

ELECTRIC POWER AND SERVICE CONTRACT
BY AND BETWEEN THE CITY OF CHENEY, WASHINGTON
AND
WILLOW STREET MINING, INC

This Electric Power and Service Contract (“**Contract**”), is entered into and effective _____, 2017 (“**Effective Date**”), by and between The City of Cheney, Washington (“**Cheney**”) and Willow Street Mining, Inc., a Washington limited liability company (“**Customer**”). Cheney and Customer may be referred to herein individually as a **Party** or collectively as **Parties**.

WHEREAS, Cheney owns and operates an electric system that it uses to provide retail electric services to end-use customers within and without its service territory; and

WHEREAS, For purposes of this Contract, the term “**Electric Power**” shall mean firm electric energy and capacity and related services purchased, generated or otherwise acquired or provided by Cheney the characteristics of which are set forth in Section E; and

WHEREAS, Customer intends to own and operate a datacenter facility (“**Facility**”) that will be located within Cheney’s service territory and will qualify as a new large single electric load pursuant to Cheney Municipal Code §14.08.055; and

WHEREAS, the Parties desire for Cheney to provide Electric Power to the Facility at rates established by Cheney city council from time to time as described in Cheney Municipal Code §14.08.055; and

WHEREAS, the Parties further desire that Cheney construct, cause to be constructed or otherwise acquire distribution facilities necessary to sell and deliver the Electric Power to the Facility at the Point of Delivery (“**Distribution Facilities**”) as provided under this Contract; and

WHEREAS, Cheney's commitments herein are made subject to any restrictions, terms and conditions of power purchases that Cheney has executed or will execute or power generation that Cheney may own or operate from time to time, in order to provide Electric Power to Customer’s Facility.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION A: TERM

1. **Term**: This Contract shall be effective as of the Effective Date and shall remain in effect through _____ (“**Term**”) unless terminated earlier as may be allowed under Section A.2.
2. **Termination**: Subject to payment of the Termination Costs as set forth in Section 3 below, this Contract may be terminated prior to expiration of the Term as follows:

- a. Either Party may terminate this Contract with or without cause after giving sixty (60) days prior written notice to the other Party.
 - b. A non-defaulting Party may terminate this Contract, effective immediately, for an uncured Event of Default as provided in Section G.2.d.
 - c. Customer may terminate this Contract, effectively immediately upon providing written notice to Cheney, if the Facility is destroyed or rendered inoperable by a casualty beyond the reasonable control of Customer.
3. **Termination Costs:** In the event of termination, all otherwise unrecovered wholesale power, transmission, distribution, administrative and other costs reasonably incurred by Cheney to provide Electric Power to the Facility under the terms of this Contract (collectively, the “**Termination Costs**”) shall become due and payable upon the effective date of such termination (“**Termination Date**”). Such Termination Costs may include costs to be incurred by Cheney after the Termination Date pursuant to legally enforceable obligations undertaken by Cheney prior to the Termination Date. Notwithstanding the forgoing, Cheney shall use commercially reasonable efforts to mitigate its Termination Costs. As soon as practicable following the Termination Date, Cheney shall send Customer a written invoice detailing such Termination Costs, which shall be due and payable by Customer within fifteen (15) calendar days.
 4. **Effect of Termination:** Upon the expiration or in the event of termination of this Contract by either Party, Cheney shall have the immediate right to disconnect the Facility from its electric system.
 5. **Survival of Obligations:** Upon the expiration or in the event of termination of this Contract by either Party, all outstanding obligations, including without limitation Customer’s obligation to pay Termination Costs, shall survive the expiration or termination of this Contract until satisfied.

SECTION B: TRANSACTION

1. **Sale and Purchase of Electric Power:** Subject to the terms and conditions of this Contract, Cheney agrees to sell and deliver at the Point of Delivery (as defined in Section E.2), and Customer agrees to buy and receive at the Point of Delivery, Electric Power in an amount sufficient to meet the Facility’s electrical requirements up to a contract demand limit of 1,000 kilowatts at a power factor greater than 0.97 (“**Contract Demand Limit**”).
2. **Commencement of Electric Power Service:** Cheney shall commence deliveries of Electric Power for the Facility following the completion of all necessary Distribution Facilities and at a specific date and time to be established by mutual agreement of the Parties.
3. **Electric Power Requirements:** Customer shall purchase from Cheney all Electric Power required for use at the Facility, up to the Contract Demand Limit, pursuant to the terms and conditions of

this Contract. Except as otherwise provided herein, Cheney's right and obligation to provide Electric Power to the Facility during the Term of this Contract shall be exclusive.

- a. Customer may not increase the Electric Power use of the Facility by any amount that exceeds the Contract Demand Limit without prior written approval from Cheney.
 - b. Cheney may, in its sole discretion, adjust the Contract Demand Limit for the protection of its electric system when the Facility is operated at a power factor lower than 0.97 on a regular basis. Customer shall be responsible for all costs reasonably incurred by Cheney to repair damage to its electric system resulting from persistent operation of the Facility at a power factor lower than 0.97.
4. **Distribution Facilities:** Cheney shall design and construct the Distribution Facilities that it determines to be necessary, in its reasonable discretion consistent with prudent utility practices, to deliver Electric Power to the Facility at the Point of Delivery.
- a. Prior to constructing the Distribution Facilities, Cheney shall provide Customer with a written quote for the Distribution Facilities costs. Customer shall pay the entire quoted amount for the cost of such Distribution Facilities within the later of (i) ninety (90) days of receiving the quote or (ii) ninety (90) days of the Effective Date of this Contract. Cheney shall have no obligation to acquire or construct the Distribution Facilities, or to incur any other Contract implementation costs including delivery of Electric Power, prior to Customer's payment of the quoted Distribution Facilities costs.
 - b. Cheney reserves the right to invoice Customer for any cost that exceeded the initial quoted amount that were necessarily incurred because of unforeseen events or conditions.
 - c. Cheney shall at all times own, operate and maintain all of the Distribution Facilities. Cheney reserves the right to use the Distribution Facilities to provide service to third parties and other locations. In the event that the Distribution Facilities are used to provide service to third parties, the Customer may be entitled to a partial refund of the Distribution Facilities costs pursuant to Cheney's applicable line extension policy then in effect.

SECTION C: RATES AND CHARGES

1. **Rate Schedule Charges:** Customer shall pay Cheney for all Electric Power provided to the Facility under this Contract at the rates and upon the terms and conditions established by duly adopted (and amended as set forth in Section C.2 resolutions of the Cheney City Council. The rate will be based on the impact to the existing customers rates, the price of Tier 2 (or other acquired) power from BPA, additional transmission cost, the financial impact of the service on the Cheney electric utility and such other factors as may be established by the City Council. The applicable rate schedule may include, but is not limited to, the following representative charges:
 - a. A Base charge for each meter that measures Customer's Electric Power usage.

- b. An Energy Charge applied against Customer's measured Electric Power use.
- c. A Demand Charge applied to Customer's peak demand.

Exhibit A to this Contract is the rate schedule adopted by Resolution ____ that is applicable to Cheney's provision of Electric Power to the Facility effective _____ ("Rate Schedule"). The Rate Schedule is hereby incorporated into this Contract by reference.

- 2. Rate Schedule Amendments: Cheney may amend the Rate Schedule as follows:
 - a. Upon thirty (30) days prior written notice to Customer, provided that the Rate Schedule shall not be amended more than once every twelve (12) month period pursuant to this Section C.2.a; or
 - b. If the characteristics of Customer's Electric Power requirements at the Facility changes; or
 - c. If the cost or supply of Electric Power available to lawfully serve the Facility changes.

The Parties agree that any amended or successor Rate Schedule shall be substituted for Exhibit A and shall be incorporated into this Contract by reference as of the effective date of the Amended or Successor Rate Schedule.

- 3. Other Services: Other services requested by Customer and provided by Cheney, including but not limited to construction, maintenance, or repair, will be provided at Cheney's option at the cost incurred by Cheney including reasonable overhead and administrative charges.
- 4. Payment Security: Customer shall provide to Cheney, and Cheney shall hold and may use as provided in Section C.4.c and C.4.f, a cash prepayment equal to two (2) months of total expected monthly charges and payments described in Section C.1 of this Contract (collectively, the "**Prepayment**").
 - a. The Prepayment amount shall be calculated by Cheney and included in Exhibit B. The Prepayment amount and Exhibit B, may be updated by Cheney pursuant to Section C.4.e.
 - b. The initial Prepayment amount shall be due and payable upon the Effective Date of this Contract.
 - c. Upon receipt by Cheney, the Prepayment shall be held by Cheney as security for the payment and performance of Customer's obligations under this Contract. The Prepayment shall be placed in a separately identified non-interest bearing account.
 - d. The Prepayment amount held by Cheney shall constitute available funds of Cheney and may be used by Cheney for any purpose under this Contract . Unless used to offset a payment obligation owed by Customer under this Contract, Cheney's use of such Prepayment funds shall not decrease the amount credited to Customer's account.

- e. The calculation of the Prepayment amount may be updated by Cheney in its reasonable discretion not less than six (6) months following the Effective Date and thereafter not more than once per calendar year at either Party's written notice in order to reflect changes in the total expected monthly charges and payments described in Section C.1. When the Prepayment amount has been recalculated, any balance due to Customer, or balance owed by Customer, based on the difference between the Prepayment funds, including interest shall be credited to Customer's account as provided herein. The difference between the previously determined Prepayment amount and the recalculated Prepayment amount shall either be held by Cheney as additional collateral security for Customer's obligations, as provided in Section C.4, or applied as a credit (as the case may be) on Customer's next subsequent monthly bill.
- f. Upon expiration or earlier termination of this Contract, the Prepayment amount held by Cheney as collateral security shall first be used by Cheney to satisfy any outstanding amounts owed by Customer under this Contract, including but not limited to any unpaid charges under Section C.1, and any applicable Termination Costs or other related charges pursuant to Section A.3, with the remaining balance, if any, to be refunded to Customer.

SECTION D: PAYMENT OF BILLS

1. **Invoices:** Cheney shall calculate the applicable rates and charges under Section C of this Contract and shall submit an invoice (in the form of a standard City utility bill) to Customer each month for all such rates and charges incurred by Customer in the preceding month. All invoices shall be submitted by U.S. Mail, courier or email with a mailed copy to Customer at:

Attn: Mr. John Tree
Willow Street Mining, Inc. 1618 Willow Street
Cheney, WA 99004

2. **Payments:** Customer shall pay all invoices by AHC or by check in the U.S. Mail or delivered to Cheney at:

City of Cheney
Finance Department
609 2nd Street,
Cheney, WA 99004

Payment shall be due no later than fifteen (15) calendar days from the date received if by courier or by email, or if by U.S. Mail the postmarked date of the bill. Failure to receive a bill shall not release Customer from liability for payment.

3. **Late Payments:** Any payment not received by Cheney within the time required by Section D.2 shall be considered overdue. In addition to any other rights or remedies that may be available to

Cheney under Section G.4, interest shall accrue on any overdue amounts at a rate equal to one percent (1%) per month until paid.

4. **Billing Disputes:** In the event that any portion of an invoice is in dispute, including without limitation an invoice for Termination Costs under Section A.3, the entire amount of the invoice (including the disputed amount) shall be paid in full and when due. At the time of making such payment, the Customer shall indicate in writing the amount and nature of the invoice dispute. The Parties shall work together in good faith to try to resolve the dispute. If the Parties cannot resolve the invoice dispute on their own within thirty (30) calendar days, then either Party may initiate legal action to resolve the dispute. Upon determination of the correct invoice amount, an adjustment shall be made to reflect the correct amount, and the amount owed shall be paid to the Party to whom it is owed within ten (10) days of the determination of the correct amount, together with interest thereon at the rate of one percent (1%) per month.

SECTION E: CHARACTER OF SERVICE

1. **Voltage:** Electric Power supplied under this Contract shall be three phase alternating current at approximately 60 Hertz and at approximately 208/120 volts.
2. **Point of Delivery:** Deliveries of Electric Power shall be made at the load-side of the transformer vault, which shall be the demarcation point of facilities owned by Cheney and Facilities owned by Customer (“**Point of Delivery**”). The Customer shall own the cables and cable terminations on the load-side of the transformer and all electrical equipment downstream of the Point of Delivery.
3. **Facilities:** Deliveries of Electric Power may be made via overhead or underground facilities or a combination thereof at the determination of Cheney.
4. **Metering:** Metering equipment necessary to measure both real kilowatt hours (kwh) and kilo volt amps demand (KVA) power will be provided by Cheney as part of the Distribution Facilities and the metered data shall form the basis of billing determinants. Such metering equipment shall be capable of providing energy and demand data for fifteen (15) minute intervals.
5. **Service Interruption:** Cheney shall use reasonable diligence to provide a regular and uninterrupted supply of Electric Power. Whenever necessary for the purpose of making repairs or improvements to its electric system, Cheney shall have the right to temporarily suspend the delivery of Electric Power to the Facility. In such cases, Cheney will give reasonable prior notice to Customer if circumstances permit. Whenever an interruption of service can be planned, Cheney will schedule its activities by mutual agreement with Customer. Any interruption will be as short in duration as practicable in accordance with prudent utility practices. Cheney further reserves the right to reduce the supply of power hereunder due to curtailment or proration requirements of governmental regulations or power suppliers without incurring any liability to Customer.

SECTION F: ACCESS RIGHTS

1. Easements: Cheney's obligation to provide Electric Power service under this Contract is contingent upon Cheney's ability to obtain any and all easements across private property that may be necessary to install, operate and maintain the Distribution Facilities. Cheney shall use commercially reasonable efforts to obtain any such required easements. Upon request by Cheney, Customer shall cooperate in good faith with Cheney's efforts to obtain such easements.
2. Access: The duly authorized agents of Cheney shall have access at all reasonable hours to Customer's premises for the purpose of installing, inspecting, testing, maintaining, replacing, modifying or removing Distribution Facilities, reading meters, and for such other purposes necessary or incidental to carrying out this Contract. Any and all agents of Cheney shall comply with all applicable access and safety rules while on Customer's premises. Customer agrees to promptly advise Cheney of all such rules and subsequent amendments thereof.

SECTION G: MISCELLANEOUS

1. Events of Default: Each of the following shall constitute an "**Event of Default**" hereunder:
 - a. Failure of either Party to make any payment required by this Contract when due, if such failure is not cured within ten (10) days after such payment becomes due;
 - b. Failure of either Party to perform any material obligation hereunder, if such failure is not cured within thirty (30) days after receipt by the non-performing Party of written notice from the other Party of such failure;
 - c. Either Party makes an assignment for the benefit of its creditors;
 - d. Either Party files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing;
 - e. Customer fails to provide and maintain the Payment Security required by Section C.4 of this Contract.
2. Remedies: During the continuation of an Event of Default, the non-defaulting Party shall have the right, but not the obligation, to:
 - a. Suspend performance of its obligations under this Contract including disconnecting Electric Power for the period of default.
 - b. Recover from the defaulting Party all costs, fees, charges and expenses (including reasonable attorneys' fees) ("**Costs and Fees**") incurred as a result of such Event of Default (including during any applicable cure period whether or not the non-defaulting Party has elected to suspend performance during such cure period).

- c. Send the defaulting Party an invoice for such Costs and Fees or other amounts as are due and payable to the non-defaulting Party at such time under this Agreement. Such invoice shall be payable upon receipt by the defaulting Party.
 - d. Terminate this Contract by written notice designating the date of termination (“**Termination Date**”) and delivered to the defaulting Party no less than ten (10) days before such Termination Date.
 - e. In the case of an Event of Default for Customer’s failure to pay when due any amount owed to Cheney under this Contract, Cheney may apply the Prepayment maintained pursuant to Section C.4 to make the payment. The provisions of this Section G.2.e shall be in addition to any other remedies provided to Cheney herein.
 - f. Exercise any other rights and remedies under this Contract or under any applicable law then in effect.
3. Mitigation: The non-defaulting Party shall undertake all commercially reasonable efforts to mitigate its damages.
 4. No Assignment: Neither Party may assign their interest in this Contract.
 5. Entire Agreement and Modification: This Contract, the Exhibits attached hereto and any applicable provisions of the Cheney Municipal Code, customer policies or Rate Schedules adopted by Cheney, constitute the entire agreement of the Parties hereto with respect to the transactions addressed herein. Any amendments to this Contract must be in writing and signed by both Parties.
 6. No Waiver: Any waiver at any time by either Party hereto of its rights with respect to any default of the other Party hereto, or with respect to any other matter arising in connection with this Contract, shall not be considered a waiver with respect to any subsequent default or matter. A delay by a Party in asserting any right hereunder shall not be deemed a waiver of any right under this Contract.
 7. Attorney Fees: If any action at law or in equity is taken to enforce or interpret the terms of this Contract or for the breach hereof, the prevailing Party shall be entitled to its reasonable attorneys’ fees, costs and necessary disbursements as determined by a court with competent jurisdiction to be paid by the losing Party in addition to any other relief to which such prevailing Party may be entitled at trial and on appeal.
 8. Limitation of Liability: Except as expressly provided in this Contract, neither Party shall be liable for special, incidental, exemplary, indirect or consequential damages, whether based in contract or tort (including such Party’s own negligence) or under any legal theory which includes, but is not limited to, damages consisting of loss of profits or revenue, loss of use of equipment, cost of capital, cost of substitute equipment, facility equipment malfunction, loss of source code, data or information, delay in data processing or other costs, expenses and fees that may occur or result

from this Contract. Cheney shall not be liable to Customer for any loss or damages of any type or nature arising out of the interruption, fluctuation, outage, change in voltage, or other electrical disturbance associated with the provision of Electric Power service to the Facility, nor shall such event constitute a breach of contract on the part of Cheney.

9. Legal Authority: Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the State of Washington, (ii) it has all requisite power and authority to carry on the business to be conducted by it and enter into this Contract, (iii) the execution and delivery of this Contract and the performance of the Party's obligations have been duly authorized and all necessary action has been taken, and (iv) this Contract is legal, valid and binding and enforceable in accordance with its terms.
10. Governing Law: This Contract shall be governed by the laws of the State of Washington and the ordinances and resolutions adopted by the City Council.
11. Notices: All written notices, demands or requests required under this Contract shall be considered given when delivered in person, by facsimile or email, or sent by first class U.S. mail, postage prepaid, or by overnight delivery service, directed to the attention of the following:

To Customer:

Attn: Mr. John Tree
Willow Street Mining, Inc.
1618 Willow Street
Cheney, WA 99004

To Cheney:

Mayor
City of Cheney
609 2nd Street,
Cheney, WA 99004

12. Generation: Customer shall not install or operate, either directly or through third parties, electrical generation at the Facility site or interconnected to the Facility without the prior written consent of Cheney.
13. Uncontrollable Force: Neither Party shall be liable to the other for any charges, damages, or claims of damage attributable to any Uncontrollable Force. An "Uncontrollable Force" includes any cause or event that, by the exercise of reasonable diligence, the affected Party is unable to avoid. Uncontrollable Forces include, but are not limited to, injunction or other decree or order of any court or government agency having jurisdiction, sabotage, labor disputes, strikes, lock-outs, work stoppages, riot, insurrection, acts of public enemy, fire, flood, explosion, extraordinary action

of the elements, earthquake or other acts of God, or failure or loss of facilities (including the Distribution Facilities and facilities of third parties providing power or transmission services). If either Party is rendered wholly or partly unable to perform any of its obligations under this Contract by reason of Uncontrollable Force, such obligation shall be suspended or excused, provided that such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability within a reasonable time period. Neither Party shall be relieved by operation of this Section of any payment obligation or liability with respect to performance that occurred prior to the Uncontrollable Force.

14. No Third Party Beneficiary: Nothing in this Contract 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 Contract. There shall be no express or implied third party beneficiary of this Contract. No entity or person, other than the Parties, shall have the right to enforce any right under this Contract.
15. No Dedication of Facilities: Nothing in this Contract shall be construed as or shall constitute the dedication of Cheney's electric system, or any portion thereof, to Customer or to the Facility.

SECTION I: SIGNATURES

The undersigned, as of the date indicated at signature, as duly authorized representatives of The City of Cheney and Willow Street Mining, Inc. do hereby agree to the terms and conditions of this Contract as set forth herein. This Contract may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument.

City of Cheney

By _____

By _____

Chris Grover

Printed Name

Mayor

Title

Attest:

Cindy Niemeier, Finance Director

Exhibit A

RATE SCHEDULE – NEW LARGE SINGLE ELECTRIC LOAD

1) APPLICABILITY

The following rates shall be applicable to Willow Street Mining, Inc. datacenter facility (“Facility”) located at 2416 Cheney-Spokane Road, Cheney, WA 99004.

3) BASE CHARGE

A fee of **\$75.00** per month shall be charged for each meter.

4) ENERGY CHARGE

The charge for energy metered under this rate shall be:

\$0.0425 per kilowatt-hour

5) DEMAND CHARGE

Demand shall be the maximum average kva (thousand volt amps) load used by the Facility for any period of 15 consecutive minutes during the month for which the bill is rendered, as indicated or recorded by a demand meter and shall be billed at the following rate:

\$5.75 per kva

6) TAX ADJUSTMENT

Billing is subject to tax adjustment as provided by law.

7) EFFECTIVE DATE

This rate schedule shall be effective for all bills on or after the Effective Date of the Electric Power and Service Agreement.

This Rate Schedule is adopted by Resolution E-__ of the City of Cheney.

Exhibit B

PREPAYMENT AMOUNT

The Prepayment Amount will be two months of estimate billing (rounded to the nearest \$1,000). The initial Prepayment Amount will be based on installed capacity and will be equal to the following amounts as calculated below:

\$77,000 for 1 mw installed capacity

\$155,000 for 2 mw installed capacity

\$232,000 for 3 mw installed capacity

Data Center estimated billing
Cheney Large Industrial Rate

Base Rate	\$	75.00		
Energy Charge	\$	0.0425		
Demand Charge	\$	5.75		
Average hours/month		730		
Estimated Capacity Factor		90%		
Peak Demand (KW)		1,000	2,000	3,000
Average usage (KW)		900	1,800	2,700
Kwh used		657,000	1,314,000	1,971,000

Charges

Base	\$	75.00	\$	75.00	\$	75.00
Energy	\$	27,922.50	\$	55,845.00	\$	83,767.50
Demand Charge	\$	5,750.00	\$	11,500.00	\$	17,250.00
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Total-monthly	\$	33,748	\$	67,420	\$	101,093
Total-annually	\$	404,970	\$	809,040	\$	1,213,110
taxes-annually	\$	59,733	\$	119,333	\$	178,934
Final Bill-monthly	\$	38,725	\$	77,364	\$	116,004
Final Bill-annually	\$	464,703	\$	928,373	\$	1,392,044
Deposit	\$	77,000	\$	155,000	\$	232,000