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**AMENDED WHOLESALE POWER CONTRACT**

THIS AGREEMENT, made and entered into this \_\_\_ day of June, 2014, by and between **SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.**, a corporation organized and existing under the laws of the State of Montana, with its principal place of business at 3395 Gabel Road, Suite #300, Billings, Montana 59102, (hereinafter referred to as "Southern Montana"), and **BEARTOOTH ELECTRIC COOPERATIVE, INC.**, a corporation organized and existing under the laws of the State of Montana with its principal place of business at P.O. Box 1110, Red Lodge, Montana 59068-1110 (hereinafter referred to as "Member").

WHEREAS, Southern Montana purchases or otherwise obtains electric energy and related transmission services for the purpose, among other things, of supplying wholesale electric energy to borrowers from the Rural Utilities Service (hereinafter referred to as "RUS"), as members of Southern Montana; and

WHEREAS, the Parties previously have entered into a Wholesale Power Contract, dated as of March 29, 2007 (hereinafter referred to as the "Existing Agreement"), which agreement provides for the sale of electric power and energy and related services, including transmission services (hereinafter collectively referred to as "Supply Services"), by Southern Montana to the Member; and

WHEREAS, Southern Montana heretofore has entered into and in the future may enter into agreements for the sale of Supply Services with its other current or future members (hereinafter collectively referred to as the "Other Members") on terms and conditions that are similar to or that may vary from the terms and conditions set forth in this Agreement; and

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WHEREAS, in reliance on the commitments set forth in this Agreement and in the agreements with the Other Members, as such agreements may be entered into an amended, restated or replaced from time to time, Southern Montana has and in the future will (i) purchase or otherwise obtain Supply Services for resale; and (ii) develop an organizational structure, management and staff and engage in planning, all for the purpose, among other things, of providing Supply Services to its members, including the Member; and

WHEREAS, the Member desires a contractual arrangement for the purchase of electric power and energy and related services, including transmission services (hereinafter collectively referred to as “Supply Services”) from Southern Montana on the terms and conditions herein set forth.

WHEREAS, on October 21, 2011, Southern Montana filed for voluntary protection under Chapter 11 of Title 11 to the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Montana (the “Bankruptcy Court”) at Case No. 11-62031-RBK (the “Bankruptcy Case”); and

WHEREAS, Southern Montana filed with the Bankruptcy Court a plan of reorganization dated as of April 21, 2014, as amended or modified from time to time (the “Plan”) that provides for, among other things, the continued existence of Southern Montana as a Montana cooperative obligated to provide Supply Services to the Member and the Other Members during the term of the Agreement, as modified hereunder; and

WHEREAS, the Plan was confirmed by order of the Bankruptcy Court entered of record on June [Day], 2014, and Southern Montana emerged from its Bankruptcy Case on the Effective Date (as the term is defined in the Plan), and which Effective Date occurred on June [Day], 2014; and

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WHEREAS, the Plan, at section 5.9 thereof, provides for the assumption by Southern Montana of what is defined in the Plan as the All-Requirements Contracts, as modified. This Agreement is one of the referenced modified All-Requirements Contracts; and

WHEREAS, the Parties wish to confirm and clarify in this Agreement the Parties' prior agreements set forth in the Existing Agreement, as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

1. GENERAL: Southern Montana shall sell and deliver to the Member and the Member shall purchase and receive from Southern Montana all Supply Services which the Member shall require for the operation of the Member's system.

2. ELECTRIC CHARACTERISTICS: Electric power and energy to be furnished hereunder shall be alternating current, three phase, sixty cycle.

3. COORDINATION OF INTERCONNECTIONS & SWITCHING: In view of the fact that a hazard would exist if the Member should connect one of its distribution units to another of its distribution units served by different substations, and thereby possibly energizing by virtue of a feedback a de-energized section of Southern Montana or Southern Montana suppliers transmission lines, the Member agrees, as a safety measure, that it will coordinate with Southern Montana or its appropriate power supplier all changes of interconnections of its distribution units served from separate substations.

4. DELIVERY POINTS: Delivery points, delivery voltage, metering voltage, and special conditions of power and energy delivered, or scheduled for delivery, shall be shown in Exhibit A attached hereto and made a part hereof.

New delivery points agreed upon by Southern Montana and the Member may be added

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and shown on amended Exhibits in the manner described above.

5. ESTIMATED DEMAND FOR PLANNING PURPOSES: For planning purposes, the estimated demand for each point of delivery listed in Exhibit A shall be set forth in Exhibit B, attached hereto, prepared by the Member and made a part hereof. On or before the first day of April of each year the Member shall submit a revised Exhibit B to Southern Montana setting forth the estimated maximum number of kilowatts the Member will require at the respective point(s) of delivery for four (4) years from the date of this Agreement.

6. SUBSTATION: Unless otherwise provided by a supplier to Southern Montana, the Member shall install, own, and maintain the necessary substation equipment at the points of connection and shall own and maintain switching and protective equipment which may be reasonably necessary to enable the Member to take and use electric power and energy hereunder and to protect the system of Southern Montana and the suppliers to Southern Montana. Unless otherwise provided by a supplier to Southern Montana, meters and metering equipment shall be furnished and maintained or caused to be furnished and maintained by the Member.

7. RATE:

(A) The Member shall pay Southern Montana for Supply Services furnished hereunder at the rates and on the terms and conditions set forth in accordance with the Rate Schedule most recently approved by Southern Montana's Board of Trustees, subject to the restrictions on rate modifications as set forth in section 5.8 of the Plan.

(B) The Board of Trustees of Southern Montana, at such intervals as it may deem appropriate but in any event not less frequently than once in each calendar year, shall review the rates for Supply Services furnished hereunder and, if the Board of Trustees of Southern Montana

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deems it appropriate, shall revise such rates set forth in the Rate Schedule so that the rates shall produce revenues which shall be sufficient, but only sufficient, with the revenues of Southern Montana from all other sources, to meet all of Southern Montana's costs and other liabilities (including amortization, depreciation and other charges recorded on Southern Montana's books), including:

- (i) all costs and other liabilities (including any cost of termination or default thereunder) of any contracts for the purchase of Supply Services for resale;
- (ii) all payments required to be paid by Southern Montana under the Plan after the Effective Date of the Plan;
- (iii) all payments, losses and other liabilities on account of taxes (including any income taxes payable if Southern Montana becomes subject to income tax), damages, casualties, settlements of and all other payments relating to claims asserted against Southern Montana, penalties, surcharges, or other entities and administrative and general overhead expense each arising and incurred by Southern Montana after the Effective Date of the Plan;
- (iv) all amounts as may be required to meet any rate, financial or other covenants contained in any mortgage, indenture or contract of Southern Montana or necessary to meet the requirements of or permitted to be recovered by any governmental authority (hereinafter referred to as the "agency") applicable to Southern Montana, in each instance as provided for in the Plan, or as incurred by Southern Montana after the Effective

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Date in a manner not inconsistent with the Plan, and as such covenants or requirements may exist from time to time; and

- (v) all reserves and margin or equity levels established by Southern Montana's Board of Trustees as it may deem advisable from time to time.

(C) The Member shall make all payments that are required pursuant to this Agreement in a timely manner, whether or not any agreement with any of the Other Members or other entity is invalid, unenforceable or uncollectible, in each case for any reason whatsoever. All payments by the Member required pursuant to this Agreement shall not be subject to any reduction, whether by offset, recoupment or otherwise, to the extent any such claims or defenses arise before the Effective Date (as the term is defined in the Plan) and shall not be conditioned upon performance by the Other Members, any other entity or Southern Montana under this Agreement or any other agreement or instrument,

(D) Southern Montana shall cause a notice in writing to be given to the Member, the Other Members and in accordance with the Plan, the Noteholders (as the term is defined in the Plan) which shall set out all the proposed revisions of the rates set forth in the Rate Schedule with the effective date(s) thereof, which shall be not less than thirty (30) days after the date of the notice, and shall set forth the basis upon which the rates set forth in the Rate Schedule are proposed to be adjusted and established. The Member agrees that the rates set forth in the Rate Schedule from time to time established by the Board of Trustees of Southern Montana shall be deemed to be substituted for the rates herein provided and agrees to pay for Supply Services furnished by Southern Montana to it hereunder after the effective date of any such revisions at such revised rates.

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8. METER READING AND PAYMENT OF BILLS: Southern Montana shall read or cause to be read each meter on approximately the same date each month. Supply Services furnished hereunder shall be paid for by the Member at the offices of Southern Montana monthly within ten (10) days after the bill therefore is mailed to the Member. If the Member shall fail to pay any such bill within such ten-day period, Southern Montana may discontinue delivery of electric energy and related services hereunder upon fifteen (15) days' written notice to the Member of its intention to do so. Southern Montana shall timely pay for all Supply Services purchased for resale and other incurred costs in accordance with the provisions of contracts between Southern Montana and the suppliers to Southern Montana. Southern Montana shall timely make all payments required by the Plan.

9. METER TESTING AND BILLING ADJUSTMENT:

(A) Southern Montana shall without charge to the Member inspect and/or test metering equipment or cause metering equipment to be inspected and/or tested in accordance with industry standards based on equipment and at any reasonable time upon request therefore by the Member. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced.

Should any meter fail to register, the electric demand and energy delivered during such period of failure to register shall, for billing purposes, be that amount determined to be appropriate pursuant to the meter testing and billing adjustment provisions of the contract between Southern Montana and the transmission provider. If any of the inspections and/or tests provided for herein discloses an error exceeding two percent (2%), corrections based upon the inaccuracy found shall be made pursuant to the meter testing and billing adjustment provisions of the contract between Southern Montana and the transmission provider. Any correction in billing

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resulting from such correction in meter records shall be made in the next monthly bill rendered by Southern Montana to the Member and such correction when made shall constitute full adjustment of any claim between the Parties arising out of such failure or inaccuracy of metering equipment.

(B) Southern Montana shall notify the Member or arrange notification in advance of the time of any Member requested meter test so that a representative of such Member may be present at such meter test.

10. ADJUSTMENTS FOR FRACTIONAL BILLING PERIOD: For a fractional part of a billing period at the beginning or end of service, and for fractional periods due to withdrawals of service, the applicable charges for demand or capacity, for kilowatt hour blocks of energy, and/or for a minimum bill shall each be proportionately adjusted in the ratio that the number of hours that electric service is furnished to the Member in such fractional billing period bears to the total number of hours in the billing period involved.

11. RIGHT OF ACCESS: The Member hereby agrees that Southern Montana and each of its suppliers to Southern Montana, their authorized agents, contractors, or employees, may enter Member's property, including its substations, at all reasonable times, provided proper advance arrangements have been made with the Member. All activities of Southern Montana and each of its suppliers, authorized agents, contractors, or employees, shall be performed so as not to interfere with the operation and maintenance of the facilities of the Member. The Member hereby agrees to indemnify and hold harmless Southern Montana and each of its suppliers, their authorized agents, contractors, and employees, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the



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Member's ownership of property or the Member's, its employees', agents' or subcontractors' negligent or wrongful construction, operation, maintenance, or replacement activities under this Agreement, except that any liability on the part of the Member and its officers and employees shall be limited by federal law or Montana state law, as applicable to the Member. The United States is liable for federal activities hereunder only if such activities equate to negligence on the part of federal officers and employees in accordance with the Federal Tort Claims Act, as amended.

12. CONTINUITY OF SERVICE: Southern Montana shall use reasonable diligence to provide constant and uninterrupted Supply Services. If Supply Services shall fail or be interrupted, or become defective through an act of God or of the public enemy, or because of accident, labor dispute, or any other cause beyond the control of Southern Montana, Southern Montana shall not be liable therefor or for damages caused thereby.

13. RESALE OF ELECTRIC ENERGY: The Member agrees that the benefits of Federally-generated power delivered hereunder shall be made available at fair and reasonable terms to all of its consumers at the lowest possible rates consistent with sound business principles.

14. CONSERVATION AND RENEWABLE ENERGY PROGRAM:

(A) The Member shall develop and implement a conservation and renewable energy program (hereinafter referred to as the "program"), as may be required by any agency with jurisdiction over Southern Montana or the Member.

(B) Southern Montana, with the guidance and assistance of the agency, will assist the Member in development of a program which will qualify under the agency's guidelines or requirements.

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(C) The Member will develop a program and will submit said program in timely fashion to the agency for review and approval in accordance with the agency's guidelines or requirements.

(D) If the Member does not obtain the approval of its program by the agency or if such approval has been revoked, the net monetary cost resulting therefrom or any penalty, forfeiture or reduction in Federal power benefits imposed on Southern Montana by the agency will be passed through and imposed on the Member.

15. TRANSFER OF INTEREST IN CONTRACT BY MEMBER: Other than existing and continuing security interests of RUS in this Agreement (which is an amendment to the Existing Agreement) and any other holder of a validity perfected lien and security interest in the Existing Agreement (and this Agreement), no assignment, amendment or termination of this Agreement<sup>1</sup> shall be permitted (a) unless the Restructured Notes (as defined in the Plan) have been fully satisfied for a period of at least 90 days, or (b) with the unanimous board approval of Southern Montana and consent by all of the holders of the Restructured Notes. Any successor to or assignee of the rights of the Member, whether by voluntary transfer, judicial sale, foreclosure sale, exercise of remedies under an assignment or mortgage, or otherwise, shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original Member hereunder; and, provided further, that the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this article.

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<sup>1</sup> For the Beartooth agreement only, except upon a permitted release of the All Requirement Contract of Beartooth and Beartooth's withdrawal from the Debtor in accordance with consistent with Article 5.2 of the Plan).

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16. MISCELLANEOUS:

(A) Reimbursement. The Member agrees to reimburse Southern Montana for any expenses incurred for materials, labor, and replacement parts, if any, in maintaining and repairing voltage regulators, by-pass switches, and other related equipment installed to provide or maintain service to the Member in substations of a supplier to Southern Montana and to the extent that charges therefor may be made to Southern Montana by a supplier to Southern Montana.

(B) Amendment. This Agreement may be amended only by a written agreement executed by both Parties; provided, that, if at the time of such amendment either Party is an RUS Borrower, no such amendment shall be effective without the approval of RUS; provided further, that revisions to the Rate Schedule or periodic adjustments provided for under Section 7 of this Agreement shall not be considered amendments of this Agreement. This Agreement and each of the agreements with the Other Members may be amended without the consent of any member of Southern Montana that is not a party to an agreement being amended.

(C) Construction. Wherever the term “including” is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

(D) Status of Member No Defense. The Member shall not assert as a defense, offset or condition to any of its purchase, payment or other obligations under this Agreement any rights, claims or defenses that the Member may have against Southern Montana arising or relating to the period prior to the Effective Date (as the term is defined in the Plan) due to or arising out of the Member’s status as a member of Southern Montana (including any rights, claims or defenses contained in or arising out of the Articles of Incorporation or Bylaws of Southern Montana, as amended, or the Rural Electric and Telephone Cooperative Act, Section 35-18-101 et seq.

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Montana Code Annotated, including Section 35-18-302(1) Montana Code Annotated) or any other relationship between the Member and Southern Montana other than the relationship of purchaser and seller established under this Agreement.

(E) No Conflict of Interest. The Member and Southern Montana agree that this Agreement does not create any conflict of interest under Section 35-18-326, Montana Code Annotated, or other applicable law, or that any such conflict of interest has been properly waived, and that this Agreement constitutes a transaction that is fair at the time the transaction was entered into.

17. WAIVERS: Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

18. TERMINATION OF EXISTING CONTRACTS: This agreement supersedes and replaces all existing wholesale power supply and related services contracts entered into between the parties but all rights and liabilities accrued thereunder shall be and are hereby preserved.

19. TERM: This Agreement shall become effective upon the Effective Date of the Plan, and this Agreement shall remain in effect through the payment of the Restructured Notes (as defined in the Plan) in full payment and satisfaction of the obligations thereunder, plus a six (6) month wind down period thereafter or such other later date as the Parties may agree in writing, subject, however, to the provisions of sections 5.9 and 5.10 of the Plan.

20. LIMITATION OF TRANSFERS OF THE MEMBER'S ASSETS:

(A) Prohibitions on Certain Transactions. The Member agrees that the Member will not, without approval in writing of Southern Montana, and of all of the holders of Restructured

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Notes, reorganize, liquidate or dissolve, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make agreement therefor), when considered together with all other prior sales and transfers, all or a substantial portion of its assets, including any substantial portion of its service territory or of its customers, whether now owned or hereafter acquired (hereinafter each referred to as a “Restricted Transaction”). Southern Montana will not withhold or condition its consent except in cases where to do otherwise contravene the Plan or would result in rate increases for the Other Members, impair the ability of Southern Montana to repay its indebtedness or other obligations in accordance with their terms, including the Restructured Notes and other obligations of Southern Montana under the Plan, or adversely affect system performance in a material way.

(B) Permitted Transactions: Notwithstanding paragraph (A) of this Section 20, the Member may enter into a Restricted Transaction without Southern Montana’s consent as provided in this paragraph (B):

(i) Payment. The Member shall pay such portion of the indebtedness and all other obligations of Southern Montana as shall be reasonably determined by Southern Montana and shall otherwise comply with such reasonable terms and conditions as Southern Montana may require: (a) to eliminate any adverse effect that such action seems likely to have on the rates of the Other Members, (b) to assure that the ability of Southern Montana to repay its indebtedness including the Restructured Notes and other obligations under the Plan, and to meet all of its other obligations in accordance with their terms are not impaired or (c) to eliminate any adverse effect on future financings by Southern Montana (including future financing costs); or

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(ii) Restricted Transaction with Other Member. If the Restricted Transaction is with an Other Member and the surviving entity in the Restricted Transaction assumes and agrees to perform all of the Member's obligations under this Agreement.

21. SPECIFIC PERFORMANCE AVAILABLE:

Southern Montana, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of this Agreement, Southern Montana and the Administrator shall have the right to enforce the obligations of the Member under the provisions of this Agreement and (ii) if Southern Montana shall fail to comply with any provisions of this Agreement, the Member, or, if the Member is then an RUS Borrower, the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of Southern Montana under the provisions of this Agreement. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation suits for specific performance. Such rights of the Administrator to enforce the provisions of this Agreement are in addition to and shall not limit the rights which the Administrator shall otherwise have as third party beneficiary of this Agreement or pursuant to the assignment and pledge to in this Agreement and the payments required to be made thereunder. The Government shall not, under any circumstances, assume or be bound to the obligations of Southern Montana or Member under this Agreement except to the extent the Government shall agree in writing to accept and be bound by any such obligation in whole or in part.

22. COUNTERPARTS AND DUPLICATE ORIGINALS: This Agreement may be simultaneously executed and delivered in two or more counterparts and/or duplicates, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

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23. GOVERNING LAW AND SEVERABILITY: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Montana, without regard to conflicts of laws provisions. To the extent any provision of this Agreement is invalid, illegal or unenforceable under applicable law, this Agreement shall be deemed modified in a manner which is both as consistent as possible with the intent of this Agreement and valid, legal and enforceable under applicable law. If any provision hereof shall be invalid, illegal or unenforceable under applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

EXECUTED the day and year first hereinabove written.

SOUTHERN MONTANA ELECTRIC GENERATION  
AND TRANSMISSION COOPERATIVE, INC.

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

President

Attest: \_\_\_\_\_

Secretary

BEARTOOTH ELECTRIC COOPERATIVE, INC.

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

President

Attest: \_\_\_\_\_

Secretary

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STATE OF MONTANA )

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County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary of Southern Montana Electric Generation and Transmission Cooperative, Inc., a Montana corporation, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

\_\_\_\_\_  
Printed Name  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



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STATE OF MONTANA )

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County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary of Beartooth Electric Cooperative Inc., a Montana corporation, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

\_\_\_\_\_  
Printed Name  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT A**POINTS OF DELIVERY**

Member System: Beartooth Electric Cooperative, Inc. (BEC)

**Member System Points of Delivery**

Southern Montana delivers to Member System located in NorthWestern Energy Load Control Area.

Delivery point (facility owner)	Delivery kV	Meter Location	Metering Voltage (kV)
Absarokee (NWE)	100	Absarokee	12.5
Belfry (BEC)	50	Belfry	24.9
Columbus (BEC)	100	Columbus	100
East Rosebud (BEC)	50	East Rosebud	12.5
Fromberg (BEC)	50	Fromberg	12.5
Luther (BEC)	50	Luther	12.5
Nye (BEC)	50	Nye	12.5
Red Lodge (BEC)	50	Red Lodge	12.5
Reed Point (BEC)	50	Reed Point	12.5
Roberts (BEC)	50	Roberts	12.5

**EXHIBIT B**

**[TO BE PROVIDED]**