

**RESOLUTION NO. 1484
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO A
PROJECT DEVELOPMENT ASSISTANCE INCENTIVE FUNDING AGREEMENT
WITH ENERGY TRUST OF OREGON, INC.**

Whereas, the City of Prineville (“City”) was selected as a recipient of a \$250,000.00 Wood Innovations Grant from the United States Department of Agriculture’s Forest Service to study a proposed 20 megawatt biomass power plant to be located in Prineville, Oregon (“PREP”); and

Whereas, The Wood Innovations Grant program advances innovations in wood products that create jobs, revitalize local economies and support sustainable forest land management; and

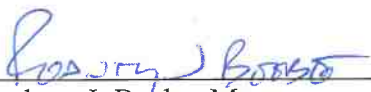
Whereas, Energy Trust of Oregon, Inc., an Oregon non-profit corporation, (“Energy Trust”) was created to invest in public purpose funding in, among other things, the above-market costs of new renewable energy resources, has determined that providing project development assistance funding for the proposed PREP study activities are consistent with Energy Trust’s statutory purposes; and

Whereas, Energy Trust has prepared a Project Development Assistance Incentive Funding Agreement (“Agreement”) for City’s Consideration; and

Whereas, City staff believes it is in the best interest of the City to approve and execute the Agreement.

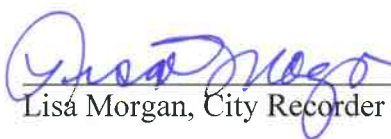
Now, Therefore, the City of Prineville resolves that the Agreement attached to this Resolution between the City and Energy Trust is hereby approved and that the Mayor is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this 27th day of April, 2021.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

Project Development Assistance Incentive Funding Agreement
between
Energy Trust of Oregon, Inc.
and
City of Prineville

Contract No: _____

This Project Development Assistance Funding Agreement ("Agreement") is executed by Energy Trust of Oregon, Inc. ("Energy Trust") and City of Prineville, Oregon ("the City"). Energy Trust and the City are organized under the laws of the State of Oregon. This Agreement will be binding on, and will inure to the benefit of, the Parties and their respective successors and permitted assigns. This Agreement may refer to Energy Trust and the City individually as "Party" and together as "Parties."

RECITALS

WHEREAS, the City was selected as a recipient of a \$250,000 Wood Innovations Grant from the United States Department of Agriculture's Forest Service, in 2020, to study a proposed 20 megawatt biomass power plant to be located in Prineville, Oregon (the "PREP"), as further described in **Section A** below). The Wood Innovations Grant program advances innovations in wood products that create jobs, revitalize local economies and support sustainable forest land management.

WHEREAS, Energy Trust, a non-profit corporation created to invest "public purpose funding" in, among other things, the above-market costs of new renewable energy resources, has determined that providing project development assistance funding for the proposed PREP study activities, as set forth in this Agreement, is consistent with Energy Trust's statutory purposes;

NOW THEREFORE, the Parties enter into this Agreement.

AGREEMENT

A. Project Development Assistance Activities. The specific project development assistance activities for the PREP that are the subject of this Agreement are set forth in the attached **Exhibit A** (each a "PDA Activity" and collectively the "PDA Activities") which is fully incorporated and made part of this Agreement by this reference.

B. Term; Survival. This Agreement is effective from April 19, 2021 until December 31, 2021 unless terminated earlier in accordance with **Section F** below. **Sections E, G, H, I, K** and any other provisions of this Agreement which by their nature extend beyond the term of this Agreement shall survive termination of this Agreement.

C. Energy Trust Project Development Assistance Incentive Funding. Provided that this Agreement is fully executed, Energy Trust will provide up to a maximum of **\$150,000** (the “Maximum Energy Trust PDA Funding Commitment”) in Energy Trust project development assistance incentive funds towards the PDA Activities for the PREP as set forth in **Exhibit A**, subject to the terms and conditions of this Agreement.

Energy Trust will pay to the City project development assistance incentive funds towards each PDA Activity listed in Table 1 below, in the amount indicated for such PDA Activity, provided that this Agreement is fully executed and the PDA Activity is conducted and completed in accordance with the terms and conditions of this Agreement.

Table 1:

PDA Activity Description	Activity Start Date/End Date	Estimated Cost	Energy Trust Incentive
Activity 1: L20 Engineering and Design Study Milestone	4/2021-8/2021	\$50,000	50% of actual Activity 1 cost or \$18,750, whichever is less
Activity 2: L30 Engineering and Design Study Milestone	4/2021-8/2021 (approx. 120 days to complete)	\$350,000	50% of Activity 2 actual cost or \$131,250, whichever is less
Total Maximum Energy Trust PDA Funding Commitment			Not to exceed \$150,000

Funds that have been reserved under this Agreement for a specific PDA Activity are not transferable to other projects or activities. The City understands and agrees that, following execution of this Agreement to reserve the Maximum Energy Trust PDA Funding Commitment amount for the PDA Activities set forth herein, the City will not be eligible to seek any additional project development assistance incentive funding from Energy Trust for the PREP via Energy Trust’s standard project development assistance incentive application processes (i.e. *Form 910E, Form 930RF*).

D. Activity Completion; Documentation Required for Incentive Payment. Upon execution of this Agreement, the City will provide Energy Trust with a completed IRS Form W-9. The City is solely responsible for ensuring that its PDA Activity work complies with all federal, state, local and utility specifications and requirements. Energy Trust’s payment of incentive funding towards a PDA Activity under this Agreement is conditioned upon the City providing Energy Trust with all documentation listed in the **Exhibit A, Section C** instructions for payment for the specific PDA Activity incentive request. Please allow 45 days from Energy Trust’s receipt of all required information for Energy Trust incentive payment processing. Failure to provide all required information may result in delay or withholding of payment.

E. Repayment of Energy Trust Incentives. The City hereby represents and warrants to Energy Trust that the resulting PREP's generated renewable energy will be delivered to either PGE or Pacific Power. The City understands and agrees that the Energy Trust incentive funding provided towards the PDA Activities under this Agreement is conditioned upon the City's agreement that it shall:

- (1) Begin construction on the PREP by March 31, 2025; and
- (2) Execute a power purchase agreement with either Portland General Electric or Pacific Power for delivery of the PREP's renewable energy power to such utility by March 31, 2025.

If, after receiving any Energy Trust incentive funding under this Agreement, the City does not achieve both of the conditions above by the deadline indicated, the City will pay to Energy Trust an amount equal to 67% of the total Energy Trust incentive amount paid to the City for the PDA Activities in accordance with this Agreement. In addition, if the City sells the deliverables supported by the project development assistance incentives (e.g. study results and other information) to a third party within three years of receiving that assistance, Energy Trust may require repayment of all or a portion of the project development assistance funds.

Special repayment provisions for proposed projects that describe both biopower and RNG: If, after receiving an Energy Trust incentive under this Agreement, the City moves forward with a RNG producing project, the City shall repay Energy Trust that portion of Energy Trust incentive funds provided that correspond to the ratio of RNG to the total project proposed and studied as described in this Agreement.

F. Termination. Energy Trust may terminate this Agreement upon 10 days' advance written notice to the City, if it determines that the City's proposed renewable project or project development activities are no longer consistent with the PREP or PDA Activities as set forth in this Agreement and eligible for Energy Trust incentive funding. Determination of eligibility for Energy Trust incentives rests solely with Energy Trust. Upon sixty (60) days written notice, Energy Trust may terminate this Agreement in the event that the OPUC grant agreement is terminated. This Agreement may be terminated by either party immediately (i) on the appointment of a receiver, trustee, liquidator, or conservator for the other party or for the purpose of taking possession of all or substantially all of the other party's property, (ii) on the filing of a petition for insolvency, dissolution, liquidation, or reorganization, or order for relief in which the other party is named as debtor, with respect to the other party pursuant to any law for the protection of debtors.

G. Use of Information; Information Release. In connection with Energy Trust's review of the City's potential PREP only, the City agrees that Energy Trust may reproduce, distribute, or otherwise use the project information collected or prepared by the City and submitted to Energy Trust hereunder. The City understands and agrees that such a review by Energy Trust may include certain authorized consultants that have signed confidentiality agreements with Energy Trust. The City agrees that Energy Trust may include some of all of the following information in reports or other documentation submitted to Energy Trust's Board of Directors, the Oregon Public Utility Commission (OPUC), the Oregon Legislature, Bonneville Power Administration, the Oregon

Department of Energy, Oregon Housing and Community Services, or other state agencies as necessary to meet Energy Trust's responsibilities: City's name and city/county location (non-residential only), a general description of the PDA Activities and proposed PREP, the amount of any Energy Trust services or incentive payments provided to the City, and any resulting energy savings or generation. Energy Trust will treat all other information gathered as confidential and report it only in the aggregate.

H. Self-Direction Status. The Energy Trust incentive funding provided under this Agreement towards the PDA Activities is subject to Energy Trust's self-direction policy. Self-direction status affects eligibility for Energy Trust services and incentives. Energy Trust's self-direct policy and a copy of our Frequently Asked Questions Regarding Self Direction are available for review on our website at www.energytrust.org. Contact us with any questions before submitting this form. The City represents and warrants to Energy Trust that (i) it understands Energy Trust's requirements for self-directors, (ii) the City's resulting PREP will not be submitted to receive renewable self-direct credits; and (iii) the renewable portion of the PREP site's utility bill will not be self-directed during the 36 months following the City's receipt of any Energy Trust incentive funds provided hereunder. If the City self-directs the renewables public purpose charge during the 36-month time period following receipt of an Energy Trust incentive payment, the City must notify Energy Trust immediately and agrees to repay Energy Trust up to 50% of the total amount of incentive funding provided under this Agreement consistent with Energy Trust's self-direction policy.

I. Disclaimer; Limitation of Liability; Indemnity; Tax Liability. The City understands and agrees that, while Energy Trust may provide incentive funding for project development assistance, Energy Trust is not supervising the performance of the project development activities performed for the City nor is Energy Trust responsible in any way for proper completion of that work or proper performance of any equipment purchased. Energy Trust is simply providing incentive funding to assist the City in identifying and implementing project development activities in support of its potential renewable energy project. **Energy Trust's liability to the City is limited to recovery of amounts due for any incentive payments due and under no circumstances will Energy Trust be liable for any further amount whatsoever.** In no event will Energy Trust be liable pursuant to this agreement to the City or to any third party for any damages, whether characterized as general, special, direct, indirect, punitive, consequential or otherwise, and the City hereby specifically indemnifies Energy Trust therefrom to the extent allowed by law. Energy Trust is not responsible for any tax liability which may be imposed on the City as a result of payment of any funds hereunder. Energy Trust is not providing tax advice, and any communication by Energy Trust is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

J. No Obligation; No Third-Party Beneficiaries. City understands that Energy Trust's approval of any project development assistance incentive funding towards any Project activity described in this Agreement does not imply any commitment by Energy Trust to provide any additional funding to the City for any additional project development work or any resulting renewable energy project or any other energy project. This Agreement is

made and entered into for the sole purpose and legal benefit of Energy Trust and City, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

K. Governing Law; Attorneys' Fees; Severability. This Agreement shall be exclusively governed by and construed in accordance with the laws of the state of Oregon, without regard to any conflicts of laws rules thereof. The exclusive jurisdiction for resolution of such disputes will be Oregon. In the event that any party initiates proceedings to enforce this Agreement or enjoin its breach, the prevailing party will be awarded its or their reasonable attorney fees and costs at arbitration, if any, trial and on any appeal as set by the trier of fact, including any bankruptcy proceedings. If any provision of this Agreement or the application of any such provision to a party or circumstances shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall remain in full force and effect, unless such construction would be unreasonable.

L. No Endorsement. Energy Trust and/or its representatives do not endorse any particular manufacturer, contractor, equipment, or system design in promoting this incentive program. The fact that the names of particular manufacturers, contractors, equipment or systems may appear in this Agreement or in related documents does not constitute an endorsement. Manufacturers, contractors, equipment, or systems not mentioned are not implied to be unsuitable or defective in any way.

M. Integration; Amendment; Interpretation. This Agreement supersedes all other agreements between the parties regarding the subject matter and contains their entire understanding as to its subject matter. No amendment to this Agreement will be effective unless it is in writing and duly executed by authorized representatives of the parties. This Agreement is the result of negotiations between the parties and shall be deemed to be the product of each party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against Energy Trust or the City solely as a result of such party's actual or alleged role in the drafting of this Agreement.

N. Assignment. This Agreement is personal to the parties and cannot be assigned by either party without the written consent of the other, except that Energy Trust may assign its rights under this Agreement to a third party when requested to do so by the OPUC under the OPUC Grant Agreement. Should consent be required under this Agreement, such consent shall not be unreasonably withheld. The foregoing notwithstanding, this Agreement will be binding on, and will inure to the benefit of, the parties and their respective successors and permitted assigns.

O. Fax/Scanned Signatures. Documents transmitted with faxed, scanned, or digital signatures shall be deemed to be original signatures. At the request of either party, the other shall confirm signature by providing an original document.

P. Authority. Each of the individuals signing this Agreement represents and warrants that he or she has been properly authorized to enter into this Agreement.

EXECUTED by the parties:

ENERGY TRUST:
Energy Trust of Oregon, Inc.

By: _____

Print name: _____

Title: _____

Date: _____

CITY:
City of Prineville

By: Rodney J Beebe

Print name: Rodney J. Beebe

Title: Mayor

Date: April 27, 2021

Exhibit A: Project Development Assistance Activities

A. Prineville Renewable Energy Project (PREP) Overview: The City's proposed PREP would be a proposed 20 MW biomass power plant located in Prineville, Oregon. Utilizing sustainable forest biomass as well as woody debris that would otherwise go to landfills; the City has indicated that the project will provide environmental, economic, and social benefits while generating renewable, reliable, baseload power to the growing Central Oregon region. It states that the proposed biomass power plant addresses many needs for the region including the need for forest restoration and fire fuels reduction activities that lead to overall healthier forests with reduced wildfire risk, baseload power generation as a way of sustaining economic growth and addressing concerns relating to power capacity in the region due to transmission constraints, and revitalization of the forest products and natural resources industries in Crook County.

The City has selected a project location and has the appropriate zoning and all of the necessary attributes for this project. The site is located adjacent to the City of Prineville Railway and within the Prineville/Crook County Enterprise Zone which offers up to 15 years of tax exemption. Site control has been established with a three-year option. Technology utilized at the facility will include a Wellons steam generating system. The steam generated will turn a Siemens extracting/condensing axial flow turbine generator to produce electricity. The City selected this equipment for its versatility and clean and efficient operation. The City is considering multiple paths for energy delivery through Pacific Power; the leading path would be providing power through a Schedule 272 (Renewable Energy Bulk Purchase Option).

The City has broken the overall project development process into three phases:

Phase 1: Feasibility (L10-L30)

Phase 2: Permitting (L40)

Phase 3: Begin Construction (L50)

Phase 1 consists of three levels. The first level, L10, an initial 'fatal flaw' review was completed by the City and addressed site selection, fuel supply and cost assessment, development of an in-depth proforma, identification of potential paths for transmission, interconnection, and wheeling, technology evaluation and selection, and engineering, procurement, and construction (EPC) contractor selection. The results of the L10 initial review have been provided to Energy Trust for review.

The remaining Phase 1 work that is the subject of this Agreement consist of the L20 and L30 engineering and design study.

B. Project Development Assistance (PDA) Activities: The City has engaged TRM Energy Solutions to complete the engineering and design study, which will consist of two PDA Activities, the completion of the "L20" and "L30" study milestones, which will be performed by the City in parallel.

PDA Activity 1: L20 Milestones Completed. The L20 portion of the engineering and design study has a cost of \$50,000 and will result in the City providing Energy Trust with documentation of the following L20 outcomes:

- Completion of site development analysis including a boundary and topographic survey, review of local zoning requirements to ensure that the elevation of the boiler building and exhaust stack will be permitted structures, if not, remedy with a land use amendment.
- Completion of an investment grade fuel study to provide a full picture of the fuel resource area that PREP will have access to and assessment of alternative fuel options outside of the committed private fuel that could be advantageous to the project's fuel procurement costs.
- Preliminary permit assessment to identify the most efficient path through permitting of the project

PDA Activity 2: L30 Milestones Completed. The L30 portion of the engineering and design study has a cost of \$350,000 and will result in the City providing Energy Trust with documentation of the following L30 outcomes:

- Preliminary design refined and updated based on the conceptual design from the L20 work scope and to include fuel handling and storage concepts, boiler island, and turbine island
- Front-End Engineering and Design (FEED) study that will provide:
 - Basis of design (BoD)- design standard for the project including fuels, site conditions, weather conditions, applicable codes, noise limits, preliminary air emission limits, and any other special considerations for the project
 - Process engineering- heat and mass balance diagrams for annual average, summer and winter conditions
 - Mechanical and piping- master equipment list, plant general arrangement drawings, P&IDs, PVF take-offs
 - Civil, structural, and architectural- site plan, soils testing and analysis, 3D architectural renderings of buildings, concrete and steel take-offs
 - Electrical and instrumentation- electrical users' list, single line diagrams, instrument list, communication network architecture and diagrams, conduit, tray and cable schedules
 - Project schedule- full engineering, procure, and construct (EPC) master project schedule
 - Scope definition and cost estimate- written scope for the entire project including an overall project budget
 - FEED report detailing all documents and drawings- three ring tabbed, bounded report compiling all documents and drawings
 - Financial model with IRR, break even analysis, NPV calculations

The City will additionally inform Energy Trust whether, based on its analysis of the results of both the L20 and L30 milestones, it will pursue the next phase of the project, L40- permitting.

C. Project Activity Documentation Required to Request Payment:

PDA Activity #	Required Documentation	Submittal Deadline
1	<ul style="list-style-type: none"> • Documentation showing total PDA Activity 1 consultant cost and portion covered by the USDA grant • Legible copy of the City's consultant's invoice for the PDA Activity 1 work; and proof that such invoice was <i>paid in full</i> (such as a cancelled check or a statement from consultant indicating a balance of zero); • Copy of site development analysis including a boundary and topographic survey, and review of local zoning requirements. Copy of land use amendment required for permitting of boiler building and exhaust stack; • Copy of investment grade fuel audit; and • Copy of preliminary permit assessment 	11/30/2021
2	<ul style="list-style-type: none"> • Documentation showing total PDA Activity 2 consultant cost and portion covered by the USDA grant • A legible copy of the City's consultant's invoice for the activity work; and proof that such invoice was <i>paid in full</i> (such as a cancelled check or a statement from consultant indicating a balance of zero); • Summary of the City's decision as to whether, based on its analysis of the results of both the PREP's L20 and L30 milestones, it plans to pursue the next phase of the project, L40- permitting. • Preliminary PREP design refined and updated based on the conceptual design from the L20 work scope and to include fuel handling and storage concepts, boiler island, and turbine island; • Front-End Engineering and Design (FEED) study that includes: <ul style="list-style-type: none"> • Basis of design (BoD)- design standard for the project including fuels, site conditions, weather conditions, applicable codes, noise limits, preliminary air emission limits, and any other special considerations for the project • Process engineering- heat and mass balance diagrams for annual average, summer and winter conditions 	11/30/2021

	<ul style="list-style-type: none"> • Mechanical and piping- master equipment list, plant general arrangement drawings, P&IDs, PVF take-offs • Civil, structural, and architectural- site plan, soils testing and analysis, 3D architectural renderings of buildings, concrete and steel take-offs • Electrical and instrumentation- electrical users' list, single line diagrams, instrument list, communication network architecture and diagrams, conduit, tray and cable schedules • Project schedule- full engineering, procure, and construct (EPC) master project schedule • Scope definition and cost estimate- written scope for the entire project including an overall project budget • FEED report detailing all documents and drawings- three ring tabbed, bounded report compiling all documents and drawings • Financial model with IRR, break even analysis, NPV calculations • Copy of the complete Financial Model providing IRR, break even analysis, NPV calculations. 	
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Energy Trust reserves the right to request, and the City agrees to provide, any additional backup documentation requested by Energy Trust. By submitting the completion documentation to request payment, the City is certifying to Energy Trust that the project development assistance work has been completed consistent with this Agreement and the information provided is true and correct.