

## ORDINANCE NO. 46-18

AN ORDINANCE of the City of Richland, Washington relating to the electric utility; authorizing the execution of a participant agreement with Energy Northwest for the financing and development of the Horn Rapids Solar, Storage and Training Project (HRSST) battery energy storage system (BESS); authorizing the issuance of one or more series of electric revenue bonds in an approximate principal amount of not more than \$4 million to provide funds to pay all or a portion of the City's costs relating to constructing the project, to make a deposit to satisfy the reserve requirement for the bonds (if necessary), and to pay the costs of issuance and sale of such bonds; and providing for other related matters.

BE IT ORDAINED BY THE CITY OF RICHLAND as follows:

Section 1.01 Definitions. Capitalized terms used but not otherwise defined in this ordinance shall have the meanings given in Ordinance 18-08 of the City.

Section 1.02 Recitals, Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:

(a) *The BESS Project*. The City has been presented with a proposal to develop, in collaboration with Energy Northwest, a new purchased power resource for the City's electric utility, which is hereby declared to be a part of the plan of additions to and betterments of the City's electric utility. The proposal (the "BESS Project") involves the development of a solar energy battery storage system, consisting of a 1 MW vanadium flow battery energy storage system ("BESS"), located in the City, to be owned and operated by Energy Northwest to serve the City's electric distribution system.

The BESS will be operated by Energy Northwest in collaboration with Potelco, Inc., which will own a 4 MWDC photovoltaic project ("Solar Project") adjacent to the BESS Project, and the Regional Education & Training Center, which provides technical training to battery storage and solar technicians. The energy generated by the Solar Project will be sold to the City, pursuant to a Power Purchase Agreement ("PPA") and will be stored in the BESS to be used, as needed, by the City to provide electricity service to its utility ratepayers. The cost of power under the PPA is expected to be less than the cost of power through the City's other existing purchased power resources and to offset the City's expenditures for purchased power over the life of the BESS.

(b) *Financing*. The BESS will be constructed and owned by Energy Northwest for the sole benefit of the City's electric utility, pursuant to a Participant Agreement under which the City will be responsible to pay for the capital construction and related costs, and for the ongoing costs of operating and maintaining the BESS. The capital costs are expected to be covered by approximately \$3 million in grants obtained by Energy

Northwest and by the issuance of electric revenue bonds by either the City or by Energy Northwest on behalf of the City. City is in need of funds with which to finance the BESS Project, which is hereby declared to be a portion of the plan of additions to and betterments of the City's electric system. The estimated aggregate capital cost of the BESS Project is approximately \$3.5 million and the City does not have available sufficient funds on hand to pay these costs. The expected life of the BESS Project is declared to be at least twenty-five (25) years.

(c) *Outstanding Electric Utility Obligations.* The City now owns and operates the Electric Utility. Pursuant to Ordinance No. 17-85, the City issued and sold its Electric Revenue Refunding Bonds, 1985 (the "1985 Bonds") all of which have been paid and retired. In Ordinance No. 17-85, the City reserved the right to issue additional electric revenue bonds having a lien and charge on the Net Revenue of the Electric Utility on a parity with the lien and charge upon such Net Revenue of the 1985 Bonds for the payment of principal thereof and interest thereon, if that certain Parity Bond Test (established in Ordinance No. 17-85 and as subsequently set forth in ordinances authorizing the issuance of additional Parity Bonds) is satisfied. The City also reserved the right to designate certain expenses as Contract Resource Obligations, payable as Operating and Maintenance Expense, upon the satisfaction of certain conditions set forth in the ordinances authorizing the outstanding Parity Bonds.

Section 1.03 Participant Agreement Authorized. Based on the foregoing, the City Council finds that it is in the best interest of the City to undertake the BESS Project as herein described. The City Council authorizes the City Manager to execute and deliver the Participant Agreement, in substantially the form attached as Exhibit A, with such changes as she may deem necessary or appropriate in consultation with the City Attorney and Bond Counsel to the City and such other legal and financial advisors as may be appropriate.

Section 1.04 Authorization of Bonds. If the Administrative Services Director determines, after consultation with such financial and legal advisers as she may deem appropriate, that it is necessary or desirable for the City to issue bonds for the purpose of paying all or a portion of the City's costs relating to constructing the project, making a deposit to satisfy the reserve requirement for the bonds (if necessary), and paying the costs of issuance and sale of such bonds, then the City shall be authorized to issue its electric revenue bonds in an approximate amount of not more than \$4 million. Such bonds shall be payable from the Net Revenue of the Electric Utility and shall be a special limited obligation of the City payable from and secured solely by the Net Revenue of the Electric Utility and by money in the Principal and Interest Account of the Bond Fund on a parity with the City's Outstanding Parity Bonds, or may have a subordinate claim or lien on such Net Revenues, all as the City Council shall later provide by ordinance. Such bonds shall be issued in one or more series at such times as the City shall deem advisable; shall be in such denominations and form, shall be dated, shall bear such interest rate or rates, shall be payable at such time or times, shall have such option of payment prior to maturity, shall guarantee such coverage and collection of rates, shall provide for such additional funds and accounts and shall contain and be subject to such provisions and covenants

as hereafter shall be provided by ordinance.

**Section 1.05 Satisfaction of Parity Bond Test or Contract Resource Obligation Conditions.** As a precondition to the execution of the Participant Agreement authorized herein, the City Council directs the City's Administrative Services Director to determine (1) if the City is to issue bonds, that all conditions set forth in the Parity Bond Test (as those conditions are set forth in Exhibit B to Ordinance 18-08) have been met and satisfied, or (2) alternatively, if Energy Northwest is to issue bonds, that all conditions for entering into a Contract Resource Obligation set forth in Section 7.04 of Ordinance 18-08 have been met and satisfied.

**Section 1.06 General Authorization and Ratification.** The Administrative Services Director and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

**Section 1.07 Severability.** The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

**Section 1.08 Effective Date of Ordinance.** This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

PASSED by the City Council of the City of Richland, Washington, at a regular open public meeting on the 4<sup>th</sup> day of September, 2018.

  
ROBERT J. THOMPSON  
Mayor

ATTEST:

  
MARCIA HOPKINS, City Clerk

APPROVED AS TO FORM:

  
HEATHER KINTZLEY, City Attorney

Date Published: September 9, 2018

**HORN RAPIDS SOLAR, STORAGE, AND TRAINING PROJECT  
PARTICIPANT AGREEMENT  
(BATTERY ENERGY STORAGE SYSTEM)**

**EXECUTED BY  
ENERGY NORTHWEST  
AND  
CITY OF RICHLAND**

**Preface**

This Horn Rapids Solar, Storage, and Training Project Participant Agreement (“Agreement”) is executed this \_\_\_ day of \_\_\_\_\_, 2018, by and between Energy Northwest, a joint operating agency and municipal corporation organized under the laws of the State of Washington and acting on behalf of the Business Development Fund, a separate system of Energy Northwest (“Energy Northwest”), and City of Richland (“City” or “Richland”). The signatories hereto are sometimes individually referred to as a “Party” and collectively as the “Parties.”

This Agreement sets forth the terms and conditions under which Energy Northwest will own and operate the battery energy storage system (BESS), which is part of an overall effort commonly referred to as the Horn Rapids Solar, Storage, and Training project. For clarity, the capitalized term “Project” as used throughout this Agreement shall refer to the BESS that Energy Northwest will own and operate for the benefit of Richland. Richland will pay all costs of the Project as set forth in this Agreement.

The Project consists of a 1 MW vanadium flow BESS, located in Richland, WA. The Project will be operated in collaboration with Potelco, Inc., which will own a 4 MW<sub>DC</sub> photovoltaic project adjacent to the Project, and the Regional Education & Training Center (RETC), which provides technical training to battery storage and solar technicians. A description of the Project is attached hereto as Appendix I.

A contractor will construct the Project. Energy Northwest shall manage Project construction, arrange Project financing, and manage and operate the Project, subject to the rights of Richland hereunder. Energy Northwest shall own the Project. After the Date of Commercial Operation, Richland shall be obligated to pay the annual costs of operating and maintaining the Project and shall pay a Recovery Fee, as described in Section 6.6. If long-term debt financing is to be provided by Energy Northwest by the issuance of bonds (“EN Bonds”), Richland shall also be obligated to make payments to Energy Northwest in respect of all Debt Service due and payable on such EN Bonds after the Date of Initial Financing. In the event the Project does not reach Commercial Operation, Richland shall be obligated to pay a Recovery Fee, as described in Section 6.7. As set forth in this Agreement, once Commercial Operation begins, Richland shall provide management guidance, direction, and oversight to Energy Northwest. Richland shall be entitled to receive all Project Energy for the term of this Agreement.

## Recitals

WHEREAS the following facts and representations are deemed pertinent to this Agreement:

- A. The Energy Northwest Board of Directors adopted **Resolution No. \_\_\_\_\_** approving the development and construction of the Project, and Energy Northwest represents that the governing bodies of a majority of Energy Northwest members adopted resolutions approving Energy Northwest undertaking the Project.
- B. The Richland City Council approved **Ordinance No. 46-18** (the “City Ordinance”) authorizing appropriate City officials to execute this Participant Agreement on behalf of the City and authorizing the issuance of bonds by the City to finance the capital costs of the Project, if deemed necessary and advisable in the determination of the [City Administrator? Director of Administrative Services?]. The City Ordinance became effective on \_\_\_\_\_, 2018. Richland desires to utilize the Project for energy storage, and Energy Northwest is willing to provide to Richland the Project storage. Richland shall furnish and receive all of the Project Energy stored and discharged as provided in this Agreement.
- C. Each Party represents that execution of this Agreement is in the best interests of its ratepayers.

Now, therefore, the Parties agree as follows:

### Section 1. Term.

- 1.1 This Agreement will take effect (the “Effective Date”) upon the date all of the following are completed:
  - 1.1.1 Execution by Energy Northwest and Richland.
  - 1.1.2 Completion of a least-cost plan as required by Washington State law.
  - 1.1.3 Completion of the Facilities Study by the Bonneville Power Administration (“BPA”) permitting the Project to be integrated into BPA’s Balancing Authority Area, subject to any reasonable conditions contained therein.
- 1.2 This Agreement shall terminate on 12:01 a.m. Pacific Time on July 1, 2045 or when all outstanding EN Bonds (if any) have been repaid and any decommissioning liability has been retired, whichever is later.
- 1.3 Richland shall have the option to extend the term of this Agreement for successive, additional five-year terms. To exercise an option for an additional five-year term, Richland shall provide Energy Northwest written notice of its intent to exercise this option no later than 12:01 a.m. Pacific Time on the July 1st one year prior to the then current termination

date of this Agreement and shall thereafter exercise the option no later than six months prior to the then current termination date of this Agreement.

## Section 2. Definitions.

As used in this Agreement, all capitalized terms not otherwise defined herein shall have the meanings set forth in Appendix II hereto. The singular of any term in this Agreement shall encompass the plural, and the plural the singular, unless the context otherwise indicates. Any references to time shall refer to the time observed in Richland, Washington on the date in question.

## Section 3. Responsibilities of the Parties; Representations and Warranties.

3.1 Energy Northwest shall be responsible for:

- 3.1.1 Completing the least-cost plan required by Washington State law.
- 3.1.2 Obtaining all regulatory and/or governmental licenses, approvals, and permits necessary for the design, construction and operation of the Project.
- 3.1.3 The construction, operation and maintenance of the Project according to Prudent Utility Practice and in compliance with all applicable local, state and Federal laws, regulations, and ordinances.
- 3.1.4 Obtaining funds for the construction of the Project.
- 3.1.5 Maintaining the accounts and funds required by the Energy Northwest Bond Resolutions and having the books of the Project audited annually (which audit may be conducted by the State Auditor unless Richland requests that the audit be conducted by an independent auditor).
- 3.1.6 Preparing Annual O&M Budgets and Annual Operating Plans and amended Annual O&M Budgets and amended Annual Operating Plans for the Project that will include all costs associated with the Project as more fully described in Section 5.
- 3.1.7 Giving to Richland, upon reasonable prior notice, access to the Project and the books and accounts of the Project. Richland may, at its own expense, maintain metering devices at the Project and audit the books and accounts of the Project.
- 3.1.8 During construction of the Project, maintaining or cause to be maintained property damage insurance covering all project related facilities at the Project on an "all-risk" basis, for the full replacement value of such facilities. Commencing on the Date of Commercial Operation, maintaining or cause to be maintained appropriate property and casualty loss insurance for the depreciated value of the Project, and other appropriate insurance for the Project in accordance with Prudent Utility Practice, including (i) commercial general liability covering bodily injury and property damage, products/completed operations, contractual and personal injury

liability, with limits not less than \$5,000,000 combined single limit per occurrence and (ii) all-risk property insurance including earthquake, tornado, and flood, subject to appropriate sublimits, covering physical loss or damage to all real and personal property located at the Project. From the Date of Commercial Operation, the insurance shall acknowledge Richland as additional insureds. All insurance for the Project shall be provided by insurance companies rated "A" or better by Best's or a comparable ratings service if Best's no longer provides ratings. The insurance shall not be terminated nor expire except on 30 days' prior written notice to Richland. If Energy Northwest receives proceeds of insurance for the Project, it shall use the proceeds to replace the damaged portion of the Project and/or to retire EN Bonds (if any) or to pay such proceeds to Richland for the retirement of City Bonds (if any); any amounts remaining after such uses shall be used as a credit to the Annual O&M Budget as provided in Section 5.8. The insurance requirements of this Section may be modified by Energy Northwest, subject to any requirements of the Bond Resolutions.

3.1.9 Providing continuous indication of Project Energy.

3.1.10 Leasing the land on which the Project operates.

3.1.11 If tasked with tracking the renewable energy certificates, maintaining an account within the Western Renewable Energy Generation Information System (WREGIS) for accounting of the renewable energy certificates created from the output of Potelco, Inc.'s 4 MW<sub>DC</sub> photovoltaic project. Each month, Energy Northwest will initiate and ensure the certificates are transferred to an account within WREGIS held by Richland. Energy Northwest will apply for and maintain Washington-eligible designation from the state of Washington. Energy Northwest will apply for and maintain program designation from other states and voluntary programs as available, as directed by Richland. Energy Northwest will include the cost of providing this service to Richland in the Annual O&M Budget.

3.2 Richland shall be responsible for:

3.2.1 Providing management guidance, direction, and oversight to Energy Northwest with respect to the Project as specified in Sections 5 and 11 of this Agreement.

3.2.2 Supplying and receiving all of the Project Energy.

3.2.3 Arranging all scheduling, shaping and wheeling services required for the Project Energy.

3.2.4 Paying all costs of the Project as detailed in Section 6.

3.2.5 Paying transmission charges.

3.2.6 If Energy Northwest provides the service set forth in Section 3.1.11, maintaining an account within the WREGIS for receipt of renewable energy certificates created

from the output of Potelco, Inc.'s 4 MW<sub>DC</sub> photovoltaic project. Energy Northwest will include the cost of providing this service to Richland in the Annual O&M Budget.

**3.3 The Parties represent as follows:**

- 3.3.1 Richland represents that it has the authority to purchase, within or without its limits, electric energy for sale and distribution to its inhabitants and other persons. (RCW 35.92.050).**
- 3.3.2 Richland represents that it has the authority to enter into agreements for the use or undivided ownership of any type of electrical generating plants and facilities. (RCW 35.92.052).**
- 3.3.3 Energy Northwest represents that it has the authority to construct, maintain, operate, and develop plants, works, and facilities for the generation and/or transmission of electric energy and to purchase or sell electric energy. (RCW 43.52.300).**
- 3.3.4 Each Party represents that (A) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (B) the governing board of the Party has duly authorized the execution, delivery, and performance of this Agreement; and (C) this Agreement constitutes the valid and legally binding obligation of the Party, enforceable against the Party in accordance with its terms.**
- 3.3.5 Each Party represents that neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any governmental authority to which the Party is subject or any provision of the governing documents of the Party, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Party the right to accelerate, terminate, modify, or cancel, or require any notice under any material agreement, contract, lease, license, instrument, or other arrangement to which the Party is a party or by which it is bound. Each Party is not required to provide any notice to, make any filing with, or obtain any authorization, consent, or approval of any governmental authority in order for the Party to consummate the transactions contemplated by this Agreement.**
- 3.3.6 Each Party represents that there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or administrative body pending or threatened against such Party that challenges, contests or questions the adoption or validity of the applicable resolution or ordinance approving this Agreement, that seeks to prohibit, restrain or enjoin such Party from complying with this Agreement, that affects or questions the validity or enforceability of this Agreement, or that challenges or affects the corporate existence of such Party or the titles of its officers.**

Section 4. Project Energy.

- 4.1 Richland will supply and receive 100% of the Project Energy and is responsible for paying 100% of the Debt Service (whether in respect of EN Bonds or City Bonds) and the Annual O&M Budget.
- 4.2 Prior to the expected Date of Commercial Operation, Energy Northwest will provide a written notice to Richland prior to the date Project Energy is expected to be available.

Section 5. Annual O&M Budget; Annual Operating Plan

- 5.1 Energy Northwest will prepare an Annual O&M Budget and an Annual Operating Plan at least 60 days prior to the expected Date of Commercial Operation and will prepare these documents at least 60 days prior to the start of each Fiscal Year thereafter during the Contract Term. The Annual O&M Budget shall include an estimate of all costs of the Project, excluding any EN Bond Debt Service, as specified in the definition of Annual O&M Budget.
- 5.2 Richland shall approve or approve with revisions the Annual O&M Budget no later than 30 days prior to the start of Commercial Operation and 30 days prior to the Fiscal Year every year thereafter. If Richland disapproves a proposed Annual O&M Budget, it shall specify the items in the Annual O&M Budget that it approves and those it disapproves or approves with revisions no later than 30 days prior to the start of Commercial Operation and 30 days prior to the Fiscal Year every year thereafter. Any revisions and/or disapprovals may be subject to arbitration as provided in Section 10. If an Annual O&M Budget has not been approved prior to the beginning of a Fiscal Year, the Annual O&M Budget prepared by Energy Northwest shall be in effect until there is an approved Annual O&M Budget or a decision by an arbitrator.
- 5.3 Richland shall approve or approve with revisions the Annual Operating Plan no later than 30 days prior to the start of Commercial Operation and 30 days prior to the Fiscal Year every year thereafter. The Annual Operating Plan shall include how the Project will be dispatched and controlled, an estimate of the Project Energy by month for the Fiscal Year, scheduled maintenance, describe capital improvements and any planned outages for maintenance. The Annual Operating Plan shall also include a comparison of the actual performance of the Project and the Annual Operating Plan in the then current year.
- 5.4 The Parties acknowledge that either Richland or Energy Northwest may issue debt (if issued by Richland "City Bonds" or if issued by Energy Northwest "EN Bonds") to finance all or a portion of the cost of constructing the Project, subject to the following:
  - 5.4.1 *Interim/Construction Period Financing.* Energy Northwest agrees to use available funds from its Business Development Fund to complete the Project. Such funds utilized are expected to be repaid to the Business Development Fund within ninety (90) days of Commercial Operation or Project Termination, whichever is first to

occur, and may be repaid either through the issuance of Debt by Energy Northwest or repaid directly by Richland from the proceeds of City Bonds or other City resources.

5.4.2 *Grant Funding.* In addition, Energy Northwest has applied for and received approval of a grant in an amount not to exceed \$3,000,000 for a portion of the cost of constructing the Project. Energy Northwest agrees to take all actions as may be necessary to ensure that such grant funding is received and applied to the Project. Richland agrees to cooperate in such manner as is necessary to ensure that such grant funding is received and applied to the Project.

5.4.3 *Debt Financing.* It is anticipated that debt financing will be required to cover the estimated cost of the Project that is not covered by the grant (including any Recovery Fee), the costs of issuing the debt, as well as amounts necessary to fund a reasonably required reserve for the bonds (if required under the bond authorizing documents). The Parties estimate this amount to be approximately \$3.5 million plus any required reserves.

Prior to Commercial Operation, Richland shall advise Energy Northwest of its intent regarding financing. If Richland requests that Energy Northwest obtain debt financing, the Parties shall proceed in accordance with Section 5.4.3.1. If Richland intends to finance the Project costs or does not consent within fourteen (14) days after receiving notice from Energy Northwest of the maturity schedule, covenants, redemption provisions, and reserves of its bonds ("EN Bond Terms"), Richland shall proceed in accordance with Section 5.4.3.2.

Alternatively, Richland may request that Energy Northwest obtain short-term financing or utilize the Business Development Fund beyond the requisite ninety (90) day payment period prior to issuing bonds. In that event, the Parties agree to negotiate in good faith the applicable terms of such financing; provided, however, the Parties understand and agree that any short-term financing or extended utilization of the Business Development Fund will carry a market-based interest rate in effect at the time of the negotiations. The resulting agreement, if any, will be memorialized in an addendum to this Agreement.

5.4.3.1 *If Energy Northwest Bonds.* Energy Northwest will consult with Richland in advance of issuing any EN Bonds, and will obtain Richland's written consent to the EN Bond Terms. If a Debt Service reserve account is required, the funds deposited therein will be used solely to pay the EN Bonds if other funds are not sufficient. To the extent that the reserve account is not drawn, the amount in the account will be used to pay the last installment of the EN Bonds and Richland will not be obligated to pay the amount covered by the reserve account. To the extent that the full amount on deposit in the Debt Service reserve account is not needed to fund the Debt Service reserve account and if permitted by federal tax rules, it will be deposited into an operating and capital reserve and used

to pay operation and maintenance expenses included in an approved Annual O&M Budget and not covered by the Monthly Billing Statement (i.e., it will offset Annual O&M amounts otherwise payable by Richland) or costs for capital improvements or repairs, replacements and betterments to the Project and that are approved by the Parties.

To the extent that the EN Bonds are intended to be exempt from federal income tax, Richland will covenant to use all power stored at the Project to service its general retail load and will not resell such power to a private party pursuant to a contract without the consent of Energy Northwest. As an obligated party with respect to the EN Bonds, Richland will also enter into a continuing disclosure agreement at the time the EN Bonds are issued, if required.

If interest rates are favorable and if requested by Richland, Energy Northwest will use its best efforts to issue refunding bonds to achieve a Debt Service savings or for any other lawful purpose. All Debt Service savings will be reflected in reduced payments by Richland in respect of Debt Service. Any additional Debt will only be issued with consent of the Parties.

Promptly upon the pricing of any EN Bonds, Energy Northwest shall provide Richland with the Debt Service schedule for the EN Bonds.

5.4.3.2 *If City Bonds.* The City may, in its sole discretion, determine to finance the debt portion of the Project costs by the issuance of City Bonds. Further, if the City has not consented to the EN Bond Terms as set forth in Section 5.4.3, the City shall be obligated to issue City Bonds or to make a payment of 100% of the Project construction costs (including any Recovery Fee) from other available Electric Utility funds. If EN Bonds are outstanding at any time, the City may at any time and in its sole discretion determine to issue bonds to replace the EN Bonds and make cash payment to Energy Northwest to repay all outstanding EN Debt Service.

5.5 The Annual O&M Budget and Annual Operating Plan may be amended, after the beginning of a Fiscal Year, by agreement of Richland and Energy Northwest. Energy Northwest shall give Richland at least 30 days' notice prior to the month in which the amended Annual O&M Budget, or amended Annual Operating Plan, is proposed to be effective.

5.6 Energy Northwest shall reflect as a credit in an Annual O&M Budget any interest earnings on money invested in any Project account not required to be maintained in such account by the Bond Resolutions or insurance proceeds received for the Project that are not used to replace portions of the Project. Any amounts collected through Monthly Billing Statements and not spent on the Project during a Fiscal Year, and any interest earned thereon, shall be held in reserve or offset the next year's required payment by Richland.

- 5.7 Energy Northwest shall maintain a daily operations log for the Project and shall provide Richland reports, as provided to Energy Northwest, showing data on the actual solar energy generated during each month, the output of the BESS, and such other information as Richland may reasonably request. Energy Northwest shall operate the BESS as directed in the Annual Operating Plan.
- 5.8 Richland, upon at least ten days' advance written notice to Energy Northwest, shall have the right to examine and audit operations and financial records relating to the Project during Energy Northwest's normal business hours.
- 5.9 Energy Northwest shall deposit all amounts received from Richland under this Agreement and all other funds of the Project into the Project Revenue Fund or accounts within the Project Revenue Fund and use such amounts for the Project and as provided in an approved Annual O&M Budget (and Debt Service budget, if any).

#### Section 6. Price and Payment.

- 6.1 Energy Northwest shall prepare and deliver to Richland, no later than the tenth day of each month, a Monthly Billing Statement containing adequate information to allow Richland to determine the accuracy of the Monthly Billing Statement. The Monthly Billing Statement shall consist of the following components:
  - 6.1.1 One-twelfth (or one divided by the number of months remaining in the Fiscal Year in the case of an amended Annual O&M Budget) of the Annual O&M Budget (pro-rated as necessary); and,
  - 6.1.2 One-twelfth of the annual EN Bond Debt Service (if any) (pro-rated as necessary); and,
  - 6.1.3 Any actual transmission charges applied to Energy Northwest's transmission bill from the previous month from Bonneville related to the Project, to include variable energy resource balancing services, reserves, generation imbalance, scheduling election, and any fees and/or penalties related to persistent or intentional deviation or failing to comply with a transmission or oversupply directive.
- 6.2 Richland shall pay to Energy Northwest the amount of the Monthly Billing Statement by the 20<sup>th</sup> day following receipt of the Monthly Billing Statement. A notice under this section shall be deemed to have been received on the date that the notice is sent via electronic mail (e-mail) to the correct e-mail address for Richland. Richland shall make payment by electronic funds transfer to Energy Northwest's account, designated in writing, on or prior to the due date. If payment in full of the Monthly Billing Statement is not received by Energy Northwest on or before the due date, a delayed payment charge of 1.5% per month or the maximum rate allowed by law shall accrue on the unpaid balance of such Monthly Billing Statement. If the due date is a Saturday, Sunday, nationally recognized banking holiday, or an Energy Northwest recognized holiday, the next following business day shall

be the last day on which payment may be received without the addition of the delayed payment charge.

6.3 Notwithstanding Section 6.2, Richland shall not be required during any Fiscal Year to pay any amount of any Annual O&M Budget or EN Bond Debt Service budget (if any) in excess of the Payment Cap, as defined in this Section, without the consent of Richland. The Payment Cap is intended by the Parties to be the express dollar amount limit required by RCW 43.52.410. The Payment Cap shall be subject to annual adjustment which is described below.

6.3.1 The Payment Cap shall be the sum of: (1) the EN Bond Debt Service budget's Fixed Costs (if any) as defined in Section 6.3.2; and (2) the Annual O&M Budget's Variable Costs as defined in Section 6.3.3.

6.3.2 The total amount of the EN Bond Debt Service budget's Fixed Costs shall be based on the actual EN Bond Debt Service (if any), which EN Bond Debt Service schedule shall be provided to Richland when the EN Bonds are issued. This amount is not subject to annual adjustment and shall remain in effect for the Contract Term, except that it shall be adjusted in the event of a refunding of EN Bonds.

6.3.3 The total value of the Annual O&M Budget's Variable Cost shall be limited to \$1,000,000 per Fiscal Year as of the date of this Agreement. This value shall be revised annually as described in Section 6.3.4. The month and year of the Date of Commercial Operation is hereafter called the Base Period.

6.3.4 On January 1<sup>st</sup> immediately following the Date of Commercial Operation and every January 1<sup>st</sup> thereafter during the Contract Term, the Payment Cap shall be revised by adjusting the Annual O&M Budget's Variable Cost by means of the Special Index, which shall be based upon the index series specified below, as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). In the event that a specified index is no longer available, the Parties shall mutually agree upon a substitute index. The Special Index shall be derived from: (1) the Employment Cost Index ("ECI"), the Total Compensation Private Industry, West Region, not seasonally adjusted, as it appears on the BLS web site; this index series shall be referred to as the Labor Index; and (2) the Producer Price Index ("PPI") for Industry; Turbines and Turbine Generator Sets, Product: Steam, Gas, Hydraulic, Solar & Wind Powered Turbine Generator Sets, Turbine Generators and Parts, not seasonally adjusted, and currently identified by series identifier PCU333611; this series shall be referred to as the Equipment & Parts Index.

6.4 The Special Index shall be derived in the following manner:

6.4.1 The Labor Index and the Equipment & Parts Index shall have their base converted to the Base Period. This shall be done by dividing the value of each index for September or Third Quarter of the most recent calendar year by its value in the Base

Period, and then multiplying the result by 100. This calculation produces a rebased index.

- 6.4.2 The rebased Labor Index shall be assigned a relative weight of 30% and the rebased Equipment & Parts Index shall be assigned a relative weight of 70%.
  - 6.4.3 Each rebased index shall be multiplied by its relative weight and the product shall then be summed. The sum of these two products is the Special Index for the current time period.
  - 6.4.4 All calculations for the Special Index shall be based upon the latest published versions of the PPI and the ECI data.
  - 6.4.5 On January 1<sup>st</sup> immediately following the Date of Commercial Operation and every January 1<sup>st</sup> thereafter for the Contract Term, the Annual O&M Budget's Variable Cost for each year shall be the value of the Annual O&M Budget's Variable Cost in the Base Period times the Special Index divided by 100.
- 6.5 If an Annual O&M Budget, Amended Budget or EN Bond Debt Service budget (if any), after adjustment for any voluntary contribution by Richland, is projected to result in Richland paying more than the amount specified in Section 6.3 and Richland does not consent to paying such amount, Energy Northwest shall terminate the Project and Richland shall not be obligated to pay any amounts in connection with the Project except any EN Bond Debt Service (if any) and other costs associated with terminating the Project that are not paid from available funds of the Project, insurance proceeds or the sale of assets of the Project.
- 6.6 In addition to the costs to be paid to Energy Northwest in this Section 6, within ninety (90) days from the date of Commercial Operation, Richland shall pay Energy Northwest a Recovery Fee of prior costs incurred by Energy Northwest for the Project. This Section 6.6 Recovery Fee shall consist of the following:
- 6.6.1 Development costs through June 30, 2017 in the amount of \$75,000; and
  - 6.6.2 Beginning July 1, 2017 through to the date of Commercial Operation, 100% of all development costs including labor, non-labor, and associated overhead costs; and
  - 6.6.3 If Richland finances the Project costs, 100% of all costs for the construction (including equipment and material acquisition costs) of the Project.

The Recovery Fee may be included as part of the Energy Northwest Debt issuance and repaid over the duration of the Debt, if directed by Richland. In that event, for the avoidance of doubt, this Section 6.6 Recovery Fee shall be included in the definition of EN Bonds as set forth in Appendix II.

6.7 In the event the Project does not achieve Commercial Operation on or before June 30, 2020, due to circumstances beyond the direct control of Energy Northwest, including a decision to terminate the Project at any time by Richland, Richland shall pay Energy Northwest a Recovery Fee of prior costs incurred by Energy Northwest for developing and constructing the Project and costs for decommissioning the Project site. This Section 6.7 Recovery Fee shall consist of the following:

6.7.1 Development costs through June 30, 2017 in the amount of \$75,000; and

6.7.2 Beginning July 1, 2017 through to the date of Project termination or indefinite suspension (a delay of at least six months), 100% of all costs for the development, construction (including equipment and material acquisition costs), and decommissioning including labor, non-labor, and associated overhead costs.

This Section 6.7 Recovery Fee shall be due and payable ninety (90) days after termination or indefinite suspension of the Project.

6.8 In the event costs are incurred after the Date of Initial Financing that are lawfully related to the Project, in excess of proceeds obtained through the issuance of Debt, and not allocated to an O&M Budget, Energy Northwest will invoice Richland for such costs. Richland will pay Energy Northwest the invoiced amount within ninety (90) days of receipt of the invoice.

In the event Energy Northwest does not receive grant funds that are anticipated to be received after the Date of Initial Financing, Energy Northwest will invoice Richland for an amount equal to the amount of grant funds not received, assuming costs have been incurred equal to that of the expected grant funds. Richland will pay Energy Northwest the invoiced amount within ninety (90) days of receipt of the invoice.

## Section 7. Termination.

The Parties may terminate this Agreement as provided below.

7.1 After Commercial Operation has commenced, Richland may only terminate this Agreement prior to July 1, 2045 if all outstanding EN Bonds, if any, have been repaid, all requirements of Energy Northwest's grant (identified in Section 5.4.2) have been fulfilled, and any decommissioning liability has been retired. If Richland terminates this Agreement prior to the commencement of Commercial Operation, Richland shall pay Energy Northwest a Recovery Fee as set forth in Section 6.7.

7.2 Energy Northwest may terminate this Agreement to the extent Richland has breached any material representation, warranty, or covenant contained in this Agreement, Energy Northwest has notified Richland of the breach, and the breach has continued without cure for a period of 30 days after notice of breach by Energy Northwest to Richland; provided, however, that if the breach cannot be cured within such 30-day period, (1) Richland promptly provides Energy Northwest with a plan for curing the breach and commences to

cure the breach during the 30-day period, and (2) thereafter diligently continues to cure such breach, then Richland shall have up to 60 additional days to effect a cure.

If Energy Northwest terminates this Agreement pursuant to this Section, obligations of Richland hereunder shall terminate, provided, however, Richland shall remain obligated for and responsible to pay the Debt Service budget associated with any EN Bonds, until all EN Bonds associated with the Project have been paid in full, all costs to decommission the Project, if necessary, have been paid in full, and any unpaid Recovery Fee, if applicable, has been paid in full.

#### Section 8. Default.

In the event Energy Northwest is unable or unwilling to fulfill its obligations set forth in this Agreement or operate and maintain the Project according to Prudent Utility Practice, Richland may pursue its rights and remedies set forth in this Agreement in Section 12.3.

#### Section 9. Limitation on Liability and Payments; Hold Harmless.

- 9.1 Energy Northwest's liability to Richland for breach under this Agreement is limited to the Project Revenue Fund that is within the Business Development Fund separate system of Energy Northwest, available insurance proceeds, and to any amounts owed to Energy Northwest by Richland under this Agreement after Energy Northwest uses any available amounts in the Project Revenue Fund to pay all amounts owed with respect to Debt. Energy Northwest's obligations are not, nor shall they be construed to be, general obligations of Energy Northwest or obligations of any other Energy Northwest projects or systems.
- 9.2 Richland shall only be required to make payments to Energy Northwest under this Agreement from the revenues derived from the ownership and operation of its retail distribution electric systems that constitute "Gross Revenue" of the City's electric system, consistent with its outstanding parity bond covenants and obligations. Richland's obligation to make payment under this Agreement shall not be a general obligation of the City. Richland agrees that it will establish, maintain and collect rates and charges for power and energy and other services, facilities and commodities sold, furnished or supplied by it through its electric utility properties which shall be adequate in the sole judgment of Richland to provide revenues sufficient to enable Richland to make its required payments under this Agreement. Richland shall not sell or otherwise dispose of more than 10% of its net utility plant of its electric system without prepaying all EN Bonds that are then outstanding.

Richland represents and certifies to Energy Northwest that under Richland's bond ordinances, once the Project is operating and/or capable of operating, all payments owed by Richland under this Agreement for EN Bonds or pursuant to an Annual O&M Budget would be treated as operating expenses of Richland's electric system and payable prior to Richland's obligation to pay debt service on its electric system bonds and other electric system debt.

- 9.3 Each Party assumes all liability for injury or damage to persons or property arising from the act or negligence of its own employees, agents, members of governing bodies, or contractors; provided that such liability may be covered by the insurance to be maintained pursuant to Section 3.1.8. To the extent permitted by law, each Party shall indemnify and hold the other Party harmless from any Liability arising from such act or negligence to the extent caused by the indemnifying Party's act or negligence.
- 9.4 The Parties agree that neither Party shall be liable to the other, whether in contract, in tort (including negligence), strict liability, under any warranty, or under any other legal or equitable theory of law, for any special, indirect, incidental, or consequential loss or damage whatsoever. The foregoing waiver shall include specifically, but without limitation, cost of capital, loss of profits or revenues or the loss of use thereof, or losses by Richland that result from the loss of power production at the Project, cost of purchased or replacement power (including additional expenses incurred in using existing power facilities) or claims of any customers of Richland.
- 9.5 Any Party seeking indemnification (the "Indemnified Party") under this provision shall give reasonable notice to the Party from whom it seeks indemnification (the "Indemnifying Party") in writing of any such Liability, permit the Indemnifying Party to assume the defense and settlement of any such claim or threatened claim, and reasonably assist the Indemnifying Party, at the Indemnifying Party's cost and expense, in investigating and defending against the Liability.
- 9.6 In the event of any claim against a Party by any employee of another Party, the indemnification and hold harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Party employing the claimant under workers compensation acts, disability benefit acts, or other employee benefit acts; and the Party employing the claimant hereby specifically and expressly waives the immunity of the Party employing the claimant under such acts, and agrees that the foregoing waiver was mutually negotiated by the Parties; provided, however, that this waiver of immunity by the provisions of this section extends only to claims against a Party by or on behalf of the employee of another Party under or pursuant to this Agreement, and does not include, or extend to, any claims by the employees of any Party directly against that Party.
- 9.7 In the case of joint or concurrent Liability, each Party shall be responsible for its share of the Liability.

#### Section 10. Arbitration.

- 10.1 The Parties agree that claims, disputes and other controversies arising out of or relating to this Agreement (collectively "Claim") are best resolved by the Parties. Consequently, each Party agrees that neither Party shall resort to the use of the arbitration process set forth in this Agreement unless and until the Parties have met on at least two (2) occasions with representatives from each Party with the authority to make compromises and commitments, to discuss in good faith resolution of the Claim.

- 10.2 Any Claim arising out of or relating to this Agreement not resolved as provided in Section 10.1 shall be subject to arbitration as provided in this Section; provided that a dispute seeking specific performance may be instituted in court. All arbitration proceedings shall be conducted by a board of arbitrators composed of three persons.
- 10.3 The Parties shall have 15 days from the institution of the arbitration to make their appointment of arbitrators. One arbitrator shall be appointed by Richland and one arbitrator shall be appointed by Energy Northwest and the third arbitrator shall be appointed by the other two arbitrators.
- 10.4 The arbitration shall be conducted under rules as may be determined by the arbitrators; provided, however, that the Parties shall be afforded discovery consistent with the Federal Rules of Civil Procedure with an understanding on limiting the scope of discovery consistent with the Federal Rules of Civil Procedure and the cost effective nature of the arbitration process; and, provided further, if the arbitrators do not unanimously agree on the rules governing the arbitration, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration board so designated shall conduct a hearing within 30 days of completion of any discovery, and within 15 days after the hearing (unless such time is extended by agreement of the Parties) shall notify the Parties of their decision in writing, stating the reasons therefore and separately listing their findings of fact, conclusions of law and order. Insofar as the Parties may legally do so, they agree to abide by the decision of the arbitration board. All factual determinations made by the board shall be conclusive and binding on the Parties and shall only be subject to judicial review as permitted under Washington law and may be enforced in accordance with Washington law.
- 10.5 Pending the final resolution of any Dispute, the Parties shall proceed diligently with the performance of their respective services and other duties and obligations under this Agreement without diminution of effort.
- 10.6 The Parties shall pay the fees and costs of the arbitrators on an equal basis, and each Party shall bear their own legal and other costs and expenses of arbitration.

#### Section 11. Project Oversight

- 11.1 The Parties will hold meetings for the effective cooperation, interchange of information and efficient operation and management of the Project, on a prompt and orderly basis.
- 11.2 The Parties shall meet regularly, but not less often than twice a year, as may be agreed upon, and at such other times as requested by either Party upon ten working days written notice.
- 11.3 Energy Northwest shall submit each of the matters listed below to Richland for approval:

11.3.1 This Subsection 11.3.1 shall pertain to the construction phase of the Project. Within 10 days after the end of each month until completion of construction, Energy Northwest shall submit to the Participant a report on the progress of construction for the previous month, and proposed changes to the construction budget and cash flow for subsequent quarters. Any changes which are forecast to result in increased costs from the current budget or more than a 15-day delay in Project completion, shall be submitted to Richland for approval. The request shall be accompanied by a revised budget and cash flow schedule through Project completion, supported by detail adequate for the purpose of comprehensive review of the reasons for the proposed changes. If Richland does not approve, Richland may terminate this Agreement in accordance with Section 7.1.

11.3.2 The Annual O&M Budgets and Amended Annual O&M Budgets as provided in Section 5.

11.3.3 The Annual Operating Plans and Amended Operating Plans as provided in Section 5.

#### Section 12. Miscellaneous Provisions.

12.1 Expenses. Except as otherwise expressly provided herein, each Party shall bear its own expenses in connection with the preparation of this Agreement and the performance of its obligations hereunder.

12.2 Incorporation of Referenced Documents. The documents identified in this Agreement are incorporated herein by reference and made a part hereof.

12.3 Specific Performance. Each Party acknowledges and agrees that the other Party would be damaged in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction(s) in order to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court within Washington State thereof having jurisdiction over the Parties and the matter, in addition to any other remedy to which a Party may be entitled, at law or in equity.

12.4 Terminal Project Failure. If the Project has not been operating for twelve (12) consecutive months and, based on the opinion of an independent engineer experienced with battery storage systems, is not capable of operating without undertaking capital improvements that would result in the cost of the Project to Richland to be uneconomic as determined by mutual decision of the Parties, the Parties may mutually agree that Energy Northwest should sell all valuable assets comprising the Project and use the amounts received from the sale to repay outstanding Debt (whether EN Bonds or City Bonds) and all other expenses associated with the Project and return any remaining amounts to Richland. If the proceeds are insufficient to repay the outstanding Debt, Richland shall remain liable for full repayment of the Debt (whether EN Bonds or City

Bonds) and for all costs of decommissioning the Project. Nothing in this subsection shall impair the authority of the Board of Directors of Energy Northwest relating to the termination of a project under Washington law.

- 12.5 Governing Law. This Agreement shall be governed in accordance with the laws of the State of Washington.
- 12.6 Amendments and Waiver. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way rights arising by virtue of any prior or subsequent such occurrence.
- 12.7 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties, their affiliates, employees, directors and officers, commissioners and council members and their respective successors and permitted assigns; provided, however, from and after the Date of Commercial Operation, that any trustee of any outstanding EN Bonds may enforce Richland's obligation to make any payments that are due under this Agreement.
- 12.8 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.
- 12.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party; which approval shall not be unreasonably withheld and shall not violate any covenants in the Bond Resolution.
- 12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 12.11 Communications. Communications between the Parties, including bills sent pursuant to Section 6, shall be delivered in person, mailed, faxed, or sent via electronic mail to the addresses and to the attention of the Representatives specified on Appendix III of this Agreement. A Party may change such address or representative by submitting to the other Parties a revised Appendix III.
- 12.12 Rules of Construction; Statutory References. Whenever in this Agreement the context so suggests, references to the masculine shall be deemed to include the feminine, references to the singular shall be deemed to include the plural, and references to "or" shall be deemed to be disjunctive but not necessarily exclusive. Any reference to statutes or laws will

include all amendments, modifications, or replacements of the specific sections and provisions concerned.

12.13 Disclosure. Any disclosure document prepared in connection with EN Bonds that includes information on Richland shall be approved by Richland.

12.14 Force Majeure.

12.14.1 Any delay in or failure of performance by Energy Northwest or Richland, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure (each a Force Majeure Event) include, but are not limited to:

Acts of God or the public enemy;

Acts or omissions of any government entity (other than Energy Northwest);

Fire or other casualty for which Richland or Energy Northwest is not responsible;

Quarantine or epidemic;

Strike or defensive lockout; and

Unusually severe weather conditions which could not have been reasonably anticipated.

12.14.2 Energy Northwest shall be entitled to an adjustment in the time of performance directly attributable to a Force Majeure Event, provided it provides written notice to Richland within five working days of the Force Majeure Event, and takes reasonable actions to mitigate the impact from the Force Majeure event.

ENERGY NORTHWEST, a joint operating agency

By \_\_\_\_\_

Its \_\_\_\_\_

CITY OF RICHLAND

By \_\_\_\_\_

Cynthia D. Reents, ICMA-CM  
City Manager

## APPENDIX I

### DESCRIPTION OF PROJECT

#### Project Description

The Horn Rapids Solar, Storage and Training project is a collaboration between Energy Northwest (EN), Potelco, IBEW Local 77, and the Regional Education & Training Center (RETC). The project will be a 4 MWDC photovoltaic solar project coupled with 1 MW/4 MWh vanadium flow battery energy storage system (BESS). It will be located on IBEW Local 77 land located at 2800 Horn Rapids Road in Richland, Washington and will interconnect with the City of Richland's 12.47kV distribution system within Bonneville Power Administration's (BPA) Balancing Authority.

The RETC leases the IBEW land and provides competency-based workforce training utilizing classrooms, lab and workshop facilities, and a lineman training pole yard. The site is also used by Bonneville Power Administration for high-line helicopter rescue and training, and private training businesses. RETC will sub-lease 20 acres to EN and Potelco and provide technical training to battery storage and solar technicians adjacent to the project.

The 4 MWDC solar project will be developed by Potelco and the energy output sold directly to the City of Richland through a Power Purchase Agreement; Energy Northwest will own and operate the 1 MW/4 MWh vanadium flow BESS. The Project for purposes of this Agreement, will consist of the BESS and the required infrastructure including site improvements and the electrical infrastructure clouded in Figure 1.



## APPENDIX II

### DEFINED TERMS

“Agreement” means the Horn Rapids Solar, Storage, and Training Project Participant Agreement (“Agreement”) dated as of \_\_\_\_\_, 2018, by and between Energy Northwest and Richland.

“Annual O&M Budget” means all Project operating costs included in any operating budget or amended or revised budget of annual operating Project costs and shall include (1) costs allocable to operation and maintenance expense accounts for the Project as such accounts are described in the Uniform System of Accounts, including taxes and in lieu of taxes; (2) capital additions, improvements and betterments to the Project; (3) repairs, renewals and replacements necessary to keep the Project in good operating condition, and modifications, betterments and additions required by governmental agencies; (4) settlements and judgments not covered by insurance; (5) costs to replenish any operating reserves; (6) applicable Energy Northwest overheads which may include Administrative & General, Information Technology, and Management Oversight related expenses; (7) asset retirement obligation costs calculated in accordance with generally accepted accounting principles (currently FSAS 143).

“Annual Operating Plan” means the plan(s) submitted pursuant to Section 5.

“City Bonds” means any bonds, notes or other debt obligations of Richland, the proceeds of which will be used to benefit the Project, including construction of the Project, to finance capital improvements to the Project, to refund any Debt, or any other lawful purpose related to the Project.

“Commercial Operation” of the Project, as applicable, means the date upon which the Project is declared in writing by Energy Northwest to be capable of delivering its full generating capability on a continuous basis to the point of interconnection with Richland electric system. Energy Northwest’s declaration of Commercial Operation will occur after (1) all required government and regulatory approvals for full operation of the Project have been obtained; and (2) (i) all solar panels and inverters included in the scope of the Horn Rapids Solar, Storage, and Training project, (ii) the battery energy storage system (BESS), (iii) the Project SCADA system, and (iv) the Project electrical distribution and interconnection system, are constructed and applicable performance warranty tests are completed and accepted in accordance with Prudent Utility Practice, the applicable Project contract documents, and any applicable or manufacturer’s recommendations, requirements or guidelines. Such declaration shall not be unreasonably withheld or delayed.

“Contract Term” means the duration of this Agreement as set forth in Section 1 of this Agreement.

“Date of Commercial Operation” means the date fixed by Energy Northwest as the point in time when the Project has reached Commercial Operation.

“Date of Initial Financing” means the date on which Richland or Energy Northwest, on behalf of Richland, has first obtained long-term financing of the Project through the issuance of EN Bonds or City Bonds, respectively.

“Debt” means (a) EN Bonds, or (b) City Bonds.

“Debt Service” means the payment of the principal and interest, if applicable, on the Debt.

“EN Bond Resolution” means any resolution of Energy Northwest’s Executive Board authorizing the issuance of EN Bonds.

“EN Bonds” means any bonds, notes or other debt obligations of Energy Northwest, the proceeds of which will be used to benefit the Project, including construction of the Project, to finance capital improvements to the Project, to refund any Debt, or any other lawful purpose related to the Project.

“Effective Date” has the meaning set forth in Section 1.1.

“Fiscal Year” means the period commencing on the Date of Commercial Operation and ending at 12 midnight on the following June 30. Thereafter “Fiscal Year” means the 12-month period commencing each year at 12:01 a.m. on July 1, and concluding at 12 midnight the following June 30, except that the last Fiscal Year shall end on the date of termination of this Agreement.

“Liability” or “Liabilities” means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due) including any liability for taxes. As set out more fully in Section 9.4, Liability does not include special, indirect, incidental, or consequential loss or damage, which specifically includes, without limitation, cost of capital, loss of profits or revenues or the loss of use.

“Monthly Billing Statement” means the monthly invoice from Energy Northwest to Richland.

“Point of Delivery” means the point where the Project is interconnected at the interconnection Approximately 400 feet northeast of pole 3401, Richland, Washington.

“Project” has the meaning set forth in the Preface and Appendix I.

“Project Infrastructure” means the roads, substation, transformers, and cable necessary to exchange Project Energy at the Point of Delivery.

“Project Energy” means the electric energy stored or discharged by the Project, whether or not the Project may be inoperable or the operation thereof is interrupted, suspended, discontinued, interfered with, in whole or in part, and exchanged at the Point of Delivery expressed in megawatt hours and the associated environmental attributes, including any and all credits, benefits, emissions reductions, environmental air quality credits, emission reductions credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Project during the Contract Term.

“Prudent Utility Practice,” at a particular time, means any of the practices, methods, and acts engaged in or approved by a significant proportion of the electrical utility industry prior to such time, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

**APPENDIX III**  
**NOTICE ADDRESSES**

City of Richland  
505 Swift Blvd  
Richland, WA 99352  
Attention: Purchasing & Contracts Manager  
Email: [Purchasing@ci.richland.wa.us](mailto:Purchasing@ci.richland.wa.us)

Energy Northwest  
P.O. Box 968  
Richland, WA 99352  
Attention: [Supply Chain Services Manager]  
Email: