

INTERCONNECTION AND SERVICE AGREEMENT

D Foundry I LLC

This Agreement is made and entered into as of the ____ day of ____, 2019, by and between PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, a municipal corporation organized and existing under the laws of the State of Washington (“District”), and _____ (“Customer”). District and Customer may be referred to herein collectively as the “Parties” and individually as “Party.”

RECITALS

- A. Customer seeks Electric Service in two phases. Initially, Customer desires service at a capacity of 7,000 kilowatt (kW) at the Premises, as defined herein.
- B. Customer has applied to expand its capacity to 19,000 kW, which capacity is not currently available on the Electric System. A third party is expected to construct a substation (“Third-Party Substation”) at its own expense. After construction, the Electric System will be capable of providing up to 19,000 kW to the Premises through the new Third-Party Substation.

NOW, THEREFORE, for good and valuable consideration as set forth herein, it is hereby agreed between the Parties as follows:

- 1. **PURPOSE.** The purpose of this Agreement is to document rates, terms, and conditions applicable to provision of Electric Service to Customer at the Premises (“Service”) under the District’s Rate Schedule 4.
- 2. **CUSTOMER REPRESENTATIONS.** Customer hereby expressly represents to the District that Customer satisfies all of the criteria for receipt of Service from District pursuant to Schedule 4.
- 3. **TERM.** This Agreement is effective on the date that it is signed by both of the Parties and terminates at midnight on March 31, 2029 unless terminated earlier pursuant to its terms. In order to take Electric Service at the Premises after termination of this Agreement, Customer must request and obtain replacement Electric Service from the District, which service will be subject to the then-existing District Service Rules and rates as determined by the District in its sole discretion. The Parties may mutually agree to extend the term of this Agreement by up to five years, which Agreement must be in writing and signed by both Parties.
- 4. **DEFINITIONS.** For purposes of this Agreement, the terms set out below are defined as follows:
 - a. *Applicable Requirements* means any applicable law, regulation, tariff, rate schedule, standard, procedure or other obligation imposed on a Party by FERC, NERC, WECC, an RTO, an ISO, a Reliability Coordinator (as the term is defined

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by NERC or WECC), any Electric Reliability Organization or regional entity (as the latter two entities are described in the Energy Policy Act of 2005, 16 U.S.C. Section 824 or other applicable law, regulation or administrative rule) or any other entity (other than one of the Parties) having jurisdiction to regulate or control the operation of the District's Electric System or the Balancing Area in which that Electric System is located.

- b. *Billed Demand*. Until such time as Demand first exceeds 5,000 kW, Billed Demand will equal Demand. Starting in the first Billing Period in which Demand exceeds 5,000 kW, the Billed Demand will be the greatest of: (a) the Demand for the Billing Period; (b) 70% of the highest Demand during the preceding 11 Billing Periods; (c) 3.5 MW; or (d) only after such time as Demand first exceeds 10,000 kW, 50% of the Demand Limit existing at the time.
- c. *Billed Energy*. Subject to adjustment pursuant to the Load Imbalance Charge in Section 8.5.2, Billed Energy for a given Billing Period will equal total Energy for the period.
- d. *Billing Period* means the time period of Service covered in a bill prepared by the District. Such periods typically range between 26 and 34 days and may not coincide with calendar months.
- e. *Credit Rating* means, with respect to an entity on any date of determination: (a) the rating then assigned to such entity's (i) unsecured debt (such debt not supported by third-party credit enhancement) or (ii) if such rating in clause (i) is unavailable, its corporate credit rating, in each case as issued by Standard & Poor's, Moody's Investors Service, or Fitch, Inc. or other rating agency or agencies to which the Parties may agree in writing, or (b) other such rating to which the Parties may agree in writing.
- f. *Demand*. Subject to adjustment under Section 8.5.1, Demand means the maximum 15-minute average rate of delivery of electric Energy during a Billing Period, in kilowatt (kW) measurement, registered by the District's meter.
- g. *Demand Limit* means the highest instantaneous Demand at which Customer is authorized to take Service.
- h. *District Service Rules* means the District's Utility Service Regulations, Utility Service Policies, and, as applicable, District Standard 950.001 "Facility Connection Requirements" as amended or superseded from time to time.
- i. *Electric System* means the District's electrically connected properties and other assets used, operated, owned or controlled by the District, and used for, or pertaining to, the generation, transmission, transformation, distribution, or sale of electric power and energy, including all additions, extensions, expansion and improvements thereto.
- j. *Energy* means electric energy delivered to the Point of Delivery in kilowatt-hours (kWh) registered by the District's meter.

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- k. *Environmental Attributes* means the fuel, emissions, and all other environmental characteristics, credits, allowances, claims, reductions, offsets, and benefits associated with the generation of electricity from any resources used by the District to provide Service under this Agreement, except any energy or capacity provided as Service under this Agreement. Environmental Attributes, also known as non-power attributes, include but are not limited to: (1) facility's fuel type, geographic location, vintage; (2) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to absorb infra-red radiation in the atmosphere and contribute to the actual or potential altering of the Earth's climate by trapping heat in the atmosphere. The owner of the Environmental Attributes shall without limitation retain all reporting rights and use of these avoided emissions and/or renewable resources in any present or future federal or state compliance or voluntary program(s).
- l. *LC Issuer* means (a) an entity organized under the laws of the United States of America or any state thereof having capital and surplus of at least one billion dollars (\$1,000,000,000) and having a Credit Rating from any two of the following three rating agencies of at least (i) "A+" by Standard and Poors Ratings Group, a division of McGraw-Hill, Inc., (ii) "A1" by Moody's Investors Services, Inc., and (iii) "A+" by Fitch Ratings, or (b) any other entity to which the Parties agree otherwise in writing. The District may reject an LC Issuer that conforms to the requirements if in the District's sole discretion acceptance of additional credit from the applicable LC Issuer would be an unacceptable credit risk due to other commitments it has accepted from such LC Issuer.
- m. *Letter of Credit* means an irrevocable, non-transferable, standby letter of credit issued by an LC Issuer in a form consistent with the Parties' agreements and otherwise reasonably acceptable to the District, including, without limitation, terms giving the District the right to draw on the letter of credit in accordance with this Agreement.
- n. *Line Extension Policy* means the District's Electric Line Extension Policy as amended from time to time. The Line Extension Policy is included in the District Service Rules.
- o. *Point of Delivery* means the point of attachment of the District's electric conductor to the Customer's conductor without regard to location of the District's metering equipment. The Point of Delivery is set forth in Exhibit A.
- p. *Power Factor* is the ratio of real power flowing to the load, to the apparent power supplied to the circuit. The formula for determining Power Factor is in Section 8.5.1.

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- q. *Premises* shall mean the physical property where Customer takes Service from the District pursuant to this Agreement. The Premises is set forth in Exhibit A.
- r. *Prudent Utility Practice* applies to the District and means any of the practices, methods and acts engaged in, or approved, by a significant portion of the electric utility industry in the Western Interconnection for operating Electric Systems during the relevant time period of any of the practices, methods and acts, which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made could have been expected to accomplish the desired result at a reasonable cost consistent with Applicable Requirements, Reliability Criteria, regulatory authority, the requirements of the Western Interconnection, longevity, reliability and safety. Prudent Practice is not intended to be the optimum practice, method or act, but rather a spectrum of commonly used practices, methods and acts.
- s. *Reliability Criteria* means the pre-established criteria, promulgated by FERC, NERC, WECC, and any Electric Reliability Organization or regional entity or comparable body that are to be followed in order to maintain the desired performance of the interconnected Electric System of the District under both contingency and steady state conditions. Reliability Criteria as defined also includes the requirements applicable to critical infrastructure and critical cyber infrastructure protection and any other requirements imposed upon the District regarding the operation of its Electric System by any regulatory authority.
- t. *Schedule 3* means District Electric Rate Schedule 3 “Primary Power Service”, as may be amended, superseded or replaced from time to time.
- u. *Schedule 35* means District Electric Rate Schedule 35 “High Density Load”, as may be amended, superseded or replaced from time to time.
- v. *Schedule 4* means District Electric Rate Schedule 4 “Large Loads”, as may be amended, superseded or replaced from time to time.
- w. *Service* is defined in Section 1.
- x. *Uncontrollable Circumstances* means the occurrence of one or more of the following causes beyond the reasonable control of Customer and over which, despite the exercise of due diligence, Customer is unable to prevent or overcome:
 - i. Earthquake, storm, lightning, fire, explosion, or act of God; or
 - ii. war (regardless of whether declared), act of public enemy, act of civil or military authority, civil disturbance, riot, sabotage or terrorism; or
 - iii. catastrophic or major equipment failure at the Premises due to causes beyond Customer's control and not due to the negligence or lack of diligence by Customer or its employees; or

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Uncontrollable Circumstance shall not include changes in law, taxes, costs, regulatory requirements or market conditions, including, but not limited to, changes that affect the cost, transportation or availability or quality of raw materials or supplies, economic hardship, strikes, lockouts and other labor difficulties, economic factors, including prices of Customer's products, labor, regulatory compliance, or any other event or circumstance not expressly listed above.

- y. *Utility Service Regulations* means the District's Utility Service Regulations as amended, superseded or replaced from time to time.

Unless expressly defined by this Agreement, all terms in this Agreement with initial capitalization have the definitions given by the District Service Rules.

5. INTERCONNECTION AND OPERATION

- 5.1 Premises Preparation, Installation, Permitting, Alteration, Maintenance and Ownership. Customer shall, at Customer's sole expense, be solely responsible for preparing, altering and maintaining the Premises in order to continue to receive Service from the District subject to this Agreement and the District Service Rules, as determined by the District in its sole discretion, including, without limitation, securing all permits, licenses or approvals necessary to take delivery of Service at the Premises. Each Party shall own, and retain operational control of all equipment on its side of the Point of Delivery.
- 5.2 Operation. Each Party shall be solely responsible for the operation and maintenance of their respective facilities in accordance with all Applicable Requirements imposed by or under Prudent Utility Practices, applicable governmental laws and regulations, and the District Service Rules. Customer shall at its sole cost continuously maintain all its facilities, equipment and operations in conformance with this Agreement.
- 5.3 Expansion of the Electric System. Any expansion of the District's Electric System required to provide Service, or required by any alteration of Services contemplated by this Agreement, and the costs thereof, are subject to the terms and conditions of the District Service Rules including the Line Extension Policy.
- 5.4 Metered Services. Customer shall pay for, and District shall design, furnish, install, own, inspect, test, maintain, replace, and upgrade all metering equipment required for provision and metering of Service as determined by the District. The District may, in its sole discretion, periodically replace metering equipment at any time during the term of this Agreement with equipment of different cost and capability, such as with an instantaneous, SCADA-enabled meter. The Premises must be separately metered, separate and apart from any other premises, to the reasonable satisfaction of the District Service Rules as directed by the District. In the event that new facilities, altered facilities, including new service drops or

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meters are necessary, the same shall be installed at Customer's sole expense consistent with District Service Rules as directed by the District.

During such times, if any, in which the installed meter does not measure Service instantaneously, all provisions of the Agreement referring to instantaneous measurements will be considered as referring to the shortest measurement increment (e.g., 15 minutes) at which the currently installed meter is configured to read.

- 5.5 Power Factor. Customer shall maintain a Power Factor in accordance with Section 8.5.1.
- 5.6 Interruption of Service/No liability by the District. The District may interrupt Service under Section 19 of the Utility Service Regulations.
- 5.7 Voltage Standards and Fluctuation, Harmonics. Pursuant to Section 33 of the Utility Service Regulations, the District is not responsible for any damages to equipment from voltage fluctuations. Customer must maintain and operate its electrical facilities in compliance with industry standard IEEE 519, "Recommended Practice and Requirements for Harmonic Control in Electric Power Systems" as may be amended and updated. Customer must design, construct, operate, maintain and use its systems and facilities to reduce, to levels acceptable to the District, the harmonic currents and voltages that pass into the District's Electric System or systems, equipment and facilities. Customer must accomplish harmonic reductions with equipment specifically designed and permanently operated and maintained as an integral part of Customer's electrical facilities.
- 5.8 Electrical Drawings and Specifications; Power Quality Plan. Customer has provided a description of Customer's electrical facilities and the Premises, including a power quality plan and electrical drawings at both the initial Demand Limit and expanded 19,000 kW Demand Limit, labeling the Point of Delivery, metering location, protection system details and settings, any power quality mitigations, transfer and tie switches, and other key components as well as a description of the electrical characteristics of Customer's significant load equipment and facility operational characteristics, which is attached hereto as Exhibit A, Customer Electrical Facilities. Customer represents and warrants that it will take Service in a manner consistent with the electrical and operational characteristics described in Exhibit A. The District will not be responsible for maintenance, operations or repairs of customer-owned equipment.
- 5.9 Operational Switching. Customer is solely responsible for operation of facilities on the customer side of the Point of Delivery and shall not rely on District equipment or District personnel for such work. To support maintenance and operations on District-owned equipment, the District may transfer Service to adjacent circuits or serving stations. Customer will prevent electrical loops from occurring by installing interlocks or eliminating tie switch capabilities.

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5.10 Load Shedding. In order to comply with Applicable Requirements, the District may use automatic load shedding schemes or manual load shedding to protect the Electric System or equipment from damage. The District may enforce load shedding on the Service with or without notice. Any interruption of Service under this section is a permissible interruption under Sections 5.6 and 18.1 of this Agreement.

6 SALE OF POWER AND AMOUNT SOLD

6.1 Commencement of Service. Customer intends to take Service substantially in accordance with the Customer Startup Plan attached hereto as Exhibit B.

6.2 Sale of Power and Amount Sold. Subject to and under the terms and conditions of this Agreement, commencing on _____ the District shall provide Service to Customer up to the Demand Limit at a voltage of 12.47 kilovolts at the Point of Delivery for use at the Premises. Customer shall take all Service, up to the maximum herein specified.

Customer expressly acknowledges and agrees that Customer shall not cause Service to exceed the Demand Limit. Customer acknowledges that any Electric Service subsequent to or in addition to Service under this Agreement will be subject to rates, fees, studies, agreements, District Service Rules, Applicable Requirements, and such other rules, policies, and requirements as may apply in the District's determination. Customer further expressly acknowledges and agrees that prior to the provision of altered or additional Service to the Premises the District may require additional security, in the form of credit assurance or deposits, and other contractual terms and conditions whether by amendment or additional agreements.

6.3 Demand Limit; Adjustments. The Demand Limit is an instantaneous rate of 7,000 kW. Customer will incur additional charges under Section 8.5.2 for usage in excess of the Demand Limit. Exceedances will also subject Customer to the District's rights to require additional protective measures, recover for damages sustained to the Electric System, disconnect Service, terminate this Agreement, or take any other remedial action available to recover losses and prevent future exceedances.

6.3.1 Application to Increase Demand Limit. Except as provided in Section 6.4, in order to increase the Demand Limit, Customer must obtain the District's prior written approval, which approval is at the District's sole discretion and may be subject to a new service application, different rates, additional fees and charges, studies, the Line Extension Policy, and other requirements.

6.3.2 Reduction to Demand Limit. Starting three years after the effective date of this Agreement, the District may, in its sole discretion and after discussion

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with Customer, reduce the Demand Limit to reflect historic and reasonably forecasted Demand by providing written notice of such reduction to Customer. Notice of the new Demand Limit will identify a date in the future in which the new Demand Limit begins to apply. A new Demand Limit reduced under this section must be no lower than that highest Demand in the preceding 24 Billing Periods.

- 6.4 Third-Party Substation Completion. The Demand Limit will increase to 19,000 kW upon the Parties mutually agreeing in writing that all of the following conditions, some of which may be the responsibility of a third-party, have been satisfied: (1) successful completion of the District's interconnection study process including payment of all study costs and all upgrades identified by the studies needed to safely and reliably provide 19,000 kW of Service (2) completion of construction, testing, and energization of the Third-Party Substation; (3) transfer of title of the Third-Party Substation to the District; (4) payment to the District of any additional line extension or upgrade costs identified by the District; (5) the District's completion of all necessary work and payment to the District for all costs of such work; (6) Customer's updating of facility information in Exhibit A, Exhibit B, and Section 5.8 to the District's reasonable satisfaction; (7) execution of any supplemental agreements between Customer and the District, such as an interconnection and operating agreement; and (8) Customer's satisfaction of all other applicable conditions in this Agreement, including any increase in the required Security Deposit per Section 9.1, and other reasonable conditions deemed necessary by the District. Customer is not obligated to satisfy the forgoing conditions, in which case the increase to the Demand Limit would not occur. Conditions (1) through (6) may be satisfied by a third party in place of Customer.
- 6.5 Third-Party Substation Limitations. The District is in no way responsible for the cost, construction, or completion of the Third-Party Substation. This Agreement in no way obligates the District to incur any cost to improve or expand its Electric System in order to accommodate Demand greater than 7,000 kW. This Agreement does not reserve or guarantee availability of any capacity for Customer in the Third-Party Substation. This Agreement does not obligate the District to take title to the Third-Party Substation. Except for Service up to the initial 7,000 kW Demand Limit under the terms and conditions of this Agreement, this Agreement does not reserve or guarantee availability of any capacity for Customer in any part of the Electric System.
- 6.6 Minimum Usage. Customer must use at least 5,000 average kW of Service in each Billing Period starting in or after the first month in which the Customer Startup Plan, Exhibit B, exceeds 6,000 kW. Usage below this threshold is subject to low usage rates under Section 8.2.

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7 HOURLY LOAD SCHEDULE

- 7.1 Five-Year Load Forecast. Not later than 30 days prior to taking Service, Customer must deliver to the District via email in spreadsheet format a load forecast, with monthly minimum, average, and maximum loads, for a period of five years starting on the initial service date.
- 7.2 One-Year Load Forecast. Not later than 30 days prior to the beginning of the first full calendar year and each subsequent full or partial calendar year during this contract, Customer must deliver to the District via email in a spreadsheet format a load forecast with monthly minimum, average, and maximum loads, for the following calendar year. In the event that Customer becomes aware of any material changes to the load forecast, Customer must promptly update the load forecast as reasonably necessary to reflect such changes.
- 7.3 Monthly Load Forecast. Beginning in the first month in which Demand first exceeds 3,000 kW, not later than 10 days prior to the beginning of each month, Customer must deliver to the District via email in spreadsheet format a load forecast for the load for each hour of such month. In the event that during any month Customer becomes aware of any material changes to the hourly load during such month, Customer must promptly update the monthly load forecast for such month as reasonably necessary to reflect such changes.
- 7.4 Outage Notice. Except for outages due to Uncontrollable Circumstances, Customer must provide at least 5 days advance notice to the District of planned changes to electrical load, both outages and other material changes in load. Customer must notify the District of load outages due to Uncontrollable Circumstances as soon as practicable by phone followed by email. Notices of outages must include the start time, end time, expected magnitude, and hourly plan to bring facility back on-line. Notice requirements in the section apply to changes that result in an increase or decrease in Demand of 3 MW or more within a period of 60 minutes or less. Failure to provide notice as required under this section may result in the application of the Load Imbalance Charge pursuant to Section 8.5.2 including a daily forecasting requirement.
- 7.5 Forecast & Outage Notice Delivery. Customer forecasts and outage notices under this Section 7 and, if applicable, under the Load Imbalance Charge in Section 8.5.2 will be deemed delivered upon receipt by the District at the email address below.

Email forecasted outage notice to: chelanpreschedule@chelanpud.org

Email unplanned outage notice to: chelanpreschedule@chelanpud.org and sysoper@chelanpud.org

Email notice of subsequent restart after unplanned outage if load increase is greater than 5,000kW: sysoper@chelanpud.org

Phone (unplanned outage notices and subsequent restart notice): (509)
661-4000

This District may update the above email address by providing notice to Customer pursuant to Section 20.1. Any forecast in excess of the Demand Limit will be deemed to be forecasted at the Demand Limit.

8 RATE; PAYMENT

8.1 Rate. During the term of this Agreement, Customer shall pay for Service at the following rates and charges. Rates specified in a Rate Schedule as monthly are deemed to apply per Billing Period.

8.1.1 Demand Charge. Subject to the low energy usage rate in Section 8.2, the following rates apply:

Billed Demand	Charge
0 - 1,675 kW	Schedule 3 Demand Charge
Above 1,675 kW	Schedule 35 Monthly Demand Charge

8.1.2 Energy Charge. Subject to the low energy usage rate in Section 8.2, the following rates apply:

Billed Energy	Charge
0 - 1,145,833 kWh	Schedule 3 Energy Charge
Above 1,145,833 kWh	Schedule 35 Energy Charge

8.1.3 Basic Charge. The basic charge, per Billing Period per meter, equals the greatest basic charge in Schedule 35.

8.2 Low Energy Usage Rate. In any Billing Period in which the minimum usage requirement in Section 6.6 applies and is not met, the demand charge in Schedule 35 will apply to the entire Billed Demand and the energy charge in Schedule 35 will apply to all Billed Energy.

8.3 Environmental Attributes. The District retains for its own use and benefit any and all Environmental Attributes associated with or related to the Energy and Service under this Agreement and retains, without limitation, all reporting rights and use of any avoided emissions and/or Environmental Attributes in any present or future federal or state compliance or voluntary program.

8.4 Not for Resale. Customer may not resell Energy.

8.5 Additional Charges & Adjustments.

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8.5.1 Power Factor. If the lowest Power Factor at which power is delivered to the Customer during the Billing Period is 0.95 or more, no adjustment will be made in the registered kilowatt Demand. If such Power Factor is less than 0.95, then the registered kilowatt Demand shall be adjusted by multiplying by 0.95 and dividing the result by such Power Factor. This adjustment may be waived in whole or in part to the extent that the District determines that a Power Factor of less than 0.95 would in any particular case be advantageous to the District. Customer must maintain a power of at least 0.90 at all times after Demand first exceeds 3000 kW. The District is not obligated to deliver power to the Customer at any time at a Power Factor below 0.90, and any such condition is cause for the District to disconnect service. The formula for determining Power Factor is as follows:

$$\text{Power Factor} = \frac{\text{kilowatt-hours}}{\sqrt{(\text{kilowatt-hours})^2 + (\text{kilovolt-ampere-reactive-hours})^2}}$$

In applying the above formula, the meter for measurement of kilovolt-ampere-reactive-hours will be ratcheted to prevent reverse registration. This section applies in place of the District Electric Rate Schedule 24, “Power Factor Provisions for Power Loads.”

8.5.2 Schedule 4 Charges. In addition to all other applicable rates and charges, the following rates and charges from Schedule 4, including terms and conditions, apply to Service:

- Schedule 4.a Energy Capacity Charge
- Schedule 4.c Load Following Charge
- Schedule 4.d Demand Exceedance Charge
- Schedule 4.e Excess Energy Surcharge

If Customer fails to provide notice of an outage as required in Section 7.4, the District may, in its sole discretion, apply the following charge from Schedule 4, including a daily forecast requirement and other terms and conditions, to Service for the remainder of the term of the Agreement:

- Schedule 4.b Load Imbalance Charge

8.6 Tax Adjustment. The amount of any tax levied on the Service by any state, city or town in accordance with R.C.W. 54.28.070 or other applicable law of the State of Washington, will be added to the above charges for electricity sold within the limits of any such city or town.

8.7 Payment.

8.7.1 Billing and Payment. Meter reading and billing will be in accordance with Section 9 of the District’s Utility Service Regulations. The District may bill Customer electronically. Customer must pay amounts billed under this Agreement in full by 10 days after the issue date shown on the billing statement. Amounts not

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paid by such date are past due and will be assessed interest. Interest is calculated daily, at a rate equal to 200 basis points above the per annum Prime Rate reported daily in the Wall Street Journal for the period beginning on the day after the due date and ending on the day of payment, provided that such interest shall not exceed the amount permitted by law. If the due date is not a business day, the payment will be due on the next following business day. Customer must make payments by wire transfer or Automated Clearing House (ACH).

8.7.2 Disconnection for Non-Payment. If Customer's bill is not paid by 13 days after the issue date shown on the billing statement, the District will send a disconnect notice to Customer. Unless Customer pays the full amount due by 7 days after the disconnect notice date, the District may, in its sole discretion, disconnect Service. Notwithstanding Section 10.F.5 of the District's Utility Service Regulations, the District has the right to disconnect Service under this section even if Customer disputes a bill through an informal conference or appeal therefrom or otherwise.

8.8 Upfront Capital Charge Deferral. The Parties agree that, but for the construction of the Third-Party Substation and the expectation that Customer will take Service through the Third-Party Substation, Customer would owe an upfront capital charge of \$2,275,000 (7,000 kW * \$325/kW) prior to taking Service. The District agrees to defer the upfront capital charge until three years after the effective date of this Agreement at which time the full upfront capital charge of \$2,275,000 will be due unless, prior to such due date, the District holds title to the Third-Party Substation and all Service is being provided through the Third-Party Substation, in which case the District will waive the upfront capital charge for purposes of this Agreement.

8.9 Rate Schedule References. From time to time, the District may amend, revise, update, renumber, retitle, rescind, add, or otherwise modify rate schedules. In consideration of such modifications, if any, the District, by providing written notice to Customer, may unilaterally amend this Agreement to change prospectively the references to Schedule 3, Schedule 35, Schedule 4, or subsequently referenced rate schedules as the District in, its sole discretion, deems appropriate. Customer acknowledges that the District anticipates increasing rates applicable to this Agreement to reflect streamflow and operational risks as determined by the District.

9 CREDIT

9.1 Amount of Letter of Credit. Prior to commencing Service, Customer must provide a Letter of Credit from an LC Issuer in a form acceptable to the District in an amount equal to 2 times the bill amount for a 30-day Billing Period in which load is constantly 7000 kW. The Letter of Credit must be renewed or replaced at least 90 days before any future expiry date on the Letter of Credit. The District may, in its sole discretion, increase or decrease the required amount of the Letter

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of Credit due to Customer's payment history or anticipated changes in Demand Limit, usage or rates, provided that the new required Letter of Credit amount is between 50% and 150% of 2 times the projected billed amount, as determined by the District in its sole discretion. After the earlier of 36 consecutive Billing Periods of on-time payments or 12 consecutive Billing Periods of on-time payments at the Demand Limit, Customer may request that the Letter of Credit requirement be reduced to as low as 50% of 2 times the projected bill amount, which reduction the District may grant or deny in its sole discretion. The District will notify Customer of changes in the required amount of Letter of Credit by email to [insert email address]. Customer must provide any requested increase to the Letter of Credit by the close of business two days after the day of the request.

9.2 Use of Letter of Credit. The District may draw on the Letter of Credit upon the occurrence of any one of the following:

- A breach or violation of any Customer obligation in Section 8.7, 8.8, 9, or 18 that is not cured as provided in Section 19.1.
- The institution with respect to the Customer, by the Customer or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation, receivership or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights.
- The failure of the Customer to maintain the required Letter of Credit with an expiration date that is no fewer than 90 days in the future.

The District may apply the proceeds of the Letter of Credit to the Customer's obligations to the District or hold the proceeds against future obligations. The District will release any remaining amount of funds drawn under the Letter of Credit (less any payments to the District for amounts due and owing) by the date that is the later of 90 days after the termination of this Agreement and the resolution of all claims against Customer.

10 **ACCESS.** Customer grants the District access to the Premises to provide Service pursuant to Section 18 of the Utility Service Regulations.

11 **INSPECTION OF PREMISES.** The District has the right, but not the obligation, to inspect Customer's Service equipment pursuant to Section 39 of the Utility Service Regulations.

12 **CHANGE OF PREMISES.** The terms of this Agreement shall apply to the Premises only and shall not be transferrable to any new or alternate location. Any new application for Services by Customer shall be subject to the applicable District Service Rules and rates at that time.

13 **SURVIVAL.** Termination of this Agreement does not release Customer from its then outstanding obligations, including, but not limited to those in Sections 5, 14, 15, 16, and 18.

14 **APPLICABILITY OF DISTRICT SERVICE RULES.** Customer warrants and represents that Customer is, and will remain, familiar with the District Service Rules, which are incorporated herein as amended from time to time. All terms of the Service not otherwise

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specifically addressed under this Agreement are subject to the District Service Rules. In the event of conflict between the terms of this Agreement and the District Service Rules, the terms of this Agreement shall govern.

- 15 **WAIVERS.** Except as may otherwise be expressly provided herein or as agreed by the Parties in writing, no provision of this Agreement may be waived except as documented or confirmed in writing by the Party waiving the provision at issue. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Agreement.
- 16 **GOVERNING LAW, VENUE, ATTORNEY FEES.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The sole venue of any legal action shall be in the Superior Court of the State of Washington in and for the County of Chelan. The substantially prevailing Party in any legal action to enforce the terms of this Agreement shall be entitled to all reasonable costs of the action, including, but not limited to, reasonable attorney fees, expert witness fees, court reporting fees, copy expenses and all reasonable travel, meals and lodging expenses.
- 17 **ASSIGNMENT.** Customer may assign this Agreement only to a successor customer at the same Premises with substantially the same load characteristics, as determined by the District, and with the express written consent of the District, which consent may be withheld by the District in the District’s sole discretion. Any such successor customer may be required to provide a larger deposit prior to taking Service or make improvements to the Premises or pay for improvements to the District’s assets necessary to the provision of the Service as determined by the District applying the District Service Rules.

18 INDEMNIFICATION; LIMITATIONS ON LIABILITY

18.1. Interruption. The District shall have the right, at any time during the term of this Agreement, without any liability whatsoever to Customer or any other person, to interrupt, suspend or curtail service to Customer in the event that the District determines that a failure to do so may endanger any person or property, or is otherwise contrary to Prudent Utility Practice or mandatory Reliability Criteria. This section is in addition to, and not in place of, Section 19 of the Utility Service Regulations “Interruption of Service/No Liability by the District.”

18.2 Customer Liability.

18.2.1 Indemnification. Customer agrees to indemnify the District, its officers, employees and agents from loss or damage for bodily injury or property damage, to the extent caused by the sole negligence of Customer in its performance under this Agreement.

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18.2.3 Operational Failures. Subject to the provisions of Section 18.3, “Concurrent Negligence,” Customer shall reimburse the District for any and all losses, claims, damages, costs, demands, fines, judgments, penalties, obligations, payments and liabilities, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees and out-of-pocket expenses and reasonable costs and expenses of investigation) incurred by the District as a result of or in connection with any failure by Customer to comply with Customer’s obligations under this Agreement.

18.3 Concurrent Negligence. In the event of any concurrent negligence on the part of the District and Customer, the indemnification obligations of the indemnitor under this Agreement shall be valid and enforceable only to the extent of the negligence of the indemnitor, as a percentage of the total negligence of the indemnitor and indemnitees.

18.4 Stipulation. The Parties stipulate that the indemnification provisions in this Agreement were mutually negotiated.

18.5 Consequential Damages. Except to the extent such damages are included in the liquidated damages or other specified measure expressly provided for in this Agreement, in no event shall either Party to this Agreement be liable for any indirect, incidental, special or consequential damages whatsoever (including, but not limited to, loss of profits or interruption of business) arising out of or related to the services provided under this Agreement.

19 TERMINATION

19.1 Breach; Cure. In addition to its other rights of termination, the District may terminate this Agreement for a breach or violation of any Customer obligation set out in this Agreement, including without limitation Sections 5, 6.2, 8.7, 8.8, 9.1, and 17, by providing written notice to Customer. Prior to terminating under this section, the District must provide written notice of the breach or violation and allow Customer 30 days to cure, except that 10 days will be allowed to cure non-payment by the time required in Section 8.7.1.

20 NOTICES

20.1 Except for forecasts and outage notices delivered under Section 7.5, any notices are deemed effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

Chelan County PUD

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Attn: _____
PO Box 1231

Attn: _____

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327 N Wenatchee Avenue
Wenatchee, WA 98807
Phone: (509) 663-8121
Fax: (509) xxx-xxxx

21 THIRD-PARTY BENEFICIARIES

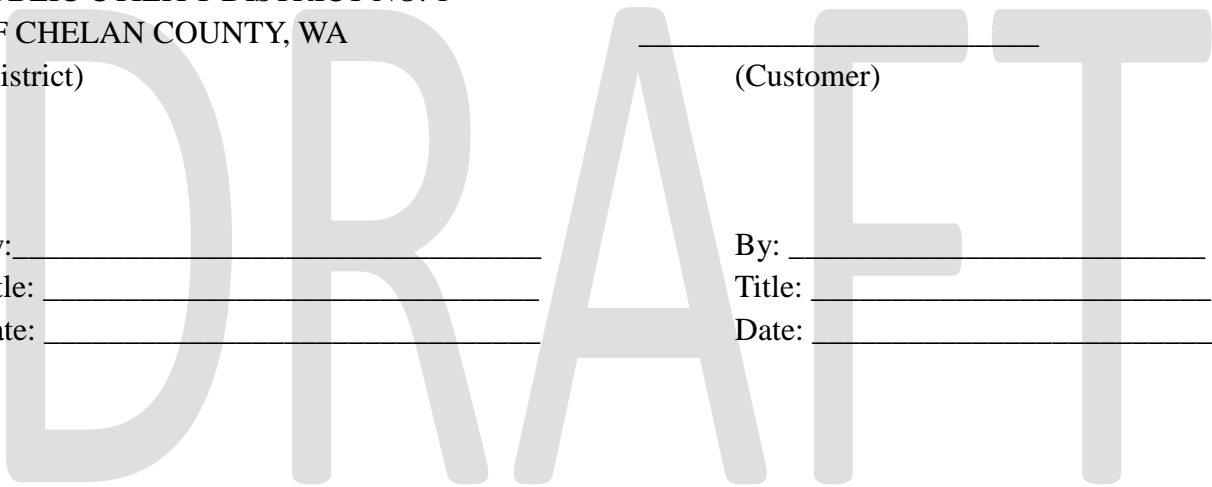
21.1 Nothing in this Agreement creates any third-party beneficiaries. For removal of all doubt, nothing in this Agreement makes Customer or third parties involved in construction of the Third-Party Substation a third-party beneficiary with respect to the construction or operation of the Third-Party Substation or the provision of any Service through this Agreement.

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WA
(District)

(Customer)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



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Exhibit A - CONFIDENTIAL INFORMATION
Customer Electrical Facilities

DRAFT

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Exhibit B - CONFIDENTIAL INFORMATION
Customer Startup Plan

DRAFT