

**RESOLUTION 22-05**

A RESOLUTION AUTHORIZING AND APPROVING A CAPACITY PURCHASE AGREEMENT BETWEEN THE CITY AND UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS (“UAMPS”), APPROVING A POWER GENERATION AND BALANCE OF PLANT AGREEMENT BETWEEN UAMPS AND WHEELER MACHINERY CO. 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 has determined that it requires additional generating capacity to enable it to continue to provide safe, reliable and economical electric services to the customers served by its municipal electric utility system (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 an electric generation facility consisting of three Caterpillar G3520 Natural Gas generator sets and related improvements (including the additional components described herein described herein, the “Project”);

WHEREAS, the City requested that UAMPS, through its Member Services Project, own the Project, contract for the acquisition and construction of the Project, finance the cost of construction of the Project and sell the capacity, output and services of the Project to the City pursuant to the Capacity Purchase Agreement (the “Capacity Purchase Agreement”) between UAMPS and the City;

WHEREAS, in furtherance of the Project, UAMPS (a) will enter into the Power Generation and Balance of Plant Agreement (the “Procurement and Construction Agreement”) with Wheeler providing for the acquisition and construction of various components of the Project, (b) will contract with the City pursuant to the Capacity Purchase Agreement 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 and (c) will issue its Member Services Project Revenue Bonds (Hyrum City Generation Project) (the “Bonds”) to finance the costs of the Project;

WHEREAS, pursuant to this resolution the City finds and determines 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 this resolution the City acknowledges and agrees 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; and

WHEREAS, the City now desires to authorize and approve (a) the Capacity Purchase Agreement and its execution and delivery by the City and (b) the Procurement and Construction Agreement and its execution and delivery by UAMPS;

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

*Section 1. Definitions.* Capitalized terms used and not defined in this resolution have the meanings assigned to such terms in the Capacity Purchase Agreement.

*Section 2. Findings and Determinations; Acknowledgments.* (a) Based on its review of the Project, the Capacity Purchase Agreement and the Procurement and Construction Contract, the City Council hereby finds and determines that:

(i) 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;

(ii) 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; and

(iii) 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.

(b) The City Council acknowledges and agrees that:

(i) the obligation of the City to 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; and

(ii) the amount of the Capacity Payments required to be made by the City under the Capacity Purchase Agreement cannot be determined until UAMPS has made

arrangements for the sale of the Bonds and the interest rate or rates on the Bonds have been established.

*Section 3. Execution and Delivery of the Capacity Purchase Agreement.* (a) The 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 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 Capacity Purchase Agreement, with such changes to the form of the Capacity Purchase Agreement attached hereto as shall be necessary to conform to complete the 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.

(b) The appointment of Matt Draper as the City's Representative to UAMPS is hereby confirmed. Such Representative (or, in his absence, such alternate(s)) is hereby delegated full authority to act on all matters that may come before the Project Management Committee for the Member Services Project of UAMPS (the "*Project Management Committee*") in accordance with the terms and provisions of the Capacity Purchase Agreement, and shall be responsible for reporting regularly to the City Council regarding the activities of the Project Management Committee.

*Section 4. Approval of Procurement and Construction Agreement.* The City Council acknowledges receipt of the form of the Procurement and Construction Agreement, in substantially the form attached hereto as *Exhibit B*, and approves the terms and provisions thereof and the purchase price payable thereunder. The City hereby directs and authorizes UAMPS to execute and deliver the Procurement and Construction Agreement.

*Section 5. 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 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 19th day of May, 2022.

HYRUM CITY, UTAH

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

[SEAL]

**EXHIBIT A**

[CAPACITY PURCHASE AGREEMENT]

**EXHIBIT B**

[PROCUREMENT AND CONSTRUCTION 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 May 19, 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 19th day of May, 2022.

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City Recorder  
Hyrum City, Utah

[SEAL]



Hyrum City

May 19, 2022

The City Council (the “*City Council*”) of Hyrum City, Utah (the “*City*”), pursuant to due notice met in regular public session on May 19, 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 May 19, 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 May 19, 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 May \_\_, 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 May \_\_, 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 May \_\_, 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 19th day of May, 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:

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CAPACITY PURCHASE AGREEMENT

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by and between

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

and

HYRUM CITY, UTAH

Dated as of May 1, 2022

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## TABLE OF CONTENTS

Section	Heading	Page
ARTICLE I	DEFINITIONS AND REPRESENTATIONS .....	2
Section 1.1.	Definitions.....	2
Section 1.2.	Construction.....	5
Section 1.3.	Representations and Warranties by UAMPS.....	6
Section 1.4.	Representations and Warranties by the City.....	7
ARTICLE II	PURCHASE AND SALE OF PROJECT CAPACITY; FINANCING OF THE PROJECT.....	8
Section 2.1.	Purchase and Sale of Project Capacity.....	8
Section 2.2.	Contract Term .....	8
Section 2.3.	Payment Provisions, Pledge of Agreement.....	9
Section 2.4.	Special and Limited Obligation of the City .....	9
Section 2.5.	Financing of the Project.....	10
ARTICLE III	CONSTRUCTION, OPERATION AND MAINTENANCE OF THE PROJECT; IMPOSITIONS AND LEGAL REQUIREMENTS .....	11
Section 3.1.	Construction of the Project .....	11
Section 3.2.	Operation of the Project .....	11
Section 3.3.	Maintenance, Insurance, Alterations and Improvement .....	12
Section 3.4.	Removal of Obsolete Portions of the Project; Sale of Portions of a Project.....	12
Section 3.5.	Taxes, Assessments and Governmental Charges.....	13
Section 3.6.	Compliance with Law .....	13
Section 3.7.	Damage, Destruction and Condemnation .....	14
Section 3.8.	Discharge of Liens .....	15
Section 3.9.	Authority; Covenant of Quiet Enjoyment.....	15
Section 3.10.	Right to Cure Authority Defaults.....	<b>Error! Bookmark not defined.</b>
Section 3.11.	No Warranty of Condition or Suitability .....	15
ARTICLE IV	COVENANTS AND AGREEMENTS OF THE CITY .....	16
Section 4.1.	Compliance with Agreement .....	16
Section 4.2.	No Prior Liens on Revenues .....	16
Section 4.3.	Against Sale or Other Disposition of Property .....	16
Section 4.4.	Maintenance and Operation of System .....	16
Section 4.5.	Rates and Charges.....	17
Section 4.6.	Insurance .....	17
Section 4.7.	Books and Accounts .....	17
Section 4.8.	Protection of Security and Rights of UAMPS .....	18
Section 4.9.	Payment of Taxes; Compliance with Governmental Obligations.....	18

Section 4.10.	Expenses; Indemnity.....	18
Section 4.11.	Tax Covenants .....	19
Section 4.12.	Further Assurances.....	20
ARTICLE VI	EVENTS OF DEFAULT; REMEDIES .....	20
Section 5.1.	Events of Default .....	20
Section 5.2.	Remedies on Default.....	21
Section 5.3.	Remedies Cumulative .....	21
Section 5.4.	No Additional Waiver Implied by One Waiver.....	21
Section 5.5.	Agreement to Pay Attorneys' Fees and Expenses .....	21
ARTICLE VI	OPTIONS.....	22
Section 6.1.	Options.....	22
Section 6.2.	Termination of Agreement.....	23
Section 6.3.	Conveyance of Title.....	23
ARTICLE VII	MISCELLANEOUS .....	23
Section 7.1.	Bond Documents; Amendment.....	23
Section 7.2.	Force Majeure .....	23
Section 7.3.	Assignment or Sublease.....	24
Section 7.4.	Amendments .....	24
Section 7.5.	Notices .....	24
Section 7.6.	Severability .....	25
Section 7.7.	Inspection of Project .....	25
Section 7.8.	Effective Date; Counterparts.....	25
Section 7.9.	Binding Effect.....	25
Section 7.10.	Law Governing .....	25
Section 7.11.	Limited Recourse .....	25
Section 7.12.	Information Security .....	26
Section 7.13.	No Broker.....	27
Section 7.14.	Entire Agreement .....	27
Section 7.15.	Date of Agreement for Reference Purposes Only.....	27
Exhibit A	Description of the Project	
Schedule I	Capacity Payment Schedule	



## CAPACITY PURCHASE AGREEMENT

This Capacity Purchase Agreement is made and entered into as of May 1, 2022 (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 power of the City, the State or any political subdivision;

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

WHEREAS, the execution, delivery and performance of this Agreement 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 May 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.

“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 \_\_\_\_\_ 2022 between UAMPS and Wheeler.

*“Project”* means the Project described in Exhibit A to this Agreement.

*“Project Agreements”* means this Agreement, the Procurement and Construction Agreement and any other contract or agreement entered into by UAMPS with respect to the acquisition, construction, operation and maintenance of the Project.

*“Project Capacity”* means all of the generating capacity, services and benefits of the Project.

*“Project Information”* has the meaning assigned to such term in Section 7.12.

*“Project Fund”* means the Project Fund established in the Bond Documents.

“*Redemption Price*” means, with respect to any Bond or a portion thereof, the principal amount thereof to be purchased, prepaid or redeemed in whole or in part, plus the applicable premium, if any, payable upon the purchase, prepayment or redemption thereof pursuant to such Bond or the Bond Documents.

“*Reserve Fund*” means any reserve fund established by the Bond Documents for payment of principal and interest on the Bonds or any other fees and expenses that are due and payable under the Bond Documents and any other costs related thereto.

“*Revenues*” means all income, revenues and moneys received, receivable or otherwise derived by the City from the ownership or operation of the System determined in accordance with generally accepted accounting principles consistently applied, including (a) all amounts received from the rates, fees and charges imposed for the capacity, energy and services provided by the System to retail consumers, and (b) all amounts received from the sale, remarketing or other disposition at wholesale of capacity, energy or other services; *provided that* the following items are not Revenues: (i) connection fees and other specific charges collected for the purpose of paying or reimbursing the cost of specific facilities; (ii) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City; (iii) grants which are restricted by the grantor for a specific purpose and are not available for general purposes of the System; and (iv) the net proceeds of eminent domain proceedings and casualty insurance maintained by the City with respect to the System to the extent such proceeds are not promptly applied to the repair or replacement of the System.

“*State*” means the State of Utah.

“*System*” means the complete municipal electric utility system of the City including, but not limited to, all facilities, works, properties and structures for the generation, transmission and distribution of electricity, including: (a) all contractual rights to electric capacity, energy and ancillary and related services; (b) transmission capacity and service; (c) all real property, including easements, rights-of-way necessary or convenient in connection with the System; (d) all licenses permits and approvals necessary for the operation of the System; and (e) all additions, betterments, extensions and improvements to the System hereafter acquired or constructed.

“*Tax Certificate*” means the Tax Exemption Certificate and Agreement of UAMPS with respect to the Bonds.

“*UAMPS Indemnified Parties*” means, collectively, UAMPS and its elected or appointed officials, employees, or agents.

*Section 1.2. Construction.* In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number means and include the plural number and vice versa.

(c) Words importing persons include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All accounting terms not otherwise defined herein shall have the meanings in accordance with generally accepted accounting principles in the United States of America in effect from time to time as applicable to UAMPS and the City.

(f) References herein to Articles, Sections, Exhibits and Schedules refer to the Articles, Sections, Exhibits and Schedules of this Agreement unless the context clearly requires otherwise. References herein to an Article number (e.g., Article IV) or a Section number (e.g., Section 6.2) shall be construed to be a reference to the designated Article number or Section number hereof unless the context or use clearly indicates another or different meaning or intent.

(g) The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest scope of such general statement, term or matter.

*Section 1.3. Representations and Warranties by UAMPS.* UAMPS makes the following representations and warranties:

(a) UAMPS is duly organized and existing under the laws of the State, and it is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) This Agreement constitutes the legal, valid and binding obligation of UAMPS enforceable against UAMPS in accordance with its terms, except to the extent that the enforceability of this agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors’ rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in an action at law or a proceeding in equity).

(c) There is no action, suit or proceeding before or pending or, to the best knowledge of UAMPS, threatened against UAMPS, by or before any court, public board, public body, administrative agency or arbitration board wherein an unfavorable decision, ruling or finding

would adversely affect the transactions contemplated hereby or by the Project Agreements or the Bond Documents, or which, in any way, would adversely affect the validity of the Bonds, the Bond Documents, the Project Agreements or this Agreement.

(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 UAMPS and will not violate or conflict with any provision of State law or any order of any court or agency of government or any agreement or other instrument to which UAMPS 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 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 UAMPS in connection with the execution and delivery of this Agreement have been duly obtained.

(f) UAMPS is authorized and empowered by law to (i) acquire, construct, equip, install, energize and operate the Project, (ii) appoint the City as its agent in connection with the acquisition, construction, equipping, installation and operation of the Project, (iii) sell the Project Capacity to the City pursuant to this Agreement, (iv) finance the Project through the issuance of the Bonds pursuant to the Bond Documents, and (v) take all actions necessary or convenient in connection with the foregoing.

*Section 1.4. Representations and Warranties by the City.* The City makes the following representations and warranties:

(a) The City is duly organized and existing under the laws of the State, and it is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) This Agreement constitutes the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms, except to the extent that the enforceability of this Agreement is qualified by (i) limitations imposed by bankruptcy laws of the 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 Project. 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 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 May 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 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 as shown on Exhibit A, as the same may be revised from time to time as provided herein.

(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.

### 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 (as shown 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 in connection with the operation, maintenance, repair and replacement of the Project and, so long

as no Event of Default has occurred hereunder, authorizes the City to take all actions, make all decisions, give all directions and control all matters with respect to the operation, maintenance, repair and replacement of the Project. UAMPS shall have no control over, and no obligation with respect to, the Project, including the operation, maintenance, repair, replacement or use of the Project. The City shall be solely responsible for the procurement of fuel and other consumables necessary for the operation of the Project.

(b) The City will pay all costs of operating, maintaining, repairing and replacing the Project and will make all decisions regarding the operation or use of the Project.

(c) The City will hold, in its own name, all real property, easements, rights of way, and any other interests in land under the Project and UAMPS shall have no rights therein; *provided that* the City hereby grants an easement and license to UAMPS for the purpose of (i) inspecting the Project and monitoring the compliance by the City with its obligations under this Agreement and (ii) upon the occurrence and continuation of an Event of Default, taking the actions provided for in Section 5.2.

*Section 3.3. Maintenance, Insurance, Alterations and Improvement.* (a) During the term of this Agreement, the City will maintain the Project in the same manner in which the City maintains similar facilities that it owns and in accordance with accepted utility practice. The City may install any replacements, or perform renewals and repairs to the Project that it deems necessary or desirable (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen). UAMPS shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements or perform renewals or repairs of the Project, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project, or to furnish any services for the Project, and the City hereby agrees to assume full responsibility therefor.

(b) The City will procure and maintain insurance on the Project consistent with the insurance it maintains on and with respect to the System pursuant to Section 4.6.

(c) The City may make such alterations of or additions to the Project or any portion thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, and such alterations or additions shall constitute a part of the Project. The City may install or permit to be installed, machinery, equipment and other personal property and fixtures on the Project and may replace Project components with other property.

(d) Except as otherwise provided in Section 3.8, unless UAMPS shall consent thereto in writing, the City shall not create, permit or suffer to exist any Lien against the Project or any portion thereof, or the interest of the City in the Project or this Agreement except for Permitted Encumbrances.

*Section 3.4. Removal of Obsolete Portions of the Project; Sale of Portions of a Project.* (a) The City may remove from the Project and sell, assign or otherwise dispose of any portion of the Project which is obsolete, worn-out or no longer usable for the purpose for which such portion had originally been acquired (including from a Loss Event), *provided that* this Agreement shall remain valid, binding and enforceable following such removal. The City shall be required to

deposit in the Bond Fund or otherwise pay to UAMPS any amounts received by the City from such sale, assignment or disposition, which amounts will be credited against the Capacity Payments next payable by the City. Upon removal by the City of a portion of the Project which is obsolete, worn-out or no longer usable for the purpose for which such portion had originally been acquired, the City may notify UAMPS that such property no longer constitutes part of the Project and effective upon such notice the definition of the Project will be deemed to be so amended.

(b) The City may remove from the Project and sell, assign or otherwise dispose of any portion of the Project which is not obsolete, worn-out or no longer usable for the purpose for which such portion had originally been acquired (including from a Loss Event), *provided that* (i) this Agreement shall remain valid, binding and enforceable following such removal and (ii) the City shall deposit in the Bond Fund any funds received by it from the sale or other disposition of such removed property for use first as prepayment of Capacity Payments thereafter coming due and second, if no such Capacity Payments are to come due, as directed in the Bond Documents.

(c) The removal from the Project of any property under this Section shall not entitle the City to any abatement or reduction in the Capacity Payments and other amounts payable by the City under this Agreement. The rights provided to the City under this Section are in addition to the option of the City to purchase the Project or portions thereof under Section 6.1.

*Section 3.5. Taxes, Assessments and Governmental Charges.* The City shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project, this Agreement, any estate or interest of UAMPS or the City in the Project or transfer of such estate or interest, or the Capacity Payments hereunder during the term of this Agreement, and all assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project, all of which are herein called "*Impositions.*" The Capacity Payments set forth on Schedule I do not include an element intended to cover the cost of Impositions that may be levied and assessed upon or against the Project. Any such Impositions shall be the City's obligation and paid as additional amounts payable in accordance with Section 2.3(b). UAMPS shall promptly forward to the City any notice, bill or other statement received by UAMPS concerning any Imposition. The City may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. The City may contest in good faith the validity, existence or applicability of any Imposition. Notwithstanding anything herein to the contrary, the City may withhold payment of such Imposition during such contest so long as the failure to pay such Imposition does not adversely affect the validity and enforceability of this Agreement or the other obligations of the City hereunder. At the request of the City, UAMPS shall pay an Imposition, but only to the extent that the City provides funds to UAMPS to make such payment. Any refund of an Imposition shall belong to the City and UAMPS shall promptly pay over any refund of an Imposition received by it to the City.

*Section 3.6. Compliance with Law.* The City agrees that it will, throughout the term of this Agreement and at its sole cost and expense, operate and maintain the Project in compliance, in all material respects, with all federal, state and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen,

ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Project or the City's operation and maintenance of the Project or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "*Legal Requirements*"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions in connection with the operation and maintenance of the Project or any portion thereof. The City may in good faith contest the validity or applicability of any Legal Requirement. Notwithstanding anything herein to the contrary, the City may withhold compliance with such Legal Requirement during such contest so long as such noncompliance does not adversely affect the validity and enforceability of this Agreement or the other obligations of the City hereunder.

*Section 3.7. Damage, Destruction and Condemnation.* (a) In the event that at any time during the term of this Agreement the whole or portion of the Project shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between UAMPS and those authorized to exercise such right, or if the temporary use of the Project or any portion thereof shall be so taken by condemnation or agreement (a "*Loss Event*"):

(i) UAMPS shall have no obligation to rebuild, replace, repair or restore the Project,

(ii) there shall be no abatement, postponement or reduction in the Capacity Payments or other amounts payable by the City under this Agreement, and

(iii) the City will promptly give written notice to UAMPS of any Loss Event of greater than \$500,000 or any Loss Event that will permanently result in a loss of use of the Project, which notice shall generally describe the nature and extent of such Loss Event.

(b) The City shall not be obligated to rebuild, replace, repair or restore the Project or any portion thereof or purchase the Project or any portion thereof following a Loss Event so long as this Agreement shall remain valid, binding and enforceable on the City following such Loss Event. If the City elects to rebuild, replace, repair or restore the Project or any portion thereof following a Loss Event, it shall do so with funds other than funds provided or otherwise derived under this Agreement.

(c) Any proceeds of insurance or condemnation awards or recoveries of claims against contractors (or an amount equal to such proceeds, awards or recoveries) received by UAMPS or the City shall be, as directed by the City, deposited into the Project Fund or the Bond Fund for use to pay or reimburse the costs of rebuilding, replacing, repairing or restoring the related portions of the Project, for the prepayment of Capacity Payments thereafter coming due, or as may otherwise be permitted in the Bond Documents; provided, however, that, if the foregoing proceeds (or amounts equal thereto) are received by the City in respect of facilities that were a part of the Project when the damage or the basis for the claim originally arose but which facilities were subsequently

removed from the definition of the Project, any proceeds (or amounts equal to such proceeds) received by the City shall be retained by the City as its own funds.

*Section 3.8. Discharge of Liens.* (a) Except as permitted by Section 7.3, the City shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Project or any portion thereof during the term of this Agreement, without the prior written consent of UAMPS, and any purported disposition without such consent shall be void; if any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "*Liens*"), whether or not valid, is made against the Project or any portion thereof or the interest therein of UAMPS or the City or against any of the Capacity Payments or other amounts payable under this Agreement or the interest of the City under this Agreement other than Liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by Section 3.8(b), the City forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to UAMPS and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of UAMPS for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against UAMPS' interest in the Project.

(b) So long as no Event of Default has occurred and is continuing hereunder, the City may at its sole expense contest by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien.

(c) Notwithstanding the preceding paragraphs, the City shall not be required to discharge Liens against the interest of the City in the Project as long as this Agreement will remain valid, binding and enforceable. Nothing herein shall be construed as limiting the right of the City to use the generating capacity, output and services provided by the Project in connection with the operations of the System or to sell the capacity and output of the Project to third parties to the extent permitted by the Tax Certificate.

*Section 3.9. Covenant of Quiet Enjoyment.* So long as the City shall pay the Capacity Payments and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and no Event of Default hereunder shall have occurred and be continuing, the City shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Project, and UAMPS (at the sole cost and expense of the City) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

*Section 3.10. No Warranty of Condition or Suitability.* UAMPS HAS NOT AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP

OF THE PROJECT OR ANY PORTION THEREOF, THE FITNESS OF THE PROJECT FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT, OR THE SUITABILITY OF THE PROJECT FOR THE PURPOSES OR NEEDS OF THE CITY OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF THE PROJECT. THE CITY IS SATISFIED THAT THE PROJECT IS SUITABLE AND FIT FOR ITS PURPOSES. UAMPS SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE CITY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE PROJECT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

## ARTICLE IV

### COVENANTS AND AGREEMENTS OF THE CITY

*Section 4.1. Compliance with Agreement.* The City will punctually pay the Capacity Payments and the other amounts payable hereunder in strict conformity with the terms of this Agreement. The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, condemnation of the Project by any governmental entity, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of UAMPS to observe or perform any agreement, condition, covenant or term required to be observed and performed by it contained herein, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

*Section 4.2. No Prior Liens on Revenues.* The City covenants and agrees that it will not enter into any agreement, make any pledge, grant any lien or otherwise take any action with the effect that (i) except as permitted in Section 2.4(b), the Capacity Payments do not constitute items of Operating Expenses, (ii) the other amounts payable by the City hereunder do not constitute items of Operating Expenses or (iii) the Operating Expenses are not payable as a first charge on the Revenues.

*Section 4.3. Against Sale or Other Disposition of Property.* The City will not sell, lease, encumber or otherwise dispose of any System properties in any manner that would materially adversely affect the efficient and proper operation of the System or the Revenues to be produced by the operation of the System; *provided that* any real or personal property which has become nonoperative, obsolete or worn out or which is not needed for the efficient and proper operation of the System may be sold, exchanged or disposed of by the City.

*Section 4.4. Maintenance and Operation of the System.* (a) The City will maintain and preserve the System in good repair and working order at all times and will operate the System in



an efficient and economical manner and will pay all Operating Expenses of the System as they become due and payable.

(b) The City will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues, the System or any part thereof.

(c) The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, expressed or implied, required to be performed by it contained in all contracts for the use of the System and all other contracts affecting or involving the System to the extent that the City is a party thereto.

*Section 4.5. Rates and Charges.* (a) The City shall establish, fix, prescribe and collect rates and charges for the sale or use of the electric power and energy and related services provided by the System which, together with other available income, are reasonably expected to produce Revenues at least sufficient to pay in each fiscal year of the City all Operating Expenses of the System, the Capacity Payments and all other amounts payable by the City under this Agreement, and all other amounts payable out of the Revenues, including debt service on any Revenue Bonds issued by the City. The City will review such rates and charges from time to time, and upon any material change to the operations of circumstances of the System, and shall promptly revise such rates and charges as necessary to comply with the foregoing requirement.

(b) Except in connection with the receipt of federal or State funding, or as required by law or as a condition to the acquisition or operation of the Project or System, the City will not permit any part of the System, or any facility thereof, to be used, or taken advantage of, free of charge by any person, firm or corporation, or by any public agency (including the United States of America, the State of Utah and any public corporation, political subdivision, city, county, district or agency of any thereof).

(c) The City shall have in effect at all times rules and regulations (i) requiring all users of the electricity and other services provided by the System to pay the rates, fees and charges imposed by the City and (ii) providing for the billing and payment thereof.

*Section 4.6. Insurance.* (a) Subject to the condition that insurance is obtainable at reasonable prices and upon reasonable terms and conditions, the City will procure and maintain insurance on the System and the Project and public liability insurance in such amounts and against such risks as are usually insurable in connection with similar enterprises and are normally carries by municipalities and other public power systems in the operation of similar properties, *provided that* the City may in its discretion be a self-insurer of any risk. [To be discussed: All policies of insurance on the Project shall name UAMPS as an additional insured.]

(b) The City will secure and maintain adequate fidelity insurance or bonds on all officers and employees handling or responsible for the funds of the System.

*Section 4.7. Books and Accounts.* (a) The City will keep proper books of record and accounts of the System in accordance with generally applicable account principles as applied to the City in which complete and correct entries shall be made of all transactions relating to the

System and the Revenues. Such books of record and accounts shall at all times during normal business hours be subject to inspection by UAMPS or its representatives authorized in writing.

(b) UAMPS shall not be required to review or inspect, and shall not be deemed to have notice of, the contents of the books and records of the City.

*Section 4.8. Protection of Security and Rights of UAMPS.* The City will preserve and protect the security and the rights of UAMPS to the Capacity Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

*Section 4.9. Payment of Taxes; Compliance with Governmental Regulations.* The City will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the System or any part thereof or upon the Revenues when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

*Section 4.10. Expenses; Indemnity.* (a) The City shall pay all reasonable costs and expenses of UAMPS incurred in connection with this Agreement.

(b) To the extent permitted by law, the City shall at all times protect, indemnify and hold the UAMPS Indemnified Parties harmless of, from and against

(i) all costs and expenses arising from or relating to compliance with environmental laws and regulations and orders of governmental agencies applicable to the Project or arising from or relating to mitigation, remediation, or abatement of environmental impacts,

(ii) any and all claims (whether in tort, contract or otherwise), demands, expenses (including reasonable attorneys fees) and liabilities for any loss, damage, injury and liability of every kind and nature and however caused, including any liability arising from failure to comply with applicable environmental laws, regulations or orders applicable to the Project, and

(iii) taxes of any kind and by whomsoever imposed on UAMPS in respect of the Project or the Bonds,

in each case arising from or relating to the Project or resulting from, arising out of, or in any way connected with the financing of the costs of the Project; *provided, however*, that the City shall have no indemnification obligation under this Section for any such costs, expenses, claims, demands, taxes or liabilities arising from the intentional misrepresentation or willful misconduct of UAMPS or the UAMPS Indemnified Parties. The indemnification set forth in this Section shall be binding upon the City for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the expiration or termination of this Agreement.

*Section 4.11. Tax Covenants.* (a) The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest on the Bonds to become includable in gross income for federal income tax purposes. To that end, the City hereby covenants that it will not take or fail to take any action that would cause the Bonds to be (a) “arbitrage bonds” within the meaning of Section 148 of the Code, (b) “private activity bonds” within the meaning of Section 141 of the Code, or (c) “federally guaranteed” within the meaning of Section 149(b) of the Code.

(b) Without limiting the generality of the foregoing paragraph, the City further covenants and agrees that:

(i) it will at all times comply with the provisions of the Tax Certificate and the rebate requirements contained in Section 148(f) of the Code;

(ii) no use will be made of the proceeds of the Bonds, or any funds or accounts of the City which may be deemed to be proceeds of the Bonds, pursuant to Section 148 of the Code and applicable regulations (proposed or promulgated) under which, if such use had been reasonably expected on the date of issuance of the Bonds, would have caused the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code;

(iii) it will not sell or dispose of the capacity and output of the System, including the Project, in such manner that such sale, disposition or use would cause the Bonds to be “private activity bonds” described in Section 141 of the Code or “arbitrage bonds” described in Section 148 of the Code; and

(iv) it will not take any action that will adversely affect the exemption from federal income taxation of interest on the Bonds, nor will it omit to take any action necessary to preserve the exclusion from federal gross income of interest on the Bonds.

Pursuant to these covenants, the City obligates itself to comply throughout the term of the Bonds with the requirements of Section 103 of the Code and the regulations proposed or promulgated thereunder.

(c) The City and UAMPS recognize that UAMPS is issuing the Bonds and has certain responsibilities related to the maintenance of the exemption from federal income taxation of interest on the Bonds. The City agrees that it will cooperate with and assist UAMPS (at the City’s expense) in taking actions related to the Bonds.

(d) UAMPS will promptly notify the City if the Internal Revenue Service (the “IRS”) contacts UAMPS concerning the Bonds and will forward any written communications from the Internal Revenue Service concerning the Bonds to the City. In the case of any inquiries or requests from the Internal Revenue Service for information concerning the Bonds, the City will cooperate with UAMPS and take all reasonable actions requested by UAMPS (at the expense of the City) to respond to such inquiries in a timely fashion.

(e) UAMPS and the City recognize that the IRS or another regulatory entity may undertake an examination of the Bonds. In the event that UAMPS is notified of such an examination, UAMPS shall notify the City. UAMPS will (at the expense of the City) coordinate the defense of such examination and will determine if counsel should be hired and, if so, which counsel. Except to the extent that UAMPS determines that another party should undertake a response, UAMPS will be responsible for compiling answers to any information or document request that might be presented to it or the City in the course of any such examination. If an examination cannot be closed without a closing agreement, UAMPS will use reasonable efforts to reach an acceptable closing agreement with such regulatory agency and to obtain all required City and UAMPS approvals of such closing agreement.

(f) The IRS and other regulatory agencies may conduct compliance checks from time to time. As part of such compliance check, the IRS or another regulatory agency may send questionnaires to UAMPS or to the City. UAMPS will promptly advise the City concerning any such compliance check. UAMPS (at the expense of the City) will compile a response to any compliance check and may hire counsel to assist in the response to a compliance check. The City will advise UAMPS of any such compliance check promptly after receiving notice thereof.

(g) The City and UAMPS recognize that if there is a violation of the covenants of the City related to the maintenance of the tax exemption of interest on the Bonds or a violation of the covenants of the City related to the maintenance of the tax-exempt status of the Bonds, then UAMPS may be able to enter into a voluntary closing agreement with the IRS to preserve the favorable tax status of the Bonds. UAMPS will consult with the City with respect to whether a voluntary closing agreement is desirable and possible. UAMPS will be responsible for the negotiation of any voluntary closing agreement and may retain or consult with counsel in connection with any such negotiation. The City shall pay or reimburse UAMPS for any settlement amount and the costs and fees, including fees of counsel, incurred in obtaining such settlement.

*Section 4.12. Further Assurances.* The City will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, if any, at the sole cost and expense of the City, as UAMPS deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement.

## ARTICLE V

### EVENTS OF DEFAULT; REMEDIES

*Section 5.1. Events of Default.* Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Failure of the City to pay any Capacity Payment that has become due and payable by the terms of Section 2.3(a);

(b) Failure of the City to pay any amount due hereunder (other than under Section 2.3(a)) and continuance of such failure for thirty days after notice of such failure is given to the City by UAMPS; and

(c) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including proceedings under Title 11, Chapter 9, United States Code or other proceedings for relief under any federal or state bankruptcy law or similar law for the relief of debtors, are instituted by or against the City and, if instituted against the City, said proceedings are consented to or are not dismissed within thirty days after such institution.

*Section 5.2. Remedies on Default.* Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, UAMPS, subject to the second succeeding paragraph of this Section, may take whatever action at law or in equity permitted by law to be taken against the City as may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement.

UAMPS, as owner of the Project, shall have the right to re-enter and take possession of the Project, to sell or lease the Project, to terminate this Agreement and to exclude the City from possession of the Project upon the occurrence of an Event of Default under this Agreement. No action taken pursuant to this Section shall, except as expressly provided herein, relieve the City from the City's obligations hereunder, all of which shall survive any such action.

Any amounts collected pursuant to action taken under this Section shall be deposit in the Bond Fund and applied in accordance with the provisions of the Bond Documents.

*Section 5.3. Remedies Cumulative.* The rights and remedies of UAMPS under this Agreement shall be cumulative and shall not exclude any other rights and remedies of UAMPS allowed by law or in equity with respect to any default under this Agreement. Failure by UAMPS to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the City hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and, to the extent permitted by law, to enforce by mandatory injunction, specific performance or other appropriate legal remedy strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the City be continued or repeated.

*Section 5.4. No Additional Waiver Implied by One Waiver.* In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between UAMPS and the City or any delay or omission on the part of UAMPS in exercising any rights hereunder shall operate as a waiver.

*Section 5.5. Agreement to Pay Attorneys' Fees and Expenses.* In the event the City should default under any of the provisions of this Agreement, and UAMPS should employ attorneys and/or incur other expenses for the collection of Capacity Payments or other amounts payable

hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it will on demand therefor pay to UAMPS the reasonable fees and disbursements of such attorneys, and such other expenses so incurred, including fees and expenses on appeal.

## ARTICLE VI

### OPTIONS

*Section 6.1. Options.* (a) The City has the option, at any time and from time to time, to make advance Capacity Payments which, at the direction of the City, shall be deposited into the Bond Fund and held to make the next maturing scheduled payments of principal and interest on the Bonds or applied to redeem all or a portion of the Bonds, all in accordance with the terms of the Bond Documents. The City has the option, at any time and from time to time, to purchase all or any portion of the Project by making a purchase option payment equal to the amount necessary to purchase, redeem or prepay all or the applicable portion of the Bonds on the next purchase, redemption or prepayment date provided for in the Bond Documents. The City shall exercise its option to make such advance Capacity Payments or such purchase option by delivering a written notice of an Authorized Representative of the City to UAMPS setting forth (i) the amount of the advance Capacity Payment or purchase option payment, (ii) the principal amount of Bonds outstanding, if any, requested to be redeemed with such advance Capacity Payment or purchase option payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Bond Documents), and (iii) the date on which such principal amount of Bonds are to be purchased, redeemed or prepaid as provided in the Bond Documents. Such advance Capacity Payment to be applied to redeem Bonds or to make any such purchase or prepayment option payment shall be paid in legal tender on or before the redemption, purchase or prepayment date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue on the Bonds to be redeemed to the date fixed for redemption, purchase or prepayment and all expenses of UAMPS (including reasonable fees and expenses of counsel to UAMPS) in connection with such redemption, purchase or prepayment. UAMPS agrees to take all actions required to be taken by it to effect such redemption, purchase or prepayment as and to the extent provided in the Bond Documents. After any purchase of a portion of the Project, the Capacity Payments payable pursuant to Section 2.3(a) may be reduced by the percentage equal to the percentage that the portion of the Project purchased is to the entire Project or by such other amount as may be agreed to by UAMPS and the City; *provided*, that the remaining amount of Capacity Payments payable may not be less than an amount sufficient to pay debt service on the Bonds when due.

(b) Nothing in this Section shall be deemed to require that the City exercise an option to purchase the Project or prepay the Capacity Payments, or any portion thereof, or in any way to limit the City's right to effect a change in the definition of the Project or the right of the parties hereto to agree to effect an amendment to the definition of the Project, as provided in Section 3.1(c).

*Section 6.2. Termination of Agreement.* After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with the Bond Documents, the City may terminate this Agreement by paying all amounts due and payable under this Agreement and by giving UAMPS notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the City under Section 4.10.

*Section 6.3. Conveyance of Title.* At the closing of any purchase of the Project or any portion thereof pursuant to Article VI hereof, UAMPS will upon receipt of the purchase price deliver to the City good title to the property being purchased evidenced in writing by a bill of sale or other instrument of conveyance, as such property then exists, subject to the following: (i) those license and encumbrances (if any) to which said property was subject when conveyed to UAMPS; (ii) those Liens resulting from the failure of the City to perform or observe any of the agreements on its part contained in this Agreement; and (iii) Permitted Encumbrances other than this Agreement and the Bond Documents.

## ARTICLE VII

### MISCELLANEOUS

*Section 7.1. Bond Documents; Amendment.* UAMPS shall have and may exercise all the rights, powers and authority granted to it in the Bond Documents, and may from time to time modify, amend or supplement the Bond Documents in accordance with the provisions thereof; *provided that* no change to the Bond Documents may increase the Capacity Payments payable by the City without its consent.

*Section 7.2. Force Majeure.* In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the City to make payments required to be made hereunder), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though

such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

*Section 7.3. Assignment or Sublease.* The City may not assign, partially assign or transfer this Agreement or sublet the whole or any part of the Project without the written consent of UAMPS, which consent may require that the City shall remain liable to UAMPS for the payment of all Capacity Payments and other payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement. The City shall furnish or cause to be furnished to UAMPS a copy of any such assignment, transfer or sublease in substantially final form not later than thirty days prior to the date of execution thereof, together with its request that UAMPS consent thereto. In connection with any such consent, UAMPS may require that any funds received by or on account of the City in connection with a sublease, assignment, partial assignment, or transfer in accordance with this Section be deposited into the Bond Fund and applied to the payment of the prepayment of the Capacity Payments.

*Section 7.4. Amendments.* This Agreement may be amended only by a written amendment signed by the parties.

*Section 7.5. Notices.* All notices, certificates or other communications hereunder shall be deemed sufficiently given if (a) mailed by United States certified mail, return receipt requested, postage prepaid, or (b) if sent by a nationally recognized overnight courier, or (c) delivered personally, addressed as follows:

(a) To UAMPS: Utah Associated Municipal Power Systems  
155 North 400 West, Suite 480  
Salt Lake City, Utah 84103  
Attention: \_\_\_\_\_

(b) To the City: Hyrum City  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
Hyrum, Utah \_\_\_\_\_

In all cases, with a copy to:

City Attorney  
Hyrum City  
\_\_\_\_\_  
Hyrum, Utah \_\_\_\_\_

UAMPS and the City may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.



Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been given or served two days after the date the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid or one day after the date that the same shall be deposited with a nationally recognized overnight courier or on the date of delivery or refusal thereof, if delivered personally.

*Section 7.6. Severability.* If any clause, provision or Section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

*Section 7.7. Inspection of Project.* (a) Upon reasonable notice and with monitoring by the City, the City shall permit UAMPS and its agents or representatives to inspect the Project at all reasonable times during business days and business hours for the purpose of determining whether or not the City is in compliance with its obligations hereunder. UAMPS shall not have any duty to inspect the Project.

(b) Nothing in this Section or elsewhere in this Agreement shall imply any duty on the part of UAMPS to do any work, and performance thereof by UAMPS shall not constitute a waiver of the City's default in failing to perform the same.

*Section 7.8. Effective Date; Counterparts.* This Agreement shall become effective upon its execution and delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 7.9. Binding Effect.* This Agreement shall inure to the benefit of, and shall be binding upon, UAMPS and the City and their respective successors and assigns. The Lender is hereby made an express third party beneficiary of this Agreement.

*Section 7.10. Law Governing.* This Agreement shall be governed by and construed in accordance with the laws of the State, without reference to any choice of law doctrine that would result in the application of the laws of another state.

*Section 7.11. Limited Recourse.* (a) No recourse under any obligation, covenant or agreement of UAMPS contained in this Agreement shall be had against any appointed officials, employees, attorneys, contractors, and other agents of UAMPS, or any officer, official, agent or employee of the State or any department, board or agency of the foregoing, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement is solely a limited obligation of UAMPS, payable solely from the Capacity Payments and receipts derived from payments made by the City pursuant to this Agreement, which revenues and receipts will be pledged and assigned under the Bond Documents for the payment of the Bonds. No personal liability whatever shall attach to or be incurred by the appointed officials, employees, attorneys, contractors, and other agents of UAMPS, or any officer, official, agent or employee of the State or any department, board or agency of the foregoing, or any of them under or by reason of any of the obligations, covenants or agreements of UAMPS contained in this Agreement, or implied therefrom, and that any and all personal liability for breaches by UAMPS of any of such obligations, covenants or agreements

either at common law or at equity, or by statute or constitution, of every such officer, director or employee, or any officer, official, agent or employee of the State or any department, board or agency of the foregoing, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement; provided, however, that nothing in this Section shall relieve any of the foregoing persons or entities from any liability arising from his, her or its willful misconduct or intentional misrepresentation.

(b) Anything contained in this Agreement to the contrary notwithstanding, any obligation UAMPS may incur in connection with the undertaking of the Project for the payment of money shall not be deemed to constitute a debt or general obligation of UAMPS, the State or any political subdivision thereof, but shall be payable solely from the Capacity Payments and the other amounts payable by the City under this Agreement. No provision in this Agreement or any obligation herein imposed upon UAMPS, or the breach thereof, shall constitute or give rise to or impose upon UAMPS, the State or any political subdivision thereof a pecuniary liability or a charge upon its full faith and credit or taxing powers or any revenues of UAMPS other than the Capacity Payments and other amounts payable by the City under this Agreement.

*Section 7.12. Information Security.* (a) It is possible that information that is provided to UAMPS by the City or that comes into the possession of UAMPS as a result of its ownership of the Project during the performance of this Agreement, may contain critical and sensitive information about the Project. “*Project Information*” means information about the Project that is so designated at any time by the City in writing to UAMPS.

(b) The City hereby designates the following information as Project Information:

- (i) Information describing the precise location (survey coordinates) of the Project;
- (ii) Information relating to the design, operation, maintenance or construction of the Project;
- (iii) Information describing schedules for the design, operation, maintenance or construction of the Project, and
- (iv) Information describing engineering or security vulnerabilities.

Project Information excludes any of the foregoing information if it has otherwise been made available to the public by the City or with the City’s consent.

(c) UAMPS may disseminate Project Information among officials, employees, attorneys, contractors, and other agents only as may be necessary in the performance of this Agreement. UAMPS shall, to the extent permitted by applicable law, including the Utah Government Records Access and Management Act, ensure that Project Information is not distributed, shared, or otherwise made accessible to others not involved in the performance of this Agreement other than with the prior consent of the City or pursuant to a valid final order or direction by a judicial, regulatory, administrative or other governmental body having jurisdiction thereof. If UAMPS is

requested to disclose any Project Information pursuant to a judicial, regulatory, administrative or other governmental process, UAMPS shall immediately notify the City. The City may thereupon defend against disclosure at the City's expense.

*Section 7.13. No Broker.* Each of the parties represents to the other that it has not dealt with any broker in connection with this transaction. If any claim is made by any broker who shall claim to have acted or dealt with the City or UAMPS in connection with this transaction, the City or UAMPS, as the case may be, will be responsible for payment of the brokerage commission, fee or other compensation to which such broker is entitled.

*Section 7.14. Entire Agreement.* This Agreement contains all the promises, agreements, conditions, inducements and understandings between UAMPS and the City relating to the Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as herein set forth.

*Section 7.15. Date of Agreement for Reference Purposes Only.* The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first written above.

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman

[SEAL]

Attest:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Secretary

HYRUM CITY, UTAH

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

[SEAL]

Attest:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Recorder

**EXHIBIT A**

**DESCRIPTION OF THE PROJECT**

The following table shows the principal components of the Project and their estimated costs:

PROJECT COMPONENT

ESTIMATED  
COST

TOTAL ESTIMATED COST:

**SCHEDULE I**

**CAPACITY PAYMENT SCHEDULE**

DATE	AMOUNT
	\$

# Hyrum City Power West Point Sub 7.857MW Generation Facility



PRESENTED BY



4901 West 2100 South \* Salt Lake City, Utah 84120

## Contact

Shane Minor

Utility, Governmental & International Sales

Phone: 801-978-1533

Cell: 801-201-0929

[sminor@wheelercat.com](mailto:sminor@wheelercat.com)

02-25-2022



February 25, 2022

Mr. Matt Draper  
Power Director  
Hyrum City Power

Re: Proposal for Turnkey Power Plant - Pricing valid  
for 30 Days



## 7.857 MW Turnkey Generation Facility

- **3 Caterpillar G3520 Fast Start 2,619 kW Generator Sets Installed**
- **1 Metal Building 4,922 Sq. Ft.**
- **Total Project Pricing.....\$10,994,419.78**

### **Pricing includes:**

#### **Shell Building**

- Metal Building
- Concrete for building slab, gen pads, concrete pads for SCRs, swamp coolers and radiators, switchgear pit
- Shell electrical, cameras, lighting, gas leak detection, CO detection
- Switchgear - Medium Voltage Breakers
- Gas Piping, Coolant Piping, Oil Piping, gas meter
- Plant Remote Control Capability – Factory talk
  - PAC points for PAC dispatch
  - Plant ancillary equipment automation
  - Caterpillar Paralleling and Synchronizing controls
- UDAQ Initial AO Compliance Testing
- Protective Relay, programming for settings and logic, testing
- Factory Witness Testing
- Structural Engineering
- Electrical Engineering
- Electrical - Coordination Study, Test Breakers, and Relays, Install Settings, As Built Drawings
- Civil Engineering
- Mechanical Engineering
- Main Gas Line from Dominion Gas Train
- P&P Bond

#### **ELECTRICAL**

- Blackstart/Emergency generator
- SWITCHGEAR
- MCC
- GEN & SWITCHGEAR WIRING
- NEUTRAL GROUNDING RESISTOR
- SCADA Support
- Control Panel/Pull Box

#### **MECHANICAL**

- JW& Aftercooler Radiator
- Coolant Line Isolation Valves
- Radiator Piping
- Radiator Piping Stands
- Low Level Switches
- Sight Glass/Level

- Auto Bleeders
- Auto Bleeder Brackets, Tubing, Etc.
- Auto Bleeders, Brackets, Tubing, etc. install
- Coolant Line Pipe Wrap
- Expansion Tank Stands/Tanks
- Thermal Wells/Junction Adapters
- Engine to Coolant Pipe Flexes
- Install Engine to Coolant Pipe Flexes
- Pipe Flexes gasket bolt kit
- Y Strainer and install
- Y-Strainer - Gasket kits
- Bleeder Valves/fittings and threadolets - gas line and coolant lines
- Coolant Drain Valves in Pipe
- Expansion Tank to Radiator Headers Tubing
- Expansion Tank to Radiator Headers Tubing install
- Rubber Expansion Joints
- Rubber Expansion Joints Hardware and install
- Radiator Mounting - Anchor
- Radiator Mounting Isolators, levelers Install
- Coolant Top-Off Tanks
- Balance Valve
- Antifreeze

#### **Exhaust**

- Engine to Exhaust Pipe-Flex, labor, hardware
- Engine to Oxidation Catalyst Exhaust Piping
- Exhaust Stacks Just hardware and gaskets
- Exhaust Stands/Guy Wires
- Thimbles/Flashing
- Exhaust Wrap in Building and small segment to SCR outside
- Muffler Stand
- Exhaust Pipe Mounting Brackets

#### **SCR**

- Safety Power SCR
- SCR Freight
- SCR Stand
- SCR Stand Blast and Paint
- Stand Freight
- Install SCR
- SCR Tank
- Initial DEF Fill
- Duplex Circulation Pumps
- Heat Trace all Exterior Urea Lines
- Heat Trace Breakers with install
- DEF Piping Loop (Aquatherm) and Install
- Air Piping and Install
- Dosing Cabinet Stand
- Install Dosing Cabinet Stand/Mount Dosing Cabinet to Stand
- Hose, Pipe, etc. between dosing cabs to SCR's build and install tube wire bundle
- Air Compressor
- Air Compressor Freight
- Air dryer
- Stack
- Air Filters, Screens, valves, etc.
- Air Receiver Tank and Mounting

#### **Air - Conditioning**

- Swamp Coolers
- Swamp Cooler Install
- Swamp Cooler trim/Sleeve

- Swamp Cooler Stand/s
- Swamp Cooler Plumbing
- Automation Valves, etc.
- Curbs
- Water Softener

**Exhaust Relief**

- Louver/Damper
- Curbs

**Gas**

- Engine Gas Line & Regulator
- Gas Meter

**Misc.**

- Crane Rental
- TESTING AND SET-UP (Engine Megger, Alignment Etc.)
- Crankcase Ventilation
- Starting Batteries
- SENS Battery Charger
- Room temp and humidity sensor
- Fresh Oil Pump
- Used Oil Pump
- Pump Catch Basin
- New Oil Tank
- Controls for pumps
- Oil Lines for filling and emptying engine
- Main oil manifold
- Main Coolant Manifold
- Water Lines for Filling and emptying engine
- Fill Station
- Crankcase Ventilation Installation
- Fill Station Controls
- Fill Stations for Units 1,2,3
- In Plant Informational Signage
- Plaque
- Used Oil Tank & Freight
- Post Install EMISSION TESTING
- INSTALLATION
- Start Up
- Blackstart Testing w Load Bank
- FACTORY TRIP FOR Personnel

PRESENTED BY



**4901 West 2100 South \* Salt Lake City, Utah 84120**

**Contact**

Shane Minor  
 Utility, Governmental & International Sales  
 Phone: 801-978-1533  
 Cell: 801-201-0929  
[sminor@wheelercat.com](mailto:sminor@wheelercat.com)  
 2-25-2022

<b>Clarifications and Assumptions</b>
Pricing assumes medium voltage cable is provided, pulled and terminated by others. We can include this but this is often a cost saving measure employed by the utilities as they have people capable of performing this work.
Pricing assumes electrical, water, sewer are stubbed 10 feet out from building and are ready for tie in. We can perform this tie-in work but will just need to understand what the interconnect looks like, price it up, present this as a scope change and bill it as a change order.
Does Not Include 12,470Volt to Transmission Voltage Transformer
Gens are 12,470V
Does Not Include Gas Company Gas Line, Gas Train
Does Not include house power transformer
Includes Blackstart Standby House Power Genset
Utilities and electrical are stubbed up 10 feet from building for interconnect by others
Assumes pad for constructions is graded level, at 98% compaction and ready for construction
Switchgear lineup for first phase will have 3 generator sections, a main section, one house power feeder section and a master section. The switchgear pit will have space for these sections as well as for future switchgear. The switchgear space provisions for future generation will include 3 more generator sections a second main breaker section, tie breaker section and an additional space to access the switchgear pit.
Caterpillar standard 1 year warranty
Building, facility, other equipment 1 year warranty
No extended service coverage is included in pricing
Maintenance costs have been estimated in strike price calculations, no maintenance contract is included in this pricing
Air Permit not included in pricing
Abnormal winter conditions not included in pricing
Cost for sewer line, if needed not included
Cost for water line not included
Shell Building is basic metal building design.
Shell building pricing is based on conceptual discussions and conceptual drawings. Changes to building size or configuration will result in a cost per square foot change or additional cost due to square foot increases.
Sales Tax Not Included
Force Majeure - WPS will not be held liable for events beyond their control that may delay their delivery, such as Acts of God, fire, strikes, floods, accidents, or similar causes beyond our control.
Pandemics: This is a moving target with rapidly changing requirements and regulations. Delays due to Pandemics, Wheeler Power Systems cannot be liable for.
The last lead time indicator from Caterpillar had engine genset availability at 60 weeks. Due to the current supply chain crisis, Caterpillar is no longer stating what lead times are. Orders go into a cue and are assigned lead times due to a variety of different criteria.
Cost escalations for all equipment and supplies are coming in at a much more frequent interval than we have seen historically. Pricing exercises will need to be performed again if procurement exceeds 30 days past the date of this quote.
No Mezzanine or second floor included in building
Project changes which are outside of concept scope will be billed as change orders and will be at a rate of 15%. This is broken out as 8% for company direct and allocated overhead and 7% profit.

# Cat® G3520

## Gas Generator Sets



Image shown may not reflect actual configuration

Bore – mm (in)	170 (6.7)
Stroke – mm (in)	215 (8.5)
Displacement – L (in <sup>3</sup> )	97.6 (5956)
Compression Ratio	11.5:1
Aspiration	Turbocharged
Fuel System	Electronic Fuel Control Valve
Governor Type	ADEM™ A4

Standby 60 Hz kW (kVA)	Emissions Performance
2619 (3238)	NOx Selectable (0.5 to 1.0 g/bhp-hr)
<del>2000 (2500)</del>	<del>NOx Selectable (0.5 to 1.0 g/bhp-hr)</del>

### Standard Features

#### Cat® Natural Gas Engine

- Robust 20 cylinder high speed block design provides prolonged life and lower owning and operating costs
- Engineered for standby power
- Designed for maximum performance on low pressure gaseous fuel supply

#### Generator Set Package

- **Accepts 100% block load in one step**
- Facilitates compliance with NFPA 110, Type 10 starting and loading requirements (LV)
- Conforms to ISO 8528-5 G2 load acceptance criteria
- Reliability verified through torsional vibration, fuel consumption, oil consumption, transient performance, and endurance testing

#### Generators

- Superior motor starting capability minimizes need for oversizing generator
- Designed to match performance and output characteristics of Cat engines

#### Cooling System

- ~~Optional radiator available to operate in ambient temperatures up to 43°C (110°F)~~
- Package tested to ensure proper cooling of complete generator set

#### EMCP 4 Control Panels

- User-friendly interface and navigation
- Scalable system to meet a wide range of installation requirements
- Expansion modules and site specific programming for specific customer requirements

#### Warranty

- 12 months warranty for continuous ratings
- Extended service protection is available to provide extended coverage options

#### Worldwide Product Support

- Cat® dealers have over 1,800 dealer branch stores operating in 200 countries
- Your local Cat dealer provides extensive post-sale support, including maintenance and repair agreements

#### Financing

- Caterpillar offers an array of financial products to help you succeed through financial service excellence
- Options include loans, finance lease, operating lease, working capital, and revolving line of credit
- Contact your local Cat dealer for availability in your region

GENSET - WITHOUT RADIATOR  
 ENGINE SPEED (rpm): 1800  
 COMPRESSION RATIO: 11.5  
 AFTERCOOLER TYPE: SCAC  
 AFTERCOOLER - STAGE 2 INLET (°F): 130  
 AFTERCOOLER - STAGE 1 INLET (°F): 192  
 JACKET WATER OUTLET (°F): 210  
 ASPIRATION: TA  
 COOLING SYSTEM: JW+OC+1AC, 2AC  
 CONTROL SYSTEM: ADEM4 W/ IM  
 EXHAUST MANIFOLD: DRY  
 COMBUSTION: LOW EMISSION  
 NOx EMISSION LEVEL (g/bhp-hr NOx): 1.0  
 SET POINT TIMING: 25

RATING STRATEGY:  
 FUEL SYSTEM:  
**SITE CONDITIONS:**  
 FUEL:  
 FUEL PRESSURE RANGE(psig): (See note 1)  
 FUEL METHANE NUMBER:  
 FUEL LHV (Btu/scf):  
 ALTITUDE(ft):  
 INLET AIR TEMPERATURE(°F):  
 STANDARD RATED POWER:  
 POWER FACTOR:  
 VOLTAGE(V):

**HIGH ALTITUDE/AMBIENT**  
 CAT LOW PRESSURE  
 WITH AIR FUEL RATIO CONTROL  
 Nat Gas  
 0.5-5.0  
 84.7  
 905  
**4571**  
**103**  
 3629 bhp@1800rpm  
**1.0**  
 440-13800

RATING	NOTES	LOAD	MAXIMUM RATING		SITE RATING AT MAXIMUM INLET AIR TEMPERATURE		
			100%	100%	75%	50%	
GENSET POWER (WITHOUT FAN)	(2)(3)	ekW	2619	2619	1964	1309	
GENSET POWER (WITHOUT FAN)	(2)(3)	kVA	2619	2619	1964	1309	
ENGINE POWER (WITHOUT FAN)	(3)	bhp	3628	3628	2732	1837	
INLET AIR TEMPERATURE		°F	103	103	103	103	
GENERATOR EFFICIENCY	(2)	%	96.8	96.8	96.4	95.6	
GENSET EFFICIENCY (ISO 3046/1)	(4)(5)	%	40.4	40.4	39.4	37.5	
THERMAL EFFICIENCY	(4)(6)	%	44.1	44.1	45.4	47.0	
TOTAL EFFICIENCY	(4)(7)	%	84.5	84.5	84.8	84.5	

ENGINE DATA							
GENSET FUEL CONSUMPTION (ISO 3046/1)	(8)	Btu/ekW-hr	8437	8437	8667	9106	
GENSET FUEL CONSUMPTION (NOMINAL)	(8)	Btu/ekW-hr	8643	8643	8878	9328	
ENGINE FUEL CONSUMPTION (NOMINAL)	(8)	Btu/bhp-hr	6239	6239	6383	6651	
AIR FLOW (@inlet air temp, 14.7 psia) (WET)	(9)	ft3/min	7733	7733	5930	4228	
AIR FLOW (WET)	(9)	lb/hr	32703	32703	25078	17882	
FUEL FLOW (60°F, 14.7 psia)		scfm	417	417	321	225	
INLET MANIFOLD PRESSURE	(10)	in Hg(abs)	94.2	94.2	71.1	49.3	
EXHAUST TEMPERATURE - ENGINE OUTLET	(11)	°F	847	847	896	922	
EXHAUST GAS FLOW (@engine outlet temp, 14.5 psia) (WET)	(12)	ft3/min	19305	19305	15356	11153	
EXHAUST GAS MASS FLOW (WET)	(12)	lb/hr	33841	33841	25954	18496	
MAX INLET RESTRICTION	(13)	in H2O	10.04	10.04	10.04	10.04	
MAX EXHAUST RESTRICTION	(13)	in H2O	20.07	20.07	20.07	20.07	

EMISSIONS DATA - ENGINE OUT							
NOx (as NO2)	(14)(15)	g/bhp-hr	1.00	1.00	1.00	1.00	
CO	(14)(15)	g/bhp-hr	1.40	1.40	1.46	1.61	
THC (mol. wt. of 15.84)	(14)(15)	g/bhp-hr	1.91	1.91	2.20	2.59	
NMHC (mol. wt. of 15.84)	(14)(15)	g/bhp-hr	0.15	0.15	0.18	0.21	
NMNEHC (VOCs) (mol. wt. of 15.84)	(14)(15)(16)	g/bhp-hr	0.06	0.06	0.07	0.08	
HCHO (Formaldehyde)	(14)(15)	g/bhp-hr	0.24	0.24	0.24	0.25	
CO2	(14)(15)	g/bhp-hr	364	364	372	388	
EXHAUST OXYGEN	(14)(17)	% DRY	9.8	9.8	9.6	9.4	

HEAT REJECTION							
LHV INPUT	(18)	Btu/min	377252	377252	290645	203576	
HEAT REJ. TO JACKET WATER (JW)	(19)	Btu/min	41605	41605	34948	28102	
HEAT REJ. TO ATMOSPHERE (INCLUDES GENERATOR)	(19)	Btu/min	16009	16009	12766	10996	
HEAT REJ. TO LUBE OIL (OC)	(19)	Btu/min	10709	10709	9605	8243	
HEAT REJECTION TO EXHAUST (LHV TO 248°F)	(19)	Btu/min	90246	90246	75046	55705	
HEAT REJ. TO A/C - STAGE 1 (1AC)	(19)(21)	Btu/min	22876	22876	11259	2466	
HEAT REJ. TO A/C - STAGE 2 (2AC)	(19)(21)	Btu/min	17302	17302	11958	6331	
PUMP POWER	(20)	Btu/min	1231	1231	1231	1231	

COOLING SYSTEM SIZING CRITERIA							
TOTAL JACKET WATER CIRCUIT (JW+OC+1AC)	(22)	Btu/min	93979	93979			
TOTAL AFTERCOOLER CIRCUIT (2AC)	(22)	Btu/min	22321	22321			
HEAT REJECTION TO EXHAUST (LHV TO 248°F)	(22)	Btu/min	99270	99270			

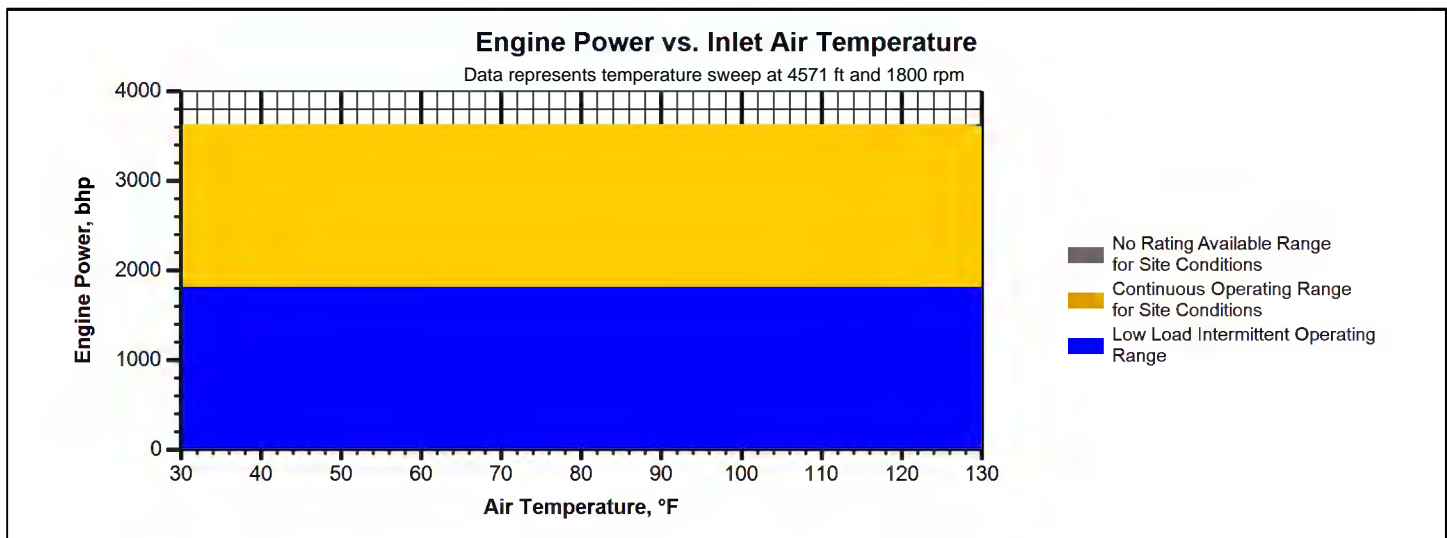
A cooling system safety factor of 0% has been added to the cooling system sizing criteria.

MINIMUM HEAT RECOVERY							
TOTAL JACKET WATER CIRCUIT (JW+OC+1AC)	(23)	Btu/min	67743	67743			
TOTAL AFTERCOOLER CIRCUIT (2AC)	(23)	Btu/min	16437	16437			
HEAT REJECTION TO EXHAUST (LHV TO 248°F)	(23)	Btu/min	67380	67380			

**CONDITIONS AND DEFINITIONS**

Engine rating obtained and presented in accordance with ISO 3046/1, adjusted for fuel, site altitude and site inlet air temperature. 100% rating at maximum inlet air temperature is the maximum engine capability for the specified fuel at site altitude and maximum site inlet air temperature. Maximum rating is the maximum capability at the specified aftercooler inlet temperature for the specified fuel at site altitude and reduced inlet air temperature. Lowest load point is the lowest continuous duty operating load allowed. No overload permitted at rating shown.

For notes information consult page three.



**NOTES:**

1. Fuel pressure range specified is to the engine fuel control valve. Additional fuel train components should be considered in pressure and flow calculations.
2. Generator efficiencies, power factor, and voltage are based on specified generator. [Genset Power (ekW) is calculated as: Engine Power (bkW) x Generator Efficiency], [Genset Power (kVA) is calculated as: Engine Power (bkW) x Generator Efficiency / Power Factor]
3. Rating is with two engine driven water pumps. Tolerance is (+)3, (-)0% of full load.
4. Efficiency represents a Closed Crankcase Ventilation (CCV) system installed on the engine.
5. Genset Efficiency published in accordance with ISO 3046/1.
6. Thermal Efficiency is calculated based on energy recovery from the jacket water, lube oil, 1st stage aftercooler, and exhaust to 248°F with engine operation at ISO 3046/1 Genset Efficiency, and assumes unburned fuel is converted in an oxidation catalyst.
7. Total efficiency is calculated as: Genset Efficiency + Thermal Efficiency. Tolerance is ±10% of full load data.
8. ISO 3046/1 Genset fuel consumption tolerance is (+)5, (-)0% at the specified power factor. Nominal genset and engine fuel consumption tolerance is ± 2.5% of full load data at the specified power factor.
9. Air flow value is on a 'wet' basis. Flow is a nominal value with a tolerance of ± 5 %.
10. Inlet manifold pressure is a nominal value with a tolerance of ± 5 %.
11. Exhaust temperature is a nominal value with a tolerance of (+)63°F, (-)54°F.
12. Exhaust flow value is on a "wet" basis. Flow is a nominal value with a tolerance of ± 6 %.
13. Inlet and Exhaust Restrictions are maximum allowed values at the corresponding loads. Increasing restrictions beyond what is specified will result in a significant engine derate.
14. Emissions data is at engine exhaust flange prior to any after treatment.
15. NOx tolerance's are ± 18% of specified value. All other emission values listed are higher than nominal levels to allow for instrumentation, measurement, and engine-to-engine variations. They indicate the maximum values expected under steady state conditions. Fuel methane number cannot vary more than ± 3. THC, NMHC, and NMNEHC do not include aldehydes
16. VOCs - Volatile organic compounds as defined in US EPA 40 CFR 60, subpart JJJJ
17. Exhaust Oxygen level is the result of adjusting the engine to operate at the specified NOx level. Tolerance is ± 0.5.
18. LHV rate tolerance is ± 2.5%.
19. Heat rejection values are representative of site conditions. Tolerances, based on treated water, are ± 10% for jacket water circuit, ± 50% for atmosphere, ± 20% for lube oil circuit, ± 10% for exhaust, and ± 5% for aftercooler circuit.
20. Pump power includes engine driven jacket water and aftercooler water pumps. Engine brake power includes effects of pump power.
21. Aftercooler heat rejection is nominal for site conditions and does not include an aftercooler heat rejection factor. Aftercooler heat rejection values at part load are for reference only.
22. Cooling system sizing criteria represent the expected maximum circuit heat rejection for the ratings at site, with applied plus tolerances. Total circuit heat rejection is calculated using formulas referenced in the notes on the standard tech data sheet with the following qualifications. Aftercooler heat rejection data (1AC & 2AC) is based on the standard rating. Jacket Water (JW) and Oil Cooler (OC) heat rejection values are based on the respective site or maximum column. Aftercooler heat rejection factors (ACHRF) are specific for the site elevation and inlet air temperature specified in the site or maximum column, referenced from the table on the standard data sheet
23. Minimum heat recovery values represent the expected minimum heat recovery for the site, with applied minus tolerances. Do not use these values for cooling system sizing.



Constituent	Abbrev	Mole %	Norm
Water Vapor	H2O	0.0000	0.0000
Methane	CH4	92.2700	92.2700
Ethane	C2H6	2.5000	2.5000
Propane	C3H8	0.5000	0.5000
Isobutane	iso-C4H10	0.0000	0.0000
Norbutane	nor-C4H10	0.2000	0.2000
Isopentane	iso-C5H12	0.0000	0.0000
Norpentane	nor-C5H12	0.1000	0.1000
Hexane	C6H14	0.0500	0.0500
Heptane	C7H16	0.0000	0.0000
Nitrogen	N2	3.4800	3.4800
Carbon Dioxide	CO2	0.9000	0.9000
Hydrogen Sulfide	H2S	0.0000	0.0000
Carbon Monoxide	CO	0.0000	0.0000
Hydrogen	H2	0.0000	0.0000
Oxygen	O2	0.0000	0.0000
Helium	HE	0.0000	0.0000
Neopentane	neo-C5H12	0.0000	0.0000
Octane	C8H18	0.0000	0.0000
Nonane	C9H20	0.0000	0.0000
Ethylene	C2H4	0.0000	0.0000
Propylene	C3H6	0.0000	0.0000
TOTAL (Volume %)		100.0000	100.0000

Fuel Makeup:  
Unit of Measure:

Nat Gas  
English

#### Calculated Fuel Properties

Caterpillar Methane Number:	84.7
Lower Heating Value (Btu/scf):	905
Higher Heating Value (Btu/scf):	1004
WOBBE Index (Btu/scf):	1168
THC: Free Inert Ratio:	21.83
Total % Inerts (% N2, CO2, He):	4.38%
RPC (%) (To 905 Btu/scf Fuel):	100%
Compressibility Factor:	0.998
Stoich A/F Ratio (Vol/Vol):	9.45
Stoich A/F Ratio (Mass/Mass):	15.75
Specific Gravity (Relative to Air):	0.600
Fuel Specific Heat Ratio (K):	1.313

#### CONDITIONS AND DEFINITIONS

Caterpillar Methane Number represents the knock resistance of a gaseous fuel. It should be used with the Caterpillar Fuel Usage Guide for the engine and rating to determine the rating for the fuel specified. A Fuel Usage Guide for each rating is included on page 2 of its standard technical data sheet.

RPC always applies to naturally aspirated (NA) engines, and turbocharged (TA or LE) engines only when they are derated for altitude and ambient site conditions.

Project specific technical data sheets generated by the Caterpillar Gas Engine Rating Pro program take the Caterpillar Methane Number and RPC into account when generating a site rating.

Fuel properties for Btu/scf calculations are at 60F and 14.696 psia.

Caterpillar shall have no liability in law or equity, for damages, consequently or otherwise, arising from use of program and related material or any part thereof.

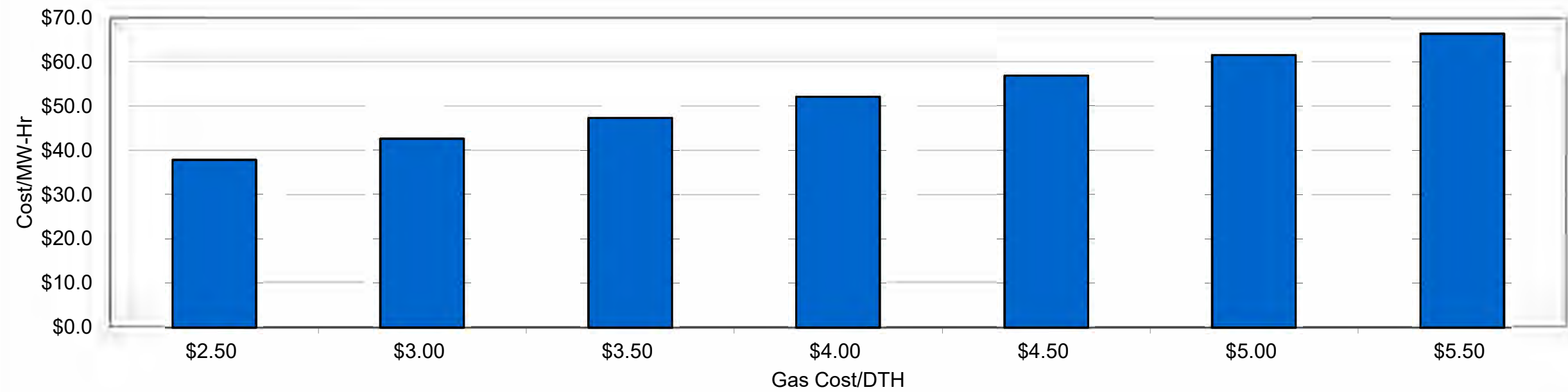
#### FUEL LIQUIDS

Field gases, well head gases, and associated gases typically contain liquid water and heavy hydrocarbons entrained in the gas. To prevent detonation and severe damage to the engine, hydrocarbon liquids must not be allowed to enter the engine fuel system. To remove liquids, a liquid separator and coalescing filter are recommended, with an automatic drain and collection tank to prevent contamination of the ground in accordance with local codes and standards.

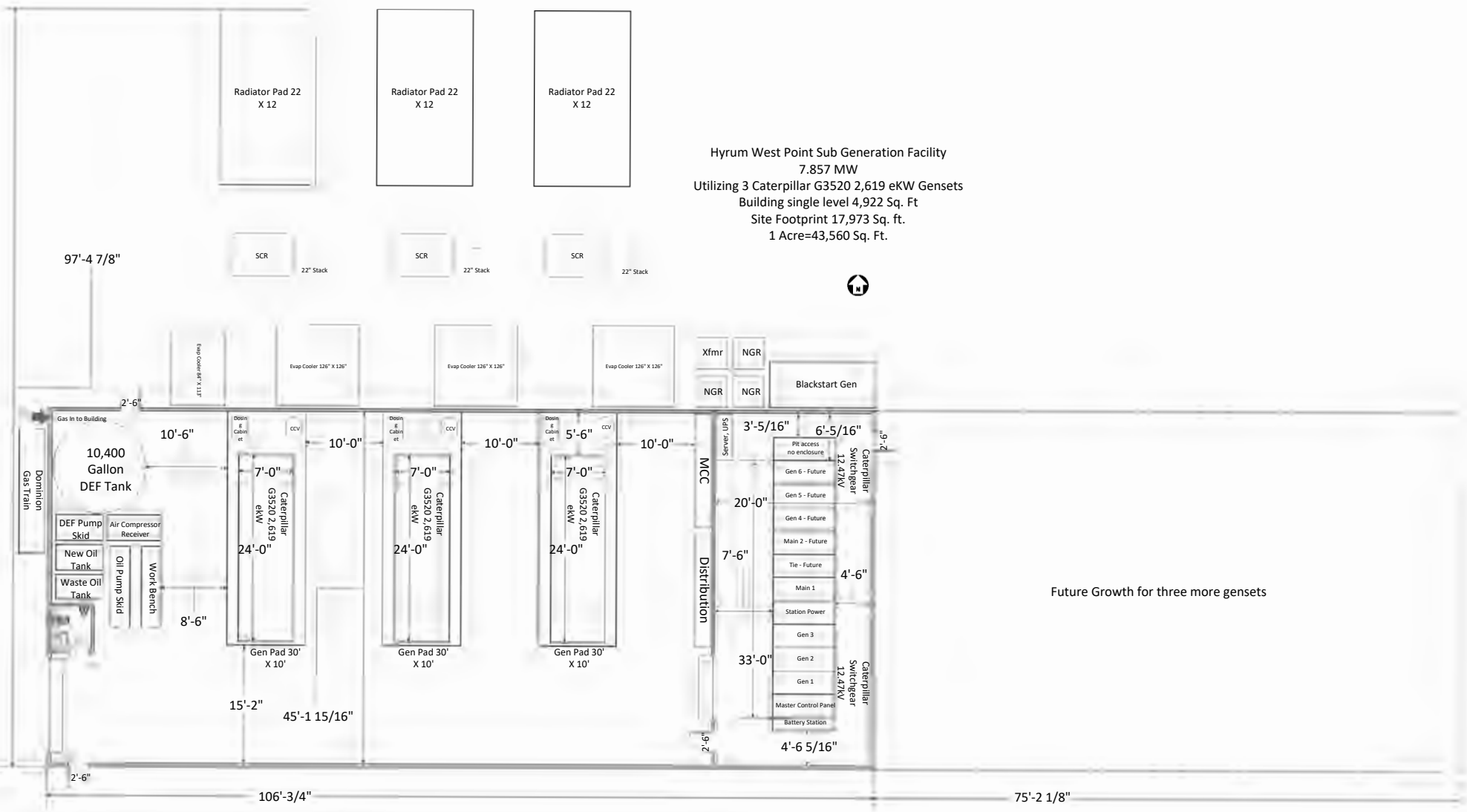
To avoid water condensation in the engine or fuel lines, limit the relative humidity of water in the fuel to 80% at the minimum fuel operating temperature.

<b>\$/DTH</b>	<b>\$2.50</b>	<b>\$3.00</b>	<b>\$3.50</b>	<b>\$4.00</b>	<b>\$4.50</b>	<b>\$5.00</b>	<b>\$5.50</b>
<b>\$/MW-HR</b>	<b>\$37.8194</b>	<b>\$42.5731</b>	<b>\$47.3267</b>	<b>\$52.0804</b>	<b>\$56.8340</b>	<b>\$61.5877</b>	<b>\$66.3413</b>

**Caterpillar G3520 HAHA 1 Gram NOx Gas Gen Set  
Hyrum 2,619 KW Ea. @ 4,571 Ft. 103 Degree F.**



Hyrum West Point Sub Generation Facility  
 7.857 MW  
 Utilizing 3 Caterpillar G3520 2,619 eKW Gensets  
 Building single level 4,922 Sq. Ft  
 Site Footprint 17,973 Sq. Ft.  
 1 Acre=43,560 Sq. Ft.



Future Growth for three more gensets

## **POWER GENERATION AND BALANCE OF PLANT AGREEMENT**

### **1. Introduction.**

This Power Generation and Balance of Plant Agreement (“Agreement”) is entered into by and between Utah Associated Municipal Power Systems, a political subdivision of the State of Utah (“UAMPS” or “Client”) and Wheeler Machinery Co., a Utah corporation (“Wheeler”). This Agreement shall be binding and effective as of the date of signing, (the “Effective Date”).

### **2. Recitals.**

Whereas, Hyrum City, Utah (“Hyrum”) has determined that the power needs of the customers served by its municipal electric utility system require the construction of the power generation plant described herein;

Whereas, Wheeler submitted a proposal for the “Hyrum City Power West Point Sub 7.857 MW Generation Facility” dated February 25, 2022 (the “Proposal”) to Hyrum for the construction and equipping of a power generation facility consisting of three (3) Caterpillar G3520 Natural Gas generator sets and related improvements (as more fully described in the Proposal, the “Project”);

Whereas, Hyrum is a member of UAMPS and has requested that UAMPS undertake, own and finance the Project on behalf of Hyrum and sell the capacity, output and services of the Project to Hyrum; and

Whereas, UAMPS will appoint Hyrum as its agent in connection with various matters relating to the Project and is willing to enter into this Agreement for the benefit of Hyrum.

Therefore, in consideration of the promises, covenants, and conditions set forth in this Agreement, and in further consideration of the execution of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Client and Wheeler agree as follows.

### **3. Scope of Work.**

3.1 Wheeler shall provide all of the materials and equipment, including three (3) Caterpillar G3520 Natural Gas generator sets (“Generators”), and perform all of the work and services described in the Proposal in accordance with the specifications set forth in the Proposal (“Scope of Work”). The Proposal is attached hereto as Exhibit “A” and incorporated herein by this reference. The Scope of Work shall not include those items that are excluded under the “Clarifications and Assumptions” section of the Proposal, including water, sewer, substation improvements and site grading, and such excluded items shall be provided by Hyrum under its agreements with UAMPS.

3.2 The Scope of Work shall include Wheeler’s standard start-up, implementation and testing procedures for the Project (“Commissioning”). The testing procedures shall be sufficient to establish that the Generators are capable of performing in accordance with the technical

specifications set forth in the Proposal as well as the requirements of the air quality permit for the Project. Wheeler shall permit UAMPS and Hyrum (or their consultants) to witness the performance testing and to review the results thereof.

3.3 The occurrence of the Effective Date of this Agreement shall constitute UAMPS' notice to Wheeler to proceed with the Scope of Work.

3.4 Wheeler has previously provided the "Estimated Timeline Hyrum City 2022-03-03," setting forth its estimated timeline for the Scope of Work and the completion of the Project. Within seven business days of the Effective Date, Wheeler shall provide to UAMPS an update to such estimated timeline. UAMPS shall have seven business days after its receipt of the updated timeline to submit any questions or issues to Wheeler. The parties shall cooperate with one another in resolving any issues with respect to the timeline. Wheeler agrees to (a) perform the Scope of Work in accordance with the final timeline agreed to by the parties (the "Final Timeline") and (b) give prompt written notice to UAMPS of any events or circumstances, including force majeure events, that it reasonably expects to delay the completion of the Project by thirty or more days.

3.5 The Final Timeline shall establish a date for the completion of Commissioning and the availability of the Project for commercial operation (the "Final Completion Date"). The parties acknowledge that the Covid-19 pandemic and recent supply chain issues have made it difficult to meet completion dates in the construction industry. Wheeler will use commercially reasonable efforts, in all circumstances, to complete Commissioning and to make the Project available for commercial operation by the Final Completion Date. In the event that the Final Completion Date is delayed by more than 90days, for any reason other than actions or inactions of UAMPS or Hyrum, Wheeler shall pay liquidated damages to UAMPS in the amount of \$ 500.00 for each additional day of delay.

3.6 Wheeler will be responsible for keeping the Project site in a safe and orderly condition and for cleaning up its work on the Project on a regular basis.

3.7 Upon discovery of any hazardous materials on the Project site, Wheeler shall cease work, notify Client and Hyrum immediately, and allow Client and Hyrum to contract with a properly licensed and a qualified hazardous material contractor to deal with such materials.

#### **4. Consideration.**

4.1 The total contract amount is \$10,994,419.78 ("Consideration Payment").

4.2 Client will pay Wheeler the total contract amount within thirty (30) days after (a) Wheeler has completed all implementation and testing and turns the Project over to the Client ("Commissioning"); or (b) the Client begins operating any of the generator sets in production mode, whichever occurs first. Wheeler agrees to notify the Client of the projected Commissioning date as soon as reasonably possible.

4.3 No change orders or contract additions will be made unless agreed to in advance in writing by Client's representative, Jackie Coombs, and Wheeler's representative, Jason Soares. Any change order proposed by Wheeler shall be submitted to UAMPS which will consult with Hyrum and then notify Wheeler of its acceptance or rejection of the change order. Wheeler shall not be entitled to any additional consideration for changes in performance which were not authorized as contemplated by this Section 4.3 nor for the correction of any mistakes attributable in any way to Wheeler, or its employees, agents, subcontractors, or independent contractors.

4.4 The Client may withhold all or part of any of the Consideration Payment to the extent that the Client reasonably determines such withholding is necessary to protect itself from loss or liability on the account of:

4.4.1 Substantially defective performance by Wheeler, including (but not limited to) defective goods or services not remedied.

4.4.2 Any other substantial failure to materially comply with the terms and conditions of this Agreement.

4.5 Upon Wheeler's timely remedy of the grounds for withholding some or all of the Consideration Payment as contemplated by Section 4.4, the corresponding amount withheld shall be paid to Wheeler. However, in the event of Wheeler's default, the Client reserves the right to perform the Scope of Work, or any unfinished portion thereof, itself, or to procure the same from a third party, while holding Wheeler responsible for any costs occasioned thereby.

4.6 In the event the Client terminates, suspends, or abandons this Agreement without cause pursuant to Section 5.3, the Client shall pay Wheeler a proportionate amount of the Consideration Payment for any of the Scope of Work which was actually performed or provided prior to termination, suspension, or abandonment.

## **5. Termination and Non-Appropriation.**

5.1 The Client may terminate this Agreement, for cause, if Wheeler materially fails to perform the terms of the Agreement. The following are examples of "cause" for termination:

5.1.1 Wheeler's performance under this Agreement fails to meet industry standards.

5.1.2 Wheeler materially fails to perform its duties and obligations required by this Agreement with diligence or within the time specified herein.

5.1.3 Wheeler has otherwise materially breached this Agreement.

5.1.4 Wheeler files a voluntary bankruptcy petition or an involuntary bankruptcy petition is filed against Wheeler and such involuntary petition is not dismissed within thirty (30) days.

5.2 Prior to terminating this Agreement as contemplated by Section 5.1, the Client must first provide written notice to Wheeler of the Client's intention to terminate this Agreement. Said notice of termination must be provided by the Client to Wheeler at least thirty (30) calendar days prior to termination. After receiving such notice of termination from the Client, Wheeler shall have the next fifteen (15) calendar days in which to cure any deficiency noted by the Client.

5.3 Any Scope of Work which Wheeler has completed or performed prior to the date of any termination, suspension, or abandonment, shall be recorded, and tangible work documents shall be transferred to, and become the sole property of, the Client. Client will pay Wheeler for any and all performance completed on the Project.

## **6. Taxes.**

6.1 All applicable taxes will be the responsibility of Client. All taxes, fees, and expenses imposed upon it for work, labor, material, and services required to fulfill this contract is responsibility of Client. Client will be responsible for all applicable governmental permits. [Note Tax provisions to be discussed with Wheeler.]

## **7. Indemnification and Insurance.**

7.1 Each party (the "Indemnifying Party") will indemnify, defend, and hold the other party, its officers, directors, employees, and/or shareholders, harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees, which arise out of or relate to any material breach of this Agreement or of the representations or warranties contained therein by the Indemnifying Party, or its employees or agents, (including, but not limited to, any breach by such Indemnifying Party of its confidentiality obligations hereunder) or acts or omissions of negligence, willful misconduct, or fraud of the Indemnifying Party or its employees or agents, including, but not limited to, third party claims and claims for property damage or personal injury to the Indemnifying Party's Personnel ("Personnel" defined as such Party's officers, directors, owners, employees, servants and agents, independent contractors and subcontractors); provided, however, that the foregoing does not in any manner relieve either Party or any third party of its obligations under statutory workers' compensation law and other laws regarding employer obligations as to such Party's own employees.

7.2 The Indemnifying Party's obligations under this Section will be subject to being provided by the other party with prompt written notice of the event giving rise to an indemnity obligation, providing reasonable cooperation and assistance in the defense or settlement of any claim (at the Indemnifying Party's sole cost and expense), and granting the Indemnifying Party control over the defense and settlement of the same. Providing the Indemnifying Party with notice of the event giving rise to an indemnity obligation is an express condition precedent to the duty to provide a defense and indemnity. Notice must be made in strict accordance with the provisions of this Agreement, and time is of the essence. With respect to this Section, in the event the Indemnifying Party fails to provide a reasonably sufficient defense of an

indemnified claim, the other party may, after written notice to the Indemnifying Party, retain its own legal counsel and provide its own defense with respect to the indemnified claim, and the Indemnifying Party will reimburse all reasonable attorneys' fees and expenses for such defense. The Indemnifying Party will have the right to consent to any settlement or judgment that is binding upon the Indemnifying Party.

7.3 Wheeler shall provide for the payment of worker's compensation benefits to its employees employed on or in connection with the performance of this Agreement, and in accordance with applicable State and Federal laws.

7.4 Wheeler shall maintain commercial general liability insurance, with a limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate limit of liability including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, and personal and advertising injury, with no exclusions for explosion, collapse and underground perils, or fire, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and \$2,000,000 annual aggregate.

7.5 Wheeler, at its own expense, shall maintain automobile public liability insurance for all owned, leased, non-owned and hired automobiles (to the extent applicable) for both bodily injury and \$250,000.00 property damage in accordance with statutory requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. Such benefits and coverage shall not be deemed to limit Wheeler's liability under this Agreement. It is intended by this Section that the requirements set forth herein will satisfy applicable minimum requirements under Utah law. However, in the event that the foregoing requirements do not satisfy applicable Utah law, Wheeler must maintain automobile public liability insurance in amounts satisfying applicable Utah law.

7.6 Wheeler, at its own expense, shall maintain professional liability/errors and omissions insurance appropriate to Wheeler's profession, with a minimum coverage of \$2,000,000 per occurrence. The professional liability/errors and omissions insurance required by this Section must be project specific with at least a one-year extended reporting period (or longer upon request by the Client). Wheeler shall, likewise, require its subcontractors, if any, to provide for such insurance and to maintain such insurance at no expense to the Client.

7.7 Wheeler, at its own expense, shall maintain Builders Cause of Loss Special Form insurance (excluding Earthquake and Flood perils) covering physical loss or damage to property, material and equipment during construction, while in transit (excluding marine transit), during loading and unloading, while in storage, while at another location for repair and during installation, testing, commissioning and start-up for the full replacement cost of the Project when completed.

7.8 The Commercial General Liability and Automobile Liability policies required by this Agreement, shall include the Client, its directors, officers, agents, and employees as additional insured persons with respect to the activities of Wheeler in the performance of this Agreement, or that of its employees, agents, subcontractors, independent contractors, and the like. Any certificate



or certificates presented as evidence of insurance shall specify the date when such benefits and insurance expire. Unless a different length of time is expressly set forth in this Agreement, Wheeler shall maintain any insurance required by this Agreement until after the Scope of Work has been fully performed by Wheeler, and subsequently approved and accepted by the Client. Wheeler shall provide the Client with written notice at least sixty (60) days in advance of any cancellation, termination, or material alteration of said policies of insurance.

7.9 Wheeler, at its own expense, shall maintain Excess Liability insurance with a single limit of at least \$3,000,000 per occurrence and on an annual aggregate basis in excess of the limits of the insurance provided in Sections 7.4 and 7.5 above and the ~~workers compensation~~ Employer Liability coverage provided in Section 7.3 above.

7.10 The Commercial General Liability and Automobile Liability policies required by this Agreement, shall include the Client, its directors, officers, agents, and employees as additional insured persons with respect to the activities of Wheeler in the performance of this Agreement, or that of its employees, agents, subcontractors, independent contractors, and the like. Any certificate or certificates presented as evidence of insurance shall specify the date when such benefits and insurance expire. Unless a different length of time is expressly set forth in this Agreement, Wheeler shall maintain any insurance required by this Agreement until after the Scope of Work has been fully performed by Wheeler, and subsequently approved and accepted by the Client. Wheeler shall provide the Client with written notice at least sixty (60) days in advance of any cancellation, termination, or material alteration of said policies of insurance.

**8. Representations and Warranties.** Each party represents that:

8.1 Its signatory has the authority to execute this Agreement.

8.2 It has not sold, assigned, or otherwise transferred any interest in the claims or subject matter contemplated by this Agreement.

8.3 Wheeler represents and warrants that:

8.3.1 Wheeler has sufficiently and reasonably researched the requirements of this Agreement, understands the same, and is able to competently perform each of its duties and obligations required hereunder.

8.3.2 Wheeler warrants the workmanship, materials, proper functioning, and manner of the Scope of Work contemplated by this Agreement for one year from the date of Commissioning (“Warranty Period”). In the event that any portion of the Scope of Work does not remain in good and operating condition (in the reasonable judgment of the Client) during the Warranty Period (ordinary wear and tear excepted), Wheeler, at its own expense, shall immediately perform all necessary repairs and replacements to maintain such inadequate Scope of Work in good and operating condition (to the Client’s reasonable satisfaction). Should any portion of the Scope of Work imminently jeopardize the health

and safety of the Client, or any other individual, the Client may perform any necessary repairs and replacements (or arrange for a third party to perform such services) at Wheeler's expense – to be paid by Wheeler within thirty (30) days of receiving a notice of indebtedness from the Client.

8.3.3 As to the equipment, the manufacturer's standard 12-month warranty shall prevail. Wheeler reserves the right to give notice as to when the manufacturer's warranty period begins to run, Wheeler shall notify manufacturers as of the date of Commissioning.

8.3.4 Wheeler shall perform its obligations required by this Agreement in a manner consistent with applicable professional and technical standards for Scope of Work of a similar and comparable nature, and shall ensure that the implementation thereof is also performed in an applicable professional, technical, and workmanlike manner. Wheeler shall correct any defect in its performance at no additional cost to the Client. Upon request by the Client, Wheeler must be able to summarize and concisely report pertinent information associated with this Agreement and the performance thereof to the Client in a timely manner. Wheeler shall not make any alterations or variations in or additions to, or omissions from, its duties and obligations contemplated by this Agreement, without the prior written consent of the Client

8.3.5 Wheeler's licensure or authority to transact business issued by the Utah Division of Corporations and Commercial Code and the Utah Division of Occupational and Professional Licensing, as well as any other required licensure, is currently active, and shall remain active throughout the performance of this Agreement.

## **9. Confidentiality.**

9.1 The parties acknowledge that this Agreement may be subject to public disclosure pursuant to the Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*, as the same may be amended from time to time.

9.2 Notwithstanding Section 9.1., Wheeler agrees that, except as directed by the Client, Wheeler shall not at any time during or after the term of this Agreement disclose to any person or entity any information or document provided by the Client which the Client has designated as "confidential" or "private." Upon the conclusion or termination of this Agreement, Wheeler shall turn over to the Client all documents, papers, and other matter, including copies thereof, which are in Wheeler's possession or control, and which are designated "confidential" or "private." Wheeler further agrees to bind its employees and any sub-contractors to the terms and conditions of this Section 10.2.

**10. Equal Opportunity.** Neither Wheeler, nor any subcontractor of Wheeler, shall discriminate against any employee, applicant for employment, or recipient of services on the basis of race, religion, color, sex, age, disability, or national origin.

**11. Record Keeping and Audits.** Parties shall maintain accurate accounting records for all goods and services provided in the performance of this Agreement, and shall retain all such records

for a period of at least three (3) years following the termination or completion of this Agreement. Upon forty-eight (48) hours written notice and during normal business hours, the Client shall have access to and the right to audit any records or other documents pertaining to this Agreement. Wheeler shall furnish copies of any records requested by the Client at Wheeler's expense.

## **12. Relationship of the Parties and Immunity.**

12.1 The relationship between the Parties shall be that of independent contracting parties. Each party shall be responsible for the manner of its own performance of this Agreement. Nothing herein shall be construed to create an employer-employee, principal-agent, or other similar relationship. Neither party is authorized to, nor shall either party, enter into any contract or commitment on behalf of the other party. Neither party shall be considered an affiliate or subsidiary of the other party. It is expressly understood that this Agreement, including the performance thereof, is not a joint venture, partnership, or any other relationship other than that of independent contracting parties.

12.2 Nothing in this Agreement, nor the performance hereof, shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which the Client or its employees, officers, and directors may assert under State or Federal law, including (but not limited to) The Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101, *et seq.* All claims against the Client or its employees, officers, and directors are subject to the provisions of the aforementioned act, which controls all procedures and limitations in connection with any claim of liability.

## **13. Notices.**

13.1 If any notice is required to be provided pursuant to the terms and conditions of this Agreement, said notice must be provided by certified mail as follows:

To the Client:

UAMPS  
Attn: Jackie Coombs  
155 N 400 W.  
Salt Lake City, UT 84103

To Wheeler:

Wheeler Machinery Co.  
Attn: Shane Minor  
4901 West 2100 South,  
Salt Lake Client, Utah 84120

13.2 The designation of any address or individual contemplated by this Section 13 may be changed by notice given in the same manner as provided in this Section 13. and shall not be subject to the restrictions contemplated by Section 20.

**14. Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs incurred in connection with the drafting, execution, and performance of this Agreement. However, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees, legal costs, and other collection fees and costs incurred by said prevailing party in connection with the suit, both before and after judgment, in addition to any other relief to which such party may be entitled.

**15. Non-Waiver.** No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

**16. Binding Effect.** This Agreement is binding upon the parties and their proper and allowable heirs, legatees, representatives, successors, transferees, and assignees.

**17. Assignment.** Neither party hereto may assign this Agreement, nor delegate any responsibilities under this Agreement. Any purported assignment or delegation in violation of this Section 18, without prior written consent from the non-assigning party, shall be void, and will be considered a material breach of this Agreement.

**18. Time.** Time is of the essence with this Agreement, as well as every term, covenant, and condition contained herein.

**19. Force Majeure.** Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, pandemics, factory delays, supply chain limitations, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns, or the inability to procure parts or materials. This provision shall not apply to a party's obligation to make payment when due under the terms of this Agreement.

**20. Amendments.** This Agreement may not be modified, amended, or terminated, except by an instrument in writing, signed by each party hereto.

**21. Further Assurances.** The Client and Wheeler mutually agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

**22. Incorporation of Miscellaneous Material.** Each section of this Agreement shall be considered a part hereof, including (but not limited to) Sections 1. and 2., respectively. Likewise, any exhibit referenced in this Agreement is made a part hereof.

**23. Drafting and Voluntary Execution.**

23.1 The negotiation and drafting of this Agreement have been accomplished collectively by each party hereto, and for all purposes this Agreement shall be deemed to have been drafted jointly by each such party. The parties acknowledge that they have been represented

by counsel of their choice in all matters connected with the negotiation and preparation of this Agreement, or that they have had the opportunity to be represented by counsel, and that they have reviewed this Agreement with their counsel, or that they have had the opportunity to review this Agreement with their counsel, and that they fully understand the terms of this Agreement and the consequences thereof. Furthermore, the parties hereto have been afforded the opportunity to negotiate as to any and all terms of this Agreement, and each party is executing this Agreement voluntarily and free of any undue influence, duress, or coercion. The parties further acknowledge that they have relied on their own judgment, belief, knowledge, and advice from their own representatives, consultants, affiliates, and agents, as to the extent and effect of the terms and conditions contained herein. The parties are not relying upon any statement or representation made by any other party or any officer, director, employee, agent, servant, adjustor, or attorney acting on behalf of another party, unless such a statement or representation is expressly set forth in this Agreement.

23.2 The headings in this Agreement are for convenience only and shall not be interpreted to limit the meaning of the language contained herein in any way.

**24. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall, nevertheless, be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

**25. Governing Law.**

25.1 This Agreement shall be construed in accordance with the laws of the State of Utah, regardless of any choice or conflict of law rules.

25.2 Each party agrees that any legal action or proceeding with respect to this Agreement may only be brought in the state or federal courts of Salt Lake County, in the State of Utah. Consequently, each party hereby submits itself unconditionally to the jurisdiction and venue of the aforementioned courts.

**26. Third-Party Beneficiaries.** This Agreement is not meant to create any rights or benefits (whether intended or incidental) for any third party. Only the named parties to this Agreement may enforce the terms and conditions hereof.

**27. Entire Agreement.** All agreements, covenants, representations and warranties – express or implied, oral or written – of the parties concerning the subject matter hereof are contained solely in this Agreement, subject to any implied warranties and conditions imposed upon the parties by Utah law. No other agreements, covenants, representations, or warranties – express or implied, oral or written – have been made by any party to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein. This is an integrated agreement

**28. Duplicate Originals.** This Agreement may be executed in identical duplicate originals, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

**29. Signatures.** The Client and Wheeler voluntarily enter into this Agreement, as evidenced by affixing their respective signatures, below.

**Utah Associated Municipal Power Systems:  
Machinery Co.:**

**Wheeler**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Chairman \_\_\_\_\_

\_\_\_\_\_  
By: Stephen Green  
Its: VP – Sales & Rental

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_