

Resolution No. 12-06-2023-

A RESOLUTION AUTHORIZING A TAX CERTIFICATE AND AGREEMENT FOR UAMPS' PAYSON POWER PROJECT; AND RELATED MATTERS.

WHEREAS, Payson City, Utah (the "*Participant*") is a member of Utah Associated Municipal Power Systems ("*UAMPS*") and is a Participant in the Payson Power Project (the "*Project*") under the Payson Power Project Power Sales Contract dated as of June 1, 2002 (the "*Power Sales Contract*") between the Participant and UAMPS;*

WHEREAS, the Participant has been advised that UAMPS proposes to enter into a Commodity Supply Contract (the "*Supply Contract*") with Southeast Energy Authority, a Cooperative District ("*SEA*") to purchase a portion of the natural gas necessary for the operation of the Project at price that reflects a discount from the current contract price of natural gas for the Project being paid by UAMPS, and that the savings from such discount will be applied by UAMPS for the benefit of the Participant and the other Participants in the Project based on their respective Entitlement Shares;

WHEREAS, the Participant has been advised that SEA will issue bonds to finance a prepayment for the natural gas that it sells to UAMPS under the Supply Contract (the "*Prepay Bonds*") with the intention that the interest on the Prepay Bonds will qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended (the "*Code*"); and

WHEREAS, the Participant acknowledges that its use of the electricity it purchases from its Entitlement Share under the Power Sales Contract will be subject to certain restrictions that are necessary to establish and maintain the tax-exempt status of interest on the Prepay Bonds, and desires to adopt this resolution to authorize a Tax Certificate and Agreement that sets forth the Participant's agreement to comply with such restrictions;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF PAYSON CITY, UTAH, AS FOLLOWS:

Section 1. Approval of Tax Certificate and Agreement. The Tax Certificate and Agreement, in substantially the form attached hereto as *Exhibit A*, is hereby authorized and approved.

Section 2. Authorized Officers; Final Changes and Dating. The Participant's Representative and Alternate Representative to UAMPS (the "*Authorized Officers*") are each hereby authorized to execute and deliver the Tax Certificate and Agreement and to deliver the same to UAMPS on behalf of the Participant. Each of the Authorized Officers is hereby delegated authority to approve such changes to the Tax Certificate and Agreement as are

* Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Power Sales Contracts and the Tax Certificate and Agreement.

authority to approve such changes to the Tax Certificate and Agreement as are necessary to complete the form thereof, together with any minor or non-substantive changes, and his or her execution of the Tax Certificate and Agreement shall be conclusive evidence of such approval. The Authorized Officers shall deliver an executed and undated copy of the Tax Certificate and Agreement on or prior to the date requested by UAMPS, and UAMPS is hereby be authorized to deliver the Tax Certificate and Agreement, dated the issue date of the Prepay Bonds, to SEA on behalf of the Participant.

Section 3. Other Actions With Respect to the Tax Certificate and Agreement. The Authorized Officers shall take all action necessary or reasonably required to carry out and give effect to the Tax Certificate and Agreement including adjusting the priority of the Participant's resources within the UAMPS Power Pool to ensure the Qualified Use of the electricity from the Participant's Entitlement Share in the Project.

Section 4. Severability. If any section, paragraph, clause, or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this resolution.

Section 5. Effective Date. This resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the City Council of Payson City, Utah, this 6th day, December 2023.

PAYSON CITY, UTAH

By _____
Mayor

[SEAL]

ATTEST:

City Recorder

EXHIBIT A

TAX CERTIFICATE AND AGREEMENT

This Tax Certificate and Agreement is executed in connection with the Commodity Supply Contract (the “*Supply Contract*”) between Southeast Energy Authority, a Cooperative District (“*SEA*”) and Utah Associated Municipal Power Systems (“*UAMPS*”).

WHEREAS, _____ (the “*Participant*”) is a member of UAMPS and has entered into the Payson Power Project Power Sales Contract dated as of _____¹ (the “*Power Sales Contract*”) with UAMPS;

WHEREAS, the Participant understands that UAMPS has entered into the Supply Contract to obtain a supply of natural gas for use as fuel in the operation of the Payson Power Project, and that UAMPS will sell a portion of the electricity generated with such natural gas to the Participant in accordance with its Entitlement Share under (and as such term is defined in) the Power Sales Contract;

WHEREAS, the Participant further understands that SEA will issue bonds to finance a prepayment for the natural gas that it sells to UAMPS under the Supply Contract (the “*Prepay Bonds*”) with the intention that the interest on the Prepay Bonds will qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended (the “*Code*”); and

WHEREAS, the Participant acknowledges that its use of the electricity it purchases from its Entitlement Share under the Power Sales Contract is subject to certain restrictions that are necessary to establish and maintain the tax-exempt status of interest on the Prepay Bonds;

ACCORDINGLY AND IN FURTHERANCE OF THE FOREGOING, THE PARTICIPANT HEREBY CERTIFIES AND AGREES AS FOLLOWS:

1. The Participant is a political subdivision of the State of _____,² and owns and operates a municipal utility system that provides electricity service to retail customers located in an established service area (the “*System*”).

2. The Participant will (a) use all of the electricity it acquires from its Entitlement Share under the Power Sales Contract in a Qualified Use (as defined below), (b) not take any action (or make any allocation) that is inconsistent with the Qualified Use of such electricity, (c) not take or omit to take any action which could adversely affect the tax-exempt or tax-advantaged status of interest on the Prepay Bonds or any refunding bonds issued by SEA, (d) take, and pay the costs of, such remedial actions as may be necessary to maintain the tax-exempt or tax-advantaged status

¹ (a) “June 1, 2002” for Fairview, Monroe, Mt. Pleasant, Payson and Springville, (b) “June 1, 2002, as supplemented” for Ephraim, Hurricane, Hyrum, Kaysville, Lehi, Logan, Santa Clara, Spring City, SEDS and Washington, and (c) “December 1, 2009” for TDPUD.

² Utah for all Participants, except California for TDPUD.

of interest on the Prepay Bonds or any refunding bonds in the event of its failure to use such electricity in a Qualified Use, and (e) act in accordance with such reasonable written instructions as may be provided by SEA (through UAMPS) from time to time in order to maintain the tax exempt or tax-advantaged status of the Prepay Bonds.

3. “*Qualified Use*” means the sale of electricity to retail customers located within the “electricity service area” of a municipal utility pursuant to generally applicable and uniformly applied rate schedules or tariffs; *provided* that: (a) “Qualified Use” shall not include any sale of electricity that gives rise to “private business use” or a “private loan” within the meaning of Section 141 of the Code; and (b) “Qualified Use” shall include such additional uses of electricity as may be approved by SEA (through UAMPS) with a favorable opinion of bond counsel. For purposes of this definition: (i) “electricity service area” has the meaning assigned to such term in U.S. Treasury Regulation Section 1.148-1(e)(2)(iii); and (ii) a “municipal utility” is a state or local government unit that owns and operates an electric distribution utility.

4. In each of the five calendar years preceding 2024, the amount of electricity sold to retail customers in the Participant’s electricity service area has equaled or exceeded the amount of electricity attributable to its Entitlement Share under the Power Sales Contract (excluding the amount of electricity that the Participant was obligated to take under a long term agreement that was either (i) purchased pursuant to a long term prepaid agreement using the proceeds of tax-exempt or tax-advantaged obligations, or (ii) generated from gas that a person is obligated to take under a long term agreement that was purchased pursuant to a long term prepaid agreement using the proceeds of tax-exempt or tax-advantaged obligations), and it anticipates this to be the case in 2024.

5. References to the “Bonds” in Section 17(c) [Sale or Assignment of Electric System or Power Sales Contract] and Section 17(f) [Tax Status] of the Power Sales Contract shall be deemed to include the Prepay Bonds at all times while the Supply Contract is in effect.

6. The Participant expects to make the required payments under the Power Sales Contract solely from the current revenues of the System.

Dated: _____, 2024.

[NAME OF PARTICIPANT]

By: _____
[Name]
[Title]