CITY OF LOGAN, UTAH

RESOLUTION 24-11

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

*** *** ***

WHEREAS, the City of Logan, Utah (the *"Participant"*) is a member of Utah Associated Municipal Power Systems (*"UAMPS"*) and has previously entered into the Master Firm Power Supply Agreement with UAMPS that enables the parties to enter into firm transactions for the purchase and sale of electricity from specified power supply resources;

WHEREAS, pursuant to the Master Firm Power Supply Agreement, UAMPS has entered into (a) the Amended and Restated Solar Power Purchase Agreement (as such agreement may be amended and restated from time to time, the *"Red Mesa PPA"*) with NTUA Generation—Utah, LLC and (b) the Second Amended and Restated Solar Power Purchase Agreement (the *"Steel Solar 1B PPA"* and, together with the Red Mesa PPA, the *"PPAs"*) with Steel Solar, LLC;

WHEREAS, pursuant to the Master Firm Power Supply Agreement, the Participant has elected to participate in (a) the Red Mesa PPA pursuant to the Red Mesa Tapaha Solar Firm Power Supply Agreement Amended and Restated Transaction Schedule and (b) the Steel Solar 1B PPA pursuant to the Steel 1B Solar Project Firm Power Supply Agreement Second Amended and Restated Transaction Schedule (such Transaction Schedules and the Master Firm Power Supply Agreement are referred to collectively herein as the *"Firm PSAs"*), each between the Participant and UAMPS;*

WHEREAS, the Participant understands that in order to provide a discounted price for portions of the electricity sold to the Participant under the Firm PSAs (such portions are referred to herein as the *"Prepaid Portions"*), UAMPS will participate in a prepayment transaction being undertaken by Southeast Energy Authority, a Cooperative District (*"SEA"*) by (a) assigning its rights to portions of the electricity to be delivered under the PPAs to the commodity supplier under the prepayment transaction and (b) entering into a Commodity Supply Contract (the *"Supply Contract"*) with SEA under which it will purchase the assigned electricity from SEA at prices that reflect discounts from the contract prices under the PPAs, and the savings from such discounts will be applied by UAMPS for the benefit of the Participant and the other Participants in the PPAs;

WHEREAS, the Participant has been advised that SEA will issue bonds to finance a prepayment for the electricity that it sells to UAMPS under the Supply Contract (the *"Prepay*

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

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 Prepaid Portions of the electricity it purchases under the Firm PSAs 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 GOVERNING BODY OF THE CITY OF LOGAN, 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 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 Governing Body of the City of Logan, Utah, this day, _____.

CITY OF LOGAN, UTAH

By _____
Mayor

[SEAL]

ATTEST:

_____
City Recorder

EXHIBIT A

[TAX CERTIFICATE AND AGREEMENT]

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 Master Firm Power Supply Agreement dated as of _____, and [describe Red Mesa, Steel Solar 1A and Steel Solar 1B transaction schedules as applicable] (the *"Firm PSA"*)[1] with UAMPS pursuant to which the Participant has an Entitlement Share (as defined in the Firm PSA) in the energy, environmental attributes and other benefits received by UAMPS under the [describe Red Mesa, Steel Solar 1A and Steel Solar 1B PPAs as applicable] (the *"PPA"*)[2];

WHEREAS, the Participant understands that in order to provide a discounted price for a portion of the electricity sold to the Participant under the Firm PSA (such portion is referred to below as the *"Prepaid Portion"*), UAMPS will participate in a prepayment transaction being undertaken by SEA by (a) assigning its rights to a portion of the electricity to be delivered under the PPA to the commodity supplier under the prepayment transaction and (b) entering into the Supply Contract under which it will purchase the assigned electricity from SEA at a discounted price for sale to the Participant under the Firm PSA;

WHEREAS, the Participant further understands that SEA will issue bonds to finance a prepayment for the electricity 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 Prepaid Portion of the electricity it purchases under the Firm PSA 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 _____,[3] and owns and operates a municipal utility system that provides electricity service to retail customers located in an established service area (the *"System"*).

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1 For Participants in more than one transaction schedule, the term "Firm PSA" will apply separately to each transaction schedule.

2 For Participants in more than one transaction schedule, the term "PPA" will apply separately to each Power Purchase Agreement.

3 Utah for all Participants, except California for TDPUD and Nevada for Fallon.

2. The Participant will (a) use all of the Prepaid Portion of the electricity it acquires under the Firm PSA in a Qualified Use (as defined below), (b) not take any action (or make any allocation) that is inconsistent with the Qualified Use of the Prepaid Portion of such electricity, (c) not take or omit to take any action with respect to the Prepaid Portion of such electricity, its Entitlement Share or its System 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 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 the Prepaid Portion of the electricity attributable to its Entitlement Share under the Firm PSA (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. The Participant expects to make the required payments under the Firm PSA solely from the current revenues of the System.

Dated: _____, 2024.

[NAME OF PARTICIPANT]

By: _____
[Name]
[Title]

TALKING POINTS RE PREPAY TRANSACTION
FIRM POWER SUPPLY PROJECT

March 2024

OVERVIEW

- The Internal Revenue Code and US Treasury Regulations ("Tax Code and Regulations") contain special provisions that allow tax-exempt bonds to be issued to finance prepayments for natural gas and electricity. The prepay transactions are structured to convert the difference between the issuer's lower (tax-exempt) cost of funds and the prepaid energy supplier's higher (taxable) cost of funds into a discounted price for prepaid energy.
  - The initial discount is expected to be at least 8.0% and will be determined before closing.
  - The amount of the discount will be reset periodically over the term of the prepay (every five to ten years) when the bonds are refinanced.
- UAMPS will assign existing gas or electricity purchase agreements into the prepay transaction and the discount will be applied to the contract prices under these agreements.
- The Tax Code and Regulations require that the prepaid (discounted) gas or electricity (including electricity that is generated using prepaid natural gas as fuel) be used by UAMPS members to serve retail customers in their municipal utility service areas. This is referred to as the "Qualifying Use" requirement.
- The date of closing has not yet been determined but will likely take place in Q2 2024.
- The term of the transaction is thirty years.

CONTRACT STRUCTURE

- Southeast Energy Authority ("SEA") will issue bonds for a 30-year prepayment for gas or electricity from a special purpose entity ("Prepay LLC") organized by J. Aron & Company, the commodities affiliate of Goldman Sachs & Co.
  - UAMPS has no obligation on the bonds issued by SEA.
- UAMPS will assign previously-executed gas purchase or power purchase agreement(s) to J. Aron through a Limited Assignment Agreement ("LAA").
  - The LAA does not require any changes to the existing purchase agreement, but will be consented to by the seller.
  - The LAA is designed to leave the seller indifferent to the prepay. All interactions between UAMPS and seller remain the same.
  - The amount of gas or electricity purchases assigned to J. Aron under the LAA establishes the monthly cashflows required over the 30-year term of the prepay.
- UAMPS has already received approval from the Nebo Project to assign a 5-year gas purchase made to fuel the Nebo Power Plant into the prepay.
- UAMPS also seeks to assign the Red Mesa Power Purchase Agreement (PPA) and Steel Solar 1A and 1B PPAs into the prepay. The Red Mesa PPA will receive the prepay discount at the outset, and the Steel Solar PPAs receive the prepay discount in a couple of years after they have an established operational track record.
- UAMPS is assigning less than the total amount of anticipated solar generation from each PPA to allow for flexibility in operations.

- The term of the PPAs is shorter than the term of the prepay (25 years, versus 30 years). For the last approximately five years of the prepay, UAMPS will assign other power purchase agreements into the prepay to support the required monthly cashflows and to continue to receive the discount from the prepay.
- The LAA provides J. Aron "flash title" to the assigned gas or electricity, which is then delivered to Prepay LLC, which is then delivered to SEA, which then delivers the gas or electricity to UAMPS.
    - If the prepaid transaction terminates for any reason, the LAA also terminates and UAMPS and the seller are restored to their original positions.
- UAMPS will enter a "Commodity Supply Agreement" with SEA to purchase the gas or electricity from SEA at a discount.
- The bonds issued by SEA will need to be refinanced from time to time over the 30-year term of the prepay. When the bonds are refinanced, the discount available to UAMPS under the Commodity Supply Agreement will need to be reset.
    - Changes in market conditions could lead to a lower (or higher) savings for UAMPS.
    - The Commodity Supply Agreement will specify the minimum discount to be achieved for each reset period. If minimum is not achieved, UAMPS may choose not to take energy from the prepay project during the reset period.

QUALIFIED USE CERTIFICATE

- UAMPS has provided a resolution for the governing boards of the Firm Power Project Participants who have an Entitlement Share in the Red Mesa PPA and/or the Steel Solar 1A or 1B PPAs ("Participants") to approve the form of a "Qualified Use Certificate" for the prepaid energy. **Please have the resolution approved, signed and returned to UAMPS by May 3, 2024.**
    - **Complete the resolution by filling in the date it was adopted on page 2. Please do not make changes to these documents without contacting UAMPS.**
    - **Do not complete or sign the generic form of the Qualified Use Certificate that's attached to the resolution. We will send you a final, individualized Qualified Use Certificate a few weeks before the bond closing for execution.**
- The Qualified Use Certificate states that the electricity that the Participant receives from the prepay will be used to serve retail customers located in the established service territory of its electric utility system.
    - If, during the term of the prepay, a Participant uses the prepaid electricity for a non-Qualified Use, it agrees that it will cooperate with UAMPS to remediate the non-Qualified Use through its other power purchases from UAMPS.
- The Participant must also confirm in the Qualified Use Certificate that the amount of its historic electricity sales to its retail customers equals or exceeds the amount of prepaid electricity attributable to its Entitlement Share under the applicable PPA.