COMBINED EPHRAIM CITY COUNCIL
& UTILITIES BOARD MEETING
Council Chambers – Ephraim City Hall
5 South Main, Ephraim, Utah
Wednesday, September 2, 2015
6:30 PM

CALL TO ORDER

ROLL CALL

I. MOTION AGENDA

A. **Approval of Staff Recommendations**

1. **Agreement: Carbon Free Power Project Study Phase Siting**

   Approval of Mayor to sign the Carbon Free Power Project Study Phase Siting Agreement. The Utilities Board recommends the agreement be signed in order for the study to go forward.

2. **IPA Second Amendatory Agreement**

   Approval of Mayor to sign the revised IPA Second Amendatory Agreement as presented.

ADJOURNMENT

From time to time, matters are discussed by the City Council that do not appear on the posted agenda. Items that require/request action taken by the City Council will appear in the posted agenda. Submitted Action Items for the Council agenda must be received by the City Recorder's office by the Friday prior to the Council meeting and should be accompanied by any and all supporting written documentation. Without such documentation, the recorder reserves the right to postpone the hearing of any item until such documentation has been submitted.

In Accordance with the Americans with Disabilities Act (ADA) this facility is wheelchair accessible and handicap parking is available. Request for accommodations and interpretive services must be made three (3) working days prior to the meeting. Please contact the city office at 283-4631 for information or assistance.

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted this 28th day of August, 2015. A copy was also provided to the local media and posted on the Utah State website.

LEIGH ANN WARNOCK
EPHRAIM CITY RECORDER

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:	9/2/15	☒ Motion ☐ Resolution
DEPARTMENT:	Utilities	☐ Ordinance - Introduction
DIVISION:	Utilities	☐ Ordinance - Adoption ☐ Public Hearing

TITLE:
Carbon Free Power Project Study Phase Siting Agreement

SUMMARY RECOMMENDATION:
Utilities Board Members are recommending the City Council approve signing the Carbon Free Power Project Study Phase Siting Agreement.

REPORT:
UAMPS IS LOOKING TO ENTER INTO A CARBON FREE POWER PROJECT, AND IS ASKING THE CITY, AS A PART OF UAMPS, TO REVIEW AND SIGN THE AGREEMENT ALLOWING A STUDY FOR THE PROPOSED CARBON FREE SITE. UTILITIES BOARD MEMBERS ARE RECOMMENDING THE AGREEMENT BE SIGNED IN ORDER FOR THE STUDY TO GO FORWARD.

FISCAL REQUIREMENTS

CITY FUNDS:	$0.00	BUDGETED:	$0.00
STATE FUNDS:	$0.00	AVAILABLE TO TRANSFER:	$0.00
FEDERAL FUNDS:	$0.00	IN CONTINGENCY:	$0.00
OTHER SOURCES:	$0.00 $0.00 $0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
TOTAL:	$0.00		

FISCAL IMPACT STATEMENT:

ADDITIONAL INFORMATION

SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY RECORDER

1. AGREEMENT DOCUMENT
2.
3.
4.
5.

IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?

- ☐ Department
- ☒ City Clerk's Office
- ☐ Document to be recorded

SIGNATURES

CITY MANAGER: Brant T. Hanson	DATE:
REVIEWED BY CITY ATTORNEY: David Church	DATE:
RECOMMENDED BY (DEPT/DIV HEAD): UTILITIES BOARD	DATE: 8/27/2015
WRITTEN/SUBMITTED BY:	DATE:

CARBON FREE POWER PROJECT STUDY PHASE SITING AGREEMENT

BETWEEN

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

AND

EPHRAIM CITY

This Carbon Free Power Project Study Phase Siting Agreement (this "*Agreement*") is made and entered into as of September 1, 2015, between Utah Associated Municipal Power Systems, a political subdivision of the State of Utah ("*UAMPS*"), and Ephraim City, a member of UAMPS ("*Participant*"). UAMPS and Participant are sometimes hereafter referred to collectively as the "Parties" and individually as "Party."

RECITALS:

A. UAMPS is organized as an Energy Services Interlocal Entity under the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.*, and pursuant to its Amended and Restated Agreement for Joint and Cooperative Action, as amended from time to time (the "*Joint Action Agreement*") for certain purposes, including but not limited to investigation of future electric energy resources.

B. UAMPS, through the formation of the Carbon Free Power Project ("*CFPP*") has decided to pursue the development of a facility that can house up to twelve (12) NuScale nuclear power modules that can each generate up to approximately fifty (50) megawatts of electric power. The anticipated commercial operation date for the first such nuclear power module is currently scheduled to occur in late 2023.

C. UAMPS, Energy Northwest and NuScale Power, LLC ("*NuScale*") have entered into a Teaming Agreement, dated as of June 19, 2013 and a subsequent Addendum to the Teaming Agreement dated as of April 18, 2014 ("*Teaming Agreement*"), outlining those entities respective responsibilities during the development phase of the Project.

D. Participant enters into this Agreement to further develop the CFPP as a hedge against carbon dioxide regulation that may impose cost burdens on existing fossil fueled resources and/or to provide greater diversification in its resource portfolio.

E. The United States Department of Energy ("*DOE*") received appropriations by the U.S. Congress through House of Representative Resolution No. H.R. 83 for small modular reactor ("SMR") licensing technical support for SMR commercialization by a utility. The DOE has identified NuScale's technology, with UAMPS as a utility partner, as eligible recipients for SMR licensing technical support and, more specifically, cost-share support for UAMPS site permitting activities and combined construction and operation license activities. To facilitate the DOE's support, NuScale and the DOE have or will enter into a cooperative award agreement (the "*DOE Cost Share Agreement*"), whereby NuScale is designated as the primary recipient of funds for certain CFPP development costs that DOE deems reimbursable consistent with the purpose of the DOE Cost Share, which funds will be passed through to UAMPS for the recovery of up to fifty percent (50%) of CFPP site permitting activities and combined construction and operation license activities. UAMPS and NuScale have entered into or will enter into an agreement (the "*UAMPS-NuScale Cost Share Agreement*") addressing the flow of funds from NuScale to UAMPS for DOE reimbursed CFPP development costs and NuScale's responsibility to pay for a portion of the CFPP development costs as identified in Exhibit B and the UAMPS-NuScale Cost Share Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Defined Terms:

"Board" means the Board of Directors for the CFPP as may be established from time to time pursuant to the Joint Action Agreement and the Act.

"Buy-In Amount" shall be determined by multiplying the New Participant's or purchasing Participant's desired purchase of Orphan Site Shares, expressed in whole kilowatts, by the result of dividing the Siting Phase Work Costs incurred as of the date of purchase of Orphan Site Shares (without recognizing the benefit of the DOE Cost Share) by the Projected Project Capacity, such formula being:

$$\text{Desired Site Share Purchase (kW)} \times \frac{\text{Total Siting Phase Work Costs Incurred as of Purchase Date}}{\text{Projected Project Capacity (kW)}}$$

For example, the Buy-In Amount for a New Participant desiring to purchase 50,000 Orphan Site Shares with total Siting Phase Work Costs totaling $3,000,000 at the purchase date, the Buy-In Amount would be $250,000 (50,000 x ($3,000,000/600,000)).

"*CFPP*" shall mean the Carbon Free Power Project as it is described in Recital B.

"*CFPP Development Phase*" shall mean any of the phases for carrying out Siting Phase Work as identified in the CFPP Work Plan, attached hereto as Exhibit B, as may be amended from time to time consistent with this Agreement.

"*DOE Cost Share*" shall mean the cost share funding provided by DOE to UAMPS through NuScale pursuant to the DOE Cost Share Agreement and UAMPS-NuScale Cost Share Agreement.

"*Effective Date*" means the date on which this Agreement has been executed and delivered by UAMPS and the Participant.

"*Entitlement Share*" shall mean the amount of desired capacity from the CFPP that the Participant elects to subscribe to in the CFPP Power Sales Contract between UAMPS and the Participant.

"*Members*" shall mean UAMPS members not participating in the CFPP.

"*Open-Enrollment Period*" shall mean the period of time as determined by the Project Management Committee to allow for Original Participants to deliver their executed Agreements.

"*Original Participants*" shall mean those Participants that execute the Agreement before the close of the Open-Enrollment Period.

"*Orphan Site Share*" shall mean a Site Share that is not subscribed at the end of the Open-Enrollment Period. The total amount of Orphan Site Shares will be the difference of the Projected Project Capacity less the total Site Shares subscribed at the end of the Open-Enrollment Period and any Orphan Site Shares purchased pursuant to Section 8.

"*Participants*" shall mean those UAMPS members or non-UAMPS entities who have entered into this Agreement and are identified in Schedule I.

"*Phase Cost Estimate*" shall mean the cost estimate for each CFPP Development Phase that is identified to complete Siting Phase Work as identified in the CFPP Work Plan, as may be amended pursuant to this Agreement.

"*Power Sales Contract*" or "*PSC*" shall mean each of those contracts to be negotiated with the Participants to further the implementation and operation of the CFPP.

"*Preparatory Costs*" shall be those costs necessary for the initial formation and development of the CFPP prior to the adoption of budgets by the Project Management Committee pursuant to this Agreement, which costs are preliminarily identified in the attached CFPP Work Plan as "Preparatory Work" and shall not exceed $210,000.

"*Project Agreements*" means all agreements entered into by UAMPS to carry out this Agreement, the Siting Phase Work, the Site Use Agreement with the DOE, the Teaming Agreement between UAMPS, Energy Northwest and NuScale, and any other agreements UAMPS enters into in connection with the Siting Phase Work of the CFPP. A list of current Project Agreements is identified in Exhibit A and will be amended as necessary.

"*Project Management Committee*" shall mean the committee of Participants initially established for the CFPP pursuant to the Joint Action Agreement and UAMPS bylaws.

"*Projected Project Capacity*" shall mean 600 MW based on the gross output of the full, build-out of an electric generating facility comprised of 12 nuclear power modules with the capability to each generate 50 MW gross electric.

"*Site Percentage Cost Share*" shall be determined by multiplying a Participant's Site Percentage Share by Siting Phase Work Costs. For example, if Siting Phase Work Costs for a billing period are $100,000 and a Participant's Site Percentage Share is 10%, then such a Participant will be billed $10,000 ($100,000 x 10%).

"*Site Percentage Share*" shall mean each Participant's Site Percentage Share, expressed as a percentage of a Participant's Site Share divided by sum of all Participants Site Shares. Each Participant's Site Percentage Share will be set forth in Schedule I.

"*Siting Phase Work*" shall have the meaning as set forth in Section 2 of this Agreement.

"*Siting Phase Work Costs*" shall mean all costs, charges and expenses associated with the Siting Phase Work Product, which shall include UAMPS' administrative and general costs in performing Siting Phase Work, as well as those incurred by UAMPS under Project Agreements.

"*Siting Phase Work Product*" shall mean all work product developed pursuant to this Agreement and other Project Agreements.

"*Site Share*" shall mean each Participant's interest in the CFPP, which will be expressed in whole kilowatts. Each Participant's Site Share will be identified in Schedule I. The total sum of Site Shares shall not exceed 600 megawatts, based on the Projected Project Capacity.

Section 2. Scope of Work; Siting Phase Work. UAMPS will direct all work necessary to study the feasibility of constructing, permitting, and operating the CFPP (the "Siting Phase Work"). The Siting Phase Work is generally outlined in the CFPP Work Plan, attached hereto as Exhibit B. The Siting Phase Work will be conducted in a phased-approach as identified in the CFPP Work Plan. The Project Management Committee will approve Siting Phase Work for each CFPP Development Phase pursuant

to a specified budget as identified in the CFPP Work Plan. UAMPS will notify the Project Management Committee of costs incurred pursuant to the CFPP Work Plan on a monthly basis. The CFPP Work Plan may be amended at the discretion of the Project Management Committee pursuant to Section 6 of this Agreement.

Section 3. *Siting Phase Work Costs.* The Participant acknowledges and agrees to pay its Site Percentage Cost Share, regardless of whether UAMPS is reimbursed pursuant to the DOE Cost Share for costs incurred in connection with Siting Phase Work. A Participant's responsibility to pay costs will be limited to its Site Percentage Cost Share. Further, until a budget for a CFPP Development Phase is adopted by the Project Management Committee, a Participant's Site Percentage Cost Share shall be limited to its proportionate share of Preparatory Costs. Any Participant providing notice to UAMPS to terminate this Agreement pursuant to Sections 5, 7 or 9 will remain obligated to pay its Site Percentage Cost Share for Siting Phase Work Costs incurred up to the date of such termination of that Participant's Site Share in the CFPP.

Section 4. *Open-Enrollment Period.* The Project Management Committee will determine the Open-Enrollment Period at the first Project Management Committee meeting and, if necessary, may extend the Open-Enrollment Period. A Participant joining during the Open-Enrollment Period will execute this Agreement and a revised Schedule I will be circulated at the close of the Open-Enrollment Period, identifying the total Site Shares subscribed to by the Original Participants and the total Orphan Site Shares. A Participant joining during the Open-Enrollment Period will be obligated to pay its Site Percentage Cost Share for Siting Phase Work Costs already incurred. Such a payment will be allocated pro rata to the Participants based on the Site Percentage Shares of the Participants that executed this Agreement prior to the newly joining Participant. Participants joining after the end of the Open-Enrollment Period will be required to pay a Buy-in Amount as set forth in Section 8.

Section 5. *Notice of Withdrawal by a Participant.* (a) A Participant will not be obligated for Siting Phase Work Costs contained in a Project Management Committee's approved, initial budget for a CFPP Development Phase, or an increase in an approved budget for a CFPP Development Phase by greater than twenty percent (20%), by providing notice of a Participant's rejection of the proposed initial budget or increase within five business (5) days of the Project Management Committee adoption of the initial budget or increase. Upon such notice by a Participant UAMPS will notify the Project Management Committee, which will meet as soon as practical to determine the impact of such notice. UAMPS staff will suspend, to the extent practicable, Siting Phase Work on the CFPP Development Phase that is the subject of the Participant's rejection, but may continue Siting Phase Work on CFPP Development Phases approved preceding the notice of objection from a Participant.

(b) In response to the Participant's objection, the Project Management Committee may:

(i) reaffirm the initial budget adoption for a CFPP Development Phase or an increase in the approved budget for a CFPP Development Phase by greater than twenty percent (20%), in which case the Project Management

Committee will revise Schedule I accordingly and this Agreement will be terminated between UAMPS and the withdrawing Participant pursuant to Section 9, or

(ii) repeal the initial budget for the CFPP Development Phase or the budget amendment that exceeded twenty percent (20%) of the originally adopted budget for the CFPP Development Phase, in which case the Participant's objection is deemed withdrawn, and

(iii) take such other action consistent with this Agreement.

(c) In the event of termination under Section 5(b)(i) and all payments have been made as required for such termination to be effective pursuant to Section 9, the termination shall be effective on the date the Participant provided notice of its objection. As of that effective date, the Participant's rights, except for the right to a potential payment pursuant to Section 11, and obligations shall be null and void and the Participant shall have no obligation or liability to UAMPS or the other Participants. If such a Participant does not sell its Site Share prior to this date, then the Participant, consistent with Section 11, may receive a one time payment in consideration of costs paid by the Participant prior to the date of termination as described in this Section.

(d) If the Participant does not timely object to the initial budget approval for a CFPP Development Phase or an increase in a budget for a CFPP Development Phase by greater than twenty percent (20%), the Participant is barred from seeking to terminate this Agreement under this Section 5.

Section 6. Project Management Committee Duties. (a) The Participants hereby terminate the CFPP Interim Voting Agreement and confirm participation in the Project Management Committee pursuant to Schedule I, which shall consist of one voting representative from each Participant (who shall be the Participant's Representative) and shall be chaired by a Participant's Representative elected by the Project Management Committee. Pursuant to Section 14 of this Agreement, the Participant has delegated full and complete authority to its Participant's Representative to act on all matters and decisions that come before the Project Management Committee.

(b) An authorized officer of UAMPS shall attend all meetings of the Project Management Committee and shall cause minutes to be kept of all such meetings. The Joint Action Agreement and the by-laws of UAMPS shall govern the procedures for and the voting rights on the Project Management Committee, *provided that*:

(i) The Participant's Representative of any Participant that is in default under Section 10(d) hereof shall not be entitled to vote on any matter during the period of such default and the consent or approval of such Participant or such Participant's Representative shall not be required to obtain any consent or approval required hereunder during the existence of such default and such Participant or such Participant's Representative shall not be included to constitute a quorum of the Project Management Committee; and

(ii) All decisions made by the Project Management Committee shall be made by resolution, order or other appropriate action of the Project Management Committee and, before such resolution, order or action of the Project Management Committee shall take effect, the same shall be

ratified and approved by resolution, order or action of the Board, acting in accordance with the Joint Action Agreement and the by-laws of UAMPS.

(c) In addition to its other responsibilities under this Agreement, the Project Management Committee shall review and approve:

(i) the CFPP Work Plan and UAMPS' approval of all notices to proceed under the CFPP Work Plan and notices to proceed under the Project Agreements;

(ii) Project Agreements and any modifications or amendments thereto, and appointment of all representatives of UAMPS serving under the Project Agreements and provide such direction to UAMPS as shall be necessary to enable UAMPS to meet timely its obligations and responsibilities under the Project Agreements;

(iii) moving forward with each CFPP Development Phase as identified in the CFPP Work Plan;

(iv) a revision to Schedule I reflecting a Participant's withdrawal from the CFPP by virtue of exercising its rights under Section 5 of this Agreement;

(v) the commercial operation date of the CFPP under the Project Agreements;

(vi) the transition from this Agreement into Power Sales Contracts for the further development of the CFPP.

Section 7. Option to Convert Site Shares into Entitlement Share. Each Participant will have the right but not the obligation to convert its Site Shares into an Entitlement Share on an equivalent basis in the Power Sales Contract. In the event that a Participant chooses not to proceed with the CFPP by entering into Power Sales Contract(s), such Participant will provide notice to terminate this Agreement to UAMPS. Such notice shall provide within forty-five (45) days from the date of notice to UAMPS information as to the intent of the Participant to sell its Site Shares. The Participants may sell their Site Shares pursuant to the process set forth in Section 8 based on the amount of Siting Phase Work Costs paid by the Participant or at any price they may negotiate.

Section 8. Addition of New Participants after the Open-Enrollment Period; Sale of Site Shares and Orphan Site Shares. (a) Members or non-UAMPS entities who desire to become a Participant under this Agreement after the Open-Enrollment Period ("New Participant(s)") must obtain approval by the Project Management Committee to purchase Site Shares from Participants or Orphan Site Shares. No Participant will be forced to reduce its Site Shares to allow for the addition of a New Participant. Any New Participant allowed to enter into this Agreement pursuant to this Section will receive, on a go-forward basis, the full benefit for the DOE Cost Share on the same basis as the Participants.

(b) The sale of Site Shares by a Participant to a New Participant or Participant(s) will be subject to pro rata rights of first refusal based on the Site Percentage Shares of the other Participants. Once the selling Participant(s) and the New Participant or other Participant(s) have finalized negotiations to transfer Site Shares they shall notice UAMPS of the terms thereof. UAMPS shall notice the other Participants of the terms of

the right of first refusal within ten (10) days. All other Participants shall have thirty (30) days to exercise their pro rata rights of first refusal based on their Site Percentage Shares and on the same terms as negotiated between the selling Participant(s) and the New Participant or other Participants. If no other Participants exercise their pro rata right of first refusal, or if not all Site Shares are purchased by other Participants, then the selling Participant may sell its remaining Site Shares on the terms set forth in the notice. All New Participants who purchase Site Shares shall execute this Agreement, which will include a revised Schedule I reflecting the revised Site Shares and Site Percentage Shares.

(c) For the purchase of an Orphan Site Share(s) by a New Participant or Participants, the Project Management Committee must approve the purchase. The New Participant or Participants must pay a Buy-In Amount based on the amount of Orphan Site Shares being purchased, which must be paid prior to the transfer of the Orphan Site Shares and the New Participant's execution of this Agreement. The Buy-in Amount will be allocated pro rata to the Participants based on the Site Percentage Shares of the Participants prior to acceptance of such purchase of Orphan Site Shares. No Participant will be forced to reduce its Site Shares to allow for the addition of a New Participant.

Section 9. *Term and Termination.* (a) Unless terminated earlier under Section 9(b), this Agreement shall be effective on the Effective Date and shall remain in full force and effect until the later of:

(i) through the term of the Project Agreements;

(ii) the date on which all costs incurred by UAMPS in carrying out Siting Phase Work and under the Project Agreements have been paid in full and all other obligations of UAMPS under the Project Agreements have been paid or satisfied, including but not limited to any outstanding payment obligations owed under this Agreement;

(iii) the CFPP Power Sales Contracts become effective;

(iv) termination of this Agreement by the mutual consent of all Parties.

(b) A Participant may terminate this Agreement pursuant to Section 5 of this Agreement. Such right to terminate will be contingent upon the terminating Participant paying all of its Site Percentage Cost Share for Siting Phase Work Costs incurred up to the date of receipt of the Participant's objection notice.

Section 10. *Billing Period, Billing and Payment.* (a) The billing period shall be a calendar month. On or before the 25th day after the end of each billing period (beginning with the first billing period following the Effective Date of this Agreement), UAMPS shall issue to the Participant a billing statement showing the amount payable by the Participant for such billing period for its Site Percentage Cost Share less the proportionate amount received from the DOE Cost Share and any other amounts, adjustments or reconciliations payable by or credited to such Participant and the Participant shall pay the total of such amounts to UAMPS at the office of UAMPS, or such other address as UAMPS shall designate in writing to the Participant, on the 15th day following the date on which the billing statement was received by the Participant.

(b) If payment in full is not made on or before the close of business on the due date, UAMPS shall impose a delayed-payment charge on the unpaid amount due for each day overdue at a rate equal to the lesser of one percent per month, compounded monthly,

or the maximum interest rate lawfully permitted; *provided, however*, that UAMPS, acting upon the direction of the Project Management Committee, may elect to waive such delayed-payment charge but only to the extent that any such waiver will not adversely affect the ability of UAMPS to meet its payment obligations under the Project Agreements. If said due date is Saturday, Sunday, or a holiday, the next following business day shall be the last day on which payment may be made without the addition of the delayed-payment charge.

(c) In the event of any dispute as to any portion of the billing statement for such billing period, the Participant shall nevertheless pay the full amount of the billing statement when due and shall give written notice of the dispute to UAMPS not later than the 60th day after such billing statement was received by the Participant. Such notice shall identify the disputed billing statement, state the amount in dispute and set forth a full statement of the grounds for such dispute. No adjustment shall be considered or made for disputed charges unless notice is given by the Participant. The Project Management Committee shall give consideration to such dispute and shall advise the Participant with regard to its position relative thereto within thirty (30) days following receipt of such written notice. This written notice shall constitute the final determination of the dispute. Upon this determination of the correct amount, any difference between such correct amount and such full amount shall be accounted for in the billing statement next submitted to the Participant after such determination.

(d) In the event that a Participant fails to make full payment of the bill within thirty (30) days of the due date, it shall be in default. Upon such default, UAMPS will give notice to the non-defaulting Participants and provide the non-defaulting Participants with a right of first refusal for the defaulting Participant's Site Share at a price that will recoup all costs owed by the defaulting Participant. If the Participants do not elect to acquire all of the defaulting Participant's Site Share being offered, then the offer will be distributed to the Members and then non-UAMPS entities. Any New Participant will be accepted as a Participant to this Agreement pursuant to the same terms and conditions as set forth in Section 8, but will not be required to pay a Buy-In Amount upon acquiring Site Shares pursuant to this Section 10(d).

(e) The obligation of the Participant to make the payments under this Section 10 for amounts payable by the Participant pursuant to this Agreement is a several obligation and not a joint obligation with those of any other Participant. The obligation of the Participant to make the payments under this Section 10 shall constitute an obligation of the Participant and an operating expense of the Participant's electric system payable solely from the legally available revenues and other available funds of the electric system and shall constitute a cost of purchased power and energy. The obligations of the Participant to make such payments shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be conditioned upon the performance by UAMPS under this or any other agreement or instrument.

Section 11. Ownership of Work Product. The Participants acknowledge the Siting Phase Work Product may or may not have economic value. UAMPS shall retain ownership of Siting Phase Work Product on behalf of the Participants. If this Agreement is terminated and further development of the CFPP ceases prior to transition into Power Sales Contracts, then UAMPS will dispose of the Siting Phase Work Product as directed

by the Project Management Committee and consistent with the Project Agreements. If further development of the CFPP continues beyond this Agreement, the Participants will work in good faith to assign value to the Siting Phase Work Product to the extent is necessary to do so to facilitate further development of the CFPP.

Section 12. *Review and Audit.* Either Party, at its sole expense, has the right, at all reasonable times and pursuant to reasonable notice, to review and audit the books, records and documents of the other Party directly pertaining to the billings required to administer this Agreement and the Project Agreements. All information obtained by either Party's representatives in examining the other Party's applicable records to verify such billings shall be considered confidential and shall not be disclosed to third parties without prior written consent of the audited Party, unless required by law or order of a court or other tribunal.

Section 13. *Separate Agreement.* This Agreement and the Project Agreements do not modify any existing or future rights, obligations, performances, or procedures of UAMPS or any of the Participants except as specifically contracted herein and in the Project Agreements.

Section 14 *Representations and Warranties.* Each Party represents and warrants to the other that (i) it possesses all legal power and authority necessary on its part to enter into this Agreement and to perform its obligations hereunder; (ii) this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid, and binding obligation, enforceable in accordance with its terms; and as to Participant, (iii) it has delegated full and complete authority to its Participant's Representative to act on its behalf and bind it to decisions made by the Project Management Committee. Upon the request and at the cost of the other Party, each Party agrees that it will provide such certificates and legal opinions as may be reasonably necessary to confirm the foregoing representations and warranties to third parties, including, but not limited to, other parties to the Project Agreements.

Section 15. *Waiver.* A waiver at any time by a Party of its rights with respect to a default under or breach of this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent or prior default or breach. No delay, short of the statute of limitations, in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

Section 16. *Relationship of Parties.* (a) This Agreement is not intended to create, nor shall it be deemed to create, any relationship between UAMPS and the Participant other than that of independent parties contracting with one another for the purpose of effectuating the provisions of this Agreement.

(b) The covenants, obligations, liabilities, rights and benefits of the Participant under this Agreement are individual and not joint and several, or collective, with those of any other Participant. Other than giving effect to the Joint Action Agreement of UAMPS on behalf of the Participant, the Agreement shall not be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership

covenant, obligation or liability on, between or among the Participant and any one or more of the Participants. No Participant shall be or be deemed to be under the control of, nor shall any Participant control or be deemed to control, any or all of the other Participant or the Participants as a group. No Participant shall be bound by the actions of any other Participant, nor shall any Participant be deemed to be the agent of any other Participant or have the right to bind any other Participant.

Section 17. *No Recourse.* No member of the governing body, nor any officer or employee of UAMPS or any Participant shall be individually or personally liable for any payment under this Agreement or be subject to any personal liability or accountability by reason of the execution, performance or breach of this Agreement; provided, however, that this Section shall not relieve any officer or employee of UAMPS or Participant from the performance of any official duty imposed by law, the Joint Action Agreement, UAMPS bylaws, or this Agreement.

Section 18. *Consistent Terms.* UAMPS shall not enter into an agreement or an amendment to an agreement with other Participants that contains terms or conditions that are materially different from those contained in this Agreement except upon written notice to and written consent or waiver by each Participant, and upon similar amendment being made to the Agreements of any other Participants requesting such amendment.

Section 19. *Applicable Law; Venue.* This Agreement is made under and shall be governed by the law of the State of Utah regardless of the effect of the application of Utah's choice of law rules. Any dispute hereunder will be determined in a court of general jurisdiction in Utah.

Section 20. *Headings.* Headings herein are for convenience only and shall not influence the construction hereof.

Section 21. *Severability.* If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in full force and effect as though such section, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not been included herein.

Section 22. *Entire Agreement.* This Agreement constitutes the entire and complete agreement of UAMPS and the Participant in respect of the CFPP and shall not be nor shall it be deemed to be modified, amended or superseded by any other agreement or contract between UAMPS and the Participant in respect of any other project or subject. Unless explicitly allowed herein, no amendment of this Agreement will be effective unless it is in writing and signed by UAMPS and all then-current Participants.

Section 23. *Notices.* Any notice or demand by the Participant to UAMPS under this Agreement shall be deemed properly given if emailed or mailed postage prepaid and addressed to UAMPS at its principal office or if faxed to UAMPS with receipt confirmed, followed by a written copy of such notice or demand mailed to

UAMPS postage prepaid; any notice, billing statement or demand by UAMPS to the Participant under this Agreement shall be deemed properly given if mailed postage prepaid and addressed to the Participant's Member Representative at the address on file with UAMPS or if faxed to the Participant's Member Representative with receipt confirmed, followed by a written copy of such notice or demand mailed to the Participant's Member Representative postage prepaid. A courtesy copy of any such notice will also be sent to the Participant's city or governing body; the receipt of this courtesy copy is not required to satisfy the notice requirements contained in this Section. In computing any period of time from such notice, such period shall commence at noon, Salt Lake City time, on the date mailed or faxed. The designations of the name and address to which any such notice or demand is directed may be changed at any time and from time to time by either Party giving notice as above provided.

Section 24. *Default by Participant.* Subject to Section 26 and in the event of any default or failure of the Participant to observe, keep, and perform any of the covenants, agreements, or obligations contained herein, UAMPS may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Agreement.

Section 25. *Default by UAMPS.* Subject to Section 26 and in the event of any default or failure of by UAMPS to observe, keep, and perform any of the covenants, agreements, or obligations contained herein, the Participant's sole remedy for such default shall be limited to mandamus, injunction, action for specific performance or any other available equitable remedy as may be necessary or appropriate. In no event shall Participant withhold or offset any payment owed to UAMPS hereunder. Notwithstanding the above limitation, UAMPS' liability under this Agreement will be limited to the Siting Phase Work Costs received from the Participant pursuant to this Agreement.

Section 26. *Limitation of Remedies.* IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, TREBLE OR PUNITIVE DAMAGES, INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, AS A RESULT OF THE PERFORMANCE OR NON-PERFORMANCE OF THEIR OBLIGATIONS UNDER THIS AGREEMENT OR PROVIDED BY STATUTE OR IN TORT.

Section 25. *No Third Party Beneficiaries.* This Agreement does not and is not intended to confer any rights or remedies upon any person or party other than the Parties.

Section 26. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized officers as of the date first above written.

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By:_____
Douglas O. Hunter, General Manager

EPHRAIM CITY

By:_____

Its:_____

Attest and Countersign:

By:_____

Title: _____

Schedule I

Participant	Site Share	Site Share Percentage*
Beaver	2,100	0.6414%
Blanding	2,000	0.6109%
Bountiful	30,000	9.1631%
Brigham City	8,400	2.5657%
Enterprise	1,000	0.3054%
Ephraim	7,200	2.1991%
Fairview	2,400	0.7330%
Fallon	0	0.0000%
Fillmore	3,500	1.0690%
Heber	27,000	8.2468%
Holden	500	0.1527%
Hurricane	5,000	1.5272%
Hyrum	17,400	5.3146%
Idaho Falls	63,600	19.4258%
Kanosh	300	0.0916%
Kaysville	36,000	10.9957%
Lassen	3,000	0.9163%
Lehi	0	0.0000%
Logan	30,000	9.1631%
Monroe	600	0.1833%
Morgan	1,500	0.4582%
Mt. Pleasant	3,600	1.0996%
Northern Wasco	12,600	3.8485%
Oak City	500	0.1527%
Payson	27,600	8.4301%
Plumas	0	0.0000%
Price	10,200	3.1155%
Santa Clara	8,500	2.5962%
SESD	2,000	0.6109%
Spring City	400	0.1222%
Springville	0	0.0000%
St. George	0	0.0000%
Truckee	9,500	2.9016%
Washington	11,000	3.3598%
Total	327,400	100.0000%

*Pursuant to Section 4 of the Agreement, this Schedule will be revised at the close of the Open-Enrollment Period.

Exhibit A—Project Agreements

Exhibit B—CFPP Work Plan

The CFPP Work Plan as described in this Exhibit is subject to the approval of the Project Management Committee and may be amended from time to time by the Project Management Committee.

- **Preparatory Work:**
  - Scope of Work. Continue on ongoing activities in the following areas:
    - Land use negotiations with INL/DOE;
    - Development of water acquisition strategy;
    - Continued negotiation with UAMPS-NuScale Cost Share Agreement;
    - Continued processing of DOE Cost Share application.
- **Phase I-ROI/CFPP Site Selection**:
  - Scope of Work.
    - Region of Interest (ROI) analysis by third party contractor;
    - Continued site use negotiations with INL/DOE;
    - Continued pursuit of water acquisition;
    - Update CFPP pro forma based on data collected during Phase I;
    - Deliverable #1—Completion of ROI: Final identification of preferred site for CFPP based on ROI
    - Deliverable #2: Execution of INL Site Use Agreement
  - Anticipated Completion= November/December 2015
- **Phase II--Site characterization Work of Preferred CFPP Site for NRC Application:**
  - Scope of Work.
    - Preliminary site characterization work for CFPP Preferred Site in preparation for NRC submittal;
    - Acquire additional rights necessary to construct, operate, and decommission CFPP at the particular site selected by PMC to the extent these rights have not been obtained via Phase I (execution of site use agreement, water use agreement)

      Note: The amount of site characterization work done during Phase II will depend on the amount of expenditures the Project Management Committee is willing to commit to absent financing. It is possible that Phase II is not initiated under this Agreement, but, instead, Phase II is completed pursuant to the CFPP Power Sales Contracts.