

RESOLUTION NO. 22-13

A RESOLUTION AUTHORIZING AND APPROVING AN AMENDED AND RESTATED CAPACITY PURCHASE AGREEMENT BETWEEN THE CITY AND UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, AND RELATED MATTERS.

***** ***** *****

WHEREAS, Hyrum City, Utah (the “City”) is a member of Utah Associated Municipal Power Systems (“UAMPS”) pursuant to the provisions of the Utah Associated Municipal Power Systems Amended and Restated Agreement for Joint and Cooperative Action, as amended (the “Joint Action Agreement”);

WHEREAS, one of the purposes of UAMPS under the Joint Action Agreement is the acquisition and construction of electric generating, transmission and related facilities in order to secure reliable, economic sources of electric power and energy for its members;

WHEREAS, the City and UAMPS have previously entered into the Capacity Purchase Agreement dated as of June 1, 2022 (the “Capacity Purchase Agreement”), and capitalized terms used and not otherwise defined in this resolution shall have the meanings assigned to them in the Capacity Purchase Agreement;

WHEREAS, pursuant to the Capacity Purchase Agreement UAMPS has (a) entered into the Procurement and Construction Agreement with Wheeler Machinery Co. providing for the construction and equipping of the major components of the Project, including three Caterpillar G3520 Natural Gas generator sets and related improvements, (b) agreed to finance the cost of construction of the Project by the issuance of Bonds and (c) agreed to sell the capacity, output and services of the Project to the City.

WHEREAS, pursuant to Resolution 22-06 adopted on May 19, 2022 (“Resolution 22-06”), the City has found and determined that the Project will enhance, improve and extend the capability, reliability and services of the System for the use and benefit of customers located within its electric service area established by law, and the Capacity Payments and other amounts payable by the City under the Capacity Purchase Agreement are payable solely from the rates, charges or revenues derived from the System and are not secured by the full faith and credit or the taxing power of the City, the State or any political subdivision;

WHEREAS, pursuant to Resolution 22-06, the City has acknowledged and agreed that the obligation of the City to make the payments required under the Capacity Purchase Agreement is absolute and unconditional, whether or not the Project or any portion thereof is acquired, constructed, completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output thereof for any reason whatsoever;

WHEREAS, subsequent to the initial execution and delivery of the Capacity Purchase Agreement, the City has requested that UAMPS provide interim financing for the Cost of Construction of one or more of the Hyrum City Components of the Project, and UAMPS is willing to provide such interim financing, and the City and UAMPS desire to amend and restate the Capacity Purchase Agreement to include the terms and provisions for such interim financing and certain related revisions to the Capacity Purchase Agreement; and

WHEREAS, the City now desires to authorize and approve the amended and restated Capacity Purchase Agreement (the "*A&R Capacity Purchase Agreement*") and its execution and delivery by the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hyrum City, Utah, as follows:

Section 1. Findings and Determinations; Acknowledgments. The findings and determinations and acknowledgments of the City in Resolution 22-06 are hereby confirmed and restated with respect to the A&R Capacity Purchase Agreement and the repayment obligations of the City with respect to interim financings provided by UAMPS thereunder.

Section 2. Execution and Delivery of the A&R Capacity Purchase Agreement. The A&R Capacity Purchase Agreement in substantially the form attached hereto as *Exhibit A* is hereby authorized and approved. The Mayor is hereby authorized, empowered and directed to execute and deliver the A&R Capacity Purchase Agreement on behalf of the City, and the City Recorder is hereby authorized, empowered and directed to attest and countersign such execution and to affix the corporate seal of the City to the A&R Capacity Purchase Agreement, with such changes to the form of the A&R Capacity Purchase Agreement attached hereto as shall be necessary to conform to complete the A&R Capacity Purchase Agreement, or to correct any minor irregularities or ambiguities therein and as are approved by the Mayor, her execution thereof to constitute conclusive evidence of such approval.

Section 3. Miscellaneous; Effective Date. (a) This resolution is adopted pursuant to the Utah Interlocal Cooperation Act and other applicable provisions of law.

(b) This resolution shall be and remain irrevocable until the expiration or termination of the A&R Capacity Purchase Agreement in accordance with its terms.

(c) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(d) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(e) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this 18th day of August, 2022.

HYRUM CITY, UTAH

By _____
Mayor

ATTEST:

City Recorder

[SEAL]

EXHIBIT A

[A&R CAPACITY PURCHASE AGREEMENT]

After the conduct of other business not pertinent to the foregoing, it was moved and carried that
the City Council adjourn.

HYRUM CITY, UTAH

By _____
Mayor

ATTEST:

By _____
City Recorder

[SEAL]

STATE OF UTAH)
)
COUNTY OF HYRUM)

I, the undersigned, do hereby certify that I am the duly qualified and acting City Recorder of Hyrum City, Utah (the “*City*”). I further certify that the above and foregoing constitutes a true and correct extract from the minutes of a regular public meeting of the City Council (the “*City Council*”) of the City, held on August 18, 2022, including a resolution adopted at such meeting, together with the exhibits attached thereto, as said minutes, resolution and exhibits are recorded in the regular official book of minutes of the proceedings of the City Council kept in the office of the City Recorder, that said proceedings were duly had and taken as therein shown, that the meeting therein shown was in all respects called, held and conducted in accordance with law, and that the persons therein named were present at said meeting, as therein shown.

I further certify that I caused a true and correct copy of the above-referenced resolution (including the exhibits attached thereto) to be filed in the office of the City Recorder for examination by any interested person during the regular business hours of the office of the City Recorder.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed or imprinted hereon the official seal of the City, this 18th day of August, 2022.

City Recorder
Hyrum City, Utah

[SEAL]

Hyrum City

August 18, 2022

The City Council (the “*City Council*”) of Hyrum City, Utah (the “*City*”), pursuant to due notice met in regular public session on August 18, 2022, at the hour of 6:30 p.m., at its regular meeting place at 60 West Main, Hyrum, Utah. The meeting was duly called to order by the Mayor with the following members of the City Council being present, constituting a quorum of the City Council:

PRESENT:	Steve Adams	Councilmember
	Jared Clawson	Councilmember
	Paul James	Councilmember
	Vicky McCombs	Councilmember
	Craig Rasmussen	Councilmember

ABSENT:

ALSO PRESENT:	Stephanie Miller	Mayor
	Ron Salvesen	City Administrator
	Stephanie Fricke	City Recorder
		City Attorney
	Matt Draper	Power Director

After the minutes of the preceding meeting had been read and approved, the City Recorder presented to the City Council an affidavit evidencing the giving of public notice of the agenda, date, time and place of the August 18, 2022 regular public meeting of the City Council in compliance with the requirements of applicable Utah law. The affidavit was ordered recorded in the minutes of the meeting and is as follows:

STATE OF UTAH)
)
COUNTY OF CACHE)

I, the undersigned, the duly qualified and acting City Recorder of Hyrum City, Utah (the “City”), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated 1953, as amended, I gave public notice of the agenda, date, time and place of the August 18, 2022, regular public meeting held by the City Council of the City, by:

(a) causing a Notice of Public Meeting to be posted at the principal office of the Board on August 18, 2022, at least twenty-four (24) hours before the convening of the meeting, in the form attached hereto, said such Notice of Public Meeting having continuously remained so posted and available for public inspection during the regular office hours of the Board until the convening of the meeting;

(b) causing a copy of the Notice of Public Meeting in the form attached hereto to be provided on August 18, 2022, at least twenty-four (24) hours before the convening of the meeting, to _____ a newspaper of general circulation within the geographic jurisdiction of the City; and

(c) causing a Notice of Public Meeting, in the form attached hereto, to be posted on August 18, 2022 on the Utah Open Public Notice Website at least twenty-four (24) hours before the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the City, this 18th day of August, 2022.

City Recorder
Hyrum City, Utah

[SEAL]

[Attach Notice of Public Meeting]

As required by Section 52-4-203, Utah Code Annotated 1953, as amended, written minutes and a recording of this meeting are being kept.

The following resolution was then introduced in written form and pursuant to motion duly made and seconded, was adopted and approved by the following vote:

Aye: Councilmember _____
 Councilmember _____
 Councilmember _____
 Councilmember _____
 Councilmember _____

Nay: _____

The resolution was thereupon signed by the Mayor, was attested and countersigned by the City Recorder and was ordered recorded in the official records of the City. The resolution is as follows:

CAPACITY PURCHASE AGREEMENT

by and between

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

and

HYRUM CITY, UTAH

Dated as of June 1, 2022

[Amended and Restated as of August 15, 2022](#)

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CAPACITY PURCHASE AGREEMENT

This Capacity Purchase Agreement is made and entered into as of June 1, 2022 ~~(and is amended and restated as of August 15, 2022 (the Capacity Purchase Agreement made and entered into as of June 1, 2022 is referred to herein as the “Original Agreement,” and the Original Agreement as amended and restated as of August 15, 2022 is referred to herein as this “Agreement”)~~, by and between the Utah Associated Municipal Power Systems, an energy services interlocal entity and a political subdivisions of the State (“UAMPS”), and Hyrum City, Utah, a municipal corporation and a political subdivision of the State (the “City”). UAMPS and the City are sometimes referred to individually herein as a “party” and collectively as the “parties.”

RECITALS*

WHEREAS, the City owns and operates the System, provides electric utility services to customers located within its established service area and is authorized pursuant to law to construct, operate and contract for the capacity and service of facilities that provide generation, transmission and related services;

WHEREAS, the City requires additional generating capacity to enable it to continue to provide safe, reliable and economical electric services to the customers served by the System and has received a proposal from Wheeler Machinery Co. (“Wheeler”) for the “Hyrum City Power West Point Sub 7.857 MW Generation Facility” dated February 25, 2022 (the “Proposal”) for the construction and equipping of a electric generation facility consisting of three Caterpillar G3520 Natural Gas generator sets and related improvements (as more fully described herein, the “Project”);

WHEREAS, the City is a member of UAMPS and has requested that UAMPS, through its Member Services Project, own, construct, acquire and finance the Cost of Construction of the Project and sell the capacity, output and services of the Project to the City pursuant to this Agreement;

WHEREAS, in furtherance of the Project, UAMPS will (a) enter into the Procurement and Construction Agreement with Wheeler providing for the acquisition and construction of various components of the Project and (b) pursuant to this Agreement will contract with the City for the acquisition and construction of the remaining components necessary to complete the Project and for the operation and maintenance of the Project after its completion;

WHEREAS, the City has found and determined that the Project will enhance, improve and extend that capability, reliability and services of the System for the use and benefit of customers located within its electric service area established by law, and the Capacity Payments and other amounts payable by the City under this Agreement are payable solely from the rates, charges or revenues derived from the System and are not secured by the full faith and credit or the taxing

* Capitalized terms used but not defined in the Recitals have the meanings assigned such terms in Section 1.1.

power of the City, the State or any political subdivision;

WHEREAS, subsequent to the initial execution and delivery of the Original Agreement, the City has requested that UAMPS provide interim financing for the Cost of Construction of one or more of the Hyrum City Components of the Project, UAMPS is willing to provide such interim financing, and the parties desire to amend and restate the Original Agreement as set forth herein to include the terms and provisions for such interim financing and certain related revisions to the Original Agreement;

WHEREAS, the execution, delivery and performance of this Agreement, as amended and restated, by UAMPS and the City has been duly authorized and approved by all necessary action of their respective governing bodies; and

NOW, THEREFORE, in consideration of the premises and the respective representations, covenants and agreements hereinafter contained, the parties hereto do mutually promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1. Definitions. In addition to the terms defined in the preamble and recitals, the following terms shall have the following meanings in this Agreement:

“*Act*” means the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended.

“*Agreement*” means this Capacity Purchase Agreement dated, as of June 1, 2022, between UAMPS and the City, and shall include any and all amendments and supplements hereto hereafter made in conformity herewith and with the Bond Documents.

“*Authorized Representative*” means, (i) in the case of UAMPS, its Chief Executive Officer thereof, or any officers, employees, contractors or other agents of UAMPS authorized to perform specific acts or to discharge specific duties and (ii) in the case of the City, its Mayor and those officers or employees authorized to act pursuant to letters of authority issued from time to time by the Mayor and delivered to UAMPS.

“*Bond Counsel*” means Chapman and Cutler LLP or any other nationally-recognized bond counsel selected by UAMPS and approved by UAMPS.

“*Bond Documents*” means (a) the resolution adopted by UAMPS on May 18, 2022 authorizing the execution of the Project Agreements and the issuance of the Bonds to finance the costs of the Project, (b) all resolutions supplemental to such resolution and a certificate of determination of the City under such resolution, (c) the Bonds, (d) any contract or agreement between UAMPS and the Lender and (e) the Tax Certificate.

“*Bond Fund*” means the Bond Fund established by the Bond Documents.

“*Bonds*” means the bonds, notes or other debt obligations issued or incurred by UAMPS pursuant to the Bond Documents to finance the costs of the Project.

“*Capacity Payment*” means the amounts payable by the City for the purchase of the Project Capacity pursuant to this Agreement as shall be set forth on Schedule I.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations thereunder.

“*Cost of Construction*” means all costs of acquiring, installing and/or constructing the Project or any portion thereof to completion and operation, which costs shall include but shall not be limited to (i) all costs of environmental review, engineering and architectural services with respect to the Project or any portion thereof, including the cost of design, test borings, surveys, estimates, plans and specifications and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper installation and/or construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion, operation and/or energization of the Project or any portion thereof; (ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to construction managers, contractors, suppliers, builders and materialmen in connection with the acquisition, installation and/or construction of the Project or any portion thereof; and (iii) all costs which are required to be paid, under the terms of any contract or contracts, for the acquisition or construction of the Project or any portion thereof, including under the Procurement and Construction Agreement.

“*Event of Default*” under the Bond Documents has the meaning specified in Section 5.1.

“*Impositions*” has the meaning assigned to such term in Section 3.5.

“*Legal Requirements*” has the meaning assigned to such term in Section 3.6.

“*Lender*” means the purchaser of the Bonds.

“*Lien*” has the meaning assigned to such term in Section 3.8.

[“*Lines of Credit*” means one or more lines of credit or similar agreements drawn on by UAMPS to provide interim financing for the Cost of Construction of some or all of the the Hyrum City Components described in Exhibit A as provided in Section 2.6.](#)

“*Loss Event*” has the meaning assigned to such term in Section 3.7.

“*Operating Expenses*” means all actual operation and maintenance expenses costs of the System incurred by the City for maintaining and operating the System, calculated in accordance with generally accepted accounting principles used by the City consistently applied, including: (a) costs of purchased or generated power and energy; (b) costs of fuel, water, and other commodities;

(c) costs of transmission and interconnection services, including the amounts payable by the City under this Agreement; (d) expenses of maintenance, repair, billing and collection, and other expenses incurred to maintain and preserve the System in good repair and working order; and (e) the administrative costs of the City relating to the System, including salaries and wages of employees, payments to employees retirement and benefit systems, overhead, taxes (if any), fees of auditors, accountants, attorneys, engineers, or other consultants, insurance premiums and all other reasonable and necessary costs of the City or charges required to be paid by it relating to the System; *provided that* Operating Expense do not include: (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, (iii) costs of capital additions, replacements, betterments, extensions or improvements to the System that under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation, (iv) payments in lieu of taxes and transfers to the general fund of the City, (v) charges for the payment of any bonds or other debt obligations payable from the Revenues of the System and (vi) the Capacity Payments payable by the City under this Agreement.

“Permitted Encumbrances” means, as of any particular time,

- (a) this Agreement and the Bond Documents;
- (b) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;
- (c) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the City certifies to UAMPS will not interfere with or impair the City’s use of the Project as provided in this Agreement;
- (d) such minor defects, irregularities, encumbrances, easements, rights-of-way (including agreements with any railroad the purpose of which is to service a railroad siding) and clouds on title as normally exist with respect to property similar in character to the Project and as do not, either singly or in the aggregate, materially impair the value or use of the property affected thereby for the purpose for which it was acquired and held by UAMPS under this Agreement; and
- (e) any mechanics’, workmen’s, repairmen’s, materialmen’s, contractors’, warehousemen’s, carriers’, suppliers’ or vendors’ lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 3.8 of this Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, any agency or political subdivision thereof or any other entity.

“Procurement and Construction Agreement” means the Power Generation and Balance of Plant Agreement dated [as of June 7, 2022](#) between UAMPS and Wheeler.

United States or insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law and (iii) the exercise of judicial discretion in appropriate cases.

(c) There is no action, suit or proceeding pending or to the knowledge of the City threatened against the City by or before any court, public board, public body, administrative agency or arbitration board that would materially adversely affect the ability of the City to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the City as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the City hereunder have been obtained.

(d) The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the City and will not violate or conflict with any provision of law or any order of any court or agency of government or any agreement or other instrument to which the City is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such agreement or other instrument or result in the imposition of any Lien of any nature whatsoever other than Permitted Encumbrances.

(e) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the City in connection with the execution and delivery of this Agreement have been duly obtained.

(f) The City is authorized and empowered by law to (i) own and operate the System, (ii) acquire, construct, equip, install, energize and operate the Project as the agent of UAMPS, (iii) purchase the Project Capacity from UAMPS pursuant to this Agreement, (iv) pay the Capacity Payments and the other amounts payable by the City under this Agreement, provided that the Capacity Payments and such other amounts shall be payable solely from the Revenues of the System as provided herein, and (v) take all actions necessary or convenient in connection with the foregoing.

(g) No Event of Default, and no event that with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing.

ARTICLE II

PURCHASE AND SALE OF PROJECT CAPACITY; FINANCING OF THE PROJECT

Section 2.1. Purchase and Sale of Project Capacity. (a) UAMPS has all legal rights of title and ownership of the [“Procurement and Construction Components” of the Project identified on Exhibit A](#). UAMPS hereby sells to the City and the City hereby purchases from UAMPS, the Project Capacity, for and during the term herein provided and upon and subject to the terms and conditions herein set forth. UAMPS hereby delivers to the City and the City hereby accepts sole

and exclusive possession of the Project.

(b) The City shall assure that, during the term of this Agreement, the rights to and interests in the land on which or above which the Project is located and the “Hyrum City Components” of the Project identified on Exhibit A shall be sufficient, ~~if~~ applicable, for the design, installation, construction, testing and energization of the Project and for the operation and continued allowed existence of the Project after construction.

(c) UAMPS covenants and agrees not to sell, convey, transfer, lease, mortgage or encumber the Project or any portion thereof except as specifically permitted under this Agreement.

Section 2.2. Contract Term. The term of this Agreement shall commence as of June 1, 2022 and shall, subject to Section 6.2, expire on the date on which the City has paid all of the Capacity Payments and the other amounts payable by the City hereunder.

Section 2.3. Payment Provisions, Pledge of Capacity Payments. (a) The City covenants to make Capacity Payments in the amounts and at the times as shall be set forth on Schedule I. UAMPS agrees that such Capacity Payments shall be deposited directly in the Bond Fund.

(b) The City shall pay, as additional amounts payable hereunder, all Impositions, as defined in and in accordance with the provisions of Section 3.5 hereof. If the City fails to pay any Imposition except as permitted by Section 3.5, UAMPS may make such payment and the City shall reimburse UAMPS therefor in accordance with Section 2.3(c).

(c) In the event the City should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the amount not so paid shall continue as an obligation of the City until the amount not so paid shall have been fully paid with interest on such overdue amount until the date of payment at an interest rate per annum equal to the “WSJ Prime Rate” published in *The Wall Street Journal*.

(d) The City shall have the option to prepay its Capacity Payment obligations and to exercise its option to purchase the Project at the times and in the manner provided in Article VI hereof.

(e) Pursuant to the Bond Documents UAMPS will pledge and assign as security for the Bonds all of UAMPS’ right, title and interest in the Capacity Payments payable hereunder. The City hereby consents to the above-described pledge, assignment and security interest.

(f) The parties agree that any amounts remaining in the Bond Fund upon expiration or earlier termination of the Contract Term after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Documents) and any expenses in accordance with the Bond Documents shall belong to and be paid to the City as overpayment of Capacity Payments.

Section 2.4. Special and Limited Obligation of the City. (a) The obligation of the City to pay the Capacity Payments and all other payments provided for in this Agreement and to operate

and maintain the Project in accordance with Article III shall in each case be (i) a special and limited obligation of the City, payable solely from the Revenues of the System, and (ii) subject to the preceding clause, absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against UAMPS, and the obligation of the City shall arise and continue whether or not the Project is completed, operating or operable or its use is curtailed, suspended or terminated.

(b) The City agrees to make all payments required under this Agreement as an item of the Operating Expenses of the System; *provided that* in the event that the City issues bonds, notes or other debt obligations that are payable from and secured by a pledge of the Revenues of the System (“*Revenue Bonds*”), the City may provide in the resolution, ordinance, indenture or other instrument pursuant to which such Revenue Bonds are issued that the Capacity Payments payable hereunder shall be paid on a parity basis (*i.e.*, equally and ratably) with the debt service payments on such Revenue Bonds. The City agrees to provide to UAMPS a substantially final draft of the instrument pursuant to which such Revenue Bonds are to be issued for review and comment.

(c) THE CITY’S OBLIGATIONS HEREUNDER SHALL BE PAYABLE SOLELY FROM THE REVENUES OF THE SYSTEM AS A COST OF ELECTRIC GENERATION CAPACITY AND SERVICE THAT IS NECESSARY AND USEFUL IN THE OPERATION OF THE SYSTEM. SUCH OBLIGATIONS ARE NOT, NOR SHALL THEY BE CONSTRUED TO BE, GENERAL OBLIGATIONS OF THE CITY OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, NOR ARE SUCH OBLIGATIONS INTENDED TO BE, OR ARE THEY SECURED BY, THE FULL FAITH AND CREDIT OR THE TAXING POWER OF THE CITY OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THIS AGREEMENT SHALL NOT CONSTITUTE AN INDEBTEDNESS, GENERAL OBLIGATION OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION. THIS AGREEMENT IS NOT AND SHALL NOT BE CONSTRUED TO BE A LENDING OR A DONATION OF THE CREDIT OF THE CITY FOR ANY PURPOSE WHATSOEVER.

Section 2.5. Financing of the Project. (a) UAMPS agrees to issue the Bonds pursuant to the Bond Documents to finance the Cost of the Construction of the Project. The parties acknowledge that the “Consideration Payment” payable under (and as such term is defined in) the Procurement and Construction [Agreement](#) is the largest component of the Cost of Construction and is not payable until such time as the commissioning of the Project has been completed. The parties agree to consult with one another and to solicit the advice of UAMPS’ municipal advisor with respect to the timing for the issuance of the Bonds.

(b) At the request of the City, UAMPS will include in the Cost of Construction to be financed with the Bonds such amounts as are necessary to pay or reimburse the City for the costs of the acquisition, construction and installation of those components of the Project that are within the City’s responsibility under Article III and identified as the “Hyrum City Components” on Exhibit A, as the same may be revised from time to time as provided herein. Prior to the issuance of the Bonds, the City shall provide to UAMPS such information as shall be necessary to complete and conform the description of the Hyrum City Components and the costs or estimated costs thereof, and UAMPS shall prepare and attach a completed Exhibit A to this Agreement and

provide a copy of the same to the City.

(c) UAMPS anticipates that the Bonds will be sold in a direct purchase transaction with a Lender selected through a request for proposals process. UAMPS and its municipal advisor expect to solicit proposals to purchase the Bonds from at least three prospective Lenders. UAMPS agrees to review all such proposals with the City and to select a Lender that is mutually agreeable to UAMPS and the City. Upon the selection of the Lender and the determination of the debt service requirements of the Bonds, UAMPS shall prepare and submit a completed Schedule I to the City setting forth the Capacity Payments payable under this Agreement.

(d) The City agrees to cooperate with UAMPS in connection with the financing of the Project and to provide such information as may necessary or desirable in connection with any request for proposals or as may be requested by a prospective Lender. The City further agrees to (i) execute and deliver a certificate of determination approving the final terms and provisions of the Bonds and Schedule I to this Agreement, (ii) provide such certificates and legal opinions as may be required in connection with the closing of the sale of the Bonds and (iii) provide such continuing information during the term of the Bonds, including budgets, financial statements and operating information with respect to the System, as may be required under the Bond Documents.

(e) THE BONDS, TOGETHER WITH THE INTEREST THEREON, ARE SPECIAL LIMITED OBLIGATIONS OF UAMPS PAYABLE SOLELY FROM THE CAPACITY PAYMENTS PAYABLE BY THE CITY UNDER THIS AGREEMENT. THE OBLIGATION OF UAMPS TO PAY THE BONDS IS A SPECIAL AND LIMITED OBLIGATION PAYABLE SOLELY FROM THE CAPACITY PAYMENTS, AND THE BONDS SHALL NOT BE PAYABLE FROM AND SHALL HAVE NO CLAIM ON THE REVENUES OR ASSETS OF ANY OTHER PROJECT OF UAMPS. THE BONDS SHALL NOT CONSTITUTE A DEBT OR PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE STATE, THE CITY OR ANY POLITICAL SUBDIVISION OF THE STATE OR A LOAN OF THE CREDIT OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF UAMPS, THE STATE, THE CITY OR ANY POLITICAL SUBDIVISION OF THE STATE. NO OWNER OF ANY BONDS SHALL HAVE THE RIGHT TO COMPEL ANY EXERCISE OF TAXING POWER OF THE STATE, THE CITY OR ANY POLITICAL SUBDIVISION OF THE STATE TO PAY THE BONDS OR THE INTEREST THEREON. THIS AGREEMENT IS NOT AND SHALL NOT BE CONSTRUED TO BE A LENDING OR A DONATION OF THE CREDIT OF UAMPS FOR ANY PURPOSE WHATSOEVER.

[Section 2.6. Interim Financing. \(a\) The City has requested that UAMPS, and UAMPS has agreed to, provide interim financing for the Costs of Construction of one or more of the Hyrum City Components of the Project upon and subject to the provisions of this Section 2.6 and this Agreement.](#)

[\(b\) UAMPS will draw from time to time on the Lines of Credit to provide interim financing for the Costs of Construction of such specific portions of the Hyrum City Components as may be requested by the City and agreed to by UAMPS in writing; provided that total amount of all such draws shall not exceed \\$1,000,000. The amount and date of each drawing under the Lines of Credit shall be set forth on Schedule II attached hereto, which shall be prepared by UAMPS. The amounts drawn by UAMPS will bear interest at the applicable rate or rates under the Lines of Credit, which rates include variable interest rates. UAMPS will bill the City each month for, and](#)

the City agrees to pay, the interest due on the amounts so drawn and any other related costs payable under the Lines of Credit.

(c) The parties expect and intend that (i) the principal amount of all draws under the Lines of Credit will be refinanced by the issuance of Bonds by UAMPS as provided in Section 2.5 and (ii) such principal amount will be repaid through the Capacity Payments made by the City. In the event that the Bonds are not issued for any reason by June 30, 2024, the City agrees to repay such principal amount and any accrued and unpaid interest and costs payable by UAMPS under the Lines of Credit on or before such date.

(d) Amounts drawn under the Lines of Credit shall not constitute “Bonds” under this Agreement, provided that (i) Section 2.4 shall apply to amounts drawn under the Lines of Credit and the City’s repayment obligations with respect to such amounts, and (ii) all references to the Bonds in Sections 2.5, 4.11 and 6.2 shall apply to and be deemed to refer to the amounts drawn under the Lines of Credit.

ARTICLE III

CONSTRUCTION, OPERATION AND MAINTENANCE OF THE PROJECT; IMPOSITIONS AND LEGAL REQUIREMENTS

Section 3.1. Construction of the Project. (a) The City hereby approves the terms and provisions of the Procurement and Construction Agreement and authorizes UAMPS to execute and deliver the Procurement and Construction Agreement on its behalf. UAMPS hereby appoints the City as its agent in connection with the acquisition and construction of the Project and, so long as no Event of Default has occurred hereunder, agrees to consult with the City with respect to all actions, decisions, directions and matters arising under the Procurement and Construction Agreement.

(b) The City, as the agent of UAMPS, agrees to cause the acquisition, construction and installation of those components of the Project for which it is responsible (identified as the “Hyrum City Components” on Exhibit A) to be completed as soon as is reasonably practicable and in accordance with the terms of the Procurement and Construction Agreement, this Agreement and all applicable requirements of governmental authorities and law.

(c) The City and UAMPS may agree to change the description and specifications of the Project, and may add facilities, equipment and other capital items to the description of the Project, so long as such change or addition is mutually agreed to by the parties and does not substantially alter the nature of the Project; *provided that* (i) prior to making any such change or addition, UAMPS shall consult with Bond Counsel to ensure that such change or addition will not adversely affect the continued exemption from federal income taxation of interest on the Bonds, and (ii) any amendment of the description and specifications of the Project shall not entitle the City to any abatement or reduction in the Capacity Payments and other amounts payable by the City under this Agreement.

Section 3.2. Operation of the Project. (a) UAMPS hereby appoints the City as its agent

SCHEDULE II

DRAWINGS ON LINES OF CREDIT

<u>DATE</u>	<u>AMOUNT</u>
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