



# City of Grand Island

Tuesday, September 22, 2015

Council Session

## Item G-13

**#2015-257 - Approving Renewable Energy Credit Agreement with Neligh, Nebraska**

Staff Contact: Tim Luchsinger, Stacy Nonhof

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director  
**Meeting:** September 22, 2015  
**Subject:** Renewable Energy Credit Agreement with Neligh  
**Presenter(s):** Timothy Luchsinger, Utilities Director

## Background

On June 9, 2015 Council approved execution of a Power Purchase Agreement (PPA) with Invenergy Inc., for the Prairie Breeze III Wind Energy Project. This PPA with Invenergy is for the entire capacity of the Project with the intent for subsequent participation agreements between the City of Grand Island and the Nebraska City Utilities and the City of Neligh for minority positions in the Project.

## Discussion

Energy generated from renewable sources such as wind are eligible to receive Renewable Energy Credits which document the energy created and then can be sold or traded to other parties and used for environmental compliance. The Utilities Department's legal counsel for the Prairie Breeze III project, Fraser Stryker, drafted a Renewable Energy Credit Purchase Agreement for the sale of approximately 5.58% of the output of this project from Grand Island to Neligh.

The sale price to Neligh for the Renewable Energy Credits is being paid by the City to Invenergy over the twenty year term of the PPA, plus the pro-rata share of any costs that may be incurred by the City as a result of marketing the energy to the electric regional system. The agreement is included the information for this item with the exclusion of the appendix with the pricing information, which is confidential based on the terms of the PPA.

## Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date

4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council authorize the Mayor to execute the Renewable Energy Credit Purchase and Sale Agreement between the City of Grand Island and the City of Neligh.

### **Sample Motion**

Move to authorize the Mayor to execute the Renewable Energy Credit Purchase and Sale Agreement between the City of Grand Island and the City of Neligh.

**RENEWABLE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

**Between**

**CITY OF GRAND ISLAND**

**And**

**CITY OF NELIGH**

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## TABLE OF CONTENTS

<b>ARTICLE I - DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE II - PRICE, DELIVERY, IDENTIFICATION, CERTIFICATION, PAYMENT AND TRANSFER OF RECS .....</b>	<b>4</b>
2.1 Purchase and Sale of RECs .....	4
2.2 Identification and Certification .....	4
2.3 Payment for RECs .....	4
2.4 Title .....	5
2.5 Taxes .....	5
<b>ARTICLE III - BUYER'S REVIEW RIGHTS .....</b>	<b>5</b>
3.1 Review Rights .....	5
<b>ARTICLE IV - REPRESENTATIONS, WARRANTIES AND COVENANTS .....</b>	<b>6</b>
4.1 Representations, Warranties and Covenants of GRAND ISLAND .....	6
4.2 Representations, Warranties and Covenants of BUYER .....	7
<b>ARTICLE V - EVENTS OF DEFAULT; INDEMNIFICATION; LIMITATION OF LIABILITY .....</b>	<b>7</b>
5.1 Events of Default by GRAND ISLAND .....	7
5.2 Events of Default by BUYER .....	8
5.3 Termination for Cause .....	8
5.4 Remedy .....	9
5.5 Limitation of Liability .....	9
<b>ARTICLE VI - TERM AND TERMINATION.....</b>	<b>10</b>
<b>ARTICLE VII - CHANGE IN LAW .....</b>	<b>10</b>
<b>ARTICLE VIII - MISCELLANEOUS .....</b>	<b>10</b>
8.1 Notices .....	10
8.2 Confidential Information .....	11
8.3 Entire Agreement; Counterparts.....	13
8.4 Assignment.....	13
8.5 Successors and Assigns .....	13
8.6 Severability .....	13
8.7 No Prior Agreements .....	13
8.8 No Waiver .....	13
8.9 Headings .....	14
8.10 No Third-Party Beneficiaries .....	14
8.11 Negotiated Agreement .....	14
8.12 Governing Law .....	14

### EXHIBITS

<b>EXHIBIT A</b>	<b>Bill of Sale; Renewable Energy Attestation</b>
<b>EXHIBIT B1</b>	<b>Contract Year Price Per REC</b>
<b>EXHIBIT B2</b>	<b>REC Settlement Amount</b>

**RENEWABLE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

This Renewable Energy Credit Purchase and Sale Agreement (“Agreement”), dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between the CITY OF GRAND ISLAND, NEBRASKA, a municipal corporation and city of the first class organized and existing pursuant to Neb. Rev. Stat. §§ 16-101 et seq. (“GRAND ISLAND”), and the CITY OF NELIGH, NEBRASKA, a municipal corporation and city of the \_\_\_\_ class organized and existing pursuant to Neb. Rev. Stat. §§ \_\_\_\_\_ et seq. (“BUYER”), and shall become effective on the Effective Date (as hereinafter defined). GRAND ISLAND and BUYER may be referred to individually herein as “Party” and collectively as “Parties.”

**WITNESSETH**

WHEREAS, Prairie Breeze Wind Energy III, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Wind Project”) is the owner and developer of a wind energy plant with an estimated name plate capacity of approximately 35.8 megawatts (MW) that Wind Project plans to construct in Antelope County, Nebraska (the “Plant”); and

WHEREAS, GRAND ISLAND and Wind Project have entered into a Power Purchase Agreement (the “PPA”), pursuant to the terms of which GRAND ISLAND agrees to purchase from Wind Project, and Wind Project has agreed to sell to GRAND ISLAND, the entire electric energy output and environmental attributes generated by the Plant, and

WHEREAS, the Parties desire to enter into an agreement for the sale by GRAND ISLAND and purchase by BUYER of certain of the environmental attributes associated with the Plant; and

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined internally in the Agreement shall apply to the Agreement and all notices and communications made pursuant to the Agreement.

- 1.1 “Applicable Law” means any federal or state constitutional provision, law, statute, rule, regulation, order, decree, judgment or decision that is applicable to a Party to this Agreement or the transaction described herein.

- 1.2 “Business Day” means a day on which the Federal Reserve Member Banks in Nebraska are open for business, and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time in Grand Island, Nebraska.
- 1.3 “BUYER” means Neligh, Nebraska.
- 1.4 “Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.
- 1.5 "Effective Date" shall have the meaning set forth in Article VI.
- 1.6 “Environmental Attributes” means all those aspects, claims, characteristics, and benefits associated with the generation of one MWh of electricity by the Plant, other than the electricity produced, including allowances, certificates, emission credits and all other credits, offsets, green tags and all other tags, and all similar rights, in each case issued, recognized, created or otherwise resulting from the existence, ownership or operation of the Plant, the generation by the Plant of electricity using wind, and the sale and delivery of wind-generated electricity to GRAND ISLAND or into a regional electricity market. Environmental Attributes include, but shall not be limited to, those attributes that are created or recognized by regulations, statutes, or other action by a Governmental Authority, and include, but shall not be limited to, those attributes that can be used to 1) claim responsibility for the reduction of emissions and/or pollutants, 2) claim ownership of emission and/or pollutant reduction rights, 3) claim reduction or avoidance of emissions or pollutants, and 4) claim compliance with a renewable energy standard or renewable portfolio standard. Emissions and pollutants as referred to above include, but are not limited to, acid rain precursors, carbon dioxide, carbon monoxide, chlorinated hydrocarbons, greenhouse gases, mercury, metals, methane, nitrogen oxides, nitrogen-oxygen compounds, ozone precursors, particulate matter, sulfur dioxide, toxic air pollutants, other carbon and sulfur compounds, and similar or dissimilar pollutants, emissions, or contaminants of air, water or soil. Environmental Attributes do not include Production Tax Credits (PTCs), or any other tax credits or tax benefits, including accelerated depreciation, associated with the ownership or operation of the Plant or property and sales tax exemptions or benefits for which the Plant may be eligible.
- 1.7 “Force Majeure” shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including without limitation by enumeration, acts of God, act of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), blockades,

strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions, arrests and restraints. Force Majeure does not include Change in Law, financial hardship or general economic or financial conditions.

If an event defined as Force Majeure occurs, and the affected Party is unable to carry out any of its obligations under this Agreement, other than the obligation to pay money when due, then upon the affected Party giving written notice to the other Party of such Force Majeure, the affected Party's obligations shall be suspended from and after the date of the Force Majeure specified in the notice to the extent made necessary by such Force Majeure and during its continuance. The notice shall specify in detail (to the extent known) the nature of the Force Majeure, the obligations which the affected Party is unable to perform or furnish due to Force Majeure, and the affected Party's best estimate of the probable duration of the Force Majeure. The affected Party shall use commercially reasonable efforts to eliminate and cure such Force Majeure insofar as possible and with a minimum of delay, and to resume full performance of its obligations.

- 1.8 "Governmental Authority" means any federal or state judicial or regulatory entity exercising authority or jurisdiction under any Applicable Laws.
- 1.9 "MWh" means a megawatt hour of electricity.
- 1.10 "Person" means any individual, corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, governmental authority or other entity, including the Parties.
- 1.11 "Plant" has the meaning set forth in the recitals.
- 1.12 "PPA" has the meaning set forth in the recitals.
- 1.13 "REC Cost" shall have the meaning set forth in Exhibit B1.
- 1.14 "REC Cost Adjustments" shall include the credits and other charges as are set forth in Exhibit B2.
- 1.15 "REC Settlement Amount" shall have the meaning as set forth on Exhibit B2.
- 1.16 "Renewable Energy Credit" or "REC" means an Environmental Attribute generated at the Plant. One REC represents the generation of one megawatt-hour (1 MWh) of wind energy produced by the Plant, based on the actual



measured MWh of generation delivered to GRAND ISLAND or to a regional electricity market.

- 1.17 "Southwest Power Pool Integrated Marketplace" or "SPP IM" means an organized wholesale electricity market operated by the Southwest Power Pool. Its dispatch process is centralized and is driven by market bids and offers to provide the optimum dispatch resource mix to serve load in SPP's region.
- 1.18 "SPP" refers to the Southwest Power Pool, Inc., a regional transmission organization and reliability entity. Should GRAND ISLAND withdraw from the SPP or any of SPP's functions be replaced by a successor entity or function, the requirements of such successor entity or function shall apply to this Agreement.
- 1.19 "SPP REC Cost Adjustment" means the collection and distillation of daily electricity sales, prices and charges in the SPP IM for the Wind Project Node based on SPP reports, an illustration and example of which is attached as Exhibit C. GRAND ISLAND shall deliver to BUYER on or before the 5th Business Day following the receipt of all such settlement information by GRAND ISLAND from SPP.
- 1.20 "Term" shall have the meaning set forth in Section 6.1.
- 1.21 "Wind Project" means Prairie Breeze Wind Energy III, LLC, a limited liability company organized and existing under the laws of the State of Delaware.
- 1.22 "Wind Project Node" means the Wind Project Node as designated by the Southwest Power Pool.

## **ARTICLE II PRICE, DELIVERY, IDENTIFICATION, CERTIFICATION, PAYMENT AND TRANSFER OF RECS**

- 2.1 Purchase and Sale of RECs. Under this Agreement, GRAND ISLAND agrees to sell and deliver, and BUYER agrees to purchase, approximately 5.58 percent (5.58%) of RECs generated at Wind Project on or after the Commercial Operation Date, reflecting two megawatts (2 MW) of renewable energy. The price for the RECs shall be as set forth on Exhibit B1 hereto, and shall be adjusted pursuant to the formula and sample provided on Exhibit B2, the intent being that the price for the RECs will be offset by sales in the SPP IM. To the extent that the REC Settlement Amount is a negative number in favor of BUYER, GRAND ISLAND hereby agrees to either credit or pay BUYER such amount in accordance with Section 2.3 below. The energy commodity value associated with the sale and purchase of wind-generated electricity from the Plant is not included in the sale and purchase of RECs under this Agreement, and BUYER shall have no rights or claims with respect to such energy commodity value. In addition to paying for the RECs, BUYER shall pay its pro rata share of costs incurred by

GRAND ISLAND and its consultant to develop and manage GRAND ISLAND's participation in the SPP IM in connection with the Plant and the PPA.

2.2 Identification and Certification. RECs will be identified by the calendar year in which the individual RECs were generated. At BUYER's written request and sole cost, RECs shall be certified in accordance with the requirements and limitations of the Green-e® program administered by Center for Resource Solutions (CRS), or such other similar independent program in the retail market as is mutually agreed to in writing by the Parties.

2.3 Payment for RECs.

2.3.1 Payment to GRAND ISLAND. GRAND ISLAND shall issue monthly invoices to BUYER for the RECs sold pursuant to this Agreement. BUYER shall make electronic payment for the RECs within ten (10) Business Days after receipt of an invoice from GRAND ISLAND. BUYER shall make such payments to a bank account as designated from time to time by GRAND ISLAND. If the payment due date falls on a non-Business Day, payment shall be due the next Business Day. If the amount due is not paid within ten (10) Business Days, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the Prime Rate plus two hundred (200) basis points. If the payment due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

2.3.2 Payment/Credit to BUYER. In the event of a credit due to BUYER under Section 2.1 hereof, GRAND ISLAND shall make electronic payment for the RECs within ten (10) Business Days after credit is issued; provided, however, if there is an unpaid balance due to GRAND ISLAND, GRAND ISLAND will apply the credit as a set-off against this unpaid balance and pay to BUYER the remainder of said credit, if any. For any credit due to BUYER, GRAND ISLAND shall make electronic payment to a bank account as designated from time to time by BUYER. If such payment due date falls on a non-Business Day, such due date shall be the next Business Day. GRAND ISLAND shall be entitled to conclusively presume, without any liability whatsoever, that the payment information furnished by BUYER (including name, financial institution, account numbers, payee, etc.) is accurate. If the amount due is not paid within ten (10) Business Days, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the Prime Rate plus two hundred (200) basis points. If the payment due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 2.4 Title. The Parties understand and agree that GRAND ISLAND shall be responsible to deliver or provide title to BUYER for RECs (or the environmental attributes underlying the RECs) which GRAND ISLAND actually receives from Wind Project, but not otherwise. The Parties agree that GRAND ISLAND, in its sole discretion, shall 1) either make arrangements for the transfer of RECs directly from Wind Project to BUYER, or 2) upon delivery of the RECs from Wind Project, shall deliver a Renewable Attestation and Bill of Sale, in substantially the forms attached hereto as Exhibit A, to BUYER, within five (5) calendar days after receipt of payment by BUYER for the relevant REC invoice. Ownership of such REC shall transfer from GRAND ISLAND to BUYER upon BUYER's payment of such REC invoice. Proof of title transfer or attestations may be disclosed by either Party to others, including the Center for Resource Solutions, to substantiate and verify GRAND ISLAND's representations. █
- 2.5 Taxes. GRAND ISLAND shall not be responsible for any taxes imposed on the creation, ownership, or transfer of a REC under this Agreement up to and including the time and place of its delivery. BUYER shall be responsible for any taxes imposed on the receipt or ownership of a RECs at or after the time and place of its delivery, and associated with transactions involving the RECs occurring subsequent to their delivery. Each Party will be responsible for the payment of any fees, including brokers fees, incurred by it in connection with any transactions hereunder.

### **ARTICLE III BUYER'S REVIEW RIGHTS**

- 3.1 Review Rights. Within thirty (30) calendar days of request from BUYER, GRAND ISLAND shall make records and accounts relating to the purchase price paid by BUYER for RECs under this Agreement available to BUYER, or its designated agent, for review at GRAND ISLAND's offices during GRAND ISLAND's normal office hours.

### **ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 4.1 Representations, Warranties and Covenants of GRAND ISLAND.

GRAND ISLAND hereby makes the following representations, warranties and covenants to BUYER as of the Effective Date:

- 4.1.1 GRAND ISLAND is a municipal corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out

all covenants and obligations on its part to be performed under and pursuant to this Agreement.

- 4.1.2 This Agreement constitutes a legal, valid and binding obligation of GRAND ISLAND, enforceable in accordance with its terms, except as enforceability may be limited by laws affecting the rights of creditors generally.
- 4.1.3 There is no pending, or to the knowledge of GRAND ISLAND, threatened action or proceeding affecting GRAND ISLAND before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.
- 4.1.4 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize GRAND ISLAND's execution and delivery of this Agreement.
- 4.1.5 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which GRAND ISLAND is a party or any judgment, order, statute, or regulation that is applicable to GRAND ISLAND.
- 4.1.6 No amounts payable by BUYER to GRAND ISLAND under this Agreement shall in any way reimburse GRAND ISLAND for costs or expenses that GRAND ISLAND incurs or pays from and after the Effective Date for environmental improvements or upgrades to its generation assets other than the Plant.

4.2 Representations, Warranties and Covenants of BUYER.

BUYER hereby makes the following representations, warranties and covenants to GRAND ISLAND as of the Effective Date:

- 4.2.1 BUYER is a municipal corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the Laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 4.2.2 BUYER is a governmental entity and is tax exempt under the Internal Revenue Code and the applicable regulations promulgated thereunder.
- 4.2.3 The execution, delivery and performance by BUYER of this Agreement have been duly authorized by all necessary action.

- 4.2.4 This Agreement constitutes the legal, valid and binding obligation of BUYER, enforceable in accordance with its terms, except as enforceability may be limited by laws affecting the rights of creditors generally.
- 4.2.5 There is no pending, or to the knowledge of BUYER, threatened action or proceeding affecting BUYER before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.
- 4.2.6 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which BUYER is a party or any judgment, order, statute, or regulation that is applicable to BUYER.
- 4.2.7 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize BUYER's execution and delivery of this Agreement.

**ARTICLE V**  
**EVENTS OF DEFAULT; INDEMNIFICATION; LIMITATION OF LIABILITY**

5.1 Events of Default by GRAND ISLAND.

The following shall constitute an Event of Default by GRAND ISLAND:

- 5.1.1 GRAND ISLAND fails to make any undisputed payment due under this Agreement within thirty (30) days after such payment is due and fails to cure such default within twenty (20) days after written notice from BUYER.
- 5.1.2 GRAND ISLAND breaches any material obligation under this Agreement, and fails to cure such breach within thirty (30) days after written notification by BUYER of the breach. Provided however, that in the case of an Event of Default by GRAND ISLAND described herein, failure to complete the cure of such Default or breach within the thirty (30) day period after BUYER notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) days and GRAND ISLAND begins the cure within the thirty (30) day period and uses commercially reasonable efforts to cure the Default or breach within sixty (60) days (as extended for a Force Majeure event).

5.2 Events of Default by BUYER.

The following shall each constitute an Event of Default by BUYER:

5.2.1 BUYER fails to make any undisputed payment due under this Agreement within thirty (30) days and for such payments due and fails to cure such default within twenty (20) days of the written notice from GRAND ISLAND.

5.2.2 BUYER breaches any other material obligation under this Agreement and fails to cure such breach within thirty (30) days after written notification by GRAND ISLAND of the breach. Provided, however, that in the case of an Event of Default by BUYER described above, failure to complete the cure of such Default or breach within the thirty (30) day period after GRAND ISLAND notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) days and BUYER begins the cure within the thirty (30) day period and uses commercially reasonable efforts to cure the default or breach within sixty (60) days (as extended for a Force Majeure event).

5.3 Termination for Cause.

If any Event of Default as defined in Sections 5.1 or 5.2 has occurred, the non-defaulting Party may provide written notice to the defaulting Party specifying the basis for its belief that such event has occurred, and that the Agreement may be terminated unless the Event of Default is cured within thirty (30) days of the written notice of intent to terminate or such longer cure period as the Parties may agree. If the Event of Default has not been fully cured within the thirty (30) day cure period, or such longer cure period as the Parties might have agreed, then the non-defaulting Party may thereafter terminate this Agreement by providing written notice of termination.

5.4 Remedy.

If either Party provides a notice of termination to the other under this Article V all provisions of this Agreement, and all rights and obligations of the Parties hereunder, will continue in full force and effect from and after the date of the notice of termination until the effective date of termination, including any right, remedy or liability resulting from nonperformance or other breach of the Agreement that occurs prior to the effective date of termination. If either Party terminates for cause, then such non-defaulting Party shall have no further obligations under this Agreement to the defaulting Party from and after the date of such termination.

The right to terminate shall be the sole remedy of BUYER for an Event of Default that has not been cured by GRAND ISLAND as provided in this Article V. For GRAND ISLAND, the right to terminate set out in this Article V is in addition to any other right or remedy provided under this Agreement, or now or hereafter existing under Applicable Law with respect to obligations incurred by BUYER prior to the Event of Default, including but not limited to the right to recover damages for any failure by BUYER to make payment for RECs delivered by

GRAND ISLAND, and the exercise of said rights shall not be deemed as a waiver or relinquishment by GRAND ISLAND of any of its other rights or remedies.

Comment [A]: Discuss.

5.5 Indemnification. BUYER expressly agrees to indemnify, hold harmless and defend GRAND ISLAND against any and all claims, liability, costs or expenses (including reasonable attorneys' fees and expenses) for (i) loss, damage or injury to Persons or property directly connected with or growing out of ownership or use of RECs after transfer of title therefor to BUYER, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of or attributable to GRAND ISLAND, and (ii) costs or charges for which BUYER is expressly responsible under this Agreement.

5.6 Limitation of Liability.

5.6.1 No Consequential or Indirect Damages. In no event shall either Party be liable under this Agreement to the other Party or any third party for any consequential, incidental, indirect, exemplary, special or punitive damages, including any damages for business interruptions, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not said other party was advised of the possibility of such damages.

5.6.2 Maximum Liability. In no event shall either Party's aggregate liability arising out of or related to this Agreement as a result of an Event of Default, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The foregoing limitation shall apply even if the non-breaching Party's remedies under this Agreement fail of their essential purpose.

## ARTICLE VI TERM AND TERMINATION

6.1 This Agreement shall be contingent upon the execution of a PPA between GRAND ISLAND and the Wind Project, and the PPA remaining in effect to enable GRAND ISLAND to sell the RECs to BUYER. The "Effective Date" of this Agreement shall be the date first written above, and this Agreement shall become operable on the Commercial Operation Date, as defined under the PPA, and shall remain in effect for a term of twenty-five (25) years from the Commercial Operation Date (the "Term") unless earlier terminated pursuant to the terms of this Agreement; provided further, in the event the PPA is terminated prior to completion of the Term or the Plant no longer is delivering energy to GRAND ISLAND or a regional electricity market, this Agreement shall terminate concurrently with such event and shall be of no further force and effect.

**ARTICLE VII  
CHANGE IN LAW**

7.1 In the event there is a Change in Law that is applicable to (1) GRAND ISLAND's ability to sell and purchase power in the Southwest Power Pool, (2) the operation of the Plant, (3) the generation of RECs produced by the Plant, (4) the sale or resale of RECs, or (5) any other obligation of either Party hereunder, and compliance with the Change in Law results in a material increase in such Party's costs under this Agreement, the affected Party will promptly submit to the other Party a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases such Party's costs; and (iii) such Party's proposed adjustment to the then applicable and future rates for REC sales under this Agreement to reflect such increases in costs. If the Parties are unable to agree to a proposed adjustment within ninety (90) days, then either Party may terminate this Agreement, without liability to the other Party.

**ARTICLE VIII  
MISCELLANEOUS**

8.1 Notices. Notices, which may be given by facsimile with an original to follow via regular mail, shall be given as follows, or to such other address as may be provided by a Party from time to time in writing. All notices are effective upon receipt.

GRAND ISLAND

Notices:

City of Grand Island  
Attention: Utilities Director  
City Hall  
100 E. First St.  
Grand Island, NE 68801  
Fax: 308-385-5488

BUYER

Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Account Information for Electronic  
Payments:

Account Information for Electronic  
Payments:

Electronic payment bank information  
to be provided, each Party to the  
other.

Electronic payment bank information  
to be provided each Party to the other.



## 8.2 Confidential Information.

8.2.1 Use of Confidential Information. During the course of this Agreement, the Parties may disclose to each other certain Confidential Information, by either oral or written communications. To constitute Confidential Information for purposes of this Agreement, the same shall be clearly so designated (if oral) or conspicuously so marked (if tangible) by the disclosing Party. The Parties hereby deem Exhibits B1 and B2 to constitute Confidential Information and otherwise not be subject to public disclosure, but the Agreement otherwise is not Confidential Information. These disclosures have been or will be made upon the basis of the confidential relationship between the Parties, and unless specifically authorized in writing by the other, the Parties will:

8.2.1.1 Use such Confidential Information solely for purposes contemplated by this Agreement; and

8.2.1.2 Promptly return to each other, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the same and provide the other Party with a written statement that such destruction has occurred; provided that a Party may retain a copy with its attorney to show compliance with this Section. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the owner of such Confidential Information.

8.2.2 Nondisclosure. Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Neither Party will make any copies of Confidential Information that is in written or other tangible form except for use by authorized Persons with a need to know in connection with this Agreement (including contractors and subcontractors), and all Persons having access to Confidential Information shall have agreed to not permit unauthorized disclosure of Confidential Information.

Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Persons who have such need to know (including contractors and subcontractors), or use Confidential Information for its own purpose not related to this Agreement. Each Party agrees that its disclosure of Confidential Information to a Person who has a need to know shall be limited to only so much of the Confidential Information as is necessary for that Person to perform his/her function in connection with the Confidential Information.

8.2.3 Exceptions. The obligations imposed in this Section 8.2 shall not apply to Confidential Information:

8.2.3.1 Which becomes available to the public through no wrongful act of the receiving Party;

8.2.3.2 Which is published or otherwise made available to the public prior to the date hereof;

8.2.3.3 Which is received from a third party without restriction known to the receiving Party and without breach of this Agreement;

8.2.3.4 Which is independently developed by the receiving Party; or

8.2.3.5 Which remains Confidential Information subject to Section 8.2, except that it must be disclosed to an owner, director, officer, employee or legal counsel of the disclosing Party, or to a Party's outside accountants, auditors, rating agencies, financial advisors, legal counsel, actual or potential lenders, underwriters, BUYER lender, actual or potential purchasers of or investors in BUYER or the legal counsel or advisors of any thereof; or

8.2.3.6 Which must be disclosed pursuant to any law (including, but not limited to, the Nebraska Open Meetings Act and the Nebraska Public Records Act, Neb. Rev. Stat. § 84-712.01 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any law, the Party receiving the request or demand shall provide the owner of such Confidential Information with prompt notice to enable the owner to seek protective legal remedies, and the receiving Party shall reasonably cooperate in connection therewith; or

8.2.3.7 Which is disclosed pursuant to a confidentiality agreement to which BUYER is a party.

8.3 Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by a facsimile transmission thereof, each of which is an original and all of which constitute one and the same instrument.

8.4 Assignment. This Agreement is binding on any successors and assigns of either Party. Neither Party may otherwise transfer or assign all or any part of this

Agreement, nor its rights or obligations hereunder, or otherwise dispose of any right, title, or interest herein, without the prior written consent of the other Party.

- 8.5 Successors and Assigns. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assigns.
- 8.6 Severability. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- 8.7 No Prior Agreements. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 8.8 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.
- 8.9 Headings. The headings used herein are for convenience and reference purposes only.
- 8.10 No Third-Party Beneficiaries. This Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.
- 8.11 Negotiated Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the Party who physically drafted and prepared it.
- 8.12 Dispute Resolution. In the event of any dispute, controversy or claim arising under or relating to this Agreement, including the breach, termination or validity hereof and whether asserted in contract, in warranty, in tort, by statute or otherwise and whether for damages or any other relief (a "Dispute"), then, within ten (10) Days following the delivery date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives cannot resolve the Dispute within thirty (30) Days of the Dispute Notice, then, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a

written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Days after delivery of the Dispute summaries, the senior officers for both Parties shall begin negotiations in good faith to resolve the Dispute. Subject to the following paragraph of this Section, only if the Parties' senior officers are unable to resolve the dispute within thirty (30) Days after delivery of the Dispute summaries, then the Parties shall be entitled to pursue any and all available remedies in law, equity and contract. The Parties agree that no statements of position or offers of settlement made in the course of such discussions or in such summaries shall be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation.

Notwithstanding the prior paragraph of this Section, even if the process specified in such paragraph has not yet been commenced or completed, either Party may apply to a court permitted by Section 8.13 for a temporary or preliminary injunction or other interim remedies.

- 8.13 Governing Law. This Agreement is deemed to have been effectively entered into in the State of Nebraska and it shall be governed by and construed under the laws of the State of Nebraska without giving effect to principles of conflicts of law that would otherwise cause the law of any state other than Nebraska to apply. The Parties agree that any action arising out of or related to this Agreement brought in any court by either Party against the other Party shall be brought only in the federal or state courts in and for the State of Nebraska.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF GRAND ISLAND

CITY OF NELIGH

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

1331660.2

**EXHIBIT A**

**BILL OF SALE; RENEWABLE ENERGY ATTESTATION**

**Bill of Sale  
From  
City of Grand Island  
To**

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KNOW ALL MEN BY THESE PRESENTS:

FOR AND IN CONSIDERATION of the good and valuable consideration as provided for in the Renewable Energy Credit Purchase and Sale Agreement between City of Grand Island and \_\_\_\_\_, dated effective \_\_\_\_\_, 20\_\_\_, receipt of which is hereby acknowledged, City of Grand Island (hereinafter "GRAND ISLAND"), a public corporation and political subdivision of the State of Nebraska, does hereby sell, grant, convey, assign and deliver to \_\_\_\_\_ (hereinafter "BUYER"), all of GRAND ISLAND's right, title and interest in and to the Renewable Energy Credits, together with all rights, privileges and appurtenances to said Renewable Energy Credits in any way appertaining or belonging thereto, as set forth on the Renewable Attestation Form attached hereto.

TO HAVE AND TO HOLD the above-described property unto BUYER, its successors and assigns forever.

FURTHER, GRAND ISLAND hereby covenants with BUYER that it is the lawful owner of the Renewable Energy Credits described above, that the same are free and clear of all liens, encumbrances and security interests, that GRAND ISLAND has marketable title and good right and lawful authority to sell and deliver the same, and that GRAND ISLAND will defend the title thereto against the lawful claims of all persons whomsoever.

Exhibit A, Page 1

IN WITNESS WHEREOF, GRAND ISLAND has caused this Bill of Sale to be executed by its duly authorized representative.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF GRAND ISLAND

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF HALL    )

The execution of the foregoing Bill of Sale was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, known to me to be the identical person whose name is affixed to the above Bill of Sale and an officer of City of Grand Island, a public corporation and political subdivision of the State of Nebraska, as the voluntary act and deed of said officer and said corporation.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

(NOTARY SEAL)

Exhibit A, Page 2

# RENEWABLE ATTESTATION FROM WHOLESAL PROVIDER OF ELECTRICITY OR RECS

## I. Wholesale Provider Information

Name of Wholesale Provider: City of Grand Island

Address of Provider: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

## II. Declaration

I, (print name and title) \_\_\_\_\_ declare that the (indicate with "x")<sup>1</sup>  
\_\_\_\_ electricity bundled with renewable attributes /  x  renewable attributes only<sup>2</sup> listed below were sold  
exclusively from: (name of Wholesale Provider) City of Grand Island ("Provider") to: (name of REC provider,  
utility, or electric service provider) \_\_\_\_\_ ("Purchaser").

I further declare that:

- 1) all the renewable attributes (including CO<sub>2</sub> benefits), including any emissions offsets, reductions or claims, represented by the renewable electricity generation listed below were transferred to Purchaser;
- 2) to the best of my knowledge, the renewable attributes were not sold, marketed or otherwise claimed by a third party;
- 3) Provider sold the renewable attributes only once;
- 4) the renewable attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Provider, nor, to the best of my knowledge, by any other entity;
- 5) the electrical energy that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Provider, or, to the best of my knowledge, by any other entity; and
- 6) the facilities that generated all of the renewable electricity / renewable attributes (as indicated above) sold to Purchaser are listed below by fuel type.

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<sup>1</sup> Use separate forms to report electricity and REC sales.

<sup>2</sup> If Provider purchased electricity bundled with renewable attributes and has stripped off those attributes to sell in this transaction, and is selling the undifferentiated electricity to a utility or load-serving entity, see section III also.



**List the renewable MWhs sold or transferred to Purchaser identified below by quarter of generation as a separate line item.**

Generator Name	Generator ID Number (EIA or QF)	Nameplate Capacity (MW)	Fuel Type (if biomass, be specific; i.e. Landfill Gas)	# MWhs RECs / Elec. Sold	First Date of Generator Operation (mm/yy) <sup>3</sup>	Period of Generation (quarter#/yy or mm/yy)
Wind Project						

**III. Additional Statement required of Provider selling electricity to Purchaser**

I declare that the electricity listed above was delivered into the NERC region(s) or ISO(s) in which the Generator(s) listed above are located.

**IV. Additional Statement required if Provider is selling only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity**

Please write the name of the utility or load-serving entity here: City of Grand Island

As an authorized agent of Provider, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

**This Attestation form is used by the Center for Resource Solutions to verify the accuracy of claims made by Participant renewable energy providers.**

<sup>3</sup> For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

Exhibit B2, Page 1

Exhibit B2, Page 2

RESOLUTION 2015-257

WHEREAS, on June 9, 2015 Council approved execution of a Power Purchase Agreement (PPA) with Invenergy Inc., for the Prairie Breeze III Wind Energy Project; and

WHEREAS, this PPA with Invenergy is for the entire capacity of the Project with the intent for subsequent participation agreements between the City of Grand Island and the City of Neligh for minority position in the Project; and

WHEREAS, the energy generated from renewable sources such as wind are eligible to receive Renewable Energy Credits which document the energy created and then can be sold or traded to other parties and used for environmental compliance; and

WHEREAS, the Utilities Department's legal counsel for the Prairie Breeze III Project drafted a Renewable Energy Credit Purchase Agreement for the sale of approximately 5.58% of the output of this project from Grand Island to Neligh; and

WHEREAS, the sale price to Neligh for the Renewable Energy Credits is that being paid by the City of Grand Island to Invenergy over the twenty year term of the PPA, plus the pro-rata share of any costs that may be incurred by the City as a result of marketing the energy to the electric regional system.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Renewable Energy Credit Agreement with Neligh, Nebraska, is approved, and the Mayor is hereby authorized to sign the Agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, September 22, 2015.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 18, 2015	☐ City Attorney