

**SMALL RENEWABLE GENERATION  
POWER PURCHASE AGREEMENT  
BETWEEN  
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON  
AND**

\_\_\_\_\_

**[Create Table of Contents here when document is finalized.]**

This small renewable generation power purchase agreement is dated \_\_\_\_\_, 20\_\_\_\_, and is between Public Utility District No.1 of Snohomish County, Washington ("District" or "Buyer"), a municipal corporation organized and existing under the laws of the State of Washington and \_\_\_\_\_ ("INSERT" or "Seller"), a \_\_\_\_\_.

RECITALS:

In August 2011, the District's Board of Commissioners passed Resolution No. 5548, approving a Small Renewables Program that established a standard method for determining the price the District can pay for the electrical output from distributed, renewable generating resources larger than 100 kilowatts, but less than 2 megawatts in size, located within the District's service territory at a single site.

Seller owns a - \_\_\_\_\_ megawatt generating unit located at \_\_\_\_\_ ("Generator").

District desires to purchase electrical energy and associated Environmental Attributes from the Generator and Seller desires to sell to District electrical energy and associated Environmental Attributes from the Generator, all pursuant to the terms and conditions of this Agreement.

Seller has entered into an Interconnection Agreement with the District.

The parties therefore agree as follows:

**1. DEFINITIONS:**

1.1 Defined Terms. As used herein, the following terms have the following meanings when used with initial capitalization, whether singular or plural:

**"Balancing Authority"** means the responsible entity that maintains load-interchange-generation balance, and supports Interconnection frequency in real time, for that portion of the interconnected electric transmission system serving the District. BPA is currently the Balancing Authority for the District and its service territory.

**“Balancing Authority Area”** means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**“Balancing Authority Area Services Agreement”** or **“BAASA”** has the meaning given in Section 6.2.6 of this Agreement, as amended.

**“Balancing Services Charges”** has the meaning given in Section 6.2.1 of this Agreement, as amended.

**“BPA”** means Bonneville Power Administration.

**“Business Day”** means each day that is not a weekend day or a federal or District holiday.

**“Commercial Operation Date”** means the first day that Generator schedules Electrical Output to the District pursuant to Section 6 following the date on which Generator delivers to the District a written certificate in accordance with Section 5.1.

**“Contract Price”** has the meaning set forth in Section 7.4 of this Agreement, as amended.

**“Contract Year”** means each calendar year during the Term, commencing on the Commercial Operation Date, provided that, if the first and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Term.

**“Covered Liabilities”** means any and all liabilities, losses, claims, damages, costs, demands, fines, judgments and penalties, together with reasonable attorneys’ fees and out-of-pocket expenses incurred in connection with any of the foregoing.

**“Curtailed Order”** means any order issued by BPA or any successor Balancing Authority requiring the Generator to suspend or curtail Electrical Output in response to system conditions, a system emergency, or otherwise to maintain reliability of the interconnected electric system, and includes, but is not limited to, orders issued by BPA under its Dispatch Standing Order No. 216 or any successor order, BPA’s Oversupply Management Protocol or any successor policy, and any BPA Business Practice. If the policy or practices of BPA or any successor Balancing Area Authority with respect to curtailments change during the Term of this Agreement (as such Term may be extended in accordance with this Agreement), the parties shall cooperate in good faith to agree upon an amendment or amendments to this Agreement to implement the changed policy or practice and to allocate its effect between the parties.

**“Delivery Point”** means the point where the ownership and risk of loss for Electrical Output is transferred from Seller to the District, and is the Measuring Point.

**“Distributed Generation Multiplier”** means the ability to receive, for each MWh of Electrical Output generated by the Generator, double credit toward the District’s obligations to comply with the renewable portfolio standard of I-937 because the Generator qualifies as “distributed generation” under RCW 19.285.030(9) and is therefore eligible to receive a double credit under RCW 19.285.040(2)(b).

**“District Indemnities”** means the District and its Commissioners, officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing.

**“Due Date”** has the meaning set forth in Section 8.

**“Electrical Output”** means all of the Generator’s electrical power and energy (measured in MWh), as measured by the meter at the Measuring Point.

**“Electric System”** means all facilities and equipment owned by the District and used to provide electric service within Snohomish County and Camano Island, Washington, including all facilities associated with the District’s Jackson Hydroelectric Project.

**“Environmental Attributes”** means any and all current or future credits, certificates, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, offsets and allowances, including renewable energy credits (as defined in RCW 19.285.030(17)) and Distributed Generation Multipliers, howsoever entitled or referred to, resulting from the avoidance of the emission of any gas, chemical or other substance attributable to the Generator, or otherwise attributable to the generation, purchase, sale or use of energy from or by the Generator, including without limitation any of the same arising out of 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 (the **“UNFCCC”**) or the Kyoto Protocol or subsequent protocols to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Renewable Energy Certificate Reporting Rights. Environmental Attributes do not include: (i) any investment tax credits and any other tax credits associated with the Generator, (ii) property tax abatement or incentives, or (iii) any direct state, federal or private cash payments or grants relating in any way to construction of the Generator.

**“Force Majeure”** has the meaning set forth in Section 12.

**“Generator”** means the electric generating unit(s) located at [REDACTED] with a maximum capacity of [REDACTED] MW.

**“Good Utility Practice”** has the same meaning as defined in the Interconnection Agreement, as amended, supplemented, or replaced from time to time.

**“Governmental Authority”** means (a) any federal, state, local, municipal or other government, or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including BPA) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power; provided, however, that, for purposes of this Agreement, such term does not include Seller or the District, or any Affiliate thereof.

**“Seller Indemnitees”** means Seller and its officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing.

**“ICE Daily Mid-Columbia Index”** means the Intercontinental Exchange Mid-Columbia daily On-Peak or Off-Peak Index for the day of delivery.

**“Initial Delivery Date”** means the date on which the Generator first delivers Electrical Output to the Interconnection Point.

**“Initiative 937” or “I-937”** means the Washington Energy Independence Act, RCW Title 19.285.

**“Interconnection Agreement”** means the agreement between the District and Seller governing interconnection of the Generator into the District’s Electric System.

**“Interconnection Facilities”** has the same meaning as defined in the Interconnection Agreement.

**“Interconnection Point”** means that point where the Electric System and the Generator interconnect electrically, which point is shown in the one-line diagram attached as Attachment A.

**“Invoice”** has the meaning set forth in Section 8.

**“KW”** means kilowatts of electrical capacity.

**“KWh”** means kilowatt-hours of electrical energy.

**“Measuring Point”** means the meter that measures the Electrical Output for all purposes under this Agreement, and is the meter located at                     .

**“MWh”** means megawatt-hours of electrical energy.

**“NERC”** means the North American Electric Reliability Corporation.

**“Non-Eligibility Determination”** has the meaning given in Section 21.8.6, as amended.

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

**“On-Peak Period”** means the hours between hour ending 0700 PPT and continuing through and including hour ending 2200 PPT, Monday through Saturday, except NERC holidays (as such hours may be amended or modified by NERC from time to time during the term of this Agreement).

**“Permits”** means, without limitation, permits, exemptions, approvals, licenses, consents, authorizations, concessions, easements, and other rights which are required to develop, construct, finance, operate, and maintain the Generator and to generate, buy, and sell the Electrical Output.

**“Planned Outage”** means a period during which the Generator is out of operation and is not producing Electrical Output, during which maintenance was planned to be performed at least ten (10) days prior to the Generator being out of operation.

**“Preschedule Day”** means any day on which Generator must submit to the District a final hourly preschedule for the next day or days, consistent with BPA’s Transmission Scheduling Procedures posted on the BPA OASIS website, to BPA for all transactions into, within or out of BPA’s Balancing Authority Area.

**“Qualified Reporting Entity”** or **“QRE”** means that entity registered with WREGIS to report the Electrical Output of the Generator for purposes of registering the Renewable Energy Certificates associated with such Electrical Output. The parties intend that Seller will in the ordinary course execute an agreement for BPA to become the QRE for the Generator.

**“Rate Schedule”** shall mean the District’s then current Electric Services Rates.

**“RCW”** means the Revised Code of Washington.

**“Renewable Energy Certificates”** or **“RECs”** means WREGIS-granted certificates that reflect the value of Environmental Attributes associated with Electrical Output produced by the Generator, where WREGIS grants one REC for each MWh of Energy produced by the Generator (recognizing that under I-937, certain multipliers are available for I-937 compliance but are not recorded by WREGIS).

**“Renewable Energy Certificate Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated RECs in compliance with I-937 (including any multipliers available under I-937) and other laws, and includes without limitation rights under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state or local certification program or emissions trading program (including, if applicable, pursuant to the WREGIS Operating Rules).

**“Scheduling Penalties”** has the meaning set forth in Section 6.2.1, as amended.

**“Term”** has the meaning set forth in Section 2.1, as amended.

**“Test Period”** shall have the meaning given such term in Section 4.

**“Test Period Contract Price”** has the meaning set forth in Section 7.2 of this Agreement, as amended.

**“Test Period Energy Price”** means:

(a) for each On-Peak Period during which Electrical Output is delivered to the Interconnection Point during the Test Period, the lesser of: (i) fifty percent (50%) of the ICE Daily Mid-Columbia Index Price for such On-Peak Period in which such Electrical Output is delivered to the Interconnection Point; or \$50 per MWh; and

(b) for each Off-Peak Period during which Electrical Output is delivered to the Interconnection Point during the Test Period, the lesser of: (i) fifty percent (50%) of the ICE Daily Mid-Columbia Index Price for such Off-Peak Period in which such Electrical Output is delivered to the Interconnection Point; or \$50 per MWh.

**“Unplanned Outage”** means a period during which the Generator is out of operation and is not producing Electrical Output that is not Planned Outage.

**“WAC”** means the Washington Administrative Code.

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

**“WREGIS”** means the Western Renewable Energy Generation Information System, the organization designated to track renewable energy generation and issue Renewable Energy Certificates for compliance with RCW 19.285.040(2) and analogous programs in other states, including any successor tracking system for Renewable Energy Certificates selected pursuant to RCW 19.285.030(17).

**“WREGIS Operating Rules”** means the operating rules and requirements adopted by WREGIS, as amended from time to time.

## 2. **TERM, RENEWAL AND TERMINATION:**

2.1 **Term.** This agreement shall take effect on [REDACTED] and shall expire on [REDACTED], unless this agreement is terminated before that date pursuant to Section 2.2 or extended pursuant to Section 2.1.1 (the “Term”).

2.1.1 **Extension of Term.** Seller may elect to extend the Term of this agreement for one year to a maximum of five years by submitting a written request to the District no earlier than three hundred sixty-five (365) days prior to the expiration of this agreement, and no later than one hundred eighty (180) days prior to the expiration of this agreement. The District will recalculate the Contract Price for the extended term based on the then current pricing model as described in Section 7.4 and provide the new Contract Price for the extended term to Seller within sixty days of receipt of the Seller’s request for extension. The new Contract Price will include definitive pricing for the first year of the extended term and the pricing determinants the

District will use for the remainder of the extended term. Seller understands that the extended term and pricing are subject to approval by the District. Seller shall have sixty days from its receipt of the new Contract Price to agree to the extension of the Term and the definitive pricing and pricing determinants provided by the District.

## 2.2 Termination.

2.2.1 Termination for Failure to Achieve Commercial Operation. This agreement shall terminate without further action by either party on the day that is three-hundred and sixty-five (365) days after the date of this agreement if the Commercial Operation Date has not occurred prior to such day. Neither party shall be liable to the other party for damages with respect to any termination occurring under this Section 2.2.1.

2.2.2 Termination by District. The District may terminate this Agreement upon thirty days written notice provided to Seller in the event that Seller fails to comply with any of the provisions of Section 15 of this Agreement within thirty days after receiving notice of default from the District. Neither party shall be liable to the other party for damages with respect to any termination occurring under this Section 2.2.2.

2.2.3 Termination for Failure to Operate. Notwithstanding any other provision of this Agreement, Seller may in its discretion elect not to operate its Generator. In the event that Seller elects to not operate its Generator pursuant to this Section 2.2.3, Seller will not be in breach of any obligation under this Agreement. If Seller elects to operate its Generator pursuant to this Section 2.2.3 for less than thirty consecutive days within a period of one-hundred and eighty days, then either party may terminate this agreement upon ten days' written notice to the other party. Neither party shall be liable to the other party for damages in the event of such termination.

**3. INTERCONNECTION FACILITIES RESPONSIBILITIES; CONFLICT OF PROVISIONS:** The duties and responsibilities of the parties with respect to Interconnection Facilities are set forth in the Interconnection Agreement between Seller and the District dated [REDACTED]. In the event that there is a conflict between the provisions of the Interconnection Agreement and this agreement, the provisions of this agreement shall prevail.

## **4. TEST PERIOD AND INITIAL DELIVERY DATE:**

4.1 Initial Delivery Date. The Initial Delivery Date will occur on or after the date that the District has certified in writing to Seller that the Generator has been interconnected with the District's Electric System in accordance with Article [REDACTED] of the Interconnection Agreement.

4.2 Test Period. The Test Period shall commence on the Initial Delivery Date, and shall end on the Commercial Operation Date.

4.3 Test Period Electrical Output. Commencing on the Initial Delivery Date and continuing until Commercial Operation Date, Seller shall deliver to the Interconnection Point

and sell to District, and District shall accept at the Measuring Point and purchase from Seller, the Electrical Output at the price specified in Section 7.2.

**5. COMMERCIAL OPERATION:**

5.1 Commercial Operation. The Generator shall achieve commercial operation as of the date on which Seller certifies to the District in writing the information in Attachment E.

5.2 Commercial Operation Date. Commencing on the Commercial Operation Date and continuing for the remaining term of this Agreement, Seller shall deliver to the Interconnection Point and sell to District, and District shall accept at the Interconnection Point and purchase from Seller, the Electrical Output at the price specified in Section 7.

**6. SCHEDULING OF ELECTRICAL OUTPUT DELIVERIES:**

6.1 Test Period Scheduling. During the Test Period, Seller shall on a pre-schedule basis provide the District its good faith estimate of expected energy output from the Generator. The District shall have no obligation to pay for energy generated by the Generator if Seller fails to provide a pre-schedule for such energy to the District.

6.2 Commercial Operation Scheduling. All schedules shall be submitted by Seller to the District in whole megawatts. Seller shall also schedule Electrical Output as follows:

6.2.1 Daily. In accordance with the WECC Preschedule calendar, Seller will provide to the District by 6:00 a.m., a schedule of the planned Electrical Output by hour to be delivered to the District for the next day. Seller shall determine the Electrical Output and the amount to be scheduled under this Agreement in its sole discretion. If, after submitting any daily preschedule in accordance with this Section 6.2.1, Seller determines that, in any hour, its Electrical Output is likely to differ from the amount set forth in the daily preschedule by more than two MWs, Seller shall promptly notify the District's power scheduling office, in no event later than one hour prior to actual delivery. Seller shall be responsible for any balancing services charge imposed by BPA upon the Generator ("Balancing Services Charges") and any scheduling penalties imposed by BPA on the Generator that are not due to any scheduling errors of the District ("Scheduling Penalties"). In addition, Seller shall be obligated to comply with any Curtailment Orders. If BPA makes any changes to its Balancing Services Charges, Scheduling Penalties, relevant Business Practices or protocols, the parties shall negotiate in good faith to amend this Agreement to address such changes. Seller's sole liability for deviations from the preschedule shall be as set forth in this Section 6.2.1, as amended, it being understood that any charges or penalties imposed by BPA directly upon the District related to the operation of the Generator that are not due to scheduling errors of the District will be passed through directly to Seller. If Seller reasonably determines that changes to the Balancing Services Charges, Scheduling Penalties or BPA's relevant Business Practices or protocols render continued operation of the Generator uneconomic for Seller, then Seller may terminate this Agreement upon one-hundred eighty (180) days' notice to the District.

6.2.2 Monthly. Five (5) Business Days prior to the first day of each calendar

month, Seller will provide to the District a non-binding, good faith estimate of Electrical Output by hour to be delivered during the daily On-Peak and Off-Peak Periods in the next month.

6.2.3 Planned Outages. Seller will provide the District with a schedule of the planned outages for the Generator (a) within ten (10) days after Commercial Operation for an initial period ending on December 31 of the year in which Commercial Operation occurs, and (b) for each subsequent calendar year by no later than September 30 of each year. Planned outages shall be accomplished outside of the October through March winter period, unless otherwise agreed to by the District. Such outage schedules shall not be deviated from without prior District consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6.2.4 Unplanned Outages. Seller shall provide as much advance warning as reasonably possible for unplanned outages. If Seller knows that the Generator will be unable to generate all or any part of Electrical Output scheduled pursuant to Section 6.2.1, Seller shall, as soon as practicable, notify the District of the nature of the event and the amount of such scheduled Electrical Output that will not be delivered. Further, if Seller knows that the Generator will not be able to generate all or any portion of the estimated monthly Electrical Output provided to the District pursuant to Section 6.2.2, Seller shall, as soon as practicable, notify the District of the nature of the event and the amount by which Seller expects the Electrical Output it will schedule pursuant to Section 6.2.1 will vary from such estimated monthly Electrical Output. In either event, Seller shall provide the District as soon as practicable when Seller expects the Generator to resume normal operations.

6.2.5 Planned and Unplanned District Distribution and Transmission Outages. The District will endeavor to provide Seller as much notice as practical of planned and unplanned transmission and/or distribution outages that could impact Seller. The District will not be liable for any financial impact of such outages on Seller.

6.2.6 BPA Balancing Authority Area Services Agreement. As a generator operating within BPA's Balancing Authority Area, Seller may be required to enter into a Balancing Authority Area Services Agreement ("BAASA") with BPA. If required, Seller shall be responsible for all costs associated with complying with the BAASA, the relevant provisions in BPA's Open Access Transmission Tariff, current BPA Business Practices, and applicable provisions of the General Rate Schedule Provisions, including any and all costs associated with complying with any Curtailment Order, whether issued by BPA or another responsible authority under the BAASA or otherwise.

## **7. ACCOUNTING AND PAYMENT FOR DELIVERIES OF ELECTRICAL OUTPUT:**

7.1 Accounting for Deliveries of Electrical Output and Test Energy. All Electrical Output and Test Energy delivered by Seller to the District at the Interconnection Point shall be accounted for on the basis of hourly metered quantities, except (i) when deliveries are interrupted or curtailed, or (ii) for any period in which the Generator is ramping up or ramping down. In the event of such interruptions or curtailments, ramping up or ramping down, hourly energy quantities shall be reduced on an integrated hourly basis to reflect such interruptions or

curtailments, ramping up or ramping down. If deliveries of energy are not maintained for an entire hour, real-time deliveries shall be accounted for on a prorated basis, using the arithmetic average of the energy deliveries over such hour.

7.2 Payment for Electrical Output During the Test Period. District shall pay Seller for the Electrical Output as measured at the Measuring Point during the Test Period at the Test Period Contract Price. Payment of such amounts shall be made in accordance with the billing and payment provisions set forth in Section 8.

7.2.1 Test Period Contract Price. During the Test Period, the Test Period Contract Price for Electrical Output from the Generator, as measured by the meter at the Measuring Point, shall be calculated in accordance with the following formula:

$$\begin{aligned} \text{Test Period Contract Price} = & \text{Test Period Energy Price} \\ & + \\ & \text{Tradable REC Value} \\ & + \\ & \text{Distributed Generation Credit} \end{aligned}$$

Where,

The *Test Period Energy Price* is as defined in Section 1.1.

A *Tradable Renewable Energy Credit (REC) Value* is added to the Test Period Contract Price for each MWh of Electrical Output as measured by the meter at the Measuring Point to reflect the Generator's value as an eligible renewable resource under I-937. During the Test Period, the Tradable Renewable Energy Credit value shall be based on current broker provided pricing for the Pacific Northwest region and shall be binding for all Electrical Output produced by the Generator as measured by the meter at the Measuring Point during the Test Period.

A *Distributed Generation Credit* equal to 50% of the Tradable REC Value will be added to the Contract Price for each MWh of Electrical Output as measured by the meter at the Measuring Point to reflect the value of the Generator's eligibility for the Distributed Generation Multiplier.

7.2.2 Adjustments to Test Period Contract Price. The Test Period Contract Price may be adjusted in accordance with Section 7.4.4 to the extent that the Tradable Renewable Energy Credit Value and/or the Distributed Generation Credit are reduced by any and all applicable loss factors to reflect the actual quantity of Renewable Energy Credits transferred to the District, and in accordance with Section 21.8.5 to the extent that the Washington State Auditor or other Governmental Authority with jurisdiction determines that the Generator is not an "eligible renewable resource" and/or is not eligible for the Distributed Generation Multiplier.

7.3 Payment of Electrical Output After Commercial Operation Date. District shall pay Seller for the Electrical Output as measured at the Measuring Point after the Commercial

Operation Date at the Contract Price. Payment of such amounts shall be made in accordance with the billing and payment provisions set forth in Section 8.

7.4 Contract Price. The Contract Price represents the price paid by the District for all output from the Generator, including Electrical Output, Environmental Attributes, Renewable Energy Certificates, Distributed Generation Multipliers, any ancillary services, and all other products, attributes or benefits produced by or associated with the Generator. Starting on the Commercial Operation Date, the Contract Price shall be paid in dollars per MWh based upon the Electrical Output as measured by the meter at the Measuring Point.

7.4.1 Contract Price for the first Contract Year. For Electrical Output produced by the Generator, as measured by the meter at the Measuring Point from the Commercial Operation Date through December 31, 20XX, the District has calculated the Contract Price in accordance with principles described in Section 7.4.2. The results of that calculation are set forth in Attachment B to this Agreement. The prices set forth in Attachment B are binding for the periods stated in that Attachment, except that such prices may be adjusted in accordance with Section 21.8.5 to the extent that the Washington State Auditor or other Governmental Authority with jurisdiction determines that the Generator is not an “eligible renewable resource” and/or is not eligible for the Distributed Generation Multiplier.

7.4.2 Contract Price Formula for remaining Contract Years. The Contract Price for Electrical Output from the Generator, as measured by the meter at the Measuring Point, for second Contract Year through last Contract Year shall be calculated in accordance with the following formula:

$$\begin{aligned} \text{Contract Price} = & \text{Energy Price} \\ & + \\ & \text{Credit for Avoided Transmission \& Distribution Losses} \\ & + \\ & \text{Tradable REC Value} \\ & + \\ & \text{Deferral of System Upgrades Credit} \\ & + \\ & \text{Generation Capacity Cost Credit} \\ & + \\ & \text{Distributed Generation Credit} \end{aligned}$$

Where,

“The **Energy Price** has been calculated for the On-Peak Period and the Off-Peak Period of each month during the Term and has been derived using the Aurora<sup>XMP</sup> market price forecast, which is updated quarterly. The resulting Energy Price for the period from the second Contract Year through the Last Contract Year is set forth in Attachment C (which is attached to this agreement and incorporated by reference ) and shall be binding during the period from the second Contract Year through the Last Contract Year. The District may propose other reasonable market forecasting tools as part of a term extension and

pricing proposal under Section 2.1.1. Due to the District's surplus energy position in the months of May and June, in each of Contract Years, the Energy Price for all On-Peak Period and Off-Peak Period hours in the months of May and June will be set to zero dollars per MWh.

“A ***Credit for Avoided Transmission and Distribution Losses*** is added to the Contract Price for the value of both: (1) regional transmission losses that would otherwise be incurred in moving power from outside of the District's service territory to the utility's electric system; and (2) distribution losses avoided by developing the resource inside the District's service territory. This credit is based upon the transmission loss factor established by Schedule 9 of BPA's Open Access Transmission Tariff, and is currently set at 1.9%. The Credit for Avoided Transmission and Distribution Losses for the period from the second Contract Year through the last Contract Year, is set forth in Attachment C, which is attached to this Agreement and incorporated by reference, and shall, unless changed by BPA, be binding for all Electrical Output produced by the Generator during the Term. If the transmission loss factor established by BPA in Schedule 9 of its Open Access Transmission Tariff is changed in the future, the Credit for Avoided Transmission and Distribution Losses will be changed accordingly.

“A ***Tradable Renewable Energy Credit (REC) Value*** is added to the Contract Price for each MWh of Electrical Output as measured by the meter at the Measuring Point to reflect the Generator's value as an eligible renewable resource under I-937. The Tradable Renewable Energy Credit for the period from the second Contract Year through the last Contract Year, is set forth in Attachment C, which is attached to this Agreement and incorporated by reference, and shall be binding for all Electrical Output produced by the Generator as measured by the meter at the Measuring Point during the Term.

“A ***Deferral of System Upgrades Credit*** will be added to the Contract Price based on the value, as computed by the District, of deferred distribution system upgrades arising from the Generator's placement within Snohomish's service territory. The Deferral of System Upgrade Credits for the period from the second Contract Year through the last Contract Year is set forth in Attachment C, which is attached to this Agreement and incorporated by reference, and shall be binding for all Electrical Output produced by the Generator as measured by the meter at the Measuring Point during the Term.

“A ***Generation Capacity Cost Credit*** will be added to the Contract Price for all On-Peak Period hours for the months of January, February, March, October, November and December based upon the capacity contribution the resource provides to the District during the On-Peak Period hours for these specific months.

“A ***Distributed Generation Credit*** equal to 50% of the Tradable REC Value will be added to the Contract Price for each MWh of Electrical Output as measured by the meter at the Measuring Point to reflect the value of the Generator's eligibility for the Distributed Generation Multiplier.

7.4.3 Annual Contract Pricing Calculation. No later than December 20 of each calendar year during the Term of this Agreement, the District shall deliver to Seller a matrix in a form reflecting that of Attachment B setting forth the On-Peak Period and Off-Peak Period prices to be paid during each month of the following calendar year based on the pricing determinants as set forth in Attachment C.. Such Contract Price shall be binding upon both parties except that, if Seller reasonably believes the District has committed an error in calculating the Contract Price in accordance with this Section 7.4.3, it may initiate Dispute Resolution in accordance with Section 18 of this Agreement. For the avoidance of doubt, the Contract Price as set forth in Attachment B is binding during the first Contract Year and the pricing determinants set forth in Attachment C are binding for remaining Contract Years, *provided that* it is understood that the Credit for Avoided Transmission and Distribution Losses may change if BPA changes the loss factor used for calculating losses on the BPA transmission system.

7.4.4. Loss Factor Adjustment for Renewable Energy Credits. WREGIS Operating Rules may require, for purposes of determining the quantity of Renewable Energy Credits created, that the Electrical Output as measured at the Measuring Point be reduced by a loss factor to reflect the energy delivered into either the transmission or distribution grid. Therefore, the Tradable Renewable Energy Credit Value and the Distributed Generation Credit will be reduced any and all applicable loss factors to reflect the actual quantity of Renewable Energy Credits transferred to the District.

7.5 Qualifying Facility. Seller affirms that the Generator is not a Qualifying Facility (“QF”) as defined in 18 C.F.R. Part 292. If the Generator were to obtain QF status during the term of this agreement, Seller shall provide the District with copies of the appropriate certification (which may include self-certification) within five (5) days of filing or receiving the certification. Seller acknowledges that the District may, in its sole discretion, revise the contract pricing provisions to recover any additional reasonable costs the District has or will incur as a result of the Generator’s QF status.

## **8. BILLING AND PAYMENT:**

8.1 Invoices. Not later than twenty (20) days after the last day of each month, District shall prepare and submit to Seller a statement for the preceding month reflecting the following:

8.1.1 The amount of Electrical Output delivered by Seller to the District at the Interconnection Point on the basis of hourly quantities by date and diurnal period for each such month, as measured at the Metering Point.

8.1.2 For deliveries of Test Energy, the Test Period Contract Price applicable to such deliveries on the basis of hourly quantities by day and diurnal period, and for deliveries after the Commercial Operation Date the Contract Price applicable to such deliveries by day and diurnal period.

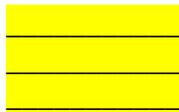
8.1.3 The payment due from the District to Seller for the Electrical Output delivered by Seller to the District in each such month pursuant to Section 7, less any amounts due from Seller pursuant to any applicable provision of this agreement, including Sections 6.2.1,

7.2.2, 7.4.4, 9.2, and 21.8.5, and a description detailing the nature and calculation, if applicable, of the amounts due from the Seller.

In the event that the amount due pursuant to subsection 8.1.3 exceeds the sum of the amounts due pursuant to subsections 8.1.1 and 8.1.2, then the District may issue to Seller an invoice for the amount of such exceedence.

8.2 Payment. Payment by the District of any statement issued pursuant to Section 8.1 shall be made concurrently with the statement provided to Seller in accordance with Section 8.1 (“Due Date”). In the event that the District issues an invoice to Seller pursuant to subsection 8.1, then the Due Date for payment of such invoice shall be thirty (30) days after receipt of the invoice. The District’s promise to pay Seller when due for Electrical Output and Test Energy is a material covenant of this Agreement.

Invoices issued by District shall be addressed and sent to:



The parties may agree to have the District’s payments to Seller be reflected as a credit against the amounts due from Seller, if any, to the District.

8.3 Late Payment. Payments not received on or before the applicable Due Date shall be considered overdue. Interest shall accrue on any unpaid overdue amounts at one percent (1%) per month or the maximum judgment interest rate permitted by law, whichever is less, from the date due until such payment is made.

8.4 Bill Disputes. In the event that any portion of any invoice is in dispute, the disputed amount shall be paid, under protest, on or before the Due Date. Upon determination of the correct billing amount, the adjustment, with interest, shall be paid to the party to whom it is owed by the other party within thirty (30) days after such determination. The interest rate applied to such disputed amount shall be one percent (1%) per month or the maximum judgment interest rate permitted by law, whichever is less, from the original due date to the date upon which the adjustment payment is made.

8.5 Records. Each party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to this Agreement.

8.6 Audit Rights. Each party has the right, at its sole expense and during normal business hours, to examine the records of the other party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

**9. METERING:**

9.1 Meter Installation and Maintenance. The District shall install at the Seller's expense a meter and related metering equipment specified by the District to measure Electric Output from the Generator. The location of the meter shall be specified by the District. The Seller shall at its own expense provide and install all meter mounting equipment, voltage transformers, current transformers, communications equipment, and related metering equipment as specified by the District. The District shall at its own expense maintain and read the meter. In the event that the meter requires replacement during the term of this agreement, the District shall pay for and install the replacement meter. The District shall own such meter during the term of this agreement, and shall retain ownership of the meter upon the expiration or termination of this agreement.

9.2 Meter Testing and Correction. All meters measuring Electric Output shall be tested periodically by the District. In addition, Seller may at its own expense request additional tests of meters measuring Electric Output, and the District shall promptly perform the requested test. The District will give Seller ten (10) days advance written notice of such meter tests, and Seller shall be permitted to observe such meter tests. If it should be found at any time that such meters have failed to register correctly within limits of +/- 2%, the amount of Electric Output during the period known to be affected by such failure, the amount of such over or under delivery shall be estimated with mathematical calculations made from data available. The District shall retroactively adjust all billings and records of readings related to such inaccurate device for the period of the inaccuracy (which shall not exceed the period since the last test or three (3) months, whichever is smaller) and the party which benefited from such inaccuracy shall pay to the party entitled to such amount the amount by which such benefiting party had underpaid or over-collected due to such inaccuracy. In the event that a meter test reveals an error in readings which is less than or equal to +/- 2%, there shall be no adjustment hereunder and all previous records of and billings related to such meter shall be considered accurate. In the event that a meter test reveals an error in readings, the meter will be reset to zero (0) regardless of the size of such error.

**10. NOTICES:**

Notification under this agreement between the parties, except otherwise required herein, may be made by letter or facsimile. The names, addresses and telephone numbers to which such notification shall be made are set forth below. Any written notices required hereunder shall be deemed properly given if deposited in the United States mail with first class postage prepaid, properly addressed as set forth below, with a facsimile transmitted by telecopy on the day of mailing to the telecopy number set forth below:

To District:                   General Manager  
                                      Public Utility District No.1 of Snohomish County  
                                      2320 California Street  
                                      P.O. Box 1107  
                                      Everett, WA 98206-1107  
                                      Fax Number: (425) 783-XXXX

Copy to:                         Assistant General Manager for Power, Rates & Transmission Management

Public Utility District No.1 of Snohomish County  
2320 California Street  
P.O. Box 1107  
Everett, WA 98206-1107  
Fax Number: (425) 783-XXXX

**To Seller:**

The parties may change at any time the persons to whom notices are addressed, or their addresses, by providing notice thereof as specified in this Section 10.

**11. SELLER'S INSURANCE:**

11.1 Generator Costs. Seller shall be responsible for all direct and indirect costs, and bear all risks and liabilities in connection with Generator, including, but not limited to, construction costs, operation and maintenance costs, financing and refinancing costs, insurance costs, costs related to the loss or diminished performance of the Generator, costs related to implementing or complying with regulatory or governmental permits, licenses, orders, costs related to decommissioning requirements and site restoration, and costs arising from claims for breach of contract, breach of fiduciary obligation, property damage, or personal injury.

11.2 Insurance. During the term of this agreement, Seller shall maintain the following insurance coverage:

11.2.1 Workers' Compensation and Employers Liability and any other statutory insurance required by law with respect to work-related injuries or disease of employees of Seller applicable to Seller's employees in such form(s) and amount(s) as required by law.

11.2.2 General/Public Liability insurance for Seller's protection, in broad form including coverage for liability assumed under agreement, providing coverage for bodily injury and property damage with a combined single limit of not less than \$5,000,000.00 cumulative total of underlying and excess coverage.

11.2.3 The foregoing General/Public Liability insurance policies policy shall include the District as an additional insured and provide that the policypolicies shall not be canceled or changed without thirty (30) days' advance written notice to District of such cancellation or change.

11.2.4 Not later than ten (10) days after the date of this agreement, and not less than annually thereafter during the term of this agreement, Seller shall deliver to District certificates of insurance and applicable endorsement(s) showing that the foregoing insurance is in full force and effect and includes the District as an additional insured.

**12. FORCE MAJEURE:**

Neither party shall be responsible or liable for or deemed in breach of this agreement because of any delay or failure in the performance of their respective obligations hereunder (other than failure to pay money when due), to the extent such delay or failure is due solely to circumstances beyond the reasonable control of the party experiencing such delay or failure, including, but not limited to acts of God, strikes or other labor difficulties, war, riots, requirements, actions or failures to act on the part of Governmental Authorities (other than the District) preventing performance, accidents, fires, failure of, damage to, loss of right to or destruction or breakdown of necessary transmission facilities, failures of transmission facilities, or transportation or transmission delays or accidents, failure of, loss of right to or destruction of the Generator or the Interconnection Facilities, or any material portion thereof, but only for such time as the foregoing circumstances delay or prevent such performance (such causes, a "Force Majeure"). The non-performing party shall give the other party prompt written notice of the occurrence of the Force Majeure and the non-performing party shall use reasonable efforts to remedy its inability to perform.

**13. INDEMNIFICATION:**

13.1 Limitation of Liability: NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER SELLER NOR THE DISTRICT SHALL BE LIABLE UNDER OR PURSUANT TO THIS AGREEMENT FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, REVENUES OR BENEFITS, LOSS OF USE OF PROPERTY, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER OR CLAIMS FOR SERVICE INTERRUPTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR EXISTENCE OF SUCH DAMAGES. This provision shall not limit the District's liability to pay for Electrical Output and Test Energy under Section 8. This Section 13.1 is intended only to limit the liability of one party to the other. To the extent that liability is incurred to third parties as a result of carrying out the provisions of this agreement, nothing in this Section 13.1 limits the indemnification obligations of Section 13.3.

13.2 No Liability for Loss of Service. Notwithstanding any other provision of this agreement, neither the District nor any electric utility or federal power marketing authority with which the District is interconnected shall be in breach of or default under this agreement, or have any responsibility or liability whatsoever to Seller or any other person under this agreement or otherwise, for or in connection with any service interruption, suspension, curtailment or fluctuation or disturbance of electric energy originating outside and passing through the Electric System, whatever the cause, or any service interruption, suspension, curtailment or fluctuation or disturbance of electric energy originating inside the Electric System. Seller hereby waives any claims relating to the foregoing and releases the District Indemnitees, and any electric utility or federal power marketing authority with which the District is interconnected, from and against, any and all liabilities, losses, claims, damages, costs, expenses, demands, fines, judgments and penalties in any manner caused by, resulting from or arising out of or in connection with any

service interruption, suspension, curtailment or fluctuation or disturbance of electrical energy originating in, or passing through, or in parallel with, or intended for delivery to, the District's Electric System.

### 13.3 Indemnity

13.3.1 Indemnification by Seller. Except as otherwise provided under Section 13.1 of this agreement, Seller hereby indemnifies and agrees to hold harmless and release the District and each and all of the District Indemnitees from and against any and all Covered Liabilities caused by, resulting from, or arising out of or in connection with (i) the Generator or any other facilities or equipment of Seller, (ii) any negligence or intentional misconduct of Seller or any of its officers, employees, agents, contractors or subcontractors, or (iii) any failure of Seller duly to perform or observe any term, provision, covenant, agreement or conditions hereunder to be performed or observed by or on behalf of Seller. In any and all claims against the District by any employee of Seller, the indemnification and hold harmless obligation 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 Seller under workers compensation acts, disability benefit acts, or other employee benefit acts; provided, however, that Seller's waiver of immunity by the provisions of this section extends only to claims against Seller by or on behalf of the District under or pursuant to this agreement, and does not include, or extend to, any claims by Seller's employees directly against Seller.

13.3.2 Indemnification by District. Except as otherwise provided in Sections 13.1 and 13.2 of this agreement, the District hereby indemnifies and agrees to hold harmless and release Seller and each and all of Seller Indemnitees from and against any and all Covered Liabilities caused by, resulting from, or arising out of or in connection with (i) any of the District's facilities, (ii) any negligence or intentional misconduct of the District or any of its officers, employees, agents, contractors or subcontractors, or (iii) any failure of the District duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the District. In any and all claims against Seller by any employee of the District, the indemnification and hold harmless obligation 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 District under workers compensation acts, disability benefit acts, or other employee benefit acts; provided, however, that the District's waiver of immunity by the provisions of this section extends only to claims against the District by or on behalf of Seller under or pursuant to this agreement, and does not include, or extend to, any claims by the District's employees directly against the District.

13.3.3 Indemnified Person's Right to Proceed. If an indemnified person is entitled to indemnification under this Section as a result of a claim by a third party, and the indemnifying party fails, after notice and reasonable opportunity to proceed under this Section, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

13.3.4 Notice of Claim. Promptly after receipt by an indemnified person of any claims or notices of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

13.3.5 Concurrent Negligence. With respect to any portions of this agreement subject to Section 4.24.115 of the R.C.W., in the event of any concurrent negligence on the part of Seller and the District, the indemnification obligations of the indemnitor under this agreement shall be valid and enforceable only to the extent of the negligence of the indemnitor.

#### **14. REGULATORY COMPLIANCE:**

14.1 Safety. Seller shall at all times exercise reasonable precautions for the safety and well-being of its employees and contractors, the public, District employees and District customers, and shall comply with all applicable federal, state and local safety laws and construction codes. At any time when the District's employees, contractors or agents are on Seller's property, the District and its employees, contractors and agents shall at all times exercise reasonable precautions for the safety and well being of the District's employees and contractors, the public, Seller employees and Seller customers, and shall comply with all applicable federal, state and local safety laws and construction codes.

14.2 Permits. Seller shall obtain and comply with all terms and conditions of each and every Permit applicable to the construction, operation, maintenance, repair, decommissioning and site restoration of the Generator, issued, or thereafter required, by a federal, state, or local government agency or body having jurisdiction.

14.3 NERC Compliance. The parties recognize that the Generator currently falls below the capacity threshold that would require compliance with reliability standards issued by NERC and/or WECC, and that Seller does not otherwise trigger those requirements at this time. If reliability compliance requirements are in the future made applicable to Seller or the Generator, the parties shall cooperate to develop a compliance plan that may include an agreement as to specific responsibilities assigned to each party in accordance with the then-governing NERC and/or WECC reliability standards.

#### **15. MISCELLANEOUS:**

15.1 Risk of Loss. Title and risk of loss of Electric Output delivered by Seller to District pursuant to this agreement shall transfer from Seller to District at and from the Interconnection Point. Renewable Energy Credits delivered by Seller to District pursuant to this agreement shall be measured based upon the Electrical Output delivered by Seller to the Measuring Point, and title to, and risk of loss of, Renewable Energy Credits shall be transferred from Seller to District using WREGIS certificates as set forth in Section 21.

15.2 DISCLAIMER. SELLER HEREBY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

15.3 Liabilities. All liabilities incurred under this agreement shall be preserved until satisfied.

15.4 Governing Law. This agreement and performance hereunder shall be subject to and be construed under the laws of the State of Washington, without regard to its conflicts of law principles. Venue for any action arising under or in connection with this Agreement shall be in the Superior Court for Snohomish County, Washington, or in the United States District Court for the Western District of Washington.

15.5 Waiver. Any waiver by a party of its rights with respect to default hereunder, or with respect to any other matter arising in connection herewith, shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

15.6 Assignment. Either party may assign this Agreement to another party with the advance written consent of the other party to this Agreement; such consent not to be unreasonably withheld, conditioned or delayed. No assignment, merger, or consolidation shall relieve any party of its obligations under this Agreement. Subject to the foregoing restriction in this Section, this Agreement shall be binding upon and inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

15.7 Amendment. No amendment to this Agreement shall be binding on or enforceable against either party unless such amendment is in writing and executed by both of the parties.

15.8 No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the parties, their respective successors, assigns and legal representatives.

15.9 Headings. All indexes, titles, subject headings, Section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement.

15.10 Entire Agreement. This Agreement represents the entirety of the agreement between the parties, and this Agreement supersedes any prior written or oral agreements between the parties.

15.11 Retail Service. Seller agrees that it will purchase solely from the District under the applicable District Rate Schedule all electrical power needed to operate its facilities from the District, and that the entire Electrical Output of the Generator will be sold to the District pursuant to this Agreement.

15.12 Change in Law. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked by a Governmental Authority (including BPA) which have the effect of changing the transfer and sale procedure set forth in this agreement so that the implementation of this agreement becomes impossible or impracticable, the parties hereto agree to negotiate in good faith to amend this agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the parties under this agreement.

**16. SUSPENSION OF DELIVERIES AND PAYMENT DEFAULT:**

The District shall have the right, upon five (5) days written notice to Seller, to suspend its obligation to accept all Electrical Output made available to the District at the Interconnection Point pursuant to Section 6, and its obligation to pay for such Electrical Output pursuant to Sections 7 and 8, when Seller is in default under the Interconnection Agreement or under any of the following sections of this Agreement; Section 6, Scheduling of Electrical Output Deliveries; Section 8, Billing and Payment; Section 11, Seller's Insurance; Section 13, Indemnification; Section 17, Generator Modifications; Section 19, Access to Facilities, and Section 20, Representations and Warranties. Such suspension shall remain in effect unless and until such default is cured by Seller, but shall not relieve the District of its obligation to pay Seller for Electrical Output delivered pursuant to this Agreement prior to such suspension.

**17. GENERATOR MODIFICATIONS:**

Seller agrees that it will not modify the Generator in any manner which will increase the Generator's capability to produce Electrical Output beyond the capability the Generator possessed on the Commercial Operation Date without the written consent of the District, which consent shall not be unreasonably withheld, conditioned or delayed.

**18. DISPUTE RESOLUTION:**

18.1. AAA. Any dispute arising under this Agreement shall be subject to binding arbitration conducted under the commercial arbitration rules of the American Arbitration Association (AAA). Prior to invoking arbitration under this Section 18, the parties shall make a good faith effort to resolve any such dispute through negotiation.

18.2. Notice of Dispute. Any party seeking to invoke binding arbitration shall do so by providing to the other party written notice of the matter in dispute, and the resolution thereof proposed by the initiating party.

18.3. Discovery. During any arbitration conducted pursuant to this Section 18, the parties shall have the discovery rights provided in the Federal Rules of Civil Procedure.

18.4. Costs. Each party shall be responsible for its own costs of arbitration, including without limitation costs for lawyers and witnesses. The costs of the arbitration proceeding and of the arbitrators shall be shared equally by the parties.

**19. ACCESS TO FACILITIES:**

Seller hereby grants to the District for the term of this Agreement the right of access to the real property on which the Generator is located for the purposes of installing, maintaining, replacing and taking any and all actions related to the equipment and facilities owned by the District located on such real property. District employees and contractors entering onto such real property shall observe all safety rules and regulations established by Seller, and shall be made available for periodic safety training to be provided by Seller. Seller shall make available to District employees and contractors all safety rules and regulations with which District employees and contractor are to comply.

**20. REPRESENTATIONS AND WARRANTIES:**

Each party represents and warrants to the other party that:

20.1 Due Authorization. The party's governing board has taken all actions necessary to authorize the execution, delivery, and performance of this Agreement. Such execution, delivery, and performance do not contravene any law, regulations, rule, or the party's charter, articles of incorporation or bylaws.

20.2 Authorization to Execute. The officer or employee executing this Agreement on behalf of the party is duly and properly in office and fully authorized to execute this Agreement.

20.3 Governmental Approvals. No government approval or filing or registration is required for the execution, delivery and performance of this Agreement by the representing party, except for approvals, filings and registrations already obtained by such party or to be obtained by such party before the delivery of Electrical Output under this Agreement.

20.4 Enforceability. This Agreement has been duly executed and delivered by the party and constitutes a legal and binding obligation of the party, enforceable against the party in accordance with its terms.

20.5 Negotiated Waiver of Industrial Insurance Immunity. TO THE EXTENT THAT THE INDEMNITY PROVISIONS OF THIS AGREEMENT APPLY, THE PARTIES SPECIFICALLY AND EXPRESSLY WAIVES THEIR IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 (RCW), AND ACKNOWLEDGE THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE UNDERSIGNED PARTIES.

**21. DELIVERY OF RENEWABLE ENERGY CERTIFICATES:**

21.1 Seller's Delivery Obligation. Seller shall deliver to the District all Renewable Energy Certificates associated with Electrical Output as measured by the meter at the Measuring Point produced by the Generator during the Term of this Agreement in accordance with the provisions of this Section 21.1. Such deliveries are understood to include the District's right to claim a Distributed Generation Multiplier for each REC delivered by Seller. Seller shall not sell, pledge, assign, transfer, or otherwise dispose of any of its rights or interests in the Renewable Energy Certificates, including but not limited to any Distributed Generation Multipliers, sold to the District under this Agreement. Seller shall not report under Section 1605(b) of the Energy

Policy Act of 1992, Initiative 937, or any similar program that the Renewable Energy Certificates, including but not limited to any Distributed Generation Multipliers, sold to the District under this Agreement belong to anyone other than the District. The District may report under any such program that all such Renewable Energy Certificates purchased hereunder, including any Distributed Generation Multiplier, belong to it.

21.2 Qualified Reporting Entity. Seller shall, as soon as reasonably practicable but no later than **Month Day, 20XX**, enter into an agreement with BPA whereby BPA shall become the QRE for the Generator. If BPA refuses to become the QRE, the parties shall cooperate to identify another QRE, which may be one of the parties.

21.3 Use of WREGIS. Seller shall use WREGIS Forward Certificate Transfers, as described in the WREGIS Operating Rules, to transfer all Renewable Energy Certificates associated with Electrical Output produced by the Generator as measured by the meter at the Measuring Point directly to the District's designated WREGIS account as WREGIS Certificates. Seller shall be responsible for any WREGIS expenses associated with registering the Generator, maintaining its account, and the creation and transfer of the WREGIS Certificates to the District's account. The District shall be responsible for any WREGIS expenses associated with maintaining its account and any other costs once the WREGIS Certificate has been deposited into the District's account, including subsequent transferring or retiring of the WREGIS Certificates. Forward Certificate Transfers will occur based on the WREGIS Certificate creation and transfer timeline established by the WREGIS Operating Rules. BPA (or the QRE if different from BPA) shall be responsible for validating and disputing Generator Electrical Output data with WREGIS prior to WREGIS Certificate creation each month. If, and to the extent that, a correction is made for metering error in accordance with Section 9, Seller shall: (i) notify BPA; (ii) notify WREGIS (directly or using the QRE, as appropriate) or any successor to WREGIS; and (iii) undertake such commercially reasonable measures as are necessary to reconcile the number of RECs awarded to the District with the Electrical Output as corrected in accordance with Section 9.

21.4 Delivery of Environmental Certificates Through Attestation. In the event that WREGIS is discontinued or the parties by mutual agreement conclude that WREGIS should no longer be used, then Renewable Energy Certificates will be delivered by Seller to the District in an Environmental Attribute Attestation and Bill of Sale form or other legal form to be agreed to between the parties or in a manner that complies with the requirements of the then-existing successor to WREGIS and with applicable state and federal law. The Environmental Attribute Attestation and Bill of Sale shall be substantially in the form attached to this agreement as Attachment D. If, and to the extent that, a correction is made for metering error in accordance with Section 9, the District shall notify Seller, and the District shall undertake such other commercially reasonable measures as are necessary to reconcile the number of Renewable Energy Certificates awarded to the District through Environmental Attribute Attestation with the corrected Electrical Output as measured by the meter at the Measuring Point.

21.5 Partial MWhs. The parties recognize that WREGIS grants Renewable Energy Certificates only for full MWhs and that the Generator, in any month, may produce Electrical Output as measured by the meter at the Measuring Point in partial MWhs. In each month during

the Term, BPA, acting as the QRE (or such other entity as may be the QRE) , shall report to WREGIS the Electrical Output produced by the Generator in whole MWhs, reserving any partial MWhs. To the extent that partial MWhs reserved in one month added together with partial MWhs reserved in one or more subsequent months add up to whole MWh amounts, the QRE shall report those whole MWh amounts to WREGIS.

21.6 California Energy Commission (CEC) Certification. The District may seek, at the District's sole cost and expense, certification of the Generator as an eligible renewable energy resource (as defined by the California Public Utilities Code) for purposes of the State of California Renewable Portfolio Standard Program; *provided that* Seller shall cooperate with the District to provide information, execute documents and provide other similar support reasonably necessary to obtain CEC certification, including, if necessary, authorizing the District to file with respect to the Generator on Seller's behalf; *provided further that* if the District is not successful in obtaining such CEC certification or maintaining it during the Term, Seller shall not be in default under this Agreement, and the obligations of the parties under this Agreement shall remain in full force and effect. For avoidance of doubt, Seller has no duty to incur any capital expenses or to make significant changes in the plant and equipment comprising the Generator in order to obtain CEC certification, unless the parties otherwise agree in writing in their respective sole discretion.

21.7 REC Reporting Rights. The parties shall cooperate to ensure that any and all Renewable Energy Certificate Reporting Rights are received by the District, and shall make such filings, execute such periodic documentation and take such actions as are reasonably required in connection therewith, to the extent requested by the District.

21.8 I-937 Certification.

21.8.1 Eligibility. Seller hereby represents and warrants, to the best of its knowledge, that as of the date of this agreement the Generator is an "eligible renewable resource" under I-937, RCW 19.285.030(10). Seller shall not be in default of this agreement or of the representation and warranty set forth in this Section 21.8.1 if I-937 or any other law, rule or interpretation thereof changes after the date of this agreement so as to cause the Generator to cease to be an "eligible renewable resource," or to cause Seller, the Generator or the Generator's fuel supply to be otherwise out of compliance with the representation and warranty set forth in this Section 21.8.1; *provided that* if any such change results in the Generator no longer being an "eligible renewable resource," the District shall adjust the Contract Price as provided in Section 21.8.5.

21.8.2 Distributed Generation Multiplier. The parties reasonably believe that the Generator output is eligible for double credit toward the District's compliance with I-937 under RCW 19.285.040(2)(b), as may be amended from time to time. The parties recognize that, as of the date of this agreement, WREGIS does not track state-specific requirements such as the Distributed Generation Multiplier. To the extent that WREGIS in the future adopts mechanisms for tracking the Distributed Generation Multiplier under I-937, the Parties agree to cooperate on a commercially reasonable basis, including the provision of any information required by WREGIS, to allow WREGIS to track the Distributed Generation Multiplier.

21.8.3 Guidance on Generator Eligibility. To the extent the District reasonably determines that there is doubt about the Generator's compliance with Section 21.8.1 or Section 21.8.2, the District may, in its sole discretion, require that the Seller seek an Energy Independence Act (EIA) advisory opinion from the Washington Department of Commerce . Seller shall be responsible for all costs of the EIA advisory opinion process.

21.8.4 Challenge to Adverse Governmental Findings. If, after the District submits an I-937 compliance report in accordance with WAC 194-37-110 (or successor regulations), the Washington State Auditor or other Governmental Authority having jurisdiction finds that Electrical Output from the Generator is not or may not qualify as an "eligible renewable resource" under I-937 or that the Generator is not or may not be eligible for the Distributed Generation Multiplier, the District or Seller may elect to challenge such findings in any available administrative, legal, or equitable forum. Each party shall reasonably cooperate in pursuing any such challenge. The costs for pursuing any such challenge shall be divided equally between Seller and the District.

21.8.5 Adjustment to Contract Price and/or Test Period Contract Price. In the event that the Generator or Electrical Output is determined by the Washington State Auditor or another Governmental Authority having jurisdiction not to be an "eligible renewable resource" under I-937, or that it does not qualify for the Distributed Generation Multiplier, or both, the District shall adjust the Contract Price and/or Test Period Contract Price paid for any affected Electrical Output as measured by the meter at the Measuring Point by subtracting the Tradable Renewable Energy Credit and/or the Distributed Generation Credit provided under Sections 7.2.1, 7.4.1 and 7.4.2, as appropriate, from the Contract Price and/or Test Period Contract Price. The District shall pay the Contract Price as so adjusted for all Electrical Output thereafter delivered by Seller during the Term of this Agreement. For affected Electrical Output already delivered to the District after the date of this agreement, the District shall recalculate the Contract Price as described above and provide Seller with a notice of the resulting overpayment amount. The overpayment amount shall be subtracted from any amounts that are owing to Seller during the remaining term of the Contract, *provided that* if any amount remains outstanding at the end of the term of this Agreement, Seller shall promptly pay that amount to the District; *provided further that* the District may charge Seller for any overpayment amount only if it notifies Seller within thirty (30) days of receiving a notice from the Washington State Auditor or other Governmental Authority having jurisdiction that the Generator is not an "eligible renewable resource" or is not eligible for the Distributed Generation Multiplier. Notwithstanding any other provision of this Section 21.8.5, if the District or Seller successfully challenges a Washington State Auditor finding or the finding of another Governmental Authority having jurisdiction under Section 21.8.4, the price paid to Seller shall be adjusted to reflect the Tradable Renewable Energy Credit and/or the Distributed Generation Credit, as appropriate, for any period during which the District is awarded RECs or Distributed Generation Credits as a result of the action under Section 21.8.4 and Seller has not received a Tradable Renewable Energy Credit or Distributed Generation Credit that properly reflects the credits received by the District for that period. The District shall provide a reasonably detailed explanation of any adjustments made to the Contract Price under this Section 21.8.5 in monthly invoices provided to Seller in accordance with Section 8.

21.8.6 Seller's Right to Sell RECs to Third Parties in Certain Circumstances. In the event that the Generator or the Electrical Output is finally determined not to be an "eligible renewable resource" under I-937 (a "Non-Eligibility Determination"), the District shall continue to purchase the Electrical Output from the Generator but the Contract Price shall be adjusted as provided in Section 21.8.5. In addition, after any Non-Eligibility Determination, the District may continue to purchase all Environmental Attributes associated with the Electrical Output from the Generator by paying to Seller the Contract Price including the Tradable Renewable Energy Credit Value but not including the Distributed Generation Credit. If, after a Non-Eligibility Determination, the District elects not to purchase the Environmental Attributes associated with the Generator from Seller, it shall so notify Seller within sixty (60) days after receiving the Non-Eligibility Determination, and, Seller shall have the right, from the date of the Non-Eligibility Determination, to sell unbundled RECs associated with the Electrical Output of the Generator to a party other than the District notwithstanding any other provision of this Agreement. If the District does not make an election within such sixty (60) day period to cease purchasing and paying for Environmental Attributes, the District shall continue purchasing and paying for Environmental Attributes as provided in this Agreement. In the event the District elects to discontinue its purchase of Environmental Attributes after a Non-Eligibility Determination, Seller shall be deemed to have retained the REC for which the District did not pay, along with the associated Renewable Energy Certificate Reporting Rights, and shall have the right to use such retained REC or transfer it to a third party, *provided that* the parties shall cooperate to transfer any such RECs from the District's WREGIS account to Seller's WREGIS account, and *provided further that* Seller shall not in any event sell, trade, or otherwise claim any RECs or Renewable Energy Certificate Reporting Rights to which the District has retained title. For purposes of this provision, "finally determined" means that the determination can no longer be appealed, whether because of the expiration of the applicable appeal period or otherwise.

21.8.7 Seller Not Responsible for Penalties. Seller shall not be responsible for any penalties imposed on the District as a result of the Generator's not being an "eligible renewable resource," or for not qualifying for the Distributed Generation Multiplier, or both, and the District's sole remedy for the Generator's failure to be an "eligible renewable resource" or to qualify for the Distributed Generation Multiplier, or both, is as set forth in Section 21.8.5.

DISTRICT: \_\_\_\_\_

Seller: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this agreement (including the waiver set forth as Section 20.5) to be executed in their respective names by their respective officers hereunder duly authorized.

PUBLIC UTILITY DISTRICT NO.1 OF  
SNOHOMISH COUNTY, WASHINGTON

·

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

Steve Klein

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

Title: General Manager

Date: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

SAMPLE

**ATTACHMENT A**

**INTERCONNECTION ONE-LINE DIAGRAM**

*(This Attachment will provide the electrical one-line diagram and will identify the point of interconnection between the Generator and the District electric system.)*

SAMPLE

**ATTACHMENT B**  
**CONTRACT PRICE FOR**  
**CALENDAR YEAR 20**   

The District shall pay **Seller** the Contract Price specified below, on a per megawatt hour (MWh) basis, as measured by the meter at the Measuring Point, as specified by On-Peak Period and Off-Peak Period:

(a) during calendar year 20   :

<b>Month</b>	<b>On-Peak Period (in \$/MWh)</b>	<b>Off-Peak Period (in \$/MWh)</b>
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

**ATTACHMENT C**  
**PRICING DETERMINANTS FOR**  
**CALENDAR YEARS 20   -20**

	20 <u>   </u>	20 <u>   </u>	20 <u>   </u>	20 <u>   </u>	Units
<b><u>Energy Price Component:</u></b>					
Energy Price applied to On-Peak hours during the months of Jan.-Dec., except the hours in the months of May-June	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/MWh
Energy Price applied to Off-Peak hours during the months of Jan.-Dec., except the hours in the months of May-June	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/MWh
Energy Price applied to On- and Off-Peak hours during the months of May-June	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/MWh
Credit for Avoided Regional Transmission Losses*	1.9%	1.9%	1.9%	1.9%	%
Tradable REC Value	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/REC
Distribution Loss Credit	4.3%	4.3%	4.3%	4.3%	%
Deferral of System Upgrades Credit	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/kW-Yr
Generation Capacity Cost Credit	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/kW-Mo
Distributed Generation Credit	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$ <u>   </u>	\$/REC

\* The percentage used to calculate the avoided regional transmission losses is subject to change in accordance with revisions in BPA's Open Access Transmission Tariff.

**ATTACHMENT D**

**FORM OF REC ATTESTATION**

**ENVIRONMENTAL ATTESTATION AND BILL OF SALE**

**I. Facility information**

Name of Generation Facility ("Facility"): \_\_\_\_\_

Company or Person That Owns Facility ("Seller"): \_\_\_\_\_

Address of Facility:

\_\_\_\_\_  
\_\_\_\_\_

North American Electricity Reliability Corporation ("NERC") region in which Facility is located:<sup>1</sup>

\_\_\_\_\_

Facility ID Number:<sup>2</sup> \_\_\_\_\_  EIA or  QF? (check one)

Nameplate Capacity (MW): \_\_\_\_\_

Date Facility Was First Operational: \_\_\_/\_\_\_/\_\_\_

Date of Capacity Upgrade or Repowering:<sup>3</sup> \_\_\_/\_\_\_/\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**II. Renewable electricity or RECs<sup>4</sup> supplied to Purchaser indicated below, by fuel type**

\_\_\_\_\_

<sup>1</sup> If you are unsure of which region Facility is in, see <http://www.nerc.com/regional/>.

<sup>2</sup> Enter Energy Information Administration ("EIA") identification number for the generating facility; if no EIA number, enter the utility-assigned Qualifying Facility ("QF") identification number.

<sup>3</sup> If applicable.

<sup>4</sup> Renewable Energy Certificates, which represent the renewable attributes of 1 MWh of renewable electricity generation.

On the table below, list the renewable megawatt-hours (“MWhs”) sold or transferred to Purchaser, broken down by quarter of generation in separate rows:

Fuel Type <sup>5</sup>	# MWh RECs / Renewable Elec. Sold	

**III. Declaration**

I, (print name and title) \_\_\_\_\_, declare that the  renewable electricity (electricity bundled with renewable attributes) /  renewable attributes only<sup>6</sup> (check one) generated by Facility during the Period of Generation were sold exclusively from Seller to \_\_\_\_\_ (“Purchaser”).

I further declare that

- 1) all the renewable attributes (including CO<sub>2</sub> benefits), including any emissions offsets, reductions or claims represented by the renewable electricity generation listed above were transferred to Purchaser;
- 2) to the best of my knowledge, the renewable attributes were not sold, marketed or otherwise claimed by a third party other than Purchaser;
- 3) Seller sold the renewable attributes only once;
- 4) the renewable attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard or other renewable energy mandate by Seller, nor to the best of my knowledge, by any other entity other than Purchaser;<sup>7</sup>
- 5) the renewable electricity sold or electricity associated with the attributes sold was not used on-site for powering electric generation equipment (parasitic load);
- 6) if Purchaser is receiving electricity bundled with renewable attributes from Seller, the renewable electricity was delivered into the NERC region in which Facility is located; and

<sup>5</sup> If using biomass fuels, list the specific type (e.g., landfill gas, wood waste, etc.) and fill in Section IV below.

<sup>6</sup> If selling renewable attributes to Purchaser without electricity, fill in the name of the load-serving entity buying the undifferentiated electricity, if applicable, at the bottom of this Declaration section.

<sup>7</sup> Renewable attributes used by Purchaser for any of the purposes listed in Section III(4) are ineligible for Green-e Energy certification.

7) the electricity that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Seller or, to the best of my knowledge, any other entity other than Purchaser.

Please indicate the following:

Is Facility owner reporting its direct greenhouse gas emissions in a legally binding cap-and-trade program for the time period of generation listed on this form?

- Yes; list the cap -and -trade program: \_\_\_\_\_
- No

If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, write the name of the utility or load-serving entity here: \_\_\_\_\_

- Check box if sale is part of a QF contract

**IV. Additional statement required for and applicable to biomass facilities only**

- 1) I attest that the Facility is an "eligible renewable resource" under RCW 19.285.030(10) and that the biomass boiler is powered by fuels allowed under RCW 19.285.030(18)(i), including any amendments to those provisions and applicable regulations issued under the Washington Energy Independence Act, RCW Chapter 19.285;
- 2) I attest that this Facility was in substantial compliance with its operating permit regarding emissions during the period of generation reported above;
- 3) I attest that if this Facility is subject to New Source Review ("NSR"), it was compliant with all standards pertaining to NSR during the period of generation reported above; and
- 4) I attest that Seller owned the renewable and environmental attributes of the biomass fuels I have listed in the table below at the time of the fuel's use for electricity generation.

Bio	Type	

**V. Signature**

As an authorized agent of Seller, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT E**

**CERTIFICATE OF COMMERCIAL OPERATION**

**Project Name:** [REDACTED]

**Nameplate Capacity:** [REDACTED]

[REDACTED] (Seller) hereby certifies that:

- (a) Seller has obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Generator and the sale of the Electrical Output and associated Environmental Attributes therefrom; and
- (b) Seller has submitted to the District written certification from a licensed professional engineer that all Electrical Output production subsystems of the Generator have been commissioned, tested and determined to be functioning within specifications; and
- (c) Seller has satisfied all applicable requirements specified by the District in the Interconnection Agreement; and
- (d) Seller has satisfied all applicable requirements specified by BPA; and
- (e) Seller is in all other respects capable of delivering Electrical Output to the District at the Delivery Point.

I certify that all statements made in this Certificate are correct to the best of my knowledge and that I have the authority to bind Seller to the statements made herein.

**SELLER:**

Signed: \_\_\_\_\_

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

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

Date: \_\_\_\_\_