**CONTRACT**

**FOR**

**OPEN-MARKET SALE OF PRIEST RAPIDS PROJECT POWER**

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**CONTRACT**

**FOR**

**OPEN-MARKET SALE OF PRIEST RAPIDS PROJECT POWER**

Executed by

**PUBLIC UTILITY DISTRICT NO. 2**

**OF GRANT COUNTY, WASHINGTON**

#### And

This contract is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_, 2018 between Public Utility District No. 2 of Grant County, Washington (the “District”), a municipal corporation of the State of Washington, and \_\_\_\_\_\_\_\_\_\_\_(the “Purchaser”), a \_\_\_\_\_\_\_\_\_\_\_\_ corporation organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The District and the Purchaser are referred to as a “Party” and collectively as “Parties.”

The District agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the District, a percentage share of the Priest Rapids Project Output upon the terms and subject to the conditions set forth in this Contract.

The Parties, in consideration of the mutual promises and intending to be legally bound, agree as follows:

1. **TERM OF CONTRACT**

Except as otherwise provided herein, this Contract shall be in full force and effect from and after it has been executed by the District and the Purchaser. Unless sooner terminated pursuant to other provisions, this Contract shall remain in effect until the end of HE 2400 (midnight) Pacific Prevailing Time “PPT”, December 31, 2019 (the “Term”). Availability of PRPO will begin at the start of HE 0100 PPT, January 1, 2019, and end HE 2400 (midnight) PPT, December 31, 2019. Except as otherwise provided herein, all obligations accruing under this Contract are preserved until satisfied.

1. **DEFINITIONS**

As used in this Contract, the following terms when initially capitalized shall have the following meanings:

“Agreement for the Hourly Coordination of Projects on the Mid‑Columbia River” (MCHC) shall mean the 2017 “Bridge” Agreement signed by Grant PUD, Chelan PUD, Bonneville Power Administration, U.S. Corps of Engineers and the Bureau of Reclamation. This Agreement keeps in place the operating parameters set forth in the 1997 “Agreement for the Hourly Coordination of Projects on the Mid-Columbia River” that allows for coordination between the two Federal projects and four non-Federal projects on the Columbia River. The “Bridge Agreement” has been extended between Grant PUD and Chelan PUD until November 30, 2019. This agreement may be amended from time to time.

“Bond Resolution” shall mean each and all of the resolutions adopted by the District authorizing the issuance of outstanding Debt for the Priest Rapids Project.

“Business Days” shall mean any weekday, Monday through Friday, excluding Federal Reserve Holidays as designated on Exhibit A of this Contract.

“Contract” shall mean this CONTRACT FOR OPEN-MARKET SALE OF PRIEST RAPIDS PROJECT POWER, in its’ entirety.

“Defaulting Party” shall mean the Party who is responsible for an “Event of Default” as defined in Section 16.

“Electric System” shall mean the separate electric utility system of the District, including all associated generation, transmission and distribution facilities and any betterments, renewals, replacements and additions of such system, but does not include the Priest Rapids Project or any other utility properties designated as a separate utility system of the District.

“FERC” shall mean the Federal Energy Regulatory Commission or its successor.

“FERC License” shall mean the license for the Priest Rapids Project PL 2114 issued by FERC on April 17, 2008, effective April 1, 2008.

“Guarantor” means the entity providing a guarantee pursuant to a Guaranty Agreement.

“HE” shall mean hour ending.

“Non-power Attributes” shall mean all environmentally-related characteristics, claims exclusive of energy, capacity, reliability, and other electrical power service attributes, that are associated with the generation of electricity from a non-carbon emitting resource, including but not limited to the facility’s fuel type, geographic location, vintage, qualifications as an eligible specified source, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases, provided, however, the District does not warrant eligibility of these Non-power Attributes in any market or jurisdiction.

“Mid-C Website” shall mean the secure internet portal through which the Purchaser will be able to monitor their share of the Priest Rapids Project and receive updates related to river conditions and operations.

“Operating Agreements” shall mean any agreements to which the District is or may become a party, which provide for operation of the Priest Rapids Project, including but not limited to: the Pacific Northwest Coordination Agreement, the Agreement for the Hourly Coordination of Projects on the Mid‑Columbia River, the Hanford Reach Fall Chinook Protection Program Agreement, the Western Electricity Coordinating Council Agreement, and the Northwest Power Pool Agreement (as such agreements currently exist or hereafter may be amended).

“Pre-Schedule Day” shall mean days identified by the District pursuant to the Western Electricity Coordinating Council Interchange Scheduling and Accounting Subcommittee daily scheduling calendar.

“Priest Rapids Project” shall mean the hydroelectric project on the Columbia River in the State of Washington designated by the Federal Power Commission as Project No. 2114. The Priest Rapids Project consists of the Priest Rapids Development and the Wanapum Development.

“Priest Rapids Project Output” or “PRPO” shall mean the amount of capacity, energy (both firm and non-firm), pondage, ancillary services, and any other product produced by the Priest Rapids Project (including Non-power Attributes), net of encroachment, Canadian entitlement, station and project use, transmission losses to the points of delivery, and depletions required by the FERC License or other regulatory requirements.

“Prudent Utility Practice” means those practices, methods and acts which: (i) when engaged in are commonly used in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition or (ii) in the exercise of reasonable judgment considering the facts known when engaged in, could have been reasonably expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition. Prudent Utility Practice is not intended to be the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of commonly used practices, methods or acts.

“Uncontrollable Forces” shall mean any cause reasonably beyond the control of the Party and which the Party subject thereto has made reasonable efforts to avoid, remove or mitigate, including but not limited to acts of God, fire, flood, explosion, strike, sabotage, acts of terrorism, act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies (other than those of the District) with proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment or contractors, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers; provided, however, that in no event shall an Uncontrollable Force excuse the Purchaser from the obligation to pay any amount when due and owing under this contract.

The following terms are defined in the cited sections of this Contract:

“Event of Default” at Section 16(a)

“Party” and “Parties” at the Preamble

“Purchaser Allocation of Pondage” at Section 7(b)(4)

“Purchaser’s PRPO” at Section 3(a)

1. **PURCHASE AND SALE OF PRIEST RAPIDS PROJECT OUTPUT/REGULATORY APPROVAL**
   1. Purchaser’s PRPO. The District shall make available to the Purchaser and the Purchaser shall purchase an amount of PRPO equal to the total applicable PRPO multiplied by the corresponding Purchaser’s PRPO Percentage which amount is herein referred to as “Purchaser’s PRPO.”
   2. The Purchaser’s PRPO Percentage shall be \_\_\_\_ % of Priest Rapids Project power for the period starting at HE 0100, January 1, 2019 and ending at HE 2400, December 31, 2019.
2. **PRPO AVAILABILITY**
   1. Purchaser understands and acknowledges that PRPO availability will fluctuate and is subject to and contingent upon many factors including, but not limited to, the following: weather and precipitation levels, regulatory and environmental considerations and requirements, Operating Agreements and Uncontrollable Forces.
   2. The District, as operator of the Priest Rapids Project, may restrict deliveries of PRPO if it determines that such action is necessary to avoid exceeding the capability of the Priest Rapids Project or subjecting it or its operation to undue hazard or violating the FERC License, any applicable law, regulation, or Operating Agreement. Any such restrictions in delivery by the District shall be made pro-rata with all purchasers of PRPO and with the District’s share of PRPO.
   3. The District, as operator of the Priest Rapids Project, may also restrict deliveries of PRPO in case of emergencies or in order to install equipment in, make repairs to, make betterments, renewals, replacements, and additions to, investigations and inspections of, or perform other maintenance work on the Priest Rapids Project. Any such restrictions in delivery shall be made pro-rata with all purchasers of PRPO and with the District’s share of PRPO.
   4. The District shall use commercially reasonable efforts to give advance notice to the Purchaser regarding any limit, restriction, interruption, curtailment or reduction of PRPO for which the District has knowledge in advance of the need for such action, giving the reason therefore and stating the probable duration thereof, and shall provide timely updates concerning the same should conditions change. In any instance where advance notice is not commercially reasonable, the District shall promptly notify Purchaser after imposing such limit, restriction, interruption, curtailment or reduction of PRPO and give the reason therefore, the probable duration thereof (non-binding), and shall make commercially reasonable efforts to provide timely updates concerning the same should conditions change.
   5. Notwithstanding any other provision of this Contract, the District shall at all times have the right to operate the Priest Rapids Project in such manner as it deems necessary to comply with the FERC License, applicable laws and regulations, Prudent Utility Practice and this Contract.
   6. Notwithstanding any other provision of this Contract, the District shall have the unilateral right to restrict deliveries of PRPO as may be necessary to fulfill any non-power regulatory or other legal requirements and shall have the unilateral right to determine the amounts of spill required at the Priest Rapids Project. Any such restrictions in delivery shall be made pro-rata with all purchasers of PRPO and with the District’s share of PRPO.
3. **PURCHASE PRICE AND PAYMENTS BY PURCHASER**
   1. The purchase price for the Purchaser’s PRPO shall be $\_\_\_\_\_\_\_\_\_\_\_\_\_, the total dollar amount submitted by Purchaser on its bid form. Purchaser shall make 12 equal monthly payments of 1/12th of the purchase price, $\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with the first such payment due January 10, 2019.
   2. The monthly payments set forth above shall be due and payable by electronic funds transfer to the District’s account, designated in writing by the District, on the 10th (tenth) calendar day of each month. If the 10th calendar day of the month is a Saturday, Sunday or a Federal Reserve Holiday as listed in Exhibit A, the payment is due the next following Business Day.
   3. If any monthly payment amount set forth on a statement or revised statement is not paid in full and received by the District on or before the deadline specified in 5(b), a delayed payment charge of 2% of the unpaid amount due will be made. Any bill which remains unpaid for more than 30 calendar days after the due date shall, in addition to the delayed payment charge, accrue interest at the lesser of 1.5% per month or the maximum rate allowed by law. Additionally, if payment due to the District under this Section 5 remains unpaid 3 Business Days after the due date, the District may thereafter suspend delivery of the Purchaser’s PRPO until payment in full of all amounts due and owing (including any interest and delay charges) is received by the District.
   4. The payments required under this Section 5 shall be due and owing notwithstanding the fact that the actual amount of power from the PRPO Percentage made available to the Purchaser is less or more than that which was anticipated by either Party at the time of execution of this Contract. The District makes no warranties of any type as to the PRPO that will actually be produced and available, other than, that the percentage of PRPO made available to the Purchaser will at all times be in accordance with Section 3(b), and Purchaser assumes all risks associated therewith.
   5. The purchase price submitted by the Purchaser on its bid form is the total price for the Purchaser’s PRPO and all rights associated with it. Except as otherwise provided in Exhibit B, Host BA Services Agreement and 20 (c), the Purchaser shall not be obligated to pay any other amounts charged to or payable by the District as a result of this Contract, including without limitation, any water fees, license fees, penalties, taxes, operating, administration, maintenance or capital costs, damages or any other costs whatsoever, relating to ownership or operation of the Priest Rapids Project.

1. **BALANCING AUTHORITY SERVICES** 
   1. This Section 6 shall apply to the provision of Balancing Authority (BA) services of the Purchaser’s PRPO.
   2. The Purchaser shall have its PRPO slice hosted by the District’s BA.

The District, as host to the Purchaser’s slice, will do so at no charge but the Purchaser will be required to abide by the District’s BA Hosting Principles (Attached as Exhibit B) and services shall be limited to those services necessary to implement the PRPO pursuant to Section 7. The Purchaser must comply with the BA Hosting Principles, which may be amended from time to time, at the District’s sole discretion.

1. **REQUIREMENTS FOR THE USE OF PRPO SLICE**
   1. Scheduling of Purchaser’s PRPO shall be as requested by the Purchaser or its designated scheduling agent, and shall be subject to the limitations set forth in this Contract.
   2. Purchaser’s schedules shall be in accordance with the following:
      1. Subject to the provisions of this Contract, the District shall make available to Purchaser, each hour, Purchaser’s PRPO.
      2. The District, as operator of the Priest Rapids Project, shall make all determinations concerning the Priest Rapids Project maximum output and minimum discharge using Prudent Utility Practices; and the District shall have the unilateral right to determine the maximum allowable amount of change in PRPO during any time period and the maximum number of unit starts and stops allowable during any time period. Purchaser’s daily and hourly schedules shall be based on Purchaser’s PRPO in accordance with the Priest Rapids Project operational parameters as established by the District from time to time.
      3. Purchaser’s schedule shall not be less than Purchaser’s PRPO Percentage of the minimum operating capability of the Priest Rapids Project, as determined by the District, nor shall it be greater than 97% of the Purchaser’s PRPO Percentage of the maximum operating capability of the Priest Rapids Project as determined by the District.
      4. The District will establish and maintain for the Purchaser a pondage account that will reflect the use of pondage by the Purchaser. The Purchaser shall be entitled to utilize a share of the pondage available at the Priest Rapids Project (the “Purchaser Allocation of Pondage”), determined by multiplying the total of the pondage available by the applicable Purchaser’s PRPO Percentage. The pondage available at the Priest Rapids Project shall be determined by the District, as operator of the Priest Rapids Project, from time to time on the basis of the volume of water that can be stored between the then current maximum forebay elevation and the then current minimum forebay elevation.
      5. The Purchaser is allowed to buy and sell pond in order to manage their share and can transfer pond between any Priest Rapids Project participant. The Purchaser performs the transfer via the Mid-C website. The Purchaser will be solely responsible to make all commercial arrangements for these transactions. Grant, or an agent of Grant, may limit the ability to perform pond transfers from time to time due to operational limitations. On the last hour of the term of this Contract, the Purchaser shall return the pond account balance to at least where it was on the first hour of the term of this Contract. The Purchaser may schedule more than its share of the Priest Rapids Project inflows determined in accordance with Section 7 if the Purchaser has sufficient amount of energy in its pond account. The amount of the energy scheduled from the pondage account shall not exceed the Purchaser’s Allocation of Pondage determined in accordance with Section 7(b)(4).
      6. During any hour that spill is occurring at non-federal MCHC Projects, the spill will be allocated according to MCHC. Exhibit C, Allocation of Spill, which may be modified as deemed necessary, describes current MCHC spill allocation logic. However, any successor Operating Agreement spill logic shall prevail in the event there is a conflict with Exhibit C.
2. **POINT OF DELIVERY**
   1. PRPO power supplied hereunder shall be approximately 230 kV, three-phase, alternating current, at approximately 60 hertz.
   2. Only Priest Rapids Project Output delivered under this Agreement shall be transmitted on Priest Rapids Project transmission facilities to the Points of Delivery identified herein. Any other use of the Priest Rapids Project transmission facilities would require prior written approval from the District.
   3. The PRPO power to be delivered hereunder shall be made available to the Purchaser, at its option, exercisable from time to time, at any one or more of the following points:
      1. The 230 kV bus of the Bonneville Power Administration’s Midway Substation;
      2. The 230 kV bus of the switchyard of the Wanapum Development;
      3. The 230 kV bus of the Vantage Substation; or
      4. At any other location mutually agreed to in writing by the District and Purchaser.
3. **METERING AND TRANSMISSION**

* 1. The District shall provide and maintain suitable meters at points of interconnection between the Priest Rapids Project facilities to non-project facilities to be used in calculating the Purchaser’s PRPO. The District or an agent of the District shall read meters and records thereof shall be made available to the Purchaser as may be reasonably requested.
  2. In order for Purchaser to receive Purchaser’s PRPO at the Point of Delivery, transmission of the PRPO to the Point of Delivery is provided by the District over Priest Rapids Project facilities. This transmission may not be used for any purpose other than the receipt of the Purchaser’s PRPO at the Point of Delivery.

1. **INFORMATION TO BE MADE AVAILABLE TO THE PURCHASER**

The District shall exercise commercially reasonable efforts to provide to the Purchaser estimates and information reasonably necessary for the Purchaser to exercise its rights under this Contract.

1. **LIABILITY OF PARTIES**
   1. Except as otherwise provided in this Contract, each Party hereby releases the other Party and its commissioners, officers, directors, agents and employees from any claim for loss or damage arising out of the ownership, operation, and maintenance of the Priest Rapids Project including any loss of profits or revenues, loss of use of power system, cost of capital, cost of purchased or replacement power, other substantially similar liability or other direct or indirect consequential loss or damage.
   2. The Purchaser shall have no claim of any type or right of action against the District: (i) as a result of a FERC or court order or amendment; (ii) as a result of adjustment of PRPO, and the Purchaser hereby releases the District and its commissioners, officers, agents and employees from any claim for loss or damage arising out of the events described in this paragraph; provided however, that nothing herein precludes the Purchaser from bringing any claim in law or equity, or a court of other body with jurisdiction from awarding any remedies, in the event that the District defaults on deliveries under this contract.
   3. The Purchaser is purchasing output from or attributable to the Priest Rapids Project as available and scheduled by the Purchaser. The Purchaser acquires no interest in or rights to any facilities forming part of the Priest Rapids Project.
2. **NOTICES AND COMPUTATION OF TIME**

Any notice or other communication under this Contract given by either party shall be sent via email to all email address(s) listed below, or certified mail, properly addressed and stamped with the required postage, to the intended recipient(s) at the address and to the attention of the person(s) specified below. Notice by mail shall be deemed served upon the third day following the day upon which it was placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.  Notice by email shall be deemed served upon transmission when made prior to 5:00 p.m. on a Business Day.  Service made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed served at 9:00 a.m. on the first Business Day thereafter.

|  |  |
| --- | --- |
| District | Purchaser |
| Contact Name: Phillip Law or Rich Flanigan  Public Utility District No. 2  of Grant County, Washington  PO Box 878  30 C Street SW  Ephrata, WA  98823  (509) 754-5090 or (509) 793-1475  [plaw@gcpud.org](mailto:plaw@gcpud.org) and [rflanig@gcpud.org](mailto:rflanig@gcpud.org) and Powermarketing@gcpud.org | Contact Name  Company Name  Address  Address  (\_\_\_) \_\_\_\_\_\_\_\_\_  Email |

In computing any period of time from such notice, such period shall commence at 2400 (midnight) PPT on the date of receipt. The designations of the name and address to which any such notice or demand is directed may be changed at any time by either Party giving notice as provided above.

1. **DISTRICT’S BOND RESOLUTIONS AND LICENSE**

It is recognized by the Parties that the District, in its operation of the Priest Rapids Project, must comply with the requirements of the Bond Resolution and with the FERC License together with amendments thereof from time to time made, and the District is hereby authorized to take such actions as the District determines are necessary and appropriate to comply with such Bond Resolutions and FERC License**.**

1. **GOVERNING LAW** **.**

The Parties agree that the laws of the State of Washington shall govern this Contract.

1. **ASSIGNMENT OF CONTRACT**

Neither the Purchaser nor the District shall by contract, operation of law or otherwise, assign this Contract or any right or interest in this Contract without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, a Party may, without the consent of the other Party (and without relieving itself from liability hereunder) (i) transfer or assign this Contract to an affiliate of the Party provided that the affiliate’s creditworthiness is equal or higher than that of the Party or (ii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of the Party whose creditworthiness is equal or higher than that of the Party; provided however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions in this Contract and the transferring Party shall deliver such tax and enforceability assurance as the other Party may reasonably request.

1. **REMEDIES ON DEFAULT**
   1. An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):
      1. the failure by the Defaulting Party to make, when due, any payment required pursuant to this Contract if such failure is not remedied within three (3) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by email to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
      2. the failure by the District to deliver PRPO to the Purchaser as required by this Contract and such failure is not cured within three (3) Business Days after written notice thereof from the Purchaser to the District; or
      3. the failure by the Defaulting Party to have made accurate representations and warranties as required by this Contract and such failure is not cured within three (3) Business Days after written notice thereof to the Defaulting Party; or
      4. the institution (with respect to the Defaulting Party, by the Defaulting Party or by another person or entity) of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
      5. the failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under this Contract.
      6. With respect to its Guarantor, if any:
         * 1. if a material representation or warranty made by a Guarantor in connection with this Contract, or any transaction entered into hereunder, is false or misleading in any material respect when made or when deemed made or repeated; or
           2. the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Contract, including any transaction entered into hereunder, and such failure shall not be remedied within three (3) Business Days after written notice; or
           3. the institution (with respect to the Guarantor, by the Guarantor or by another person or entity) of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor’s rights or a petition is presented or instituted for its winding-up or liquidation; or
           4. the failure, without written consent of the other Party, of a Guarantor’s guarantee to be in full force and effect for purposes of this Contract (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each transaction to which such guarantee shall relate; or
           5. a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, any guarantee.
   2. If an Event of Default occurs, the Non-Defaulting Party may at its option terminate the Contract or seek specific performance. In the event the Non-Defaulting Party elects to terminate the Contract, it may pursue any legal or equitable remedies available by law or otherwise.
2. **INFORMATION REQUIRED FOR CREDIT DETERMINATION**

The Purchaser is required to provide the District with all of the following:

* 1. A notarized certificate prepared by Purchaser reflecting Purchaser’s current Issuer or Senior Unsecured credit ratings as assigned by Standard and Poor’s Corp., and/or Fitch Ratings, and/or Moody’s Investors Services, to the extent that such ratings have been issued and or updated;
  2. Purchaser’s most recent two years of audited financial statements including the Balance Sheet, Income Statement, Statement of Cash Flows and Notes to Financial Statements, or its most recently filed SEC Forms 10-Q and 10-K, if applicable. If Purchaser uses a parental guarantee, then Purchaser shall provide the parent’s or affiliate’s most recent two years of audited financial statements, or the most recently filed SEC Forms 10-Q and 10-K, if applicable. If the required financial statements can be found online on the internet, the Purchaser may provide the appropriate website internet link for retrieval of such information. In the event that only unaudited financial statements are available, the District shall determine whether it will accept them at its sole discretion;
  3. Most recently prepared financial statements on a going-forward basis;
  4. Documentation of any issues or matters that could have a material effect on the Purchaser’s creditworthiness, to the extent not included in the footnotes of the financial statements;

1. **CREDITWORTHINESS**

Collateral required under this contract is 3 times the monthly payment as calculated in Section 5(a). In addition, if the Purchaser is not rated investment grade or better by any one the three rating agencies described in Section 17(a), a Guaranty in the amount of 3 times the monthly payment as calculated in Section 5(a) will be required.

Collateral may be in the form of cash or letter of credit. Letters of credit must be from a financial institution rated A- or better. Collateral posted in the form of cash will be held on deposit with the District. In the event the collateral is no longer required to satisfy Purchaser’s obligations, it will be returned to Purchaser, with interest earned. Deposits will earn interest calculated at the rate for the one-year Treasury Constant Maturity calculated by the U.S. Treasury, as published in the Federal Reserve’s Statistical Release H.15 on last day of each month. If the last day of the month falls on a non-Business Day, the District will use the rate posted on the next Business Day. Interest will be accrued monthly.

Events which may trigger the District requesting assurance due to reasonable concern about the Purchaser's creditworthiness, financial responsibility, or performance viability include, but are not limited to, the following:

* 1. The Purchaser or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.
  2. Other material adverse changes in the Purchaser's financial condition occur.
  3. Substantial changes in market prices which materially and adversely impact the Purchaser's ability to perform under this Contract occur.

If the Purchaser fails to provide such reasonably satisfactory assurances of its ability to perform an obligation hereunder within three (3) Business Days of demand therefore, that will be considered an Event of Default under Section 16 of this Contract and the District shall have the right to exercise any of the remedies provided for under that Section 16. Nothing contained in this Section 18 shall affect any credit agreement or arrangement, if any, between the Parties.

1. **VENUE AND ATTORNEY FEES**

Venue of any action filed to enforce or interpret the provisions of this Contract shall be exclusively in the United States District Court for the Eastern District of Washington or the Superior Court of the State of Washington for Grant County and the Parties irrevocably submit to the jurisdiction of any such court. In the event of litigation to enforce the provisions of this Contract, the prevailing Party shall be entitled to reasonable attorney’s fees in addition to any other relief allowed.

1. **COMPLIANCE WITH LAW**
   1. The Parties understand and acknowledge that operation of the Priest Rapids Project must conform to and comply with all applicable laws, rules, regulations, license conditions or restrictions promulgated by the FERC, the State of Washington or any other governmental agency or entity having jurisdiction over the Priest Rapids Project. The Purchaser shall cooperate and take whatever action is necessary to cooperate fully with the District in meeting such requirements. Obligations of the District contained in this Contract are hereby expressly made subordinate and subject to such compliance.
   2. RCW 54.16.040 contains provisions relating to the District's sale of electric energy. The Parties understand and acknowledge that the District must comply with RCW 54.16.040 to the extent applicable to this Contract and the District's obligations and performance of this Contract are hereby expressly made subordinate and subject to such compliance.
   3. The Purchaser shall ensure that PRPO available to Purchaser under this Contract is not sold, resold, distributed for use or used in contravention of any applicable state or federal law, order, regulation, or policy. The Purchaser shall reimburse the District for any penalties imposed on and costs incurred by the District as a consequence of such violation.
2. **HEADINGS**

The headings of sections and paragraphs of this Contract are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections and paragraphs.

1. **ENTIRE AGREEMENT; MODIFICATION; CONFLICT IN PRECEDENCE**

This Contract constitutes the entire agreement between the Parties with respect to the subject matter of this Contract, and supersedes all previous communications between the Parties, either verbal or written, with respect to such subject matter. No modifications of this Contract shall be binding upon the Parties unless such modifications are in writing signed by each Party.

1. **NO PARTNERSHIP OR THIRD PARTY RIGHTS**
   1. This Contract shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligations or liability upon any Party.
   2. This Contract shall not be construed to create rights in or grant remedies to any third party as a beneficiary of this Contract.
2. **REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party that:

* 1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.
  2. The execution, delivery and performance of this Contract are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, or order applicable to it.
  3. This Contract constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to equitable defenses and applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally.
  4. The representations, warranties and covenants set forth in this Contract shall remain in full force and effect throughout completion of performance of the Contract.

PUBLIC UTILITY DISTRICT NO. 2

OF GRANT COUNTY, WASHINGTON

By:

Title:

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

(SEAL) Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

|  |  |
| --- | --- |
| Federal Reserve Holidays 2019 | |
| New Year's Day | January 1 |
| Birthday of Martin Luther King, Jr. | January 21 |
| Washington's Birthday | February 18 |
| Memorial Day | May 27 |
| Independence Day | July 4 |
| Labor Day | September 2 |
| Columbus Day | October 14 |
| Veterans Day | November 11 |
| Thanksgiving Day | November 28 |
| Christmas Day | December 25 |

**EXHIBIT B**

**BA Hosting Principles**

**Balancing Authority (BA):**

The Purchaser shall have its PRPO slice hosted by the District’s BA. The District will provide services at no charge except as outlined in this Agreement. BA hosting services shall be limited to those services necessary to implement the PRPO pursuant to Section 7 of the Contract for Open-Market Sale of Priest Rapids Project Power. The Purchaser must comply with this Host BA Services Agreement, which may be amended from time to time, at the District’s discretion to comply with reliability standards, scheduling and tagging protocols, or other commercial practices generally applicable to the District.

**Limited e-Tag Availability:**

The number of e-Tags allowed for each operating hour (Pre-schedule plus Real time) is limited to the amount of Pre-schedule capacity (depicted on the Mid-C Website under “The Most Restrictive Capacity Maximum”) available to the Purchaser divided by 15 (rounded up), plus 1.

**Example: Preschedule Capacity is 121 the formula would be 121/15 = 8.06 which would round up to 9, plus 1 for a total of 10 tags available each hour.**

The limitation on the number of e-Tags will not apply in the event of a transmission curtailment or a force majeure event; however the Purchaser will endeavor to minimize the real time e-Tag impact during these events.

**PreSchedule:**

The Purchaser will submit their estimated generation schedules each pre-scheduling workday for planning purposes.

The Purchaser must also submit e-Tags, based on the expected inflows and available pond. Aggregated Pre-schedule/e-Tag quantities must be greater than or equal to the required PRPO share minimum and less than 97% of the Purchaser’s share of forecasted maximum operating capability (maximum operating capability minus required reserves), which accounts for the required reservation of reserves. Only e-Tags submitted with the NERC Firm Energy product code G-F for the whole operating hour will be approved. No other E-Tag Energy or Capacity Product Code is acceptable. Intra-hour e-Tags will not be accepted under normal operating conditions.

**Real Time:**

Real time e-Tags must be submitted thirty-minutes prior to the applicable operating hour.

No more than three (3) real time e-Tags for any one operating hour shall be approved in real time. Upon mutual agreement, at the District’s sole discretion, additional real time e-Tags may be permitted to avoid spill.

**Operating Reserves:**

Contingency Reserves, in the amount of 3% of the Purchaser’s in-hour maximum operating capability, are programmatically withheld from the Purchaser’s slice. Reserves will be deployed by the District’s BA on behalf of the Purchaser as needed, for example, as requested from the Northwest Power Pool (NWPP). In-hour, if Purchaser exceeds 97% of the Purchaser’s in-hour maximum operating capability, the Purchaser will reimburse the District for the deficit megawatts. The District will charge the Purchaser for these reserves in the amount of four times the absolute value of the Powerdex Mid-Columbia weighted average Hourly Index for the corresponding hour, and will be settled monthly.

For each qualifying event under the NWPP Reserve Sharing Group (RSG), the District’s BA may call on reserves from the RSG. The Purchaser’s schedules for the 60 minutes following the event will be maintained by either the use of reserves or by restoring generation. Purchaser shall reduce their generation request to 97% of their new in-hour maximum operating capacity in the case that generation is not restored for the balance of the hour following the conclusion of the qualifying reserve event. Reserve costs incurred by the District will be reimbursed by the Purchaser on a prorated (as the Purchaser’s proportion of PRPO) basis. Previously approved e-Tags for subsequent hours shall be adjusted by the Purchaser to remain within 97% of the Purchaser’s forecasted maximum operating capability and 100% of the Purchaser’s forecasted minimum operating capability.

**Non-Compliant Requests:**

Purchaser shall neither schedule/e-Tag more than 97% of their forecasted maximum operating capability nor less than 100% of their forecasted minimum generation requirement by thirty-minutes prior to the start of any operating hour. If Purchaser fails to meet either requirement by thirty-minutes prior to the start of any operating hour, they will be deemed non-compliant; the District may create an after-the-fact e-Tag and initiate an associated purchase or sale transaction to bring the Purchaser within their slice of PRPO rights and obligations, specifically within 97% of their forecasted maximum operating capability and 100% of their forecasted minimum generation requirement. Inside the hour, if Purchaser’s composite schedule exceeds 97% of their in-hour maximum operating capability and there is insufficient energy available from the market to supply the excess energy, the District will request that Purchaser curtail their schedule for the scheduled amount in excess of 97% of their in-hour maximum operating capability.

Inside the hour, if Purchaser’s composite schedule fails to meet their minimum generation obligation, a sale may be initiated on their behalf to balance the obligation. Purchaser shall not receive payment for the energy sold on their behalf.

The charge for non-compliant transactions will be four times the absolute value of the Powerdex (│Powerdex│) Mid-Columbia weighted average Hourly Index for the corresponding hour, and will be settled monthly.

**Examples:**

Example 1 (over forecasted maximum)

Forecasted Maximum Operating Capability = 100 MW  
Tag = 98 MW (1 MW over 97% of 100 MW)  
Non-Compliance charge = 4 x │Powerdex│ x 1 MW

Example 2 (under forecasted minimum)

Forecasted Minimum Operating Capability = 20 MW  
Tag = 18 MW (2 MW under 20 MW)  
Non-Compliance charge = 4 x │Powerdex│ x 2 MW

Example 3 (over in-hour maximum but within forecasted maximum)

Forecasted Maximum Operating Capability = 110 MW  
In-Hour Maximum Operating Capability = 100 MW  
Tag = 103 MW (6 MW over in-hour limit of 97% of 100 MW)  
Non-Compliance charge = 4 x │Powerdex│ x 6 MW

Example 4 (under in-hour minimum but within forecasted minimum)

Forecasted Minimum Operating Capability = 20 MW  
In-Hour Minimum Operating Capability = 23 MW  
Tag = 21 MW (2 MW under in-hour limit of 23 MW)  
Non-Compliance charge = 4 x │Powerdex│ x 2 MW

**Notice:**

The District shall serve as “host balancing authority” for the Purchaser’s PRPO. Services provided by the District or its scheduling agent are schedule and e-Tag approval, and ensuring the provision of reserves for the Purchaser’s PRPO. If other BA services are desired by the Purchaser and the District is able to provide such services, they shall be provided under a separate and distinct agreement.

**Hubbing:**

Importing energy to the District’s BA is not allowed under this Agreement but can be arranged with a separate Hubbing Agreement.

**Exhibit C**

**Allocation of Spill**

Allocation of Spill in MCHC is described below, however, spill allocation in the MCHC may be changed in which case, if it is inconsistent with the below, the MCHC spill allocation methodology existing at the signing of this Agreement shall prevail. In addition, any successor spill allocation logic that Grant chooses to use under independent or non-MCHC operations shall prevail.

1)  During any hour that spill is occurring at non-federal Mid-C Projects in order to control forebay elevation, the spill is allocated in the following manner:

i) if spill is due to unloaded turbines at the spilling project, that spill will be allocated to meet the following objectives:

**Objective #1** – Allocate to participants who fail to meet project requirements.

* + Strategy #1 - Allocate to those participants not meeting the hourly flow requirement
  + Strategy #2 - Allocate to those participants not meeting the 24 hour rolling flow requirement
  + Strategy #3 - Allocate to those participants whose water in storage (including deferred spill allocation) is greater than their maximum allowed pondage

**Objective #2** – Allocate to participants who fail to provide information necessary to plan operations that would avoid spill.

* + Strategy #1 - Allocate pro rata to those participants who deviate from the estimates that they have provided at select times.

**Administrative Action** – Ensure all Spill Past Unloaded Units (SPUU) is allocated each hour (even when all participant requirements are met and estimates are accurate).

ii)    Spill past loaded units is allocated first to any balance in the project’s deferred spill accumulation account, with any remaining amount allocated to any Mid-C participant in the spilling project whose pondage in that project is overfull, with any remaining amount allocated to each Mid-C participant who has a share in the spilling project.

# 2)  During any hour that spill is occurring at the Priest Rapids Project for fish or any other non‑power purpose determined necessary or desirable by the District, the spill shall be allocated to reduce the inflow of Purchaser and other PRPO purchasers in proportion to their percentage shares of PRPO, including the District.