.gov P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525					
5. Grant Amount \$1,352,400.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 7/1/2021	8. End Date 6/30/2025, contingent on reappropriation, 6/30/2023 if funds are not reappropriated				
9. Federal Funds (as applicable) N/A		<table style="width: 100%; border: none;"> <tr> <td style="text-align: center; border-bottom: 1px solid black;"><u>Federal Agency</u></td> <td style="text-align: center; border-bottom: 1px solid black;"><u>CFDA Number</u></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>		<u>Federal Agency</u>	<u>CFDA Number</u>	N/A	N/A
<u>Federal Agency</u>	<u>CFDA Number</u>						
N/A	N/A						
10. Tax ID # 91-6001280	11. SWV # SWV0003387-08	12. UBI # 328-013-877	13. DUNS # N/A				
14. Grant Purpose The outcome of this performance-based contract is the completion of the roof replacement project at the MLK Community Center as referenced in Attachment A – Scope of Work. COMMERCE, defined as the Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Budget, Attachment “C” – Certification of Availability of Funds to Complete the Project, Attachment “D” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “E” – Certification of Intent to Enter LEED process.							
FOR GRANTEE <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Carly Cortright, Director, Office of Neighborhood Services <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date		FOR COMMERCE <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Mark K. Barkley, Assistant Director <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date APPROVED AS TO FORM  Steve Scheele, Assistant Attorney General <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> 1/10/2022 Date					

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

THIS CONTRACT, entered into by and between City of Spokane (a Unit of Local Government hereinafter referred to as the GRANTEE), and the Washington State Department of Commerce (hereinafter referred to as COMMERCE), WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has, in Laws of 2021, Chapter 332, Section 1075, made an appropriation to support the 2022 Local & Community Projects Program, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed \$1,352,400.00 for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

A. The release of state funds under this contract is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT C (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

- i) Eligible Project expenditures prior to the execution of this contract.
- ii) Cash dedicated to the Project.
- iii) Funds available through a letter of credit or other binding loan commitment(s).
- iv) Pledges from foundations or corporations.
- v) Pledges from individual donors.

**SPECIAL TERMS AND CONDITIONS
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- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to COMMERCE'S approval.

- B.** The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE'S review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$500,000 in state funds. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for design only are exempt from this section.

- A. Deed of Trust.** This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of contract execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the grant as set forth in Section 2, hereof.
- B. Term of Deed of Trust.** The Deed of Trust shall remain in full force and effect for a period of ten (10) years following the final payment of state funds to the GRANTEE under this grant. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance.** The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Covenant.** If the project will be partially funded by a loan and the term of said loan is less than the commitment period under this grant contract, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this contract for at least the term of the commitment period
- E. Subordination.** COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender.

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Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- a. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- b. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

The GRANTEE may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures in the following cost categories:

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for one-hundred percent (100%) of eligible Project expenditures, up to the maximum payable under this contract. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed – by budget line item – for the billing period.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the contract. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

**SPECIAL TERMS AND CONDITIONS
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The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this contract, or within fifteen (15) days following the end of the state biennium unless contract funds are reappropriated by the Legislature in accordance with Section 19, hereof.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another grant contract, GRANTEE must clearly identify such grant contracts in the transmittal letter and request for payment.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.

COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The GRANTEE shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

9. SUBCONTRACTOR DATA COLLECTION

GRANTEE will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

10. INSURANCE

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington.

**SPECIAL TERMS AND CONDITIONS
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The insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

The GRANTEE shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The GRANTEE shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.
- C. The GRANTEE shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

GRANTEE shall provide annually to COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under GRANTEE's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Agreement.

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11. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Certification of the Availability of Funds to Complete the Project
- Attachment D – Certification of the Payment and Reporting of Prevailing Wages
- Attachment E – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

12. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the contract accordingly.

13. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this contract. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this contract.

14. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this contract, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 27 (Recapture provision) of the General Terms and Conditions.

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15. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this contract shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 27 (Recapture provision) of the General Terms and Conditions.

16. MODIFICATION TO THE PROJECT BUDGET

- A. Notwithstanding any other provision of this contract, the GRANTEE may, at its discretion, make modifications to line items in the Project Budget (Attachment B), hereof, that will not increase the line item by more than fifteen percent (15%).
- B. The GRANTEE shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the Project Budget (Attachment B,) hereof, that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.
- C. Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Project Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D. Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 2 of this contract.

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this contract, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 05-05 or Executive Order 21-02, where applicable, or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

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In addition to the requirements set forth in this Contract, GRANTEE shall, in accordance with Governor's Executive Order 05-05 or Executive Order 21-02 as applicable, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05 and Executive Order 21-02.

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 05-05, Executive Order 21-02, or Section 106 of the National Historic Preservation Act.

19. REAPPROPRIATION

- A. The parties hereto understand and agree that any state funds not expended by June 30, 2023 will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this contract are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this contract, COMMERCE reserves the right to terminate or amend this contract accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

21. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK

The "Copyright Provisions", Section 13 of the General terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

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1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "GRANTEE" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

4. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

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6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

The GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

8. ATTORNEYS’ FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

9. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE’s records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE’s fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

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- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

10. BREACHES OF OTHER STATE CONTRACTS

GRANTEE is expected to comply with all other contracts executed between GRANTEE and the State of Washington. A breach of any other agreement entered into between GRANTEE and the State of Washington may, in COMMERCE's discretion, be deemed a breach of this Agreement.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

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Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Any person identified by the GRANTEE and their subcontractors(s) must be identified individually by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the GRANTEE's name, address, and Contract number; and

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- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

16. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

17. INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's/subcontractor's performance or failure to perform the Grant. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

18. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

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19. INDUSTRIAL INSURANCE COVERAGE

The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

20. LAWS

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

21. LICENSING, ACCREDITATION AND REGISTRATION

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

22. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein. The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

24. PAY EQUITY

The GRANTEE agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

25. POLITICAL ACTIVITIES

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

26. PUBLICITY

The GRANTEE agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

27. RECAPTURE

In the event that the GRANTEE fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

28. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

29. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue.

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30. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

31. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

32. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

33. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

34. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

35. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

36. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the GRANTEE's income or gross receipts, any other taxes, insurance or expenses for the GRANTEE or its staff shall be the sole responsibility of the GRANTEE.

37. TERMINATION FOR CAUSE

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant.

**GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

38. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

39. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;

**GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

40. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

41. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Funds awarded under this grant shall be used by the City of Spokane for the MLK Community Center Roof Replacement located at 500 S. Stone St., Spokane, WA.

This will include, but not be limited to complete roof tear off, replacement and asbestos survey.

The project will benefit the public by continuing to improve the facility to ensure MLK Community Center programs remain available for East Central residents, as well as the residents city-wide.

This project is anticipated to be completed by September 2022.

Costs related to the work will only be reimbursed to the extent the work is determined by Commerce to be within the scope of the legislative appropriation.

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the Scope of Work set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

Budget

Line Item	Amount
Construction	\$1,132,400.00
Other: Asbestos Survey and Abatement	\$220,000.00
Total Contracted Amount:	\$1,352,400.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE

DATE

Certification of the Availability of Funds to Complete the Project

Non-State Funds	Amount	Total
Total Non-State Funds		\$0.00
State Funds		
State Capital Budget	\$1,352,400.00	\$1,352,400.00
Total Non-State and State Sources		\$1,352,400.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this contract and identified above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this contract, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE'S review upon reasonable request.

GRANTEE

TITLE

DATE

Certification of the Payment and Reporting of Prevailing Wages

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as of May 18, 2021 (for the 21-23 biennium), including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE'S review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

**Certification of Intent to Enter the
Leadership in Energy and Environmental Design (LEED) Certification Process**

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this contract. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE

DATE

Committee Agenda Sheet

Public Infrastructure, Environment, and Sustainability

Submitting Department	ICM
Contact Name & Phone	Marcia Davis 625.6398
Contact Email	mdavis@spokanecity.org
Council Sponsor(s)	Councilmember Kinnear
Select Agenda Item Type	<input type="checkbox"/> <input checked="" type="checkbox"/>
Agenda Item Name	Update to Link-Utilities Strategy for Spokane's Water System
Summary (Background)	<p>The goal for the Link-Utilities Strategy for Spokane's Water System is to develop a plan for the City of Spokane's Water System that will meet all the demands for the next 20 years and to create a sustainable, resilient, and affordable future that is endorsed by key stakeholders. Developing a strategy for balancing the needs at existing facilities and planning for future needs (due to growth, conservation and regulations) is important. This strategy will prioritize water system investments for the 20-year Capital Facilities Plan and provide a framework that is compatible for implementation across Spokane's water utilities (e.g., water, wastewater, stormwater, and integrated water management). The prioritization and selected pathway will rely on internal and external feedback. The final outcome of this project will be to update the 20-year Facilities Plan for both water and to recommend revisions and upgrades to the Design Standards and the Spokane Municipal Code.</p> <p>GHD, INC was selected in October to lead the work on this project. This update will show progress made on developing the communications and engagement plan and discuss expected activities over the next 3 months.</p> <p>Executive Summary:</p> <ul style="list-style-type: none"> The consultant GHD was hired in October of 2021 to assist the City in developing the next 20-year Capital Facilities Plan. Initial work has been underway since the fall of 2021 This is a status update for Council and a look at the next 3 months of activities planned for this work.
Proposed Council Action & Date:	None at this time. Council Action on the Strategy for the Water System is expected mid-2023. This update is to keep Council members informed on the progress.
Fiscal Impact: Total Cost: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Utility Rates Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts N/A	

What impacts would the proposal have on historically excluded communities?

Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?



N/A – This is an public works project to provide 20-year planning for the water system and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?



Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This project is intended to support the Comprehensive Plan and is following growth management requirements to provide periodic updates.

Committee Agenda Sheet

PIES COMMITTEE

Submitting Department	Environmental Programs and Solid Waste Disposal
Contact Name & Phone	Department Head: Chris Averyt, Executive Sponsors: Marlene Feist, Cadie Olsen
Contact Email	Chris Averyt: (509) 625-6540 caveryt@spokanecity.org
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: <u>5 Minutes</u>
Agenda Item Name	Waste to Energy Plant Power Purchase Agreement
Summary (Background)	<p>This Power Purchase Agreement (PPA) is a contract between the City of Spokane's Solid Waste Utility and Avista Utilities defining the terms for sales of surplus power from the City's Waste to Energy Facility to Avista. The new agreement will take effect upon signature (Effective Date) and continue through 12/30/2037.</p> <p>The existing PPA between the City and Avista Utilities began January 1, 2018, and was scheduled to run through December 30, 2022. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens. These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work.</p> <p>Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 26 megawatts of power.</p> <p>Revenue generated from the agreement will total between \$5.6 – \$7.5 million annually, allowing the Solid Waste to maintain existing utility rates.</p>
Proposed Council Action & Date:	Move to Consent Agenda for consideration at 3:30 briefing session on 2/7/22
Fiscal Impact: Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: This agreement is anticipated to generate revenue in support of operations.	

Operations Impacts
What impacts would the proposal have on historically excluded communities? The Agreement will generate revenue to keep solid waste disposal services affordable for all customers and front line communities equally.
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? The results of the agreement will benefit all waste disposal service customers equally, creating no measurable impact to racial, ethnic, gender identity, national origin, income level, disability, sexual orientation or other disparities.
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? A financial model was created to evaluate various scenarios optimizing anticipated revenues. Legal and content area experts were consulted and actively involved in developing and negotiating the optimal agreement. The City sought and received a favorable ruling from The Washington State Utilities and Transportation Commission enabling the extension of the term of the agreement to 15 years.

POWER PURCHASE AGREEMENT
BETWEEN
AVISTA CORPORATION
AND
CITY OF SPOKANE
(WASTE TO ENERGY FACILITY)

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the date (or, if such date is not the same, the latter date) set forth beneath the Parties’ signatures on the signature page to this Agreement (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, the City owns and operates a waste to energy electric generating project located on approximately thirty-seven (37) acres of real property leased from the Spokane International Airport Board, located at 2900 S. Geiger Boulevard, Spokane, Washington, 99224 in Spokane County, Washington, which project is known as the Waste to Energy Facility and has a nameplate capacity of 26 megawatts (the “**Primary Project**”); and

WHEREAS, the City and Avista have entered into a Large Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Facility with Avista’s electric system;

WHEREAS, in November 2017, the City and Avista entered into a power purchase agreement (the “**2017 Agreement**”) under which the City delivers and sells and Avista purchases electric power from the Facility for a delivery term beginning on January 1, 2018 and expiring on December 30, 3022; and

WHEREAS, the Washington Utilities and Transportation Commission issued an order in Docket No. UE-210247 declaring that the Primary Facility is not “baseload electric generation” under RCW 80.80.010(4) and WAC 480-100-405(2)(a).

WHEREAS, the City and Avista desire to enter into this Agreement to allow the City to deliver and sell, and Avista to purchase, electric power from the Facility for a Delivery Term beginning on December 31, 2022, and expiring on December 30, 2037, in accordance with the terms of this Agreement;

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

1. DEFINITIONS; INTERPRETATION

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) **“Agreement”** means this power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) **“Applicable Program”** means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) **“Bankrupt”** means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **“Bankruptcy Code”** means Title 11 of the United States Code.

(vi) **“Business Day”** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vii) **“Change in Carbon Law”** will include adoption, enactment, promulgation, modification, amendment or revocation of (A) any state or federal law, rule, regulation, policy or decision, and any interpretation, reinterpretation or administrative position with respect to any such law, rule, regulation policy or decision, that (B) occurs after the Effective Date, and (C) pertains to a carbon tax, a new or revised emission or performance standard, or any other new or revised operational or financial requirement or limitation directly addressing greenhouse gas emissions.

(viii) **“Change in Carbon Law Costs”** means any actual and verifiable change, as a result directly of a Change in Carbon Law, in the costs incurred by a Party directly in connection with the Primary Project, any Secondary Project or the purchase and sale of Delivered Net Output under this Agreement; *provided, however*, that “Change in Carbon

Law Costs” will not, in the case of either Party, include any costs or expenses caused by or resulting from any failure by such Party to comply, or delay by such Party in complying, with any Governmental Rule.

(ix) **“City Site Load”** means any electric power requirements, other than Facility Service Power, of any City equipment or other facilities owned by the City on the Premises, including Secondary Project(s); *provided* that any City Site Load shall not have an aggregate electric demand in excess of five (5) MW; and *provided, further*, that if requested by Avista, any City Site Load shall be metered separately and distinctly from all other existing load at the sole expense of the City.

(x) **“Defaulting Party”** shall have the meaning provided in Section 16(a) of this Agreement.

(xi) **“Delivered Net Output”** shall have the meaning provided in Section 4(a) of this Agreement.

(xii) **“Delivery Term”** shall have the meaning provided in Section 3(b) of this Agreement.

(xiii) **“Dispute Notice”** shall have the meaning provided in Section 12 of this Agreement.

(xiv) **“Effective Date”** shall have the meaning set forth in the first paragraph of this Agreement.

(xv) **“EIM Hourly Price”** means, for any applicable hour, the arithmetic average of the Western Energy Imbalance Market sub-hourly market prices applicable for such hour to the location of the Primary Project.

(xvi) **“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 the generation of energy and the delivery of such energy to the electricity grid, and include 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 power generation facilities at the City’s site and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the power generation facilities at the City’s site 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 any energy, capacity, reliability or other power attributes from the Waste to Energy Facility.

(xvii) **“Event of Default”** shall have the meaning provided in Section 16(a) of this Agreement.

(xviii) **“Facility Service Power”** means electric energy generated by the Primary Project and any Secondary Project(s) that is used to operate equipment that is auxiliary to primary generation equipment of the Primary Project and such Secondary Project(s), including generator excitation, cooling or other operations related to the production of electric energy by the Primary Project and any Secondary Project(s) located at the Premises. The electrical output of any Secondary Project shall be deemed to be the first energy utilized to provide Facility Service Power.

(xix) **“FERC”** means the United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xx) **“Force Majeure”** shall have the meaning provided in Section 8(a) of this Agreement.

(xxi) **“Forced Outage”** means any outage that either fully or partially curtails the electrical output of the Primary Project or Secondary Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xxii) **“Good Industry Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xxiii) **“Governmental Authority”** means any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xxiv) **“Governmental Rules”** means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided that* Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the

Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xxv) **“Industrial Insurance Acts”** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxvi) **“Interconnection Agreement”** shall have the meaning provided in the recitals of this Agreement.

(xxvii) **“Interest Rate”** means, for any date, the lesser of (a) one percent per month, and (b) the maximum rate permitted by applicable law.

(xxviii) **“Loss”** shall have the meaning provided in Section 9(a) of this Agreement.

(xxix) **“Mid C Day-Ahead Index Price”** means, for any day other than a Sunday or a NERC Holiday, the weighted average of the Intercontinental Exchange (**“ICE”**) daily Mid-Columbia On-Peak Firm Power Price Bulletin for On-Peak Hours and the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin for Off-Peak Hours. For Off-Peak days, including Sundays and NERC Holidays, the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin shall apply.

(xxx) **“Major Maintenance”** means maintenance work upon the Primary Project or any Secondary Project that results in more than one generating unit not operating.

(xxxi) **“MW”** means megawatts.

(xxxii) **“NERC”** means the North American Electric Reliability Corporation or its successor organization.

(xxxiii) **“Off-Peak Hours”** mean HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT, Monday through Saturday, and HE 0100 through 2400 Sundays and NERC Holidays.

(xxxiv) **“On-Peak Hours”** mean HE 0700 through HE 2200 PPT.

(xxxv) **“Operating Year”** means the 12-month period from January 1 through December 31.

(xxxvi) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(xxxvii) **“Person”** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

(xxxviii) **“Point of Delivery”** means the point at which the Primary Project and any Secondary Project, on the one hand, and Avista’s electric system, on the other hand, are interconnected, as set forth in the Interconnection Agreement.

(xxxix) **“Power Meter”** shall have the meaning provided in Section 4(a) of this Agreement.

(xl) **“Premises”** means the site owned and operated by the City as of the Effective Date at which the Primary Project is located and any additional adjacent parcel of land that the City may acquire for the purpose of operating the Primary Project or any Secondary Project(s) or City Site Load.

(xli) **“Primary Project”** shall have the meaning provided in the recitals to this Agreement.

(xlii) (xxxv) **“Qualifying Facility”** means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xliii) **“Representatives”** means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xliv) **“Secondary Project”** means any City-owned energy generation or energy storage equipment or facilities, separate and apart from the Primary Project, that are constructed or installed on the Premises; *provided* that any Secondary Project(s) shall not have an aggregate electric nameplate capacity in excess of five (5) MW; and *provided, further*, that if required by Avista, any Secondary Project(s) will be separately metered at the sole cost of the City.

(xlv) **“Surplus Output”** means any generation from a Secondary Project that is not consumed as Facility Service Power or as City Site Load and that is included in Delivered Net Output.

(xlvi) **“Term”** shall have the meaning provided in Section 3(a) of this Agreement.

(xlvii) **“Termination Date”** means the date on which this Agreement terminates or expires.

(xlviii) **“WECC”** means the Western Electricity Coordinating Council or its successor organization.

(xlix) **“WUTC”** means the Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.

(ii) Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

(iv) Other grammatical forms of defined words or phrases have corresponding meanings.

(v) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(vi) Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(vii) A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

(viii) Reference to any gender includes each other gender.

(ix) Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

(x) References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

(xi) If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

(xii) "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

(xiii) "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

(xiv) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

2. REPRESENTATIONS AND WARRANTIES; COVENANTS

(a) Representations and Warranties.

(i) The City represents that it is the sole owner of the Primary Project and will be the sole owner of any Secondary Project(s). The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Primary Project is, and any Secondary Project(s) will be, a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or the Primary Project or any Secondary Project(s) shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Primary Project or any Secondary Project(s).

(b) Covenants.

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Primary Project and any Secondary Project(s), and the Primary Project and each Secondary Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. Any failure of the Primary Project or any Secondary Project to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Qualifying Facility status and associated support and compliance documents of the Primary Project and any Secondary Project at any time during the Term.

(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

3. TERM OF AGREEMENT; DELIVERY TERM

(a) The term of this Agreement (the “**Term**”) shall be effective on the Effective Date and shall terminate at 2400 PPT on December 30, 2037, unless terminated earlier in accordance with the terms and conditions of this Agreement; *provided, however*, that the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any Delivered Net Output or other output from the Primary Project or any Secondary Project prior to the commencement of the Delivery Term as defined in Section 3(b) below.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on December 31, 2022, and continue through hour ending 2400 PPT on December 30, 2037.

(c) The Delivery Term will terminate effective immediately upon termination of this Agreement for any reason.

(d) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(e) Notwithstanding any other provision of this Agreement, in the event that at any time during the Term the City incurs any Change in Carbon Law Costs, the City will not, without the agreement of Avista, seek to pass through any such costs to Avista, or otherwise seek to recover or obtain reimbursement of any such costs from Avista, under or in connection with this Agreement. Notwithstanding the foregoing, if the City determines that such costs are reasonably

likely, on a cumulative basis during the remainder of the Delivery Term, to be materially adverse to the City, the City will be entitled to provide notice of such determination to Avista, and Avista will, not later than twenty (20) Business Days following any such notice, commence to negotiate in good faith with the City regarding a mutually acceptable amendment to or replacement for this Agreement to address such costs. In the event that (i) the Parties do not, within a period of ninety (90) days following such notice, reach agreement regarding such amendment or replacement agreement, or (ii) the Parties do reach such agreement but the WUTC fails to approve such amendment or replacement agreement, the City will be entitled at any time thereafter, in its sole and absolute discretion, to terminate this Agreement effective sixty (60) days following notice from the City to Avista, without any liability whatsoever on the part of the City to Avista or any other Person for or as a result of such termination.

(f) Notwithstanding any other provision of this Agreement, in the event that at any time during the Term Avista incurs any Change in Carbon Law Costs, the City will grant to Avista, on each monthly billing statement under this Agreement after Avista incurs such Change in Carbon Law Costs, a credit in an amount equal to the amount of such costs that is reasonably allocable to such month (determined, if any Change in Carbon Law Costs are incurred by Avista on other than a monthly basis, on the basis of a reasonable monthly amortization of such Change in Carbon Law Costs over the remainder of the Delivery Term). Notwithstanding the foregoing, if the City determines that the amount of such credits is reasonably likely, on a cumulative basis during the remainder of the Delivery Term, to be materially adverse to the City, the City will be entitled to provide notice of such determination to Avista, and Avista will, not later than twenty (20) Business Days following any such notice, commence to negotiate in good faith with the City regarding a mutually acceptable amendment to or replacement for this Agreement to address such Change in Carbon Law Costs. In the event that (i) the Parties do not, within a period of ninety (90) days following such notice, reach agreement regarding such amendment or replacement agreement, or (ii) the Parties do reach such agreement but the WUTC fails to approve such amendment or replacement agreement, the City will be entitled at any time thereafter, in its sole and absolute discretion, to terminate this Agreement effective sixty (60) days following notice from the City to Avista, without any liability whatsoever on the part of the City to Avista or any other Person for or as a result of such termination.

(g) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 22 will survive the expiration or termination for any reason of this Agreement; *provided that* such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

4. PURCHASE AND SALE OF DELIVERED NET OUTPUT

(a) The City shall, for the Delivery Term, sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power (not including any Facility Service Power or City Site Load), up to a maximum of 26 megawatts per hour, that is generated by the Primary Project and any Secondary Project(s). The total amount of electric power generated

by the Primary Project and any Secondary Project(s) that is delivered by the City to Avista at the Point of Delivery during the Delivery Term is the **“Delivered Net Output”**. A power meter located at the Point of Delivery (the **“Power Meter”**) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding that the City is entitled to include Surplus Output in Delivered Net Output, at no time shall Delivered Net Output, whether or not including any Surplus Output, exceed 26 MW per hour, and the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any output from the Primary Project or any Secondary Project other than Delivered Net Output in an amount up to a maximum of 26 MW in any hour; *provided, however*, that in the event Delivered Net Output in any hour exceeds 26 MW, Avista shall retain any amount in excess of 26 MW at zero cost.. Furthermore, notwithstanding any other provision of this Agreement, the City shall have no obligation to generate or sell or deliver, and Avista shall have no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is to sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Primary Project and (unless otherwise required by Avista in accordance with the provisions of this Agreement) any Secondary Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. To the extent possible, the City shall be granted access to real time data provided by Avista. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties agree that any additional amounts of electric power made available from the Primary Project or any Secondary Project as a result of any modifications, enhancements, or expansions of or additions to the Primary Project or such Secondary Project during the Term shall be purchased and sold pursuant to this Agreement, so long as such modifications, enhancements, or expansions do not (i) cause the Delivered Net Output to exceed 26 MW per hour at any time during the Term or (ii) result in any breach or violation of the provisions of Section 2(b)(i). The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Primary Project or any Secondary Project to any third party during the Delivery Term.

(d) Notwithstanding any other provision of this Agreement, the City will be entitled, at its sole option, to develop, construct, install, own, and operate energy storage or solar photovoltaic facilities at the Premises. Any such facilities shall be deemed one or more Secondary Projects, and the Surplus Output produced by any such facilities shall be included in Delivered Net Output for purposes of this Agreement if and to the extent that (i) such treatment would not (A) cause the Delivered Net Output to exceed 26 MW per hour at any time during the Term or (B) result in any breach or violation of the provisions of Section 2(b)(i) and (ii) such facilities do not, without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of electric power.

5. OPERATION OF PRIMARY PROJECT AND ANY SECONDARY PROJECT(S)

(a) The City shall operate and maintain the Primary Project and any Secondary Project(s) in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Primary Project and any Secondary Project(s) with Avista's electrical system is (or will be) governed by a separate Interconnection Agreement between the Parties.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that it is required to do so in order to comply with any Governmental Rule or if the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydroelectric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

(e) Without the prior written consent of Avista, the City may not use any portion of Avista's distribution system for the delivery of output from the Primary Project or a Secondary Project to Facility Service Power or City Site Load.

6. PAYMENTS

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. If Avista is entitled to a credit on any such monthly statement for any Change in Carbon Law Costs incurred by Avista, Avista shall include with the applicable statement appropriate documentation to substantiate such credit and the amount thereof. Payments owed by Avista shall be paid no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable 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.

(b) If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the City at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 31 for the State of Washington.

(c) Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and set off such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business 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.

(d) Avista shall pay the City monthly for Delivered Net Output from the Primary Project at the rates set forth in Exhibit B. Avista shall pay the City monthly for Delivered Net Output that is Surplus Output at the as-available rate calculated at the time of delivery pursuant to 18 C.F.R. § 292.304(d)(1)(i). The as-available rate shall be calculated as 85% of the lesser of (i) the Mid C Day-Ahead Index Price for the applicable period or (ii) the EIM Hourly Price for the applicable period. If the City delivers to Avista any Delivered Net Output that is Surplus Output during any period when the as-available rate is negative, Avista will receive a credit from the City for such Surplus Output, on the City's billing statement to Avista for the applicable monthly billing period, in an amount equal to 115% of the lesser of (i) the absolute value of the Mid C Day-Ahead Index Price for the applicable period or (ii) the absolute value of the EIM Hourly Price for the applicable period. Avista shall not have any obligation to pay any amount whatsoever for any Delivered Net Output in excess of 26 MW in any hour.

(e) If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20th) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable 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. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

(f) All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

(g) A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice

or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within five (5) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest at the Interest Rate.

7. METERING

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Avista shall own and maintain the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery. The City shall reimburse Avista's reasonable costs, if any for any replacement of such meter. For any planned replacement of the Power Meter by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter, including providing estimated costs, with the City. Avista shall use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Avista agrees to test, at its expense, the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

(e) Notwithstanding any other provision of this Agreement, Avista shall be responsible, at its sole cost and expense, for installing, testing, calibrating, operating, and maintaining any Primary Project metering or communications equipment additions or enhancements that are required as a result of or in connection with any participation by Avista in the California Independent System Operator Energy Imbalance Market (CAISO EIM) or any other energy market.

8. FORCE MAJEURE

(a) 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 failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date ("**Force Majeure**"):

(i) Any cause or condition that is beyond such Party's reasonable control and that is not the result of such Party's negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided, including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought 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; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or 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

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent in accordance with Good Industry Practice to protect the operation, performance, integrity, reliability or stability of such Party's facilities or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) 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 the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Primary Project or any Secondary Project or in the operation of Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however,* that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

9. INDEMNITY

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter "**Loss**") based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of any City-owned equipment or facilities,

including the Primary Project or any Secondary Project, (ii) the City's negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista's electrical system, (ii) Avista's negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party's rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

(b) THE CITY AND AVISTA REPRESENT AND 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.

10. LIMITATION OF LIABILITY

(a) Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.

(i) To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

(ii) Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification

obligations of the indemnifying Party herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “**Industrial Insurance Acts**”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY’S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY’S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY’S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

11. **INSURANCE**

(a) **Business Insurance.** Prior to operating the Primary Project or any Secondary Project, the City, at his 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 the City under the provisions of this Agreement. The City must provide notice of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 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 City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Primary Project and each Secondary Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance Coverage from Third Party Insurers.** Any insurance coverage required by this Section 11 and not provided by the City through self-insurance must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, 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.

(e) **Right of City to Satisfy Insurance Requirements Through Self-Insurance.** The City shall be entitled, in its sole discretion, to satisfy any or all of the insurance requirements of this Agreement through self-insurance, including through a combination of self-insurance retention and excess liability coverage, and any such self-insurance shall be deemed to satisfy the applicable requirements of this Agreement with respect to coverage by a third party insurer.

12. ENVIRONMENTAL ATTRIBUTES

Avista shall own all Environmental Attributes generated by the Primary Project during the Term. Except as may be otherwise agreed by the Parties, the City will have all right, title, and interest in and to any and all Environmental Attributes generated by the Primary Project from and after the expiration or earlier termination of the Term.

13. DISPUTE RESOLUTION

(a) **Informal Dispute Resolution.** The Parties agree that cooperation and communication are essential to resolving issues efficiently, and therefore agree that they will use reasonable efforts to attempt to resolve through informal dispute resolution any dispute (including any payment dispute) between them with respect to this Agreement. Should any such dispute arise, either Party may deliver to the other Party a written dispute notice identifying the disputed issue. Within ten (10) days after delivery of any such dispute notice, the City's Director of Solid Waste Management and Avista's representative will meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within ten (10) days after such meeting, the Parties will

refer the dispute to the City's Director of Utilities and Avista's representative, who will then meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within fourteen (14) days after such meeting, then either Party may initiate mediation in accordance with the provisions of Section 13(b).

(b) **Mediation.** If the Parties have been unable to resolve the dispute through the informal dispute resolution procedures set forth in Section 13(a), then each Party will, within fifteen (15) days after completion of such informal dispute resolution process, propose to the other Party in writing not more than five (5) candidates to act as mediator with respect to the dispute. Within seven (7) days after the Parties exchange lists of mediator candidates, the Parties will meet and confer to choose one name from the list. If the Parties are unable to agree on a mediator within thirty (30) days after completion of the steps outlined above, the Parties will jointly petition the Presiding Judge of the Spokane County Superior Court to appoint a mediator. The Parties will, with the assistance of the mediator, use reasonable efforts to resolve the dispute within thirty (30) days after commencement of the mediation. The Parties will share the fees and expenses of the mediator equally. If mediation fails to resolve the dispute within thirty (30) days after commencement of the mediation, either Party may thereafter seek redress in court for resolution of the dispute. Except as otherwise provided in this Agreement, the Parties will continue to perform their respective obligations under this Agreement pending resolution of any dispute.

14. **ASSIGNMENT**

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Primary Project or any Secondary Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights, interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor, in accordance with City Procedures and Policy.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 9, Section 10 or otherwise 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

(a) An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 16(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due

diligence to cure such default, such twenty (20)-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default 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. GOVERNMENTAL AUTHORITY

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

18. 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 obligation 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.

19. IMPLEMENTATION

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be 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 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.

21. ENTIRE AGREEMENT AND AMENDMENT

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. 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.

22. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

23. COMPLIANCE WITH LAWS

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over such Party. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Primary Project or any Secondary Project.

24. FORWARD CONTRACT; FORWARD AGREEMENT

The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, that Avista and the City are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code, that all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code, and that this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, or that Avista and the City are not "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code.

25. NOTICES

All notices, requests, statements or payments will be made in writing except in the case of operational communications regarding pre-scheduling, scheduling, interruptions, curtailments, or outages, which will be made orally in accordance with the provisions of Exhibit A. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista: Director, Energy Resources
 Avista Corporation
 P.O. Box 3727
 MSC-7
 Spokane, Washington 99220-3727
 Facsimile No.: (509) 495-4272

To the City: Director
 Spokane Waste to Energy Facility
 2900 S. Geiger Blvd.
 Spokane, WA 99224
 Facsimile No.: (509) 625-6537

with a copy (which shall not constitute notice) to:

City Attorney
Office of the City Attorney
City of Spokane
808 W. Spokane Falls Blvd.
5th Floor, Municipal Bldg.
Spokane, Washington 99201-3326
Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 25. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A shall govern oral communications between the Parties.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

27. EXHIBITS

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

Exhibit A	-	Communications
Exhibit B	-	Payment Schedule

[Remainder of Page Intentionally Left Blank]

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:

CITY OF SPOKANE

AVISTA CORPORATION

By:

By:



(Type Name)

Dennis Vermillion

(Type Name)

Title:

Title:

President and CEO

Date:

Date:

January 7, 2022

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

Exhibit A

Communications

A-1. Oral Communications

All operational communications between the City and Avista regarding pre-scheduling, scheduling, interruptions, curtailments, or outages shall be made orally by notifying the following parties:

(a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal Business Days):

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

the City Business Phone (509) 342-5820
 Alternate Phone Number (509) 625-6516

(b) Real-Time Schedule (available 24 hours per day):

Avista Real-Time Scheduler (509) 495-8534

the City Business Phone (509) 342-5820
 Alternate Phone Number (509) 625-6516

(c) During normal business hours, all oral communications relating to interruptions, curtailments, and outages:

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

the City Business Phone (509) 342-5820
 Alternate Phone Number (509) 625-6516

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

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

the City Business Phone (509) 342-5820
 Alternate Phone Number (509) 625-6516

A-2. The City shall notify Avista's system operator, as soon as is practical, whenever the Primary Project or Secondary Project is or is expected to be brought on line, or taken off line.

- A-3.** Changes in persons or phone numbers for oral communications by a Party to this Agreement may be made orally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 25.

Exhibit B

Power Purchase Payment Rates

For the period December 31, 2022, through December 30, 2037, Avista agrees to buy the Delivered Net Output from the City's Waste to Energy Facility (the Primary Project) at the following monthly rates:

Year	Rate Jan-Feb (\$/MWh)	Rate Mar-Jun (\$/MWh)	Rate Jul-Dec (\$/MWh)
2023	\$ 51.07	\$ 39.72	\$ 51.07
2024	\$ 52.09	\$ 40.52	\$ 52.09
2025	\$ 53.14	\$ 41.33	\$ 53.14
2026	\$ 54.20	\$ 42.15	\$ 54.20
2027	\$ 55.28	\$ 43.00	\$ 55.28
2028	\$ 56.39	\$ 43.86	\$ 56.39
2029	\$ 57.52	\$ 44.73	\$ 57.52
2030	\$ 58.67	\$ 45.63	\$ 58.67
2031	\$ 59.84	\$ 46.54	\$ 59.84
2032	\$ 61.04	\$ 47.47	\$ 61.04
2033	\$ 62.26	\$ 48.42	\$ 62.26
2034	\$ 63.50	\$ 49.39	\$ 63.50
2035	\$ 64.77	\$ 50.38	\$ 64.77
2036	\$ 66.07	\$ 51.39	\$ 66.07
2037	\$ 67.39	\$ 52.41	\$ 67.39

Committee Agenda Sheet

PIES COMMITTEE

Submitting Department	Environmental Programs and Water & Hydroelectric Services
Contact Name & Phone	Seth McIntosh, Water System and Hydroelectric Plant Manager Department Head: Raylene Gennett, Executive Sponsors: Marlene Feist, Cadie Olsen
Contact Email	Seth McIntosh: (509) 742-8154 smcintosh@spokanecity.org
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: <u>5 Minutes</u>
Agenda Item Name	Upriver Dam Power Purchase Agreement
Summary (Background)	<p>This Power Purchase Agreement (PPA) is a contract between the City of Spokane's Water Utility and Avista Utilities defining the terms for sales of surplus power from the City's Upriver Hydroelectric Project to Avista. The new agreement will take effect upon signature (Effective Date) and continue through 12/31/2037.</p> <p>The existing PPA between the City and Avista Utilities began January 1, 2020, and was scheduled to continue through December 31, 2024. This agreement provided significantly less revenue than previous power purchase agreements. As part of the joint Mayor-Council Strategic Energy initiative, the City sought to negotiate terms more favorable to both parties that would provide greater value to our citizens. These negotiations resulted in a 15-year contract term, creating greater stability and predictability for both parties. This agreement is the result of two years' worth of work.</p> <p>Through the PPA between the City of Spokane and Avista corporation, the City shall sell and deliver, and Avista shall purchase and receive, the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 17.7 megawatts.</p> <p>Revenue from the agreement will total between \$2.6 - \$3.4 million annually. The terms will deliver about the same amount of revenue annually that the City had been receiving from earlier agreements and avoids losses anticipated in the contract that took effect in January 2020. This revenue helps the Water Utility provide the community with high-quality drinking water more affordably.</p>
Proposed Council Action & Date:	Move to Consent Agenda for consideration at 3:30 briefing session on 2/7/22
Fiscal Impact: Total Cost: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: This agreement is anticipated to generate revenue in support of operations.	

Operations Impacts
What impacts would the proposal have on historically excluded communities? The Agreement will generate revenue to keep water service affordable for all customers and front line communities equally.
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? The results of the agreement will benefit all water service customers equally, creating no measurable impact to racial, ethnic, gender identity, national origin, income level, disability, sexual orientation or other disparities.
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? A financial model was created to evaluate various scenarios optimizing anticipated revenues. Legal and content area experts were consulted and actively involved in developing and negotiating the optimal agreement.

POWER PURCHASE AGREEMENT
BETWEEN
AVISTA CORPORATION
AND
CITY OF SPOKANE
(UPRIVER DAM HYDROELECTRIC PROJECT)

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the date (or, if such date is not the same, the latter date) set forth beneath the Parties’ signatures on the signature page to this Agreement (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, the City owns and operates a hydroelectric generating project located on the Spokane River in Spokane County, Washington, known as the Upriver Hydro Project, which has a nameplate capacity of 17.7 megawatts and has been issued hydroelectric license no. 3074-WA by FERC (the “**Primary Project**”); and

WHEREAS, the City and Avista have entered into a Small Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Primary Project with Avista’s electric system; and

WHEREAS, in October 2019, the City and Avista entered into a Power Purchase Agreement providing for the sale by the City and the purchase by Avista of electric power generated by the Primary Project (the “**2019 Agreement**”)

WHEREAS, the 2019 Agreement expires on December 31, 2024, unless terminated earlier pursuant to its terms;

WHEREAS, in accordance with its rights under Section 3(d) of the 2019 Agreement, the City intends to terminate the 2019 Agreement effective at 2400 PPT on December 31, 2022, and replace the 2019 Agreement in its entirety with this Agreement;

WHEREAS, the City desires to sell and Avista desires to purchase electric power from the Primary Project and any Secondary Project(s) (as hereinafter defined) for a Delivery Term commencing on January 1, 2023, and expiring on December 31, 2037, in accordance with the terms of this Agreement;

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

1. DEFINITIONS; INTERPRETATION

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control”

means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) **“Agreement”** means this power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) **“Applicable Program”** means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) **“Bankrupt”** means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **“Bankruptcy Code”** means Title 11 of the United States Code.

(vi) **“Business Day”** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vii) **“City Site Load”** means any electric power requirements, other than Facility Service Power, of any City equipment or other facilities owned by the City on the Premises, including Secondary Project(s); *provided* that any City Site Load shall not have an aggregate electric demand in excess of five (5) MW; and *provided, further*, that if requested by Avista, any City Site Load shall be metered separately and distinctly from all other existing load at the sole expense of the City.

(viii) **“Defaulting Party”** shall have the meaning provided in Section 16(a) of this Agreement.

(ix) **“Delivered Net Output”** shall have the meaning provided in Section 4(a) of this Agreement.

(x) **“Delivery Term”** shall have the meaning provided in Section 3(b) of this Agreement.

(xi) **“Dispute Notice”** shall have the meaning provided in Section 12 of this Agreement.

(xii) **“Effective Date”** shall have the meaning set forth in the first paragraph of this Agreement.

(xiii) **“EIM Hourly Price”** means, for any applicable hour, the arithmetic average of the Western Energy Imbalance Market sub-hourly market prices applicable for such hour to the location of the Primary Project.

(xiv) **“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 Primary Project or the generation of energy by the Primary Project, and the delivery of such energy to the electricity grid, and include 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 Primary Project and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Primary Project 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 any energy, capacity, reliability or other power attributes from the Primary Project.

(xv) **“Event of Default”** shall have the meaning provided in Section 16(a) of this Agreement.

(xvi) **“Facility Service Power”** means electric energy generated by the Primary Project and any Secondary Project(s) that is used to operate equipment that is auxiliary to primary generation equipment of the Primary Project and such Secondary Project(s), including pumping, generator excitation, cooling or other operations related to the

production of electric energy by the Primary Project and any Secondary Project(s) and the City's underground water pumps (Well Electric and Parkwater) located at the Premises.

(xvii) **"FERC"** means the United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xviii) **"Force Majeure"** shall have the meaning provided in Section 8(a) of this Agreement.

(xix) **"Forced Outage"** means any outage that either fully or partially curtails the electrical output of the Primary Project or any Secondary Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xx) **"Good Industry Practice"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xxi) **"Governmental Authority"** means any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xxii) **"Governmental Rules"** means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided that* Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xxiii) **"Industrial Insurance Acts"** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxiv) **"Interconnection Agreement"** shall have the meaning provided in the recitals of this Agreement.

(xxv) **"Interest Rate"** means, for any date, the lesser of (a) one percent per month, and (b) the maximum rate permitted by applicable law.

(xxvi) **"Loss"** shall have the meaning provided in Section 9(a) of this Agreement.

(xxvii) **“Mid C Day-Ahead Index Price”** means, for any day other than a Sunday or a NERC Holiday, the weighted average of the Intercontinental Exchange (**“ICE”**) daily Mid-Columbia On-Peak Firm Power Price Bulletin for On-Peak Hours and the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin for Off-Peak Hours. For Off-Peak days, including Sundays and NERC Holidays, the ICE daily Mid-Columbia Off-Peak Firm Power Price Bulletin shall apply.

(xxviii) **“Major Maintenance”** means maintenance work upon the Primary Project or any Secondary Project that results in more than one generating unit not operating.

(xxix) **“MW”** means megawatts.

(xxx) **“NERC”** means the North American Electric Reliability Corporation or its successor organization.

(xxxi) **“Off-Peak Hours”** mean HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT, Monday through Saturday, and HE 0100 through 2400 Sundays and NERC Holidays.

(xxxii) **“On-Peak Hours”** mean HE 0700 through HE 2200 PPT.

(xxxiii) **“Operating Year”** means the 12-month period from January 1 through December 31.

(xxxiv) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(xxxv) **“Person”** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

(xxxvi) **“Point of Delivery”** means the point at which the Primary Project and any Secondary Project, on the one hand, and Avista’s electric system, on the other hand, are interconnected, as set forth in the Interconnection Agreement.

(xxxvii) **“Power Meter”** shall have the meaning provided in Section 4(a) of this Agreement.

(xxxviii) **“Premises”** means the site owned and operated by the City as of the Effective Date at which the Primary Project is located and any additional adjacent parcel of land that the City may acquire for the purpose of operating the Primary Project or any Secondary Project(s) or City Site Load.

(xxxix) **“Primary Project”** means the existing hydroelectric generating facility which has a nameplate capacity of 17.7 megawatts and has been issued hydroelectric license no. 3074-WA by FERC, including all equipment and structures necessary to generate and supply electric power and the underground well water pump stations (Well Electric and Parkwater) located adjacent to the generating facility.

(xl) **“Qualifying Facility”** means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xli) **“Representatives”** means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xlii) **“Secondary Project”** means any City-owned energy generation or energy storage equipment or facilities, separate and apart from the Primary Project, that are constructed or installed on the Premises; *provided* that any Secondary Project(s) shall not have an aggregate electric nameplate capacity in excess of five (5) MW; and *provided, further*, that if required by Avista, any Secondary Project(s) will be separately metered at the sole cost of the City.

(xliii) **“Surplus Output”** means any generation from a Secondary Project that is not consumed as Facility Service Power or as City Site Load and that is included in Delivered Net Output.

(xliv) **“Term”** shall have the meaning provided in Section 3(a) of this Agreement.

(xlv) **“Termination Date”** means the date on which this Agreement terminates or expires.

(xlvi) **“WECC”** means the Western Electricity Coordinating Council or its successor organization.

(xlvii) **“WUTC”** means the Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.

(ii) Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

(iv) Other grammatical forms of defined words or phrases have corresponding meanings.

(v) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(vi) Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(vii) A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

(viii) Reference to any gender includes each other gender.

(ix) Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

(x) References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

(xi) If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

(xii) "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

(xiii) "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

(xiv) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

2. REPRESENTATIONS AND WARRANTIES; COVENANTS

(a) Representations and Warranties.

(i) The City represents that it is the sole owner of the Primary Project and will be the sole owner of any Secondary Project(s). The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or

expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Primary Project is, and any Secondary Project(s) will be, a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or the Primary Project or any Secondary Project(s) shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Primary Project or any Secondary Project(s).

(b) Covenants.

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Primary Project and any Secondary Project(s), and the Primary Project and each Secondary Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. Any failure of the Primary Project or any Secondary Project to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Qualifying Facility status and associated support and compliance documents of the Primary Project and any Secondary Project at any time during the Term.

(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In

exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

3. TERM OF AGREEMENT; DELIVERY TERM

(a) The term of this Agreement (the “**Term**”) shall be effective on the Effective Date and shall terminate at 2400 PPT on December 31, 2037, unless terminated earlier in accordance with the terms and conditions of this Agreement; *provided, however*, that the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any Delivered Net Output or other output from the Primary Project or any Secondary Project prior to the commencement of the Delivery Term as defined in Section 3(b) below.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on January 1, 2023, and continue through hour ending 2400 PPT on December 31, 2037. The Delivery Term will terminate effective immediately upon termination of this Agreement for any reason. In accordance with its rights under Section 3(d) of the 2019 Agreement, the 2019 Agreement shall terminate effective at 2400 PPT on December 31, 2022, and the 2019 Agreement shall be replaced in its entirety with this Agreement.

(c) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(d) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 22 will survive the expiration or termination for any reason of this Agreement; *provided that* such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

4. PURCHASE AND SALE OF DELIVERED NET OUTPUT

(a) The City shall sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power (not including any Facility Service Power or City Site Load), up to a maximum of 17.7 megawatts in any hour, that is generated by the Primary Project and any Secondary Project(s) and delivered by the City to Avista at the Point of Delivery

during the Delivery Term (the “**Delivered Net Output**”). A power meter located at the Point of Delivery (the “**Power Meter**”) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding that the City is entitled to include Surplus Output in Delivered Net Output, at no time shall Delivered Net Output, whether or not including any Surplus Output, exceed 17.7 MW in any hour, and the City shall have no obligation to deliver or sell, and Avista shall have no obligation to accept or purchase, any output from the Primary Project or any Secondary Project other than Delivered Net Output in an amount up to a maximum of 17.7 MW in any hour. Furthermore, notwithstanding any other provision of this Agreement, the City shall have no obligation to generate or sell or deliver, and Avista shall have no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is to sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Primary Project and (unless otherwise required by Avista in accordance with the provisions of this Agreement) any Secondary Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. To the extent possible, the City shall be granted access to real time data provided by Avista. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties agree that any additional amounts of electric power made available from the Primary Project or any Secondary Project as a result of any modifications, enhancements, or expansions of or additions to the Primary Project or such Secondary Project during the Term shall be purchased and sold pursuant to this Agreement, so long as such modifications, enhancements, or expansions do not (i) cause the Delivered Net Output to exceed 17.7 MW in any hour at any time during the Term or (ii) result in any breach or violation of the provisions of Section 2(b)(i). The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Primary Project or any Secondary Project to any third party during the Delivery Term.

(d) Notwithstanding any other provision of this Agreement, the City will be entitled, at its sole option, to develop, construct, install, own, and operate energy storage or solar photovoltaic facilities at the Premises. Any such facilities shall be deemed one or more Secondary Projects, and the Surplus Output produced by any such facilities shall be included in Delivered Net Output for purposes of this Agreement if and to the extent that (i) such treatment would not (A) cause the Delivered Net Output to exceed 17.7 MW in any hour at any time during the Term or (B) result in any breach or violation of the provisions of Section 2(b)(i) and (ii) such facilities do not, without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of electric power.

5. OPERATION OF PRIMARY PROJECT AND ANY SECONDARY PROJECT(S)

(a) The City shall operate and maintain the Primary Project and any Secondary Project(s) in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Primary Project and any Secondary Project(s) with Avista's electrical system is (or will be) governed by a separate Interconnection Agreement between the Parties.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that it is required to do so in order to comply with any Governmental Rule or if the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydroelectric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) The City and Avista have agreed that the City will use reasonable efforts to shift Facility Service Power related to pumping load to Off-Peak Hours when possible in an effort to increase the capacity available to Avista during On-Peak Hours.

(e) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

(f) Without the prior written consent of Avista, the City may not use any portion of Avista's distribution system for the delivery of output from the Primary Project or any Secondary Project to Facility Service Power or City Site Load.

6. PAYMENTS

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable 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.

(b) If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the City at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 31 for the State of Washington.

(c) Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and offset such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business 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.

(d) Avista shall pay the City monthly for Delivered Net Output from the Primary Project at the rates set forth in Exhibit B. Avista shall pay the City monthly for Delivered Net Output that is Surplus Output at the as-available rate calculated at the time of delivery pursuant to 18 C.F.R. § 292.304(d)(1)(i). The as-available rate shall be calculated as 85% of the lesser of (i) the Mid C Day-Ahead Index Price for the applicable period or (ii) the EIM Hourly Price for the applicable period. If the City delivers to Avista any Delivered Net Output that is Surplus Output during any period when the as-available rate is negative, Avista will receive a credit from the City for such Surplus Output, on the City's billing statement to Avista for the applicable monthly billing period, in an amount equal to 115% of the lesser of (i) the absolute value of the Mid C Day-Ahead Index Price for the applicable period or (ii) the absolute value of the EIM Hourly Price for the applicable period. Avista shall not have any obligation to pay any amount whatsoever for any Delivered Net Output in excess of 17.7 MW in any hour.

(e) If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20th) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable 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. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

(f) All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

(g) A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or

computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within five (5) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest at the Interest Rate.

7. METERING

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Avista shall own and maintain the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery. The City shall reimburse Avista's reasonable costs, if any for any replacement of such meter. For any planned replacement of the Power Meter by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter, including providing estimated costs, with the City. Avista shall

use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Avista agrees to test, at its expense, the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

(e) Notwithstanding any other provision of this Agreement, Avista shall be responsible, at its sole cost and expense, for installing, testing, calibrating, operating, and maintaining any Primary Project metering or communications equipment additions or enhancements that are required as a result of or in connection with any participation by Avista in the California Independent System Operator Energy Imbalance Market (CAISO EIM) or any other energy market; *provided, however*, that pursuant to Section 3(b) of this Agreement the City exercises its right under Section 3(d) of the 2019 Agreement to terminate the 2019 Agreement effective at 2400 PPT on December 31, 2022. Accordingly, if as a result of termination such Primary Project metering or communications equipment additions or enhancements are no longer used by or useful to Avista, the City will reimburse Avista for any direct out-of-pocket costs and expenses incurred by Avista prior to December 31, 2022, in installing, testing, calibrating, operating, and maintaining any such Primary Project metering or communications equipment additions or enhancements, and effective upon such reimbursement, Avista will transfer to the City all right, title, and interest of Avista in and to such metering or communications equipment additions or enhancements.

8. FORCE MAJEURE

(a) 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 failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date ("**Force Majeure**"):

(i) Any cause or condition that is beyond such Party's reasonable control and that is not the result of such Party's negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided,

including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought 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; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or 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

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent in accordance with Good Industry Practice to protect the operation, performance, integrity, reliability or stability of such Party's facilities or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) 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 the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Primary Project or any Secondary Project or in the operation of Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however*, that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or

avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

9. INDEMNITY

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter “**Loss**”) based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of any City-owned equipment or facilities, including the Primary Project or any Secondary Project, (ii) the City’s negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista’s electrical system, (ii) Avista’s negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party’s rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

(b) THE CITY AND AVISTA REPRESENT AND 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.

10. LIMITATION OF LIABILITY

(a) **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL

NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.

(i) To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

(ii) Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification obligations of the indemnifying Party herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “Industrial Insurance Acts”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY’S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY’S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY’S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its

Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

11. INSURANCE

(a) **Business Insurance.** Prior to operating the Primary Project or any Secondary Project, the City, at his 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 the City under the provisions of this Agreement. The City must provide notice of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 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 City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Primary Project and each Secondary Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance Coverage from Third Party Insurers.** Any insurance coverage required by this Section 11 and not provided by the City through self-insurance must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, 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.

(e) **Right of City to Satisfy Insurance Requirements Through Self-Insurance.** The City shall be entitled, in its sole discretion, to satisfy any or all of the insurance requirements of this Agreement through self-insurance, including through a combination of self-insurance retention and excess liability coverage, and any such self-insurance shall be deemed to satisfy the applicable requirements of this Agreement with respect to coverage by a third party insurer.

12. ENVIRONMENTAL ATTRIBUTES

Avista shall own all Environmental Attributes generated by the Primary Project during the Term. Except as may be otherwise agreed by the Parties, the City will have all right, title, and

interest in and to any and all Environmental Attributes generated by the Primary Project from and after the expiration or earlier termination of the Term.

13. DISPUTE RESOLUTION

(a) **Informal Dispute Resolution.** The Parties agree that cooperation and communication are essential to resolving issues efficiently, and therefore agree that they will use reasonable efforts to attempt to resolve through informal dispute resolution any dispute (including any payment dispute) between them with respect to this Agreement. Should any such dispute arise, either Party may deliver to the other Party a written dispute notice identifying the disputed issue. Within ten (10) days after delivery of any such dispute notice, the City's Director of Water and Hydroelectric Department and Avista's representative will meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within ten (10) days after such meeting, the Parties will refer the dispute to the City's Director of Utilities and Avista's representative, who will then meet to attempt to resolve the dispute. If such representatives cannot resolve the dispute within fourteen (14) days after such meeting, then either Party may initiate mediation in accordance with the provisions of Section 13(b).

(b) **Mediation.** If the Parties have been unable to resolve the dispute through the informal dispute resolution procedures set forth in Section 13(a), then each Party will, within fifteen (15) days after completion of such informal dispute resolution process, propose to the other Party in writing not more than five (5) candidates to act as mediator with respect to the dispute. Within seven (7) days after the Parties exchange lists of mediator candidates, the Parties will meet and confer to choose one name from the list. If the Parties are unable to agree on a mediator within thirty (30) days after completion of the steps outlined above, the Parties will jointly petition the Presiding Judge of the Spokane County Superior Court to appoint a mediator. The Parties will, with the assistance of the mediator, use reasonable efforts to resolve the dispute within thirty (30) days after commencement of the mediation. The Parties will share the fees and expenses of the mediator equally. If mediation fails to resolve the dispute within thirty (30) days after commencement of the mediation, either Party may thereafter seek redress in court for resolution of the dispute. Except as otherwise provided in this Agreement, the Parties will continue to perform their respective obligations under this Agreement pending resolution of any dispute.

14. ASSIGNMENT

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Primary Project or any Secondary Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights,

interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor, in accordance with City Procedures and Policy.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 9, Section 10 or otherwise 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

(a) An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 16(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or

its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due diligence to cure such default, such twenty (20)-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default 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. GOVERNMENTAL AUTHORITY

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

18. 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 obligation 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.

19. IMPLEMENTATION

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be 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 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.

21. ENTIRE AGREEMENT AND AMENDMENT

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. 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.

22. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

23. COMPLIANCE WITH LAWS

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over such Party. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Primary Project or any Secondary Project.

24. FORWARD CONTRACT; FORWARD AGREEMENT

The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, that Avista and the City are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code, that all payments made or to be

made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code, and that this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same “forward contract” and “forward agreement” within the meaning of the Bankruptcy Code, or that Avista and the City are not “forward contract merchants” and “swap participants” within the meaning of the Bankruptcy Code.

25. NOTICES

All notices, requests, statements or payments will be made in writing except in the case of operational communications regarding pre-scheduling, scheduling, interruptions, curtailments, or outages, which will be made orally in accordance with the provisions of Exhibit A. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista: Director, Energy Resources
 Avista Corporation
 P.O. Box 3727
 MSC-7
 Spokane, Washington 99220-3727
 Facsimile No.: (509) 495-4272

To the City: Director
 City of Spokane Water and Hydroelectric Services Department
 914 East North Foothills Drive
 Spokane, Washington 99207
 Facsimile No.: (509) 625-7816

with a copy (which shall not constitute notice) to:

City Attorney
Office of the City Attorney
City of Spokane
808 W. Spokane Falls Blvd.
5th Floor, Municipal Bldg.
Spokane, Washington 99201-3326
Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 25. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A shall govern oral communications between the Parties.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

27. EXHIBITS

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

- | | | |
|-----------|---|------------------|
| Exhibit A | - | Communications |
| Exhibit B | - | Payment Schedule |

[Remainder of Page Intentionally Left Blank]

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:

CITY OF SPOKANE

AVISTA CORPORATION

By:

By:



(Type Name)

Dennis Vermillion

(Type Name)

Title:

Title:

President and CEO

Date:

Date:

January 7, 2022

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

Exhibit A

Communications

A-1. Oral Communications

All operational communications between the City and Avista regarding pre-scheduling, scheduling, interruptions, curtailments, or outages shall be made orally by notifying the following parties:

(a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal Business Days):

Avista	Pre-Scheduler (509) 495-4911 Alternate Phone Number (509) 495-4073
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the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
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(b) Real-Time Schedule (available 24 hours per day):

Avista	Real-Time Scheduler (509) 495-8534
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the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
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(c) During normal business hours, all oral communications relating to interruptions, curtailments, and outages:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
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the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

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

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
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the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800
----------	--

A-2. The City shall notify Avista's system operator, as soon as is practical, whenever the Primary Project or any Secondary Project is or is expected to be brought on line, or taken off line.

- A-3.** Changes in persons or phone numbers for oral communications by a Party to this Agreement may be made orally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 25.

Exhibit B

Power Purchase Payment Rates

For the period January 1, 2023 through December 31, 2037, Avista agrees to buy the Delivered Net Output from the City's Upriver Hydro Primary Project at the following monthly rates:

Year	Rate Jan-Feb (\$/MWh)	Rate Mar-Jun (\$/MWh)	Rate Jul-Dec (\$/MWh)
2023	\$ 57.48	\$ 44.71	\$ 57.48
2024	\$ 58.63	\$ 45.60	\$ 58.63
2025	\$ 59.81	\$ 46.52	\$ 59.81
2026	\$ 61.00	\$ 47.45	\$ 61.00
2027	\$ 62.22	\$ 48.39	\$ 62.22
2028	\$ 63.47	\$ 49.36	\$ 63.47
2029	\$ 64.74	\$ 50.35	\$ 64.74
2030	\$ 66.03	\$ 51.36	\$ 66.03
2031	\$ 67.35	\$ 52.38	\$ 67.35
2032	\$ 68.70	\$ 53.43	\$ 68.70
2033	\$ 70.07	\$ 54.50	\$ 70.07
2034	\$ 71.47	\$ 55.59	\$ 71.47
2035	\$ 72.90	\$ 56.70	\$ 72.90
2036	\$ 74.36	\$ 57.84	\$ 74.36
2037	\$ 75.85	\$ 58.99	\$ 75.85

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Public Works Division – Integrated Capital Management Department
Contact Name & Phone	Kevin Picanco, 625-6088; Inga Note, 625-6331
Contact Email	kpicanco@spokanecity.org ; inote@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: <u>20 minutes</u>
Agenda Item Name	Transportation Grant Opportunities – SRTC Call for Projects and HSIP
Summary (Background)	<p><u>Background/History:</u> <i>There are two upcoming transportation grant opportunities.</i></p> <p><u>SRTC Call for Projects:</u> <i>SRTC issues a call for projects periodically, the last in 2018. The 2022 call will be released in early February. The SRTC call covers five federal transportation funding programs: STBG, STBG-Set Aside, CMAQ, HIP, HIP-CRRSAA. Approximately \$40 million is available for the region; funds will be allocated over 3 years, 2024 through 2026. The first source for project applications is the 6-Year Program. Other projects stem from maintenance needs, recent transportation plans or studies, identified traffic operational issues or bike/pedestrians safety issues. Projects are verified for grant eligibility and reviewed for their applicability to grant program goals. Preliminary application and eligibility screening is due March 7th, final applications are due April 4th. A list of projects under consideration for application is attached.</i></p> <p><u>Highway Safety Improvement Program (HSIP):</u> <i>The Highway Safety Improvement Program (HSIP) is a federal grant program that allows states and local governments to target safety funds to their most critical safety needs. The goal of the program is to <u>reduce fatal and serious injury crashes</u>. The 2022 program criteria has two categories: Spot Location and Systemic. \$35 million is available to cities statewide. Applications for the 2022 call are due March 4th. A 10% match is required for all phases, except that construction is eligible for 100% funding if authorized by April 30th, 2025. Potential project locations will be discussed during the PIES presentation.</i></p>
Proposed Council Action & Date:	For information and discussion only. n/a
<p>Fiscal Impact: Total Cost: n/a Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:</p> <p>Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	

Operations Impacts

What impacts would the proposal have on historically excluded communities?

Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

Potential projects for transportation grant opportunities are dispersed throughout the City and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors. Equity considerations are included in SRTC's evaluation and scoring process.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Projects within the 6-year Streets program are evaluated for consistency with the City's Comprehensive Plan when they are initially added to the program.

The HSIP project selection is based on historic crash data and risk assessment for similar locations. City staff monitors collision data on a regular basis.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Potential projects submitted for application comply with goals and policies of Chapter 4 – Transportation of the City's Comprehensive Plan.

2022 SRTC Call for Projects

January, 2022

Projects Under Consideration for Application:

Reconstruction

Riverside Ave, Monroe to Wall
Spokane Falls Blvd, Post to Division
Broadway Ave. - Ash to Post
Mallon Ave - Monroe to Howard

Freight / Industrial focused or Citywide Traffic Ops

Havana St, Broadway to Sprague
Wellesley, Freya to Havana
Traffic Signal Controller Upgrade - Citywide

Regional Trail

Sunset Highway Path - Royal to Deer Heights
Millwood Trail, CoST/SCC to Felts Field
Fish Lake to Centennial Trail Connection

Impact Fee / Intersection Capacity

Palouse/Freya Roundabout
Nevada/Lincoln Intersection Improvements

Bridge

King Cole Way - Wood Bridge - Riverfront Park

Ped-Bike / Safety / Active Transportation

Driscoll Sidewalk - Garland to Wellesley
Rowan @ Maple/Ash
Pacific Ave. Greenway
Cook St. Greenway Completion
Arthur St. Sidewalk and Greenway - 38th Ave. to 43rd Ave. & 29th PHB

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Public Works Division – Integrated Capital Management Department
Contact Name & Phone	Kevin Picanco, 625-6088
Contact Email	kpicanco@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: <u>15 minutes</u>
Agenda Item Name	6-Year Comprehensive Street Program – 2023-2028 - Kickoff
Summary (Background)	<p><u>Background/History:</u> <i>In support of the State Growth Management Act and the City of Spokane's Comprehensive Plan, the City must maintain 6-year capital financing plans for certain providers of public facilities and services. Accordingly, the City must maintain a 6-year capital financing plan for its capital street program. Pursuant to RCW 35.77.010 the capital street program must be adopted before July 1 of each year, and filed with the Secretary of Transportation not later than 30 days after adoption. To determine the plan's consistency with the Comprehensive Plan, it is reviewed by the City Plan Commission. The Commission then makes a recommendation to the City Council as to the plan's consistency with the Comprehensive Plan, and the City Council then accepts or modifies the plan accordingly.</i></p> <p><u>Executive Summary:</u></p> <ul style="list-style-type: none"> • <i>This annual update facilitates:</i> <ul style="list-style-type: none"> ○ <i>Compliance with the Growth Management Act and RCW 35.77.010,</i> ○ <i>City of Spokane can qualify for grant and low interest loan funds,</i> ○ <i>Meets requirement that the City maintain a 6-Year Capital Improvement plan for its capital street program.</i> • <i>Draft Reconciliation</i> <ul style="list-style-type: none"> ○ <i>Eleven new projects are being added to the program; most as a result of grant awards in the last year.</i>
Proposed Council Action & Date: n/a	No action requested at this time. There will be subsequent updates to Council leading towards public hearing and program adoption in June, 2022.
<p>Fiscal Impact: Total Cost: n/a – kick-off meeting for information only Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source:</p> <p>Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	

Operations Impacts

What impacts would the proposal have on historically excluded communities?

Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A – This is a 6-year program annual update.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Projects within the 6-year Streets program are evaluated for consistency with the City's Comprehensive Plan when they are initially added to the program.

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This is an annual update the City's 6-year Streets Comprehensive Program (the Capital Improvement Program for City transportation projects). Projects within the 6-year Streets program are evaluated for consistency with the City's Comprehensive Plan when they are initially added to the program.

STREET PROGRAM RECONCILIATION SHEET

(Comparing 2023-28 against 2022-27 6yr. Program)

New Projects Added to Six-Year Program (2023-2028)				
Section/ Funds/ CN Year	Project Name	Project Description	Purpose Statement	Cost Estimate
Bridge 2024	Maple St. Bridge Deck Repair	Repair the bridge deck and joints on the Maple St. Bridge	Repair the bridge deck to extend the life of the bridge.	\$4.5M
Bridge 2025	Washington St., Stevens St. Bridges Deck Repair	Repair the bridge decks and bridge joints on the three Washington/Stevens bridges over the Spokane River.	Repair the bridge deck to extend the life of the bridge.	\$5.0M
Pedestrian & Bikeways 2023	Greene-Carlisle PHB & Sidewalk	Install a Pedestrian Hybrid Beacon at the Greene/Carlisle intersection. Install a shared use path along Carlisle from Greene to Ralph; install a sidewalk on both sides of Carlisle from Ralph to Freya.	Improve pedestrian and bike safety. Provide pedestrian facilities improving pedestrian mobility and access and connections to adjacent bike/ped facilities; improve transit	\$1.4M
Pedestrian & Bikeways 2023	Nevada-Joseph PHB	Install a Pedestrian Hybrid Beacon at the Nevada/Joseph intersection.	Improve safety for students and pedestrians crossings of Nevada St.	\$570k
Pedestrian & Bikeways 2023	Bemiss Elem Walk Route (Safe Routes to School)	Install sidewalk along Liberty Ave. for school walk routes for Bemiss Elementary. Install a Rectangular Rapid-Flashing Beacon (RRFB) at the Crestline/Courtland intersection.	Improve safety for student and pedestrian crossings of Crestline St. Provide sidewalks along school walk routes.	\$844k
Pedestrian & Bikeways 2023	Haven St. Sidewalk - Heroy to Rockwell	Install sidewalk along Haven St. from Heroy Ave. to Rockwell Ave.	Improve pedestrian facilities and access to transit.	\$300k
Capital Improvements 2023	Market / Monroe / 29th - Grind & Overlay	Pavement rehabilitation and preservation. Asphalt grind and overlay, pavement repair and ADA ramps.	Rehabilitate the asphalt pavement surface and extend the life of the pavement structural section.	\$4.6M
Capital Improvements 2023	29th / Washington / Monroe - Grind & Overlay	Pavement rehabilitation and preservation. Asphalt grind and overlay, pavement repair and ADA ramps.	Rehabilitate the asphalt pavement surface and extend the life of the pavement structural section.	\$6.2M
Capital Improvements 2023	Haven St. Grind & Overlay - Market to Market	Pavement rehabilitation and preservation. Asphalt grind and overlay, pavement repair and ADA ramps.	Rehabilitate the asphalt pavement surface and extend the life of the pavement structural section.	\$1.4M
Capital Improvements 2023	Maple / Ash Chip Seal - Northwest Blvd. to Rowan	Pavement preservation via chip seal coat.	Preserve and extned the life of the pavement surface.	\$1.0M
Capital Improvements 2022/23	Illinois Ave. Grind/Overlay & Shared Use Path - Perry St. to Market St.	Pavement rehabilitation and preservation. Asphalt grind and overlay, pavement repair and ADA ramps. Reconfigure the roadway and striping to construct a protected shared use pathway.	Rehabilitate the asphalt pavement surface and extend the life of the pavement structural section. Improve bike/pedestrian infrastructure.	\$2.3M
Section	Project Name	Projects Completed or Removed from Six-Year Program	Status	
Pedestrian & Bikeways	North River Dr. Sidewalk		Complete	
Pedestrian & Bikeways	Centennial Trail, Summit Gap		Complete	
Capital Improvements	Howard St., Sprague to Riverside	STA CCL Project	Remove	
Capital Improvements	Maple-Wellesley Intersection		Complete	
Capital Improvements	NSC - Ermina & Greene Signal Changes		Complete	
Capital Improvements	Sprague Ave. Investment Phase II - Browne to Scott		Complete	

Committee Agenda Sheet

Public Infrastructure Environment and Sustainability Committee

Submitting Department	Integrated Capital Management
Contact Name & Phone	Katherine Miller 625-6338
Contact Email	kemiller@spokanecity.org
Council Sponsor(s)	Councilmember Kinnear
Select Agenda Item Type	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>
Agenda Item Name	Fluoridation Contract with Murraysmith
Summary (Background)	<p>Council accepted a \$4,000,000 grant from Acora in September of 2020 to implement community water fluoridation. The agreement required the City to pay back any funds if the City did not move forward with fluoridation.</p> <p>In August of 2021 the grant agreement was amended to provide up to \$600,000 to conduct a comprehensive engineering analysis to understand the full cost to implement a fluoridation system. The costs incurred to provide the analysis would not have to be repaid regardless of whether the City chooses to proceed with fluoridation. During this amendment process, Mayor and Council agreed to have a full public and transparent discussion to review the results of the analysis and determine next steps.</p> <p>With the passage of the amendment, a Request for Qualifications (RFQ) was released in early October 2021. Murraysmith was the only consulting team that submitted a response by the October 25th due date. The RFQ was reviewed by an internal team and found to be responsive on November 10th 2021. Since November the consultant and City staff have been developing the scope, schedule and budget.</p> <p>A final draft of the contract including the scope, schedule and budget is intended to be placed on Council's agenda for briefing on February 7th with Council action on February 14th.</p>
Proposed Council Action & Date:	Council Briefing February 7 th with Council Action on February 14 th
Fiscal Impact: Total Cost: <u>\$600,000</u> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: Expense Occurrence <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	

What impacts would the proposal have on historically excluded communities?

Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A – Under this contract this analysis will assess which type of fluoridation process would be recommended if implemented, what the impacts would be to existing facilities and what the life cycle costs would be.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Unknown at this time.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This proposed contract is consistent with the amended August 2021 agreement with Acora.

Committee Agenda Sheet

Public Infrastructure Environment and Sustainability

Submitting Department	Integrated Capital Management
Contact Name & Phone	Katherine Miller 625-6338
Contact Email	kemiller@spokanecity.org
Council Sponsor(s)	Councilmember Kinnear
Select Agenda Item Type	<input type="checkbox"/> <input checked="" type="checkbox"/>
Agenda Item Name	West Plains PDA Board Presentation- Transportation & Utility Needs
Summary (Background)	<p>On December 9th, 2021 City staff provided the West Plains Public Development Authority (PDA) Board with a presentation to review currently programmed transportation and utility projects as well as review future needs. The discussion also covered roles and responsibilities regarding identifying needed transportation and utility facilities and funding strategies to address the need.</p> <p>This presentation pertains to the roles and responsibilities for all the PDA's.</p>
Proposed Council Action & Date:	NA
Fiscal Impact: Total Cost: <u>NA</u> Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.) NA	

Operations Impacts

What impacts would the proposal have on historically excluded communities?

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How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

NA

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

NA

Committee Agenda Sheet

[COMMITTEE]

Submitting Department	Fleet Operations
Contact Name & Phone	Rick Giddings 509 625 7706
Contact Email	rgiddings@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: <u>1/12/2022</u>
Agenda Item Name	Master Value Blanket renewal with Connell Oil for Lubricants
Summary (Background)	<p>Lubricants are required to maintain City equipment.</p> <p>The Master Value Blanket VB-301127, with Connell Oil, was put in place from February 10, 2020 through February 10, 2022, utilizing the Washington State Contract #02418.</p> <p>The renewal of Master Value Blanket with Connell Oil would allow the Fleet Services Department and other departments to continue to purchase lubricants utilizing the Washington State Contract #02418.</p> <p>The renewal would be valid through July 31, 2026, in line with terms of Washington State Contract #02418.</p> <p>Impact- Master VB allows the purchase of oils, grease and other automotive lubricants to maintain the City of Spokane equipment fleet.</p> <p>Action- Recommend approval for \$662,500 (\$150,000 annually) for renewal through July 31, 2026.</p> <p>Funding- Funding is available in the Fleet Services and affected department's budgets.</p>
Proposed Council Action & Date:	PIES Date January 31, 2022
Fiscal Impact: Total Cost: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: VARIOUS Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? None	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data would not be collected.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it	

is the right solution?

A review of lubricant purchases, by Departments, from 2/11/2022 to 7/31/2026, could be conducted to assist in determining future contracting requirements.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Strategic Plan - Lubricants are required to maintain City equipment

Committee Agenda Sheet

[Public Infrastructure, Environment & Sustainability]

Submitting Department	RPWRF
Contact Name & Phone	Mike Cannon 625-4642
Contact Email	mcannon@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input type="checkbox"/> <input type="checkbox"/>
Agenda Item Name	Renewal of contract to supply Polymer
Summary (Background)	Polymer is used in three processes - the Belt Filter Press for land application, the Gravity Belt Thickener processes for blending and the Primary Clarifiers for enhanced nutrient removal.
Proposed Council Action & Date: 2/14/22	Council approval for the final renewal with Polydyne, Inc. to supply polymer to Riverside Park Water Reclamation Facility.
Fiscal Impact: Total Cost: <u>\$467,100.00</u> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Department Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? N/A	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? In order to function as a wastewater treatment and water recycling facility, it is necessary to add polymer.	
Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?	

This aligns with our current Purchasing Policy guidelines. This is the final renewal from the awarded BID #4438-18 to Polydyne, Inc. (Riceboro, GA) who was the lowest responsive bidder that met our 7-day delivery requirements to supply polymer.

Committee Agenda Sheet

[Public Infrastructure, Environment & Sustainability]

Submitting Department	RPWRF
Contact Name & Phone	Mike Cannon 625-4642
Contact Email	mcannon@spokanecity.org
Council Sponsor(s)	CM Kinnear
Select Agenda Item Type	<input type="checkbox"/> <input type="checkbox"/>
Agenda Item Name	Renewal of contract to supply Liquid Aluminum Sulfate
Summary (Background)	<p>Aluminum Sulfate is used to remove Phosphorus from water from the Riverside Park Water Reclamation Facility that is discharged to the Spokane River. In order to remove Phosphorus from water discharged from RPWRF, it is necessary to add Liquid Aluminum Sulfate.</p> <p>RPWRF is required, by its discharge permit, to chemically remove Phosphorus from its effluent flow. We are anticipating usage of approximately 6,200 dry tons.</p>
Proposed Council Action & Date: 2/14/22	Council approval for the final renewal with Kemira Water Solutions, Inc. to supply Liquid Aluminum Sulfate to Riverside Park Water Reclamation Facility.
Fiscal Impact: Total Cost: \$2,678,400.00 (\$432.00 per dry ton) Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Department Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? N/A	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? In order to function as a wastewater treatment and water recycling facility, it is necessary to add liquid aluminum sulfate.	

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This aligns with our current Purchasing Policy guidelines. This is the final renewal from the awarded BID #4442-18 to Kemira Water Solutions, Inc. who was the lowest responsive bidder.

Briefing Paper

PIES

Division & Department:	Public Works, Engineering
Subject:	Geotechnical engineering on-call contract
Date:	January 24, 2022
Contact (email & phone):	Dan Buller (dbuller@spokanecity.org 625-6391)
City Council Sponsor:	Breean Beggs
Executive Sponsor:	Marlene Feist
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	The projects which pay the costs incurred under this contract are in the 6 year water, sewer and street plans
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of contract amount increase
Background/History: <ul style="list-style-type: none"> The city has various on-call contracts for specialized engineering consultants, including geotechnical engineering. The on-call contract with Budinger is for two years, with an option to extend to a third year. The funds available within the original contract amount of \$400,000 have nearly been exhausted. Funds expended under this project are reimbursed by various City public works projects originating both within and outside of Engineering Services. 	
Executive Summary: <ul style="list-style-type: none"> Engineering services requests permission to increase the total contract amount by \$400,000 for a new contract total of \$800,000. 	
Budget Impact: Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	

Briefing Paper

Public Infrastructure Environment and Sustainability Committee

Division & Department:	Finance, Fleet Services
Subject:	Purchase of Tymco Air Sweeper
Date:	January 31, 2022
Author (email & phone):	Micaela Martinez mmartinez@spokanecity.org 625-7823
City Council Sponsor:	Lori Kinnear
Executive Sponsor:	Tonya Wallace
Committee(s) Impacted:	Public Infrastructure Environment and Sustainability Committee
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan)	Strategic Plan
Strategic Initiative:	Innovative Infrastructure: Maintaining our fleet of support equipment
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	

Background/History:

The Street Department would like to purchase a Tymco Air Sweeper. The unit will be purchased from Tymco, Inc., Spokane, WA, using HGAC Buy Contract No. SW04-20. Total purchase price is \$367,976.93, including tax.

Executive Summary:

The Tymco Air Sweeper will replace a unit that has reached the end of its economic life. We recommend approval for the purchase of a Tymco Air Sweeper for the Street Department. Funding for this is included in the Street Department replacement budget.

TCO

Year	Make	Model	Capital Costs	Lifetime Maintenance	Lifetime Fuel Cost	Lifetime Usage Hours	Expected Life Years	TCO Lifetime	TCO/Hour	TCO/Year
2022	Tymco/International	500X Regenerative Air Sweeper	\$339,842	\$423,800	\$102,400	10,000	15	\$866,042	\$86.60	\$57,736
2022	Elgin/Kenworth	Broom Bear Mechanical	\$386,598	\$423,800	\$102,400	10,000	15	\$912,798	\$91.28	\$60,853

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No

Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.)

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No

Requires change in current operations/policy? ☐ Yes ☒ No

Specify changes required:

Known challenges/barriers:

Briefing Paper

Public Infrastructure Environment and Sustainability Committee

Division & Department:	Finance, Fleet Services
Subject:	Purchase of Scorpion ASL's
Date:	January 31, 2022
Author (email & phone):	Micaela Martinez mmartinez@spokanecity.org 625-7823
City Council Sponsor:	Lori Kinnear
Executive Sponsor:	Tonya Wallace
Committee(s) Impacted:	Public Infrastructure Environment and Sustainability Committee
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Strategic Plan
Strategic Initiative:	Innovative Infrastructure: Maintaining our fleet of support equipment
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	

Background/History:

The Solid Waste Collection department would like to purchase six CNG Scorpion ASL's, using Sourcewell Contract #060920-CRN, for \$3,100,262.40, including tax, from Dobbs Truck Group, Federal Way, WA.

Executive Summary:

The CNG Scorpion ASL's will replace units that have reached the end of their economic life. We recommend approval for the purchase of five CNG Scorpion ASL's for the Solid Waste Collection Department. Funding for this is included in the department's budget.

TCO

Year	Make	Model	Purchase	Lifetime Maintenance	Lifetime Usage Hours	Lifetime Fuel Cost	TCO Lifetime	TCO/Hour
2022	CCC/Scorpion	Autoloader	\$516,710.40	\$288,581.23	20000	\$95,978.00	\$901,269.63	\$45.06
2022	Peterbilt/Labrie	Autoloader	\$508,084.00	\$288,571.23	20000	\$95,978.00	\$892,633.23	\$44.63

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No

Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.)

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No

Requires change in current operations/policy? ☐ Yes ☒ No

Specify changes required:

Known challenges/barriers:

Committee Agenda Sheet

Public Infrastructure, Environment and Sustainability

Submitting Department	Solid Waste Disposal
Contact Name & Phone	David Paine, 625-6878
Contact Email	dpaine@spokanecity.org
Council Sponsor(s)	CM Lori Kinnear
Select Agenda Item Type	<input checked="" type="checkbox"/> <input type="checkbox"/>
Agenda Item Name	Value Blanket Renewal for High Calcium Quicklime for the WTE.
Summary (Background)	<p>High Calcium Quicklime is required for operation of the WTE. It is used to reduce the acid gases in the flue gas and control the final pH of the ash. Water is added to the powdered lime to create a slurry which is injected into the flue gas to remove hydrochloric acid and sulfur dioxide to comply with environmental regulations. The slurry also helps to cool the flue gasses to the correct emission temperature.</p> <p>On December 16, 2019 bidding closed for ITB 5210-19 for the purchase and delivery of this High Calcium Quicklime. Two responses were received and Pete Lien and Sons, of Rapid City, SD, was the only responsible bidder and was awarded a two year value blanket which spanned from March 1, 2020 through February 28, 2022 with the option of three (3) additional one-year contract periods. This will be the first of those renewals from Mar. 1, 2022 through Feb. 28, 2023 with an additional cost not to exceed \$1.5M. The price for lime for this renewal was increased from 200.09/ton to \$218.87/ton and the fuel surcharge has gone from \$762.56 to \$876.99 per delivery.</p>
Proposed Council Action & Date:	Council approval January 31, 2022
Fiscal Impact: Total Cost: \$1.5M Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: WTE Disposal Operations Rates: 2022 SWD Budget Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.) N/A	
Operations Impacts	

What impacts would the proposal have on historically excluded communities?

N/A

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

N/A

How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

High Calcium Quicklime is used in the WTE's Emission Controls Process. The use of this product has been tried and tested at WTE Facilities worldwide. WTE tracks and maintains a record of all chemical usages and air emissions from the Facility. The Washington Air Agency monitors and reviews the data collected in the WTE databases. The WTE is continues to research products that will ensure our compliance with our permits and support the emissions reduction efforts into the future.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Air emissions are regulated and tracked as part of the COS's WTE Operating Permits. This product supports efforts outlined in the Sustainability Action Plan by keeping the Facility's Air Emissions within the guidelines of the Operating Permits. When and if newer or better technology evolves, the WTE's Capital Plan would be programed to support any necessary or required changes.

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability

Submitting Department	ITSD
Contact Name & Phone	Michael Sloon, Interim CITO, ITSD
Contact Email	msloon@spokanecity.org
Council Sponsor(s)	CM Michael Cathcart
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested: <u>1/31/2022</u>
Agenda Item Name	Network Infrastructure Switch Upgrades
Summary (Background)	<p>We have 46 switches across the City of Spokane infrastructure that will be at the end of vendor support in 2023 and will stop receiving hardware support, software upgrades and security updates. This project will bring all targeted hardware into compliance, is a requirement of the ongoing Re-architecture program, and will position the City for an increased security posture. Also, Cisco will be raising their base pricing structure by an average of 10%, effective January 30, 2022. Because we received the quote before January 30, we can purchase at 2021 pricing.</p> <ul style="list-style-type: none"> Hardware purchase, and one year licensing, maintenance and support Contract total is \$407,436.37 including tax, and is fully covered by ITSD budgeted funds. Pricing utilizes NASPO contract NVP #AR3227, WA addendum #05819 Support and maintenance contract term is February 18, 2022 to February 17, 2023
Proposed Council Action & Date:	Final pass on February 14, 2022
Fiscal Impact: Total Cost: \$407,436.37 including tax Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Specify funding source: Expense Occurrence <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? Not applicable	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Not applicable	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?	

All network infrastructure outages are routinely tracked and managed. ITSD also routinely evaluates the effectiveness of the incumbent vendor and analyzes other vendors' solutions for improvements and cost advantages over the current solution.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This service aligns with the Sustainable Resources strategic initiative based on sound financial objectives, and quality customer service by providing a stable, current, redundant and resilient network infrastructure.