

**OFF-LICENSE SETTLEMENT AGREEMENT BETWEEN PUBLIC UTILITY
DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON,
AND THE KALISPEL TRIBE OF INDIANS**

This Off-License Settlement Agreement (“OLSA”) is entered into between the Public Utility District No. 1 of Pend Oreille County, Washington (“PUD”) and the Kalispel Tribe of Indians (“Tribe”) in connection with some of the PUD’s environmental obligations related to the operation of the Box Canyon Hydroelectric Project.

SECTION 1: RECITALS

- 1.1.** In 1952, the Federal Energy Regulatory Commission (“FERC”) licensed the PUD to construct and operate the Box Canyon Hydroelectric Project (“Project”), FERC No. 2042. The Project is located on the Pend Oreille River in northeastern Washington and northwestern Idaho.
- 1.2.** The Project occupies approximately 717 acres of federal lands. Specifically, the Project: (1) inundates 493 acres of land within the Kalispel Indian Reservation along the Pend Oreille River (in the upper half of the 55-mile reservoir) that the United States holds in trust for the Tribe; and (2) occupies 190.25 acres within the Colville National Forest.
- 1.3.** The PUD applied to FERC for a new license in January 2000. The Tribe, U.S. Department of Interior (“Interior”), U.S. Forest Service (“Forest Service”), Washington State Department of Fish and Wildlife, Washington State Department of Ecology (“Ecology”), the State of Idaho, and other entities intervened. The PUD operated the Project pursuant to annual licenses from the time the 1952 license expired in January 2002 until July 11, 2005.
- 1.4.** Pursuant to section 4(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 797(e), Interior and the Forest Service submitted conditions to FERC to be included in the new license. Pursuant to FPA section 18, 16 U.S.C. § 811, Interior also submitted fishway prescriptions to FERC to be included in the new license. Relevant to this OLSA, the conditions included the precursor to the Trout Habitat Restoration Program (“THRP”) and the fishway conditions and prescriptions for downstream fish passage at Box Canyon Dam and both upstream and downstream fish passage at the Calispell Creek Pumping Plant (“CCPP”), adjacent to the Box Canyon reservoir.
- 1.5.** On July 11, 2005, FERC issued the PUD a new 50-year license (the “License”) to operate the Project. In addition to Interior’s section 18 fishway prescriptions, FERC included in the License the section 4(e) conditions of Interior and the Forest Service in their entirety. However, FERC modified Interior’s and the Forest Service’s section 4(e) conditions to limit their applicability to either Reservation lands or National Forest System lands located “within the Project boundary.”

- 1.6.** In August 2005, the PUD, Ponderay Newsprint Company (“PNC”), Interior, the Forest Service, and others sought rehearing of the License order before FERC. On November 17, 2006, FERC issued an order revising the License. 117 FERC ¶ 61,205. Among other things, FERC included Interior’s and the Forest Service’s section 4(e) conditions and Interior’s section 18 fishway prescriptions without limitation or modification.
- 1.7.** After FERC issued its November 17, 2006 order revising the License, the PUD and PNC petitioned for review of the License in the U.S. Court of Appeals for the District of Columbia Circuit (Nos. 06-1387 and 06-1389). Interior, the Forest Service, and the Tribe intervened in the petition proceedings.
- 1.8.** The PUD and PNC also filed complaints in the U.S. District Court for the District of Columbia (Nos. 06-365, 06-768). In their complaints, the PUD and PNC asked the District Court to set aside a regulation promulgated by Interior that established that the trial-type hearings set forth in section 241 of the Energy Policy Act of 2005, 16 U.S.C. § 811, did not apply to any hydropower proceedings for which a license had been issued as of November 7, 2005, which includes the Box Canyon proceeding at issue. The District Court stayed proceedings pending resolution of the PUD’s and PNC’s petitions for review in the Court of Appeals.
- 1.9.** The PUD, PNC, Interior, Forest Service, and Tribe (collectively, “the Parties”) entered into mediation as directed by the Court of Appeals. After the Parties made significant progress towards a settlement, the Court of Appeals stayed proceedings on the PUD’s and PNC’s petitions to allow the Parties to pursue a final settlement agreement.
- 1.10.** The Parties entered into a Settlement Agreement on January 28, 2009 (“2009 Settlement Agreement”), which was incorporated into the License by FERC order on February 19, 2010. 130 FERC ¶ 62,148. Relevant to this OLSA, the 2009 Settlement Agreement replaced some of Interior’s earlier license conditions under FPA section 4(e) and all of the fishway prescriptions under FPA section 18 with the current conditions, which generally include upstream and downstream fish passage at Box Canyon Dam and the Calispell Creek Pumping Plant (in Appendix C), as well as a program of off-site mitigation (the THRP) to improve habitat for Target Fish Species in the Project vicinity (in Appendix A). In addition, under the 2009 Settlement Agreement, the PUD dismissed its pending appeals in the D.C. Circuit Court referenced in subsection 1.7 and in the D.C. District Court referenced in subsection 1.8.
- 1.11.** Pursuant to section 401 of the Clean Water Act (CWA), 33 U.S.C. § 1341, Ecology issued a certification for the Project on December 30, 2002, and amended it on February 21, 2003, Ecology Order No. 02WQER-5121A-01. The section 401 certification imposed various water quality-related conditions on the Project, subject to modification through Ecology’s later completion of applicable total maximum daily load (TMDL) studies for temperature and total dissolved gas in the Pend Oreille River. The temperature TMDL is currently awaiting approval by EPA, and is subject

to an appeal by the PUD before the Superior Court of Thurston County, Washington, Cause No. 11-2-01027-6.

- 1.12.** As part of the Project works, the PUD operates the CCPP, which discharges water from Calispell Creek on the upstream side of a railway embankment back into the creek on the downstream side of the embankment, near the confluence with the Pend Oreille River. On January 2, 2003, the EPA issued a CWA section 401 certification purporting to impose water quality-related conditions on the License due to discharges from the CCPP. The PUD filed suit in the U.S. District Court for the District of Columbia (No. 1:04cv2224) claiming that the EPA lacked jurisdiction over the CCPP and that the conditions of the certification violated EPA's own regulations. The Tribe intervened. The case has been stayed since 2007 pending potential settlement by those parties.
- 1.13.** The PUD and Tribe began meeting in early 2014 and successively thereafter to consider options for a path forward that provides a better focus on conservation outcomes, leading to the Amended Settlement Agreement and this OLSA.
- 1.14.** The Parties have now negotiated the Amended Settlement Agreement in the shared belief that certain costs, obligations, and efforts required under the 2009 Settlement Agreement can be reallocated to yield better outcomes for the Tribe and for fish populations in the Lower Pend Oreille Basin. The Parties anticipate that the Amended Settlement Agreement will be executed contemporaneously with this OLSA.
- 1.15.** The PUD and Tribe have entered into this OLSA as a component of the negotiation that led to the Amended Settlement Agreement. This OLSA places certain financial obligations (summarized in Attachment A) on the PUD in exchange for the Tribe's endorsement of the Amended Settlement Agreement, forbearance of actions to enforce or expand the PUD's environmental obligations under the License, and commitment to help the PUD meet those environmental obligations if certain conditions are met.

SECTION 2: PURPOSES OF THIS AGREEMENT

- 2.1.** The main purposes of this OLSA are to resolve disputes between the PUD and Tribe regarding the environmental impacts of the Project on the Tribe and its fisheries, and to use PUD funds to achieve greater benefits for the Tribe and better outcomes for fish than if those funds were expended toward satisfying existing obligations under the License and the 2009 Settlement Agreement.
- 2.2.** The PUD and Tribe intend that, in exchange for specified funding and commitments to the Tribe:

 - (a) the PUD shall be relieved of its obligation during the License term to implement downstream fish passage at Box Canyon Dam (pursuant to Section 5 of this OLSA);

- (b) the PUD shall be relieved of its obligations during the License term to implement upstream and/or downstream fish passage at the CCPP (pursuant to Section 6 of this OLSA); and
- (c) the PUD's current water quality obligations shall be satisfied and all related disputes resolved (pursuant to Section 7 of this OLSA).

2.3. The PUD and Tribe intend that such funding is provided by the PUD in settlement of such existing obligations, and that accepting such funds does not make the Tribe a contractor of the PUD. The PUD and the Tribe also recognize that significant non-monetary benefits will accrue to each other through this OLSA. They intend to take advantage of the collaborative opportunities this OLSA offers, and hope to continue strengthening their relationship for their long-term mutual benefit beyond the scope of this OLSA.

SECTION 3: DEFINITIONS

- (1) "2009 Settlement Agreement" means the settlement agreement entered into by the PUD, the Tribe, PNC, Interior, and the Forest Service on January 28, 2009, adopting revised fishway prescriptions and section 4(e) conditions, which were subsequently incorporated into the License by FERC *Order on Settlement Agreement and Amending License*, on February 19, 2010 (130 FERC ¶ 62,148), and subject to several subsequent schedule amendments to further negotiation of the OLSA, most recently *Order Amending Article 401(E) and Granting Extension of Time*, 154 FERC ¶ 62,190 (Mar. 24, 2016).
- (2) "Amended Conditions and Prescriptions" means the amended FPA section 4(e) conditions and section 18 prescriptions that are attached to the Amended Settlement Agreement as Appendices A and C.
- (3) "Amended Settlement Agreement" means the agreement among the PUD, the Tribe, PNC, Interior, and the Forest Service entered into contemporaneously with this OLSA to amend the terms of the 2009 Settlement Agreement.
- (4) "Box Canyon Dam" means the concrete dam and integral spillway structure located at river mile 34.4 on the Pend Oreille River, Pend Oreille County, Washington, as described in License paragraph 11.
- (5) "CCPP" means the Calispell Creek Pumping Plant.
- (6) "CCPP Section 401 Certification" means the EPA's § 401 *Certification Conditions for Calispell Creek Pump Works Under FERC Project No. 2042-013 (Box Canyon Dam)*, dated January 2, 2003.
- (7) "Corps" means the United States Army Corps of Engineers.
- (8) "EPA" means U.S. Environmental Protection Agency.

- (9) “License” means the new license issued by FERC on July 11, 2005, to the PUD to operate the Project, 112 FERC ¶ 61,055, as amended by FERC on February 29, 2010 to incorporate the appendices to the 2009 Settlement Agreement, 130 FERC ¶ 62,148, and most recently amended on March 24, 2016, 154 FERC ¶ 62,190.
- (10) “Pend Oreille Temperature TMDL” means the *Pend Oreille River Temperature Total Maximum Daily Load – Water Quality Improvement Report*, under section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), as revised by Ecology in November, 2011 (Ecology Pub. No. 10-10-065), and currently pending approval by the EPA.
- (11) “PPO” means the Plan for Pump Operations to be approved by EPA under General Condition 14 to the CCPP Section 401 Certification, a proposed final version of which is attached as Attachment B to this OLSA.
- (12) “Project” means the Box Canyon Hydroelectric Project, FERC No. 2042, located on the Pend Oreille River in northeastern Washington and northwestern Idaho.
- (13) “Revised Plan E” means the “Revised Plan E for Operation of Calispell Creek Pumps” executed March 5, 2013 by the PUD and March 20, 2013 by Diking District No. 2 of Usk, Washington (of which FERC incorporated an earlier version into the License, 112 FERC ¶ 61,055, 61,488 (2005)), attached as Attachment C to this OLSA.
- (14) “Target Fish Species” means bull trout, westslope cutthroat trout, and mountain whitefish. *See Order on Settlement Agreement and Amending License*, 130 FERC ¶ 62,148 (2010), at ¶ 25 and Appendix C § 1.1.C.
- (15) “THRP” means the Trout Habitat Restoration Program required by Interior as Revised 4(e) Condition 6 to the License, *Order on Settlement Agreement and Amending License*, 130 FERC ¶ 62,148 (2010), Appendix A, as amended by the Amended Settlement Agreement and its appendices.

SECTION 4: DURATION OF AGREEMENT

- 4.1. Effective date.** This OLSA shall become effective on the date (the “Effective Date”) when both of the following conditions have been met:
 - (a) Both the PUD and Tribe have executed this OLSA; and
 - (b) FERC has issued an order amending the License to incorporate the revised appendices attached to the Amended Settlement Agreement without material alteration.

Unless and until both of these conditions have been met, this OLSA shall have no legal effect.

- 4.2. Termination.** This OLSA shall terminate: (1) on the date of any FERC order revoking the License, (2) on the date of any FERC order conditionally approving

surrender of the License, (3) on the date of any FERC order issuing or denying the PUD a new license (other than an annual license) for the Project under 16 U.S.C. § 808, , or (4) at the option of the PUD or Tribe following the material breach of the other pursuant to subsections 4.4, 5.7, 6.6, 8.1, or 10.3 upon notice to the other pursuant to subsection 8.6.

- 4.3. Material Breach by the Tribe.** If this OLSA is terminated under subsection 4.2 due to a material breach by the Tribe, the rights and obligations of this OLSA shall continue in force consistent with section 9(c) of the Amended Settlement Agreement. In the event of such termination, the Tribe shall remit any unspent funds to the PUD, which shall then promptly deposit those funds into the escrow account identified in section 9.3 of the Amended Settlement Agreement.
- 4.4. Material Breach by PUD.** Except as otherwise provided in this OLSA, failure by the PUD to make a payment as required under this OLSA shall constitute a material breach. In that event, the Tribe may notify the PUD in writing that it is in material breach, including notice of a date (not less than 30 days after the notice) within which the PUD must make payment in order to cure the breach. If the PUD does not make payment by such date, the Tribe and PUD shall proceed to dispute resolution as provided in Section 8. Following completion of the dispute resolution process, the Tribe may terminate this OLSA if the arbitrator finds that the PUD failed to cure a material breach. In the event of termination, the Tribe's remedies shall be limited to petitioning for reversion to the License terms based on the 2009 Settlement Agreement, as described below in this subsection, and the PUD shall be relieved of its obligation to make any payments to the Tribe that would have been due after the termination date.

In the event of termination due to a breach by the PUD, the Tribe may petition Interior and FERC to amend the License to reinstate the conditions and prescriptions contained in Appendices A and C of the 2009 Settlement Agreement, updated with reasonable new timelines and standards for implementation, which shall not, without the PUD's consent, allow less time for each task or milestone than was allowed under the appendices to the 2009 Settlement Agreement as incorporated into the License. Such timelines and standards shall be based on the best available science and shall be developed in consultation with the Technical Committee. In the event of such reinstatement, the Tribe shall advocate to both Interior and FERC for the PUD to retain credit under the amended License for the restoration of all stream miles awarded by the Technical Committee prior to the termination date. The PUD and Tribe agree that they will not challenge Interior's submission to FERC of the updated 2009 appendices pursuant to this subsection, nor FERC's issuance of a license amendment that incorporates them into the License, except that each Party retains its full rights to participate as a member of the Technical Committee in developing the new timelines and standards for implementation, including any Technical Committee dispute resolution process pursuant to the License.

SECTION 5: DOWNSTREAM FISH PASSAGE DEFERRAL AT BOX CANYON DAM

- 5.1. Background: PUD’s Obligations Regarding Box Canyon Fish Passage Under License.** Under sections 4(e) and 18 of the FPA, 16 U.S.C. §§ 797(e) and 811, respectively, Interior prescribed downstream fish passage facilities at Box Canyon Dam as a condition of the License. 2009 Settlement Agreement, Appendix C, § 1.3, incorporated into the License at 130 FERC ¶ 62,148, 64,403 (2010). Interior also prescribed the THRP, a program of stream restoration intended to mitigate the impact of Project operations on Target Fish Species. *See generally id.*, Appendix A.
- 5.2. Modification of PUD’s Obligations under Amended Settlement Agreement.** Under the Amended Settlement Agreement, Interior has agreed, with the Tribe’s support, to revise Appendix C so as to refrain from exercising its authority under FPA sections 4(e) and 18 to require the construction of downstream fish passage at Box Canyon Dam, for the term of the License. Revised Appendix C also specifies that the PUD shall reinitiate fishway design development for downstream fish passage at Box Canyon Dam as part of the pre-application consultation process for any future FERC license (other than an annual license) after expiration of the License, if Interior notifies the PUD in writing no earlier than 10 years prior to the expiration of the License (or 2045) that, based on the best available science, downstream fish passage survival at Box Canyon Dam is a significant causative factor in the depression of self-sustaining populations of migratory Target Fish Species in the lower Pend Oreille River. The PUD reserves the right to challenge, under applicable law, any fish passage prescription included in any future FERC license after expiration of the License. In consideration for the Tribe’s support in securing Interior’s agreement to refrain from exercising its authority under FPA sections 4(e) and 18 to require downstream fish passage at Box Canyon Dam for the term of the License, the PUD agrees to provide funding to the Tribe and potentially to the Corps as described in subsections 5.3 and 5.4.
- 5.3. Albeni Falls Upstream Fish Passage Funding.**
- (a) Within 30 days after the following conditions are met, or otherwise by written agreement of the PUD and Tribe, the PUD shall pay the Tribe \$10 million for contribution toward the construction of upstream fish passage facilities at Albeni Falls Dam:
- (1) The Corps has secured all required internal and external approvals and permits necessary to construct upstream fish passage facilities at Albeni Falls Dam;
 - (2) The Corps and/or others have entered an agreement to provide funds that, when combined with the PUD’s \$10 million contribution under this subsection, are sufficient to construct such upstream fish passage facilities;

(3) The PUD has received written confirmation from the Corps that conditions (1) and (2) of this subsection have been satisfied, along with any written indemnification and/or other assurances that the PUD may require from the Corps consistent with paragraph (b) of this subsection; and

(4) The PUD has received written concurrence from the Tribe as to the design of such fish passage facilities, which the Tribe shall not unreasonably withhold, along with written indemnification from the Tribe consistent with paragraph (b) of this subsection.

(b) The PUD's liability under this subsection shall be strictly limited to the payment obligation provided in this subsection. The PUD shall have no responsibility for the design, construction, maintenance, or operation of upstream fish passage facilities at Albeni Falls Dam; shall not be liable for any cost overruns, negligence, or misfeasance in the design, construction, maintenance, or operation of such upstream passage; and shall have no responsibility for the effectiveness of such upstream fish passage, or for any adverse impacts on fish or other natural resources resulting from such upstream fish passage.

(c) If conditions (1) through (4) in paragraph (a) of this subsection have not all occurred within 6 years after the Effective Date, the PUD's obligation to transfer \$10 million to the Tribe for contribution toward the construction of upstream fish passage facilities at Albeni Falls Dam shall expire, and the PUD shall instead transfer \$10 million to the Watershed Program in addition to the PUD's next scheduled Watershed Program payment under subsection 5.4.

5.4. Watershed Program Funding. The PUD shall contribute \$36 million to a Watershed Program established by the Tribe. This contribution shall be divided into 25 consecutive annual installments, the first of which shall be due within 60 days of the Effective Date. Subsequent payments shall be due on the anniversary of the Effective Date for each of the next 24 years. The amount of the first three payments shall be \$1 million, and the amount of the 22 payments thereafter shall be \$1.5 million.

5.5. Watershed Program Establishment and Purpose. The Tribe shall establish a written Watershed Program with input from the Technical Committee. While the Tribe shall be solely responsible for the Watershed Program's management, financial administration, and implementation, the Tribe will work collaboratively with the Technical Committee to maximize conservation benefits under the Watershed Program. The Tribe may deposit funds received under subsection 5.4 into the Reserve Fund contemplated by subsection 5.6 prior to meeting this requirement, but it shall not expend Watershed Program funds until a written Watershed Program is established and a copy is provided to the PUD.

The purposes of the Watershed Program will be to complete restoration measures in the mainstem Pend Oreille River and its tributaries in order to help mitigate the effects of the Project. The Tribe will coordinate its efforts under the Watershed Program with the conservation priorities identified in the Comprehensive Plan performed pursuant to the Amended Settlement Agreement under Revised Appendix A, Section 6.1.

Although the Watershed Program may have some overlap with the THRP, it is a distinct program that will focus on completing high priority conservation actions rather than restoring a particular number of stream miles. The PUD's obligation to fund the Watershed Program is unrelated to any funding obligations the PUD has under the THRP, as described in the Amended Settlement Agreement or its appendices.

The Tribe shall coordinate with the PUD and the Technical Committee (as defined in the 2009 Settlement Agreement, § 1) on Watershed Program projects, but shall not be required to obtain their approval. The PUD will not necessarily receive stream mile credits for any Watershed Program project that is performed in a THRP tributary, but may incorporate improvements resulting from the Watershed Program into the PUD's efforts to restore that tributary. If the PUD eventually receives THRP credit for a tributary reach in which a Watershed Program project was performed, it shall assume the long-term monitoring and maintenance obligations for such reach, as required by the THRP, so long as the Tribe secures (or, if on land under the Tribe's control, grants) the PUD right of access sufficient for such monitoring and maintenance.

5.6. Uses of Watershed Program Funds. Watershed Program funds shall only be used for the following purposes:

- (a) Watershed assessments, planning, and reasonable administration;
- (b) Fish passage and fish management (e.g. non-native fish control and Target Fish Species supplementation);
- (c) Water temperature abatement;
- (d) Habitat restoration (e.g. geomorphic improvements, barrier removal, and floodplain restoration);
- (e) Acquisition of conservation easements and/or land to protect fish and wildlife habitat; and
- (f) Natural resource enhancement and protection efforts.

In planning and implementing Watershed Program projects, the Tribe's first priority shall be to help provide upstream fish passage at Albeni Falls Dam. To that end, the Tribe shall deposit the first five payments under subsection 5.4 into a distinct, interest bearing account with the intent of contributing this "Reserved Fund" to the construction of upstream fish passage at Albeni Falls Dam. If the Corps has not

provided upstream fish passage at Albeni Falls Dam within 5 years of the Effective Date, the Tribe may use the Reserved Fund for any authorized purpose under this subsection.

If, on the date payments are due under this subsection in years 6-9 of this OLSA, (a) efforts to secure upstream fish passage at Albeni Falls Dam have not been successful due to the limited amount of non-federal funds available; (b) a timeline for construction of upstream fish passage at Albeni Falls Dam is described in a biological opinion; and (c) the Corps is making a good faith effort to secure upstream fish passage at Albeni Falls Dam, the Tribe shall continue to maintain the Reserved Fund, including any monies transferred by the PUD to the Tribe pursuant to subsection 5.3, and will endeavor to contribute additional Watershed Program funds to the Reserved Fund due to the importance of securing upstream fish passage at Albeni Falls Dam. The Tribe may use the Reserved Fund for any authorized purpose under this subsection if any of the conditions above are not met after year 5 or upstream fish passage at Albeni Falls Dam has not been provided within 10 years of the Effective Date.

The Tribe's second priority for the Watershed Program shall be projects that are most likely to yield water temperature benefits as measured within the Project boundary.

- 5.7. Annual Reports.** By January 31 of each year of this OLSA, the Tribe shall provide the PUD with a written annual report (similar in form and substance to Attachment D) summarizing the activities undertaken and funds expended for each authorized purpose under the Watershed Program during the preceding calendar year. Within the same timeframe the Tribe shall provide the Technical Committee with a similar report summarizing activities undertaken within each authorized purpose of the Watershed Program for the calendar year. The PUD shall not request, nor shall the Tribe be required to provide, sensitive information not related to the subject matter of this OLSA. The PUD shall notify the Tribe if it has any concerns about the annual report within 30 days of receipt. The Tribe shall make a good faith effort to address any concerns that are within the scope of what the Tribe is required to provide under this subsection, and shall provide the PUD with a revised annual report within 30 days of receiving notice of the PUD's concerns. The revised annual report shall be considered final unless the PUD initiates arbitration pursuant to the paragraph below. If the PUD does not initiate arbitration within 30 days of receiving the revised annual report, the PUD shall waive such right as well as all future claims that the Tribe has mismanaged funds during the preceding calendar year.

In the event that: (1) the Tribe does not provide a written annual report to the PUD by the January 31 deadline; or (2) the PUD reasonably believes, based on the content of or an omission from the revised annual report provided by the Tribe pursuant to the paragraph above, that the Tribe has managed or expended Watershed Program funds in a grossly negligent manner, the PUD shall have the right to initiate arbitration under subsection 8.3. The PUD shall have the right to suspend payments due under subsection 5.4 until the arbitration is completed, and any such suspension shall not constitute a material breach under subsection 4.4. If the arbitrator finds that the Tribe

managed or expended Watershed Program funds in a grossly negligent manner, the PUD may treat that as a finding of material breach and terminate this OLSA under subsection 4.2.

If the Washington State Auditor requests information from the PUD concerning the Tribe's use of funds provided by the PUD under this Section, and if that information has not been provided by the Tribe in its annual report pursuant to the preceding paragraph, the PUD shall provide the Tribe with a copy of the Washington State Auditor's request for information. The Tribe shall cooperate with the PUD to timely respond to the Washington State Auditor's request unless the Tribe concludes in good faith that to do so would harm the Tribe's sovereign interests, in which case the PUD shall have the right to initiate dispute resolution under Section 8 to determine whether such conclusion was made in good faith. The PUD shall have the right to suspend payments during the pendency of the dispute resolution process, and any suspension based on a good faith belief that such suspension is justified shall not constitute a material breach under subsection 4.4. Nothing in this subsection, including the requirement to cooperate in responding to information requests from the State Auditor, shall be construed as obligating the Tribe to adhere to any particular state government audit standards.

If the arbitrator finds that the PUD's suspension of payment under this subsection was not made in good faith, the PUD shall pay the Tribe the balance due up to that date under subsection 5.4 and the Tribe's reasonable attorney fees. The Tribe may also treat such a finding as a material breach and terminate this OLSA under subsection 4.2.

SECTION 6: FISH PASSAGE DEFERRAL AT CCPP

- 6.1. Background: PUD's Obligation Under License Regarding CCPP Fish Passage.** Under sections 4(e) and 18 of the FPA, 16 U.S.C. §§ 797(e) and 811, respectively, Interior prescribed upstream and downstream fish passage at the CCPP as a condition of the License. 2009 Settlement Agreement, Appendix C at pages 21-33, incorporated into the License at 130 FERC ¶ 62,148, ¶¶ 64,414-64,421 (2010).
- 6.2. Modification of PUD Obligations under Amended Settlement Agreement.** Under the Amended Settlement Agreement, Interior has agreed, with the Tribe's support, to refrain from exercising its authority under FPA sections 4(e) and 18 to require fish passage at the CCPP for the term of the License (including any annual licenses thereafter). The purpose of this modification is to reallocate PUD resources to alternate conservation measures that will more timely and effectively mitigate Project effects than would upstream and downstream fish passage at the CCPP. These measures shall be performed through a Conservation Program established by the Tribe and funded by the PUD.
- 6.3. Conservation Program Establishment and Purpose.** The Tribe shall establish a written Conservation Program within 180 days of the Effective Date to mitigate Project effects in lieu of upstream and downstream fish passage at the CCPP. The

purpose of this program is to provide the Tribe with options for improving harvest opportunities, and to protect access to and use of natural resources of importance to the Tribe through the measures identified in subsection 6.5.

- 6.4. Conservation Program Funding.** The PUD shall contribute \$20 million to the Conservation Program established by the Tribe under subsection 6.3. This contribution shall be prorated into 20 consecutive annual installments of \$1 million, the first of which shall be due within 60 days of the Effective Date. Subsequent payments shall be due on the anniversary of the Effective Date for each of the next 19 years. The PUD's requirements regarding contributions to the Conservation Program are in addition to, and separate from, its obligations to contribute funding to the Watershed Program as discussed in subsection 5.4, above.
- 6.5. Uses of Conservation Program Funds.** The Tribe shall only use funds dedicated to the Conservation Program for the following purposes:
- (a) Capital improvements, operations, and maintenance of the Kalispel Tribe Fish Hatchery;
 - (b) Fish passage and fish management (e.g. non-native fish control and Target Fish Species supplementation);
 - (c) Land acquisition to provide enhanced harvest opportunities for members of the Tribe;
 - (d) Provision of low cost fishing and hunting opportunities for members of the Tribe;
 - (e) Stream and/or habitat restoration efforts that are complementary to the PUD's efforts toward fulfillment of the License conditions;
 - (f) Natural resource enhancement and protection efforts;
 - (g) Water temperature abatement; and
 - (h) Reasonable planning and administration of the Conservation Program.

In planning and implementing Conservation Program projects, the Tribe shall prioritize projects that are most likely to yield water temperature benefits as measured within the Project boundary.

- 6.6. Annual Reports.** By January 31 of each year of this OLSA, the Tribe shall provide the PUD with a written annual report (similar in form and substance to Attachment D) summarizing the activities undertaken and funds expended for each authorized purpose under the Conservation Program during the preceding calendar year. Within the same timeframe, the Tribe shall provide the Technical Committee with a similar report summarizing activities undertaken within each authorized purpose of the Conservation Program (Section 6.5) for the calendar year. The PUD shall not

request, nor shall the Tribe be required to provide, sensitive information not related to the subject matter of this OLSA. The PUD shall notify the Tribe if it has any concerns about the annual report within 30 days of receipt. The Tribe shall make a good faith effort to address any concerns that are within the scope of what the Tribe is required to provide under this subsection, and shall provide the PUD with a revised annual report within 30 days of receiving notice of the PUD's concerns. The revised annual report shall be considered final unless the PUD initiates arbitration pursuant to the paragraph below. If the PUD does not initiate arbitration within 30 days of receiving the revised annual report, the PUD shall waive such right as well as all future claims that the Tribe has mismanaged funds during the preceding calendar year.

In the event that: (1) the Tribe does not provide a written annual report to the PUD by the January 31 deadline; or (2) the PUD reasonably believes, based on the content of or an omission from the revised annual report provided by the Tribe pursuant to the paragraph above, that the Tribe has managed or expended Conservation Program funds in a grossly negligent manner, the PUD shall have the right to initiate arbitration under subsection 8.3. The PUD shall have the right to suspend payments due under subsection 6.4 until the arbitration is completed, and any such suspension shall not constitute a material breach under subsection 4.4. If the arbitrator finds that the Tribe managed or expended Conservation Program funds in a grossly negligent manner, the PUD may treat that as a finding of material breach and terminate this OLSA under subsection 4.2.

If the Washington State Auditor requests information from the PUD concerning the Tribe's use of funds provided by the PUD under this Section, and if that information has not been provided by the Tribe in its annual report pursuant to the preceding paragraph, the PUD shall provide the Tribe with a copy of the Washington State Auditor's request for information. The Tribe shall cooperate with the PUD to timely respond to the Washington State Auditor's request unless the Tribe concludes in good faith that to do so would harm the Tribe's sovereign interests, in which case the PUD shall have the right to initiate dispute resolution under Section 8 to determine whether such conclusion was made in good faith. The PUD shall have the right to suspend payments during the pendency of the dispute resolution process, and any suspension based on a good faith belief that such suspension is justified shall not constitute a material breach under subsection 4.4. Nothing in this subsection, including the requirement to cooperate in responding to information requests from the State Auditor, shall be construed as obligating the Tribe to adhere to any particular state government audit standards.

If the arbitrator finds that the PUD's suspension of payment under this subsection was not made in good faith, the PUD shall pay the Tribe the balance due up to that date under subsection 6.4 and the Tribe's reasonable attorney fees. The Tribe may also treat such a finding as a material breach and terminate this OLSA under subsection 4.2.

SECTION 7: WATER QUALITY COMPLIANCE

7.1. Resolution of All Water Quality Issues. The PUD and Tribe intend by this OLSA to resolve all current issues between the PUD and Tribe related to the PUD's compliance with State, Federal, and Tribal water quality laws and regulations. Resolution of these issues shall occur through a combination of actions performed by the Tribe with Watershed and Conservation Program funding provided by the PUD, as well as the additional commitments described below.

7.2. Finalization of Pend Oreille Temperature TMDL and Temperature Attainment Plan. Within 60 days after the Effective Date, the Tribe shall:

- (a) notify the EPA through Attachment E that it supports EPA approval of the Pend Oreille Temperature TMDL without amendment; and
- (b) notify Ecology through Attachment F that it supports approval of the proposed Temperature Attainment Plan ("TAP") for the Project (attached to this OLSA as Attachment G), pursuant to the Pend Oreille Temperature TMDL, and that it does not support inclusion of any other "reasonable and feasible improvements" under WAC 173-201A-510(5)(b) with respect to temperature beyond those described in that Attachment.

If the Tribe completes requirements (a) and (b) above and EPA approves the Pend Oreille Temperature TMDL, the PUD shall contribute \$3 million to the Tribe's Watershed Program. This contribution shall be prorated into 10 consecutive annual payments of \$300,000, and payments shall be due at the time of and in addition to the Watershed Program payments under subsection 5.4. If EPA approves the Pend Oreille Temperature TMDL, the PUD shall also, within 60 days after EPA's approval, move for voluntary dismissal of its pending appeal of the Pend Oreille Temperature TMDL before the Superior Court of Thurston County, Washington, Cause No. 11-2-01027-6.

7.3. Amendment of License and Approval of a Plan for Pump Operations ("PPO") to Align with Revised Plan E. Within 60 days after the Effective Date, the Tribe shall

- (a) Notify the EPA through Attachment H that it supports EPA approval of a PPO fully consistent with Revised Plan E, and that it specifically supports EPA approval of the proposed PPO attached as Attachment B to this OLSA; and
- (b) Notify FERC through Attachment I that it supports amendment of the License to incorporate Revised Plan E, replacing in its entirety the existing Plan E, Appendix F to the 2005 License Order, 112 FERC ¶ 61,055, 61,488 (2005).

If FERC approves of the License amendment without material modification to Appendix F and if the EPA approves a PPO fully consistent with Revised Plan E, the PUD shall join with the Tribe and EPA in a motion for dismissal with prejudice of the PUD's pending appeal of the CCPP Section 401 Certification before the U.S. District Court for the District of Columbia, case no. 1:04cv2224 (RCL), and shall contribute

an additional \$3 million to the Tribe's Conservation Program. This contribution shall be prorated into ten consecutive annual payments of \$300,000, and payments shall be due at the time of and in addition to Conservation Program payments under subsection 6.4.

- 7.4. Revised Plan E.** In recognition of practical and legal difficulties attendant to revising Revised Plan E, the PUD and Tribe agree that this OLSA shall not require the PUD to take any action inconsistent with, or that would require renegotiation of, Revised Plan E. The PUD, however, shall not be limited in its authority to renegotiate or modify Revised Plan E with the parties thereto at its own discretion. If any such modifications to Revised Plan E result in significant impairments to water quality, the Tribe may suspend its forbearance obligation under subsection 7.7 in order to seek reasonable mitigation.
- 7.5. Power Lake.** After occurrence of the conditions for payment under subsection 7.3, the PUD, in consultation with the Tribe and subject to the limitations of Revised Plan E, shall attempt to operate Power Lake Dam to reduce downstream water temperatures during critical warming periods.
- 7.6. Calispell Creek Pumping Plant Operations.** After occurrence of the conditions for payment under subsection 7.3, the PUD, in consultation with the Tribe and subject to the limitations of Revised Plan E, shall attempt to operate the CCPP to reduce water temperature in Calispell Creek. This will be accomplished by maintaining continuous flow at all times and matching incoming flows while maintaining water elevation as specified in Revised Plan E (and as anticipated in the PPO) during critical warming periods.
- 7.7. Calispell Creek Pumping Plant Forbearance.** The Tribe shall not seek to regulate or require mitigation of Calispell Creek water quality related to CCPP operations by the PUD for a period of 10 years from the Effective Date. The Tribe also shall not, for a period of 10 years from the Effective Date, seek or support any amendments to the CCPP Section 401 Certification or to Ecology's amended section 401 water quality certification for the Project, Ecology Order No. 02WQER-5121A-01, dated February 21, 2003.
- 7.8. Shared Risk of Water Quality Cost Overruns.** The PUD and Tribe intend that the activities listed in the proposed TAP, Attachment G to this OLSA; the Watershed Program as described in Section 5 of this OLSA; the Conservation Program as described in Section 6 of this OLSA; and operational commitments at the CCPP (subsection 7.6) and Power Lake Dam (subsection 7.5), without more, shall meet the PUD's obligations under the Pend Oreille Temperature TMDL (including the TAP to be approved by Ecology for the Project). The PUD and Tribe also intend that the actions required by the CCPP Section 401 Certification, Revised Plan E, and the funding commitments in this OLSA, without more, shall meet the PUD's water quality obligations with respect to operation of the CCPP.

In any year during the 10-year payment terms under subsections 7.2 and 7.3 in which the PUD incurs water quality compliance costs related to CCPP operations or the Pend Oreille Temperature TMDL (including the costs of obtaining approval of and implementing the TAP) beyond the commitments listed in the previous paragraph of this subsection, the PUD may deduct such additional compliance costs first from the next annual payment due under subsection 7.3 and then from the next annual payment due under subsection 7.2. However, those payments shall not be less than zero and the PUD shall be responsible for any remaining compliance costs in any year in which the payments under subsections 7.2 and 7.3 are reduced to zero. For example, if the PUD is required to implement an additional “reasonable and feasible improvement” that costs \$1 million within a year, the PUD would not make payments to the Tribe of \$600,000 in that year pursuant to subsections 7.2 and 7.3, and would instead use that \$600,000 plus an additional \$400,000 of PUD money to pay for the additional reasonable and feasible improvement.

If the PUD incurs water quality compliance costs after the 10-year payment periods under subsections 7.2 and 7.3, the Tribe shall have no obligation to contribute any funds received from the PUD under this OLSA to offset such compliance costs. However, the Tribe shall make a good-faith effort to expedite completion of the Tribe’s high-priority conservation actions that help satisfy the PUD’s water quality-related obligations, and the Tribe shall support PUD efforts to obtain regulatory credit toward such obligations for any conservation work performed by the Tribe with funds provided under this OLSA. The Tribe also agrees not to impose, support, or otherwise encourage the imposition of a fish passage requirement at the CCPP at the PUD’s expense for the duration of this OLSA by any means, including but not limited to the imposition of such a requirement pursuant to a certification issued under section 401 of the Clean Water Act or an amendment to the License pursuant to the Federal Power Act. Nothing in this subsection shall limit the Tribe from advocating or seeking to construct fish passage at CCPP without any use of PUD funds or resources.

SECTION 8: DISPUTE RESOLUTION

- 8.1. Waiver of Sovereign Immunity.** The Tribe, through the waiver of sovereign immunity approved by the Kalispel Business Committee and attached as Attachment J to this OLSA, expressly waives any claim or assertion of sovereign immunity for the limited purposes of (a) participating in arbitration with the PUD under subsection 8.3, (b) a lawsuit in which the PUD seeks to compel such arbitration in the event of the Tribe’s refusal to arbitrate, (c) a lawsuit to enter and enforce judgment on an arbitrator’s award under subsection 8.3, or (d) a lawsuit in which the PUD alleges that the arbitration award under subsection 8.3 exceeded the scope of the arbitrator’s authority under the Revised Code of Washington. Revocation or amendment of this sovereign immunity waiver without the prior consent of the PUD shall constitute a material breach of this OLSA and be grounds for termination under subsection 4.2.

The Tribe expressly consents to suit in the courts of Washington State solely for the limited purpose described above. The Tribe also agrees not to assert that the Tribe or its courts have jurisdiction over, or that tribal remedies must be exhausted with respect to, any proceeding for which the Tribe has waived its sovereign immunity under this subsection.

To the extent the PUD now or ever has any claim or assertion of sovereign immunity regarding the arbitration and legal review process permitted in subsection 8.3, the PUD expressly waives it with respect to that process.

8.2. Informal Dispute Resolution. If a dispute arises out of or relates to this OLSA, the PUD and Tribe agree to first use their best efforts to cooperatively resolve such dispute. If a dispute cannot be resolved within 30 days despite the best efforts of both PUD and Tribe, either party may proceed to subsection 8.3 (Arbitration and Venue).

8.3. Arbitration and Venue. If the PUD and Tribe are unable to settle a dispute arising under this OLSA, it is hereby agreed that the dispute shall then be referred to a mutually acceptable arbitrator, or if one cannot be agreed upon, to the nearest office of Washington Arbitration & Mediation Service (“WAMS”) for resolution within ninety (90) days of a written request for arbitration submitted by either party. The PUD and Tribe agree that if they cannot agree on a mutually acceptable arbitrator within ten (10) business days of the request for arbitration by either party, the dispute will be referred to WAMS (or another neutral entity if WAMS no longer exists) for preparation of a Strike List for arbitrator selection. All arbitration proceedings shall be conducted in accordance with the Rules of Arbitration of WAMS (or the applicable neutral entity if WAMS no longer exists) or applicable administrative service, RCW 7.04A and reasonable discovery provisions as may be stipulated or ordered. The arbitrator’s decision shall be final and binding and judgment may be entered thereon, with all remedies otherwise available in court (subject to subsection 8.5) also available in arbitration. If the arbitrator’s decision conflicts with the License or Amended Settlement Agreement, the terms of the License or Amended Settlement Agreement shall control. Except as provided in subsections 5.7 and 6.6 of this OLSA, the PUD and Tribe agree to equally share the costs of the arbitration process, with each party responsible for paying its own attorneys’ fees.

The PUD and Tribe agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this OLSA that are not affected by the dispute.

The sole and exclusive jurisdiction and venue of any legal action shall be in the Pend Oreille County Superior Court in and for the State of Washington.

8.4. Choice of Laws. This OLSA shall be governed by, and construed, interpreted, and enforced in accordance with, the substantive law of the State of Washington (without reference to any principles of conflicts of laws).

8.5. Limitation on Remedies. The PUD and Tribe recognize the potential magnitude of consequential, incidental, or punitive damages that might arise from this OLSA and desire to eliminate the risks each might face were such categories of damages not excluded. In no event shall either party be liable to the other or a third party for any potential consequential, incidental, or punitive damages.

8.6. Means of Notification. Any notice, demand, or request related to this OLSA shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by electronic mail or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below. The PUD and Tribe may modify the notification information below by giving the other 14 days written notice of the change.

<p>To the Tribe:</p> <p>Kalispel Tribe of Indians P.O. Box 39 Usk, WA 99180</p> <p>Attention: Executive Director of Natural Resources</p> <p>Phone: (509) 445-1147 Fax: (509) 445-1705</p>	<p>To the PUD:</p> <p>Public Utility District No. 1 of Pend Oreille County P.O. Box 190 Newport, WA 99156-0190</p> <p>Attention: General Manager</p> <p>Phone: (509) 447-3137 Fax: (509) 447-5824</p>
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SECTION 9: ASSIGNMENT OF OLSA

Neither this OLSA nor any right, interest, or obligation hereunder may be assigned, sold, transferred, or conveyed by either party without the prior written consent of the other, which party may withhold its consent in its sole discretion, and any attempted assignment not in compliance with this Section shall be void, except assignments and transfers that occur by operation of law. No assignment or transfer of this OLSA, or any interest herein, shall relieve the PUD and/or Tribe of any obligation incurred hereunder prior to such assignment.

SECTION 10: MISCELLANEOUS

10.1. Entire Agreement. This OLSA, in conjunction with the 2009 Settlement Agreement as amended by the Amended Settlement Agreement, contains the complete and exclusive agreement of the PUD and the Tribe with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, agreements in principle, and other writings prior to the Effective Date of this OLSA, with respect to its subject matter.

10.2. Modification. This OLSA may be amended or modified only by written consent of both the PUD and Tribe.

10.3. Expansion or Avoidance of License Obligations. The Tribe shall not invoke, support the invocation of, or rely upon any reopener clause set forth in the License for the purposes of obtaining additional obligations under the License relating to this OLSA. Any such attempt to reopen the License shall constitute a material breach of this OLSA, and shall suspend all PUD obligations under this OLSA, including all payments to the Tribe. This subsection shall not apply to the Tribe's invocation of a section 401 certification reopener following the 10-year deferral period in subsection 7.7.

The PUD shall not take or support any actions materially inconsistent with this OLSA. Any such action shall constitute a material breach of this OLSA, shall suspend all of the Tribe's obligations under this OLSA, and may release Interior's fish passage deferrals at Box Canyon Dam and the CCPP.

If either party believes the other is in material breach of this subsection, it may notify the other party in writing of the claimed material breach, the nature of the breach, whether the notifying party believes the breach can be cured, and if so, what actions by the breaching party would cure the breach. If, after such notice, the parties cannot agree that a material breach has been cured within a reasonable time, either party shall have the right to initiate dispute resolution under Section 8. Following completion of the dispute resolution process, if the arbitrator finds that there has been an uncured material breach, the non-breaching party may terminate this OLSA.

10.4. Further Assurances. Subject to the terms and conditions of this OLSA, the PUD and Tribe shall each use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper, and advisable under applicable law to consummate and make effective this OLSA, including efforts to obtain all required consents and approvals. Neither party shall, without the prior written consent of the other, take or fail to take any action that would reasonably be expected to prevent or materially impede, interfere with, or delay this OLSA. From time to time after the execution of this OLSA by both the PUD and Tribe, whether prior to or after the execution and without further consideration, the PUD and Tribe shall, each at its own expense, execute and deliver such documents and provide such information to the other as such party may reasonably request in order to accomplish, consummate, and perform its respective obligations under this OLSA.

10.5. Severability. If any provision of this OLSA is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of either party under this OLSA will not be materially and adversely affected thereby, (i) such provision shall be fully severable, (ii) this OLSA shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part thereof, (iii) the remaining provisions of this OLSA shall remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom, and (iv) in lieu of such illegal, invalid, or unenforceable

provision, the PUD and Tribe shall, in good faith, negotiate a mutually acceptable, legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible, and shall promptly take all actions necessary to amend this OLSA to include the mutually acceptable, legal, valid, and enforceable provision.

- 10.6. Waivers.** Except as otherwise provided herein, no provision of this OLSA may be waived except in writing. No failure by the PUD or Tribe to exercise, and no delay in exercising short of a statutory limitation, any right, power, or remedy under this OLSA shall operate as a waiver thereof. Any waiver at any time by a party of its right with respect to this OLSA, or with respect to any other matter arising in connection herewith, shall not be deemed a waiver with respect to any other matter.
- 10.7. No Third-Party Beneficiaries.** This OLSA shall not create any right or interest in any member of the public or any other entity as a third-party beneficiary and shall not authorize any third party to maintain a suit at law or equity pursuant to this OLSA. The duties, obligations, and responsibilities of the PUD and Tribe with respect to third parties shall remain as imposed under applicable law.
- 10.8. Parties Bound.** This OLSA is binding upon the PUD and Tribe and their successors and assigns. In the event of a change in ownership of the Project and transfer of the License to the new owner, the PUD shall have no further obligation under the License or this OLSA. In the event of a voluntary change of ownership, the PUD agrees that the acceptance of an assignment of this OLSA by the new owner shall be a condition of the transaction. In the event of an involuntary change of ownership, the PUD shall offer to assign this OLSA to the new owner.
- 10.9. No Reliance.** The PUD and Tribe acknowledge that in entering into this OLSA, each has not relied on any statement, representation, or promise of the other or of any other person or entity, except as expressly stated in this OLSA.
- 10.10. Assumption of Risk.** In entering into this OLSA, the PUD and Tribe each assume the risk of any mistake of fact or law, and if either or both subsequently discovers that any understanding of the facts or the law was incorrect, neither party shall be entitled to, nor shall attempt to, set aside this OLSA or any portion hereof.
- 10.11. Waiver of Defenses.** The PUD and Tribe release each other from any and all claims relating to the formation and negotiation of this OLSA, including reformation, rescission, mistake of fact, or mistake of law. The PUD and Tribe further agree that they waive and will not raise in any court, administrative body, or other tribunal any claim that avoids or defends against the enforcement of this OLSA other than the express conditions set forth in this OLSA.
- 10.12. Independent Counsel.** The PUD and Tribe acknowledge that they have been represented by independent counsel in connection with this OLSA, they fully understand the terms of this OLSA, and they voluntarily agree to those terms for the

purposes of making a full compromise and settlement of the subject matter of this OLSA.

10.13. Headings. The headings used for the Sections and subsections herein are for convenience and reference purposes only, and shall in no way affect the meaning or interpretation of the provisions of this OLSA.

10.14. Legal Authority. The PUD and Tribe each represents and warrants to the other that it has full authority and power to enter into this OLSA, that its representatives who sign below are duly authorized by it to enter into this OLSA, and that nothing herein violates any law, regulation, judicial or regulatory order, or agreement applicable to such warranting party.

10.15. Agreement Execution.

IN WITNESS WHEREOF, the PUD and Tribe have caused this OLSA to be executed by their properly authorized officers this _____ of _____, 2018.

**ATTACHMENT A
SUMMARY OF FINANCIAL OBLIGATIONS**

This Attachment is included for the convenience of the PUD and Tribe only and shall have no legal effect. In case of any inconsistency between this Attachment and the OLSA, the language of the OLSA shall control.

Payment for	Year(s) due	Amount	Conditions
Albeni Falls Fish Passage (§ 5.3)	Upon occurrence of conditions and request of Corps and Tribe	\$10 million (within 30 days of Tribe's request)	License-term abeyance of downstream fish passage at Box Canyon Dam
Watershed Program (§ 5.4)	Years 1-25 of OLSA	\$36 million (\$1 million for payments 1-3, \$1.5 million for payments 4-25)	License-term abeyance of downstream fish passage at Box Canyon Dam
Conservation Program (§ 6.4)	Years 1-20 of OLSA	\$20 million (\$1 million per year)	License-term abeyance of upstream and downstream fish passage at CCPP
PO River Temperature TMDL (§ 7.2)	10 consecutive years from TMDL approval	\$3 million (\$300k added to Watershed Program payment, less excess PUD costs)	Tribal letter of support to EPA for approval of TMDL and subsequent EPA approval
Plan for Pump Operations (§ 7.3)	10 consecutive years from FERC approval of Revised Plan E	\$3 million (\$300k added to Conservation Program payment, less excess PUD costs)	Revised Plan E sufficient for CCPP water quality compliance for 10-year period