Payson City

June 5, 2024

The City Council (the *“City Council”*) of Payson City, Utah (the *“City”*), pursuant to due notice met in regular public session on June 5, 2024, at the hour of 6:00 p.m., at its regular meeting place at 439 West Utah Avenue, Payson, 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: | Bill Wright | Mayor |
|  | Brett Christensen | Councilmember |
|  | Taresa Hiatt | Councilmember |
|  | Brian Hulet | Councilmember |
|  | Anne Moss | Councilmember |
|  | Ryan Rowley | Councilmember |
| Absent: |  |  |
| Also Present: | Dave Tuckett | City Manager |
|  | Kim E. Holindrake | City Recorder |
|  | Shawn Black | Power Director |

After the minutes of the preceding meeting had been approved, the City Recorder presented to the City Council the following affidavit evidencing the giving of public notice of the agenda, date, time and place of the June 5, 2024, regular public meeting of the City Council in compliance with the requirements of applicable Utah law. The affidavit was ordered recorded in the official records of the City.

State of Utah )

)

County of utah )

I, the undersigned, the duly qualified and acting City Recorder of Payson 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 June 5, 2024, 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 City Council on May 30, 2024, 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 City Council until the convening of the meeting; and

(b) causing a copy of the Notice of Public Meeting in the form attached hereto to be provided on May 30, 2024, at least twenty-four (24) hours before the convening of the meeting, to the Payson Chronicle, 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 30, 2024, on the Utah Open Public Notice Website at least twenty-four (24) hours before the convening of the meeting; and

(d) causing a Notice of Public Meeting, in the form attached hereto, to be posted on May 30, 2024, on the city 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 5th day of June 2024.

Kim E. Holindrake, City Recorder  
 Payson City, Utah

[Seal]

[Attach Notice of Public Meeting]

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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:

|  |  |  |
| --- | --- | --- |
|  | Yes | No |
| Councilmember Christensen |  |  |
| Councilmember Hiatt |  |  |
| Councilmember Hulet |  |  |
| Councilmember Moss |  |  |
| Councilmember Rowley |  |  |
| Mayor Wright |  |  |

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.

Resolution No. 06-05-2024-

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, Payson 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 and Scope of Work from Wheeler Power Systems, an affiliate of Wheeler Machinery Co. (*“Wheeler”*), for the “Payson City Power Generation Facility New Plant/Existing Plant Retrofit” dated May 7, 2024 (the *“Proposal”*) for the improvement, retrofitting and equipping of the City’s existing electric generation facility, including the acquisition and installation of six Caterpillar G3520 Natural Gas generator sets, together with related improvements to be undertaken by the City (collectively, 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 (Payson 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 Payson 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; and

(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 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

(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 debt service requirements of the Bonds have been determined.

*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, his execution thereof to constitute conclusive evidence of such approval.

(b) The appointment of Shawn Black as the City’s Representative to UAMPS is hereby confirmed. Such Representative (or, in his absence, such alternate(s) as shall have been appointed by the City) 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. Financing of the Project.* As provided in the Capacity Purchase Agreement, UAMPS will issue the Bonds to finance the Cost of Construction of the Project, and UAMPS and the City agree to cooperate and consult with one another regarding the issuance of the Bonds as set forth therein. The final principal amount, maturity date(s), interest rate(s) and other terms and provisions of the Bonds will be approved in a Certificate of Determination executed by authorized officers of UAMPS and the City. The Mayor, or such other officer of the City as may be designated by the mayor, is hereby authorized to execute the Certificate of Determination on behalf of the City.

*Section 6. 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 irrepealable 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 5th day of June 2024.

Payson City, Utah

By   
 William R. Wright, Mayor

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kim E. Holindrake, 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.

Payson City, Utah

By   
 William R. Wright, Mayor

Attest:

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Kim E. Holindrake, City Recorder

[Seal]

State of Utah )

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County of Utah )

I, the undersigned, do hereby certify that I am the duly qualified and acting City Recorder of Payson 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 June 5, 2024, including a resolution adopted at such meeting, together with the exhibits attached thereto, as said minutes, resolution and exhibits are recorded in the official records 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 5th day of June 2024.

Kim E. Holindrake, City Recorder  
 Payson City, Utah

[Seal]