

**MASTER RESOURCE AGREEMENT**  
**FOR**  
**NORTHWEST INTERGOVERNMENTAL ENERGY SUPPLY**

THIS MASTER RESOURCE AGREEMENT (“Agreement”), dated as of 1-10-17 (“Effective Date”) is entered into by and between Northwest Intergovernmental Energy Supply (“NIES”), an Oregon intergovernmental entity and City of Cheney, a municipality (hereafter “Member”).

**RECITALS**

WHEREAS:

- A. NIES and Member are Parties to a Joint Resource Planning and Acquisition Agreement (“JRPAA”) dated September 9, 2014, pursuant to which Member may agree to participate in a NIES-Owned Resource pursuant to the terms and conditions of this Master Resource Agreement; and
- B. Member wishes to participate in one or more Transactions beginning in BPA Fiscal Year 2020 or thereafter; and
- C. NIES will exercise its best efforts to execute one or more Enabling Agreements and Confirmations with third party sellers that meet Member’s Transaction criteria; and
- D. If NIES can execute an Enabling Agreement and Confirmation that meets Member’s Transaction criteria, then the Parties desire to establish a Fixed Purchase Amount and a Percentage Cost Responsibility (“PCR”) for each Transaction consistent with the terms and conditions of the JRPAA, the applicable Enabling Agreement and Confirmation, this Agreement, and any applicable NIES credit support or other policy or other applicable agreement between NIES and Member.

NOW THEREFORE, NIES and Member agree as follows:

**AGREEMENT**

1. **Definitions.** All capitalized terms used herein shall have the respective meanings set forth in the JRPAA, as applicable, or below unless the context in which such term is used clearly requires otherwise.

- 1.1. "BPA Fiscal Year" begins October 1 and ends September 30.
- 1.2. "Enabling Agreement" means a master agreement between NIES and a third party seller or purchaser that provides the general terms and conditions for the purchase, sale, or exchange of electricity.
- 1.3. "Confirmation" is the documentation of an agreement between NIES and a third party seller or purchaser pursuant to an Enabling Agreement, for the purchase or sale and delivery of electric power at a specified quantity, price, and delivery point and other specified terms.
- 1.4. "Remarket" is the NIES resale on behalf of Member of all or a portion of Member's Fixed Purchase Amount associated with a Transaction.
- 1.5. "Resource Costs" are calculated for each Transaction by multiplying Member's Fixed Purchase Amount (converted to megawatt hours) for such Transaction by the Transaction Price plus Member's share of any additional costs incurred by NIES that are directly related to the purchase and delivery of the Resource for that particular year. Additional costs may include, without limitation, any costs incurred by NIES to provide credit support or financial security for the purchase and delivery of the Resource. Member's Resource Costs for a Transaction may also include the direct (non-proportionate) allocation of costs incurred by NIES in connection with the purchase and delivery of the Resource that would not have been incurred but for Member's participation in the Resource. Resource Costs do not include Specific Resource Investigation Costs, which are recovered separately from the Resource Costs. Exhibit A lists Member's estimated annual Resource Cost for each Transaction.
- 1.6. "Transaction" is Member's participation, as set forth in Exhibit A, in any NIES-Owned Resource that is documented in a Confirmation.
- 1.7. "Transaction Price" is the price per megawatt hour listed in the Confirmation executed by NIES as documented in Exhibit A.
- 1.8. For purposes of this Agreement, a "signature" or "signed" document or a "vote in writing" as that term is used in section 3.4 may include electronic signatures that comply with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001-7031, or a comparable Oregon state law applicable to NIES, and that include a user identification number or password as a method of verification of the identity of the person signing a document.

## 2. Transaction Terms and Conditions

- 2.1. Member's Participation. Member may participate in one or more Transactions under this Agreement. Each Transaction in which Member participates shall be documented in Exhibit A.
- 2.2. Member's Fixed Purchase Amount. Member shall have a Fixed Purchase Amount for each Transaction in which it has agreed to participate, which shall be documented in Exhibit A.
- 2.3. Member's PCR. Member shall have a PCR for each Transaction listed in Exhibit A. Member's PCR shall equal its Fixed Purchase Amount divided by the sum of all NIES members' Fixed Purchase Amounts for that particular NIES-Owned Resource.
- 2.4. Member's Voting Rights. Member's Voting Rights for each Transaction in which it participates shall equal its PCR for that Transaction.
- 2.5. Member's Obligation to Pay Resource Costs. Pursuant to section III(D)(3) of the JRPA , Member shall pay its Resource Costs with respect to any Transaction listed in Exhibit A.
- 2.6. Creditworthiness and Credit Support Requirements. During the term of any Transaction listed on Exhibit A, Member shall be bound by and shall abide by all terms and conditions of NIES' then applicable Credit and Risk Management Policy.
- 2.7. Monthly Invoicing. NIES will submit an invoice to Member on or before the fifth day of the month of delivery itemizing Member's monthly Resource Costs for each Transaction listed in Exhibit A. On or after the tenth day of that month, Member hereby authorizes NIES, through its designee NEMS, to perform an Automated Clearing House (ACH) electronic funds transfer to withdraw the funds in the amount of the invoice from Member's bank account. Notwithstanding the foregoing, NIES may invoice Member based on charges for scheduled deliveries in the current month and the next two succeeding months as estimated by NIES, and Member shall be obligated to pay such invoices in advance of actual deliveries.
- 2.8. Indemnity. Member shall indemnify and hold harmless NIES and any non-participating NIES members, from and against any and all costs, claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs arising from or associated with Member's share of the NIES-Owned Resource subject to this Master Resource Agreement. For purposes of this indemnity, "Member's share" shall be based on Member's PCR for such NIES-Owned Resource.

Member shall be solely liable for, and shall indemnify and hold harmless NIES, non-participating NIES members, and all other Participating Members from and against, any and all costs, claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs arising out of: (a) Member's obligation to pay its Resource Costs, and (b) NIES Remarketing of all or a portion of Member's Fixed Purchase Amount.

- 2.9. Member's Share of Specific Resource Investigation Costs. NIES and Member agree that Member shall be responsible for its share, equal to its PCR, of Specific Resource Investigation Costs incurred by NIES for each Transaction. Member shall be responsible for such costs for each resource investigation in which Member participates pursuant to Sections 3.1 or 3.2 below even if Member elects not to participate in a Transaction pursuant to Section 3.4. Such Specific Resource Investigation Costs shall be payable upon invoice by NIES. Notwithstanding the foregoing, Member and NIES agree that Member's Specific Resource Investigation Costs under this Agreement shall not exceed \$1,000.00 per Transaction unless Member agrees in writing to pay any additional Specific Resource Investigation Costs.

### **3. Process to Participate in a Transaction**

- 3.1. Resource Investigation Initiated by Member. Member shall notify NIES that it desires to initiate an investigation into a potential NIES-Owned Resource by submitting a letter to NIES, using the template contained in Exhibit B. The notification letter must specify Member's desired annual megawatt amount and maximum purchase price and any other attributes Member requires of the Transaction. Member acknowledges and agrees that, upon NIES' receipt of such notice from Member, NIES will notify all other NIES members of its intent to form a Resource Committee to investigate a potential NIES-Owned Resource. Other NIES members will have three (3) business days to notify NIES of their desire to participate in the investigation of such potential NIES-Owned Resource and to appoint a representative to the Resource Committee by submitting a letter or email to NIES, using the template contained in Exhibit B.
- 3.2. Resource Investigation Initiated by Other NIES Members. Upon NIES' receipt of notice from any other NIES member to initiate a resource investigation, NIES shall notify Member of its intent to form a Resource Committee to investigate a potential NIES-Owned Resource. Upon receipt of such notice, Member shall have three (3) business days to notify NIES of its desire to participate in the investigation of such potential NIES-Owned Resource and to appoint a representative to the Resource Committee by submitting a letter or email to NIES, using the template contained in Exhibit B.
- 3.3. Resource Committee. With respect to any resource investigation that Member has initiated pursuant to Section 3.1 or in which Member has notified NIES of its intent to participate pursuant to Section 3.2, NIES shall establish a Resource Committee with a representative of Member and a representative from each additional NIES member providing notice of its intent to participate. NIES shall establish a PCR for Member at this time.
- 3.4. Resource Committee Voting. With respect to any Resource Committee established by NIES pursuant to Section 3.3 in which Member has a representative, NIES shall provide Member written or electronic notice at least two (2) business days before any Resource Committee vote to authorize NIES to enter into a Confirmation. Member's Resource Committee representative, and the representatives of each other participating

NIES member, shall vote to either approve or reject NIES' execution of the Confirmation.

The vote of Member's representative, and each other Resource Committee representative, shall be made and communicated to NIES in writing on or before the deadline established by NIES. The failure to submit a timely and written vote shall be deemed to be a vote against entering into a Transaction. Member shall not be bound by any Confirmation executed by NIES pursuant to this Agreement unless Member's Resource Committee representative has timely and affirmatively voted in writing to authorize NIES to execute the Confirmation. Such written vote authorizing NIES to execute a Confirmation shall be signed by Member's Resource Committee representative and shall be in the form attached hereto as Exhibit D.

If Member's Resource Committee representative does not affirmatively vote in writing to authorize the execution of the Confirmation by the deadline established by NIES, then Member's right to participate in a Transaction with respect to such NIES-Owned Resource shall automatically be terminated. In such case, Member's representative will no longer be a member of the Resource Committee and will not have a PCR or Voting Rights. Member remains obligated, however, to pay its share of any Specific Resource Investigation Costs incurred prior to the voting deadline.

If Member's Resource Committee representative *does* affirmatively vote in writing to authorize the execution of the Confirmation by the deadline established by NIES, but the representative of any other participating NIES member does not affirmatively vote in writing to authorize the execution of the Confirmation, then NIES shall not be authorized to execute the Confirmation. In such case, the representatives of the NIES members not voting or voting against the Confirmation shall be removed from the Resource Committee and the PCR and Voting Rights of Member and of each of the NIES members whose representatives voted in favor of executing the Confirmation shall be adjusted to reflect the new composition of the remaining participating NIES members. The remaining representatives of the revised and reconstituted Resource Committee may thereafter vote to authorize or reject NIES' execution of the Confirmation. The voting requirements set forth above shall remain applicable to each subsequent vote. This voting process shall be repeated until all remaining Resource Committee representatives have unanimously voted in writing or via electronic message to authorize the execution of the Confirmation and all approved terms.

- 3.5. NIES Authorized to Transact. Upon the unanimous approval by the Resource Committee pursuant to section 3.4, NIES shall be authorized to execute a Confirmation under the terms and conditions set forth in Section IV.C of the JRPAA and as approved by the Resource Committee. NIES agrees to attempt to execute such Confirmation no later than ten (10) business days after it has received authorization to transact. If for any reason NIES is unable to execute a Confirmation within ten (10) business days after receiving authorization to transact, then such authorization shall automatically terminate unless a longer deadline is expressly permitted in Exhibit D as initially submitted, or as subsequently amended in writing, by Member's Resource

Committee representative and by the Resource Committee representatives of each other Participating Member.

NIES shall have no liability to Member under this Agreement or otherwise, if for any reason NIES is unable to execute a Confirmation as approved by the Resource Committee. NIES' execution of a Confirmation consistent with this Agreement establishes a Transaction that is binding on Member without any further authorization or approval from Member's governing body. Upon NIES' execution of a Confirmation, NIES shall send a revised Exhibit A to Member reflecting the Transaction. Member shall be bound to participate in such Transaction according to the terms of the JRPPA and this Master Resource Agreement.

#### **4. Remarketing**

- 4.1. Member's Request to Remarket. Member may request that NIES Remarket its Fixed Purchase Amount or a portion thereof at any time before or during the term of a Transaction. Member shall make such request NIES at least three (3) business days prior to the first desired Remarketing delivery date. Member shall authorize NIES in writing using Exhibit C, and Member must identify the desired megawatt amount, minimum Remarketing price, term length, and any other attributes required by Member.
- 4.2. NIES Authorized to Remarket. Upon receipt of an authorization to Remarket all or a portion of Member's Fixed Purchase Amount, NIES shall use commercially reasonable efforts to Remarket in accordance with Member's request. NIES agrees to attempt to execute such Confirmation no later than ten (10) business days after it has received authorization to transact. NIES shall have no liability to Member under this Agreement or otherwise, if for any reason NIES is unable to execute a Confirmation as approved by the Member. NIES' execution of a Confirmation consistent with this Agreement establishes a Transaction that is binding on Member without any further authorization or approval from Member's governing body. Upon NIES' execution of a Confirmation, NIES shall send a revised Exhibit A to Member reflecting the Transaction. Member shall be bound to participate in such Transaction according to the terms of the JRPPA and this Master Resource Agreement.
- 4.3. No Price Guarantee. Member acknowledges and agrees that the Remarket price may be different than the original Transaction Price, which could result in a net loss or net gain to the Member. NIES shall have no liability if it is unable to Remarket the Fixed Purchase Amount on the terms requested by Member. If for any reason the Remarketing is not completed, then Member shall remain obligated to receive and pay for Member's entire Fixed Purchase Amount at the original Transaction Price all as set forth in Exhibit A. In the event that the Remarket price is greater than Transaction Price, then Member shall be entitled to receive the positive difference between Remarket price and the Transaction Price.

#### **5. Representations.**

5.1. Member Representations. Member represents and warrants as follows:

- (i) Member has the corporate power and authority to execute and deliver this Agreement.
- (ii) The execution and delivery by Member of this Agreement and the performance by Member of the actions contemplated on its part hereby have been duly authorized by the governing body of the Member.
- (iii) This Agreement has been duly executed and delivered by the Member and is a valid and binding agreement of the Member, enforceable against the Member in accordance with its terms, subject only to limitations on enforceability imposed by (i) applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, and (ii) general equitable principles.
- (iv) Member's representative serving on any Resource Committee has been duly appointed by Member and delegated the legal authority by Member's governing body to bind Member to Transactions pursuant to this Master Resource Agreement.

5.2. NIES Representations. NIES represents and warrants as follows:

- (i) NIES has the corporate power and authority to execute and deliver this Agreement.
- (ii) The execution and delivery of this Agreement by NIES and the performance by NIES of the actions contemplated on its part hereby have been duly authorized by the Board of Directors of NIES.
- (iii) This Agreement has been duly executed and delivered by NIES and is a valid and binding agreement of NIES, enforceable against NIES in accordance with its terms, subject only to limitations on enforceability imposed by (i) applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, and (ii) general equitable principles.

## 6. **Miscellaneous.**

6.1. Termination Date. This Agreement shall terminate if and when the JRPPA expires or terminates. This Agreement may also be terminated by either party hereto with or without cause by giving the other party not less than thirty (30) days written notice. Notwithstanding the forgoing, the applicable provisions of this Agreement shall survive termination until all outstanding Transactions listed on Exhibit A have expired or have been terminated and all existing obligations arising under this Agreement, any Specific Resource Investigation Agreement, any Confirmation and/or under any agreement to provide credit support shall continue to be enforceable until fully satisfied.



6.2. Additional Remedies. Nothing herein is intended to limit the remedies available to a non-defaulting party under this Agreement, the JRPAA, an applicable Enabling Agreement or Confirmation or by law. In particular, but without limitation, if NIES is

the non-defaulting party in any Transaction in which Member is the defaulting party, NIES shall have the right (i) to indefinitely suspend NIES' performance of all Transactions with Member under this Agreement; and (ii) during any period of suspension, Remarket Member's Fixed Purchase Amount, and (iii) recover any losses due to a differential between the Resource Cost and the amount recovered from the Remarketing of Member's Fixed Purchase Amount. NIES and Member may agree to terms for a resumption of performance of any Transaction for which performance has been suspended.

- 6.3. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of NIES and Member and their respective successors and permitted assigns. Member may not make any transfer or assignment of this Agreement, other than an assignment for security, without NIES' prior written consent. Any assignment made without a consent required hereunder shall be void and of no force or effect.
- 6.4. Amendments. This Agreement may be amended by agreement between NIES and Member, but no such amendment to this Agreement shall be effective unless it is in writing, executed by both parties.
- 6.5. Entire Agreement; Waiver. This Agreement, together with Exhibits A through D, the Credit Policy and other applicable policies of NIES, any applicable Enabling Agreement or Confirmation, and the JRPAA, constitutes the entire agreement between the parties hereto relating to the subject matter contemplated by this Agreement and supersedes all prior agreements, whether oral or written. The subject matter of this Agreement involves only Transactions for the delivery of power commencing in BPA Fiscal Year 2020 or later, and nothing in this Agreement is intended to supersede the terms of any existing or future agreement that would fit the definition of a Transaction but commenced prior to BPA Fiscal Year 2020.
- 6.6. Conflicts. This Agreement and the JRPAA shall be interpreted to be consistent if possible; however, in the event of any irreconcilable conflict between the provisions of this Agreement and the JRPAA, the provisions of this Agreement shall prevail.
- 6.7. Counterparts. This Agreement may be executed in multiple counterparts to be construed as one.
- 6.8. Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable.
- 6.9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon.

IN WITNESS WHEREOF, NIES and the Member have caused this Agreement to be executed, attested, sealed and delivered by their respective duly authorized officers as of the day and year first written above.



City of Cheney	Northwest Intergovernmental Energy Supply
	
Date: <del>to</del> 1-10-17	Date: 3-8-2017
By: Tom Trulove	By: Robert Hammond
Its: Mayor	Its: President