

LOCATION EXCHANGE AGREEMENT

This Location Exchange Agreement (“Agreement”) is entered into by and between Inland Power and Light Company (“Inland”) and City of Cheney (“Cheney”). Inland and Cheney may be referred to herein individually as a “Party” and collectively and the “Parties.”

RECITALS

WHEREAS, Inland is a Member of the Northwest Energy Supply Cooperative (“NESC”); and

WHEREAS, Inland and NESC are parties to a Joint Resource Planning and Acquisition Agreement (“JRPPA”) dated December 10, 2014, pursuant to which Inland may participate in one or more NESC-owned wholesale power resources pursuant to the terms and conditions of a Master Resource Agreement (“Inland MRA”) dated November 17, 2016; and

WHEREAS, Pursuant to the terms of its JRPPA and the Inland MRA, Inland has elected to participate in five (5) MWs of a wholesale power transaction between NESC and Shell Energy North America (“Shell Energy”) that was confirmed on November 5, 2019 pursuant to the Edison Electric Institute (“EEI”) Master Enabling Agreement by and between NESC and Shell Energy dated February 12, 2010 (“Shell Transaction”); and

WHEREAS, The period of delivery for the Shell Transaction is October 1, 2021 through September 30, 2022 (“Delivery Period”), and point of delivery specified for the Shell Transaction is Mid-C; and

WHEREAS, the City of Cheney, Washington (“Cheney”) is a member of the Northwest Intergovernmental Energy Supply (“NIES”); and

WHEREAS, Cheney and NIES are parties to a JRPPA dated December 10, 2014, pursuant to which Cheney may participate in one or more NIES-owned wholesale power resources pursuant to the terms and conditions of a Master Resource Agreement dated January 10, 2017 (“Cheney MRA”); and

WHEREAS, Pursuant to the terms of its JRPPA and Cheney MRA, Cheney has elected to participate in 1 (1) MWs of a wholesale power transaction between NIES and Transalta Energy Marketing (U.S.) Inc. (“Transalta”) that was confirmed on February 16, 2018 pursuant to the EEI Master Enabling Agreement by and between NIES and Transalta dated August 29, 2017 (“Transalta Transaction”); and

WHEREAS, During the Delivery Period, Transalta shall deliver the contract quantity to certain points of delivery that, at its option, may include, but are not limited to, Mid-C; and

WHEREAS, Inland and Cheney each have access to wholesale power scheduling and management services provided by and on behalf of NESC and NIES and therefore do not require that their wholesale power supply be delivered exclusively to Mid-C; and

WHEREAS, Cheney and Inland agree to exchange with each other the 1 MW of power that Inland is entitled to receive exclusively at Mid-C pursuant to the Shell Transaction for the 1 MW of power that Cheney is entitled to receive pursuant to the Transalta Transaction (which may be delivered to points other than Mid-C).

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

AGREEMENT

I. Term and Termination

- 1.1 Effective Date: This Agreement shall be effective upon execution by both Parties (“Effective Date”).
- 1.2 Term: Unless earlier terminated by either Party according to the terms hereof, and subject to the survival of any outstanding obligations under Section 1.4 below, this Agreement shall expire immediately after the last hour of the Delivery Period.
- 1.3 Termination: Either Party may terminate this Agreement prior to the expiration date in its sole discretion and without cause by giving the other Party written notice. Such termination shall be effective on and for the next delivery day if given by 10:00 AM on the day prior to the WECC Pre-Scheduling day for that delivery day. The term “WECC Pre-Scheduling Day” shall mean the WECC Pre-Scheduling Day prior to the delivery day or day(s) as defined by the most recent WECC Pre-Schedule calendar. For example, the WECC Pre-Scheduling Day for a Thursday will typically be for delivery days of Friday and Saturday.
- 1.4 Survival: Any obligations of a Party to the other under this Agreement that remain outstanding upon the termination or expiration of this Agreement shall survive until satisfied in full. All future obligations of a Party will cease immediately if this Agreement is terminated as specified in Section 1.3.

II. Exchange of Power

- 2.1 Deliveries by Inland to Cheney: For each hour during the Delivery Period, Inland shall deliver to Cheney at Mid-C one (1) MW of firm power.
- 2.2 Deliveries by Cheney to Inland: For each hour during the Delivery Period, Cheney shall return to Inland one (1) MW of firm power. For purposes of this Section 2.2, the point of delivery of the return power by Cheney to Inland in each hour shall be the point at which firm power is delivered to Cheney during such hour pursuant to the Transalta Transaction.

- 2.3 **Implementation Costs.** If the Northwest Energy Management Service (“NEMS”), acting in its capacity as the billing agent, reasonably determines that either Party would incur any additional costs, fee, charge, or penalty under the Shell Transaction or the Transalta Transaction that is incremental to those that would have been incurred absent this Agreement (“Incremental Transaction Cost”), then NEMS shall recover such Incremental Transaction Cost on an equitable basis from NESC and NIES, rather than directly from either Party to this Agreement, consistent with the terms and intent of this Agreement, NESC Resolutions #2021-01 and #2021-02, and NIES Resolutions #2021-01 and #2021-02.
- 2.4 **Replacement Power Costs.** If NESC or NIES recovers any replacement power costs under the Shell Transaction or the Transalta Transaction for non-delivery of power during an hour, then NEMS shall allocate such replacement power costs to the Party that did not receive power for such hour consistent with the terms and intent of this Agreement.

III. Non-Delivery of Power by Wholesale Counterparty

- 3.1 **Exchange Obligation Contingent on Receipt of Power:** Inland’s obligation to deliver one (1) MW of firm power to Cheney at Mid-C during any hour of the Delivery Period is contingent upon Inland’s receipt during such hour of one (1) MW of firm power at Mid-C pursuant to the Shell Transaction. If, for any reason, Inland does not receive during any hour one (1) MW of firm power pursuant to the Shell Transaction, then Inland shall have no obligation to provide Cheney with replacement power from any other resource.

Cheney’s obligation to deliver one (1) MW of firm power to Inland during any hour of the Delivery Period is contingent upon Cheney’s receipt during such hour of one (1) MW of firm power at an agreed-upon point of delivery pursuant to the Transalta Transaction. If, for any reason, Cheney does not receive during any hour one (1) MW of firm power pursuant to the Transalta Transaction, then Cheney shall have no obligation to provide Inland with replacement power from any other resource.

- 3.2 **Exchange of Power Suspended:** Each Party’s obligation to deliver firm power to the other under this Agreement shall be suspended for each hour in which the other Party fails or is unable to deliver a like amount of firm power, whether pursuant to Section 3.1 or otherwise. For each hour in which a Party’s delivery obligation is suspended pursuant to this Section 3.2, such Party may retain for its own account any firm power received by it pursuant to the Shell Transaction in the case of Inland, or the pursuant to the Transalta Transaction in the case of Cheney.
- 3.3 **Transaction Remedies:** Notwithstanding any other provision of this Agreement, if for any reason Inland does not receive one (1) MW of firm power pursuant to the Shell Transaction during any hour of the Delivery Period, then Inland reserves

and may exercise for its own account any rights or remedies available to it under the Shell Transaction.

Notwithstanding any other provision of this Agreement, if for any reason Cheney does not receive one (1) MW of firm power pursuant to the Transalta Transaction during any hour of the Delivery Period, then Cheney reserves and may exercise for its own account any rights or remedies available to it under the Transalta Transaction.

- 3.4 Communications Regarding Power Non-Deliveries: Cheney, Inland, and NEMS shall promptly communicate to each Party (and to NEMS, as applicable) as soon as it becomes aware of any curtailment of non-delivery of firm power pursuant to this Agreement, pursuant to the Shell Transaction in the case of Inland, or the pursuant to the Transalta Transaction in the case of Cheney.

IV. No Change to MRA Transaction Terms

Nothing in this Agreement shall modify, amend, supersede, or replace any term or provisions of the Inland MRA, Cheney MRA, Shell Transaction, or Transalta Transaction. Notwithstanding any other provision of this Agreement, Inland shall continue to be responsible for the full and timely performance of all of its obligations under the Inland MRA according to the terms thereof. Notwithstanding any other provision of this Agreement, Cheney shall continue to be responsible for the full and timely performance of all of its obligations under the Cheney MRA according to the terms thereof.

V. Representations and Warranties

- 5.1 Legal Authority: Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the state in which it is organized; (ii) it has the right, power, and authority to enter into this Agreement and to perform its obligations hereunder; (iii) this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; (iv) the execution, delivery, and performance of this Agreement does not violate or conflict with the organizational documents of such Party or any material agreement or instrument binding upon such Party; and (v) no consent or approval by any governmental authority is required in connection with such Party's execution, delivery, and performance of this Agreement
- 5.2 Good Standing Under Transaction Agreements: Inland represents and warrants that it is in good standing under the Inland MRA and its JRRPA. Inland further represents that it has good title with respect to all firm power delivered to Cheney hereunder, and that such firm power will be delivered free of any liens or encumbrances.

Cheney represents and warrants that it is in good standing under the Cheney MRA and its JRRPA. Cheney further represents that it has good title with respect to all

firm power delivered to Inland hereunder, and that such firm power will be delivered free of any liens or encumbrances.

- 5.3 Performance and Enforcement of Obligations: Inland covenants that it will undertake all commercially reasonable efforts to enforce its rights under the Inland MRA and its JRRPA.

Cheney covenants that it will undertake all commercially reasonable efforts to enforce its rights under the Cheney MRA and its JRRPA.

VI. Defaults and Remedies

- 6.1 Failure to Perform Obligations under this Agreement: It shall be an event of default (“Default”) by a Party if such Party fails to timely perform any material obligation under this Agreement.
- 6.2 Failure to Perform Transaction Obligations: Any event of default by Inland under the Inland MRA or its JRRPA shall also be a Default of this Agreement. Any event of default by Cheney under the Cheney MRA or its JRRPA shall also be a Default of this Agreement.
- 6.3 Remedies: Except as otherwise expressly provided for in this Agreement, the Parties shall have all rights or remedies available at law or in equity in conjunction with the Defaults provided in Sections 6.1 and 6.2. In addition to any other rights or remedies available at law or equity, if a Default occurs, the non-Defaulting Party shall have the right but not the obligation to: (i) suspend its performance under this Agreement; or (ii) immediately terminate this Agreement.
- 6.5 No Consequential Damages: In no event shall either Party be liable to the other under any provision of this Agreement for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

VII. Miscellaneous

- 7.1 Assignment: Neither Party may transfer or assign this Agreement without first obtaining the express written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed.
- 7.2 Governing Law: This Agreement shall be governed by the laws of the State of Oregon without regard to its conflicts of laws principles.
- 7.3 Severability: If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other governmental authority

having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

- 7.4 Notices: All written notices, demands, or requests required by this Agreement shall be considered given when delivered in person, by confirmed email, by first class U.S. mail, or by overnight delivery service, in each case directed to the attention of the following:

To Inland:
ATTN: Brian Hess
Email: brianh@inlandpower.com
PO Box A
Spokane, WA 99219

To Cheney:
ATTN: Steve Marx
Email: smarx@cityofcheney.org
112 Anderson Rd.
Cheney, WA 99004

- 7.5 Amendment: This Agreement may be amended only by a written document signed by both Parties hereto.
- 7.6 No Third-Party Beneficiaries: Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. There shall be no express or implied third-party beneficiary of this Agreement. No entity or person, other than the Parties, shall have the right to enforce any provision, obligation or right arising under this Agreement.
- 7.7 Final Agreement: This Agreement constitutes the final agreement of the Parties with respect to the subject matter hereof and supersedes and negates any prior correspondence or representations that may have been made by either Party to the other concerning the terms of this Agreement to the extent that such correspondence or representations are inconsistent with the express terms of this Agreement.
- 7.8 Waiver: Any waiver by a Party of its rights with respect to a Default hereunder, or with respect to any other matter arising in connection herewith, shall not be deemed to be a waiver with respect to any subsequent Default. A delay by a Party in asserting any right hereunder shall not be deemed a waiver of any right under this Agreement.

VIII. Execution

This Agreement may be executed by electronic signature and in duplicate originals or electronic copies. The Parties also agree to execute any further documents, and take any further actions, as may be reasonable and necessary in order to carry out the purpose and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

INLAND POWER AND LIGHT COMPANY

By: _____

Title: _____

Date: _____

CITY OF CHENEY

By: _____

Title: _____

Date: _____