

INCORPORATED COUNTY OF LOS ALAMOS RESOLUTION NO. 18-09

A RESOLUTION AUTHORIZING AND APPROVING THE CARBON FREE POWER PROJECT POWER SALES CONTRACT WITH UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS; APPROVING THE AMENDED AND RESTATED INITIAL BUDGET AND PLAN OF FINANCE FOR THE PROJECT; AND RELATED MATTERS

WHEREAS, the Incorporated County of Los Alamos, New Mexico (“Participant” or “County”) 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 (“Joint Action Agreement”); and

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 and economic sources of electric power and energy for its members; and

WHEREAS, the County on September 1, 2015, entered into an agreement wherein the County joined UAMPS and other Participants in the decision via the *Carbon Free Power Project Study Phase Siting Agreement* (“Project Study Agreement”) to pursue the development of a facility that can house up to twelve (12) small nuclear power modules that can each generate up to approximately fifty (50) megawatts of electric power per unit with the anticipated commercial operation date for the first such nuclear power module to occur in late 2027; and

WHEREAS, UAMPS proposes to acquire and construct the nuclear generating facility plant known as the Carbon Free Power Project (“Project”) to be located at a site within the Idaho National Laboratory near the City of Idaho Falls, Idaho; and

WHEREAS, the duly elected Council of the County (“County Council”) has reviewed (or caused to be reviewed on its behalf) certain descriptions and summaries of the Project and the Power Sales Contract; and representatives of the Participant have participated in discussions and conferences with UAMPS and others regarding the Project; and

WHEREAS, capitalized terms used and not defined herein shall have the meanings assigned to them in the Power Sales Contract); and

WHEREAS, the Participant acknowledges that the obligation of the Participant to make the payments provided for in the Power Sales Contract will be a special limited obligation of the Participant payable from the revenues and other available funds of its electric system, and that the Participant shall be unconditionally obligated to make the payments required under the Power Sales Contract from revenues of the Participant’s electric system subject to the terms and conditions of the Power Sales Contract; and

WHEREAS, the County Council has reviewed (or caused to be reviewed on its behalf) the Amended Initial Budget & Plan of Finance for the Project prepared by UAMPS setting forth, among other things, preliminary estimates of the Development Costs, certain limitations on the amount of Development Costs the Participant is obligated to pay in the 1st phase of the Licensing Period,

estimates of the Cost of Acquisition and Construction, the estimated timeline for the development and construction of the Project, and the estimated target price range for Project output, and now desires to approve Amended Initial Budget & Plan of Finance; and

WHEREAS, the County Council now desires to authorize and approve the Power Sales Contract and the Amended Initial Budget and Plan of Finance.

NOW THEREFORE BE IT RESOLVED by the Governing Body of the Incorporated County of Los Alamos, New Mexico as follows:

Section 1. Approval of Power Sales Contract and Amended Initial Budget and Plan of Finance; Entitlement Share.

- (a) The Power Sales Contract, in substantially the form attached hereto as Annex A, is hereby authorized and approved, and the County Utilities Manager is hereby authorized, empowered and directed to execute and deliver the Power Sales Contract on behalf of the County, and the County Clerk is hereby authorized, empowered and directed to attest and countersign such execution to affix the corporate seal of the County to the Power Sales Contract, with such changes to the Power Sales Contract from the form attached hereto as Annex A as shall be necessary to conform to the County's legal status and authority, to complete the form of the Power Sales Contract or to correct any minor irregularities or ambiguities therein and as are approved by the County Utilities Manager and the County Attorney, his execution thereof and the delivery of the County Attorney's written opinion thereon to constitute conclusive evidence of such approval.
- (b) The *Amended Initial Budget & Plan of Finance* attached hereto as Annex B is hereby approved.
- (c) An Entitlement Share representing up to 8,000 kW of capacity, as such capacity amount may be rounded upon the approval of the Project Management Committee and the Participant's Representative pursuant to the Power Sales Contract to provide a whole number of small modular reactors is hereby authorized and approved.

Section 2. County Representative. The County, by separate resolution or action of the Council, shall designate a Representative and an alternate or alternates to act in his or her absence. Such Representative and alternate(s) are hereby delegated full authority to: (i) Approve any appendix to the Pooling Agreement between UAMPS and the Participant that may be necessary or desirable in connection with the utilization of the Participant's Entitlement Share; and (ii) Act on all matters that may come before the Project Management Committee established by the Power Sales Contract, and shall be responsible for reporting regularly to County Council regarding the activities of the Project Management Committee; provided that the Representative shall not deliver a Notice of Withdrawal or a Notice of Reduction under the Power Sales Contract without prior consultation with, and prior approval from, County Council.

Section 3. Compliance with Tax Covenants. The County agrees in the Power Sales Contract that it will apply all of the electric power and energy acquired under the Power Sales Contract to a Qualified Use and that it will not take or omit to take any action which could adversely affect the Tax Status of any Bond or Bonds theretofore issued or thereafter issuable by UAMPS. In furtherance of that agreement, County Council hereby agrees that it will observe and comply

with such instructions as may be provided from time to time by UAMPS with respect to the Qualified Use of the electric power and energy acquired under the Power Sales Contract.

Section 4. Further Authority.

- (a) The Utilities Manager and the County Clerk are hereby authorized, empowered and directed to: (i) Execute the Certificate of the Participant in substantially the form attached as Exhibit III to the Power Sales Contract and to deliver the same to UAMPS; and (ii) From time thereafter and upon the request of UAMPS, execute the Bring-Down Certificate of the County in substantially the form attached as Exhibit IV to the Power Sales Contract and to deliver the same to UAMPS.
- (b) The County's legal counsel is hereby authorized and empowered to: (i) Execute the Opinion of Counsel to the County in a form similar to attached Exhibit V to the Power Sales Contract that in substance provides the opinion of the County's legal counsel and to deliver the same to UAMPS; and (ii) From time thereafter and upon the request of UAMPS, execute the Bring-Down Opinion of Counsel to the County in a form similar to attached Exhibit VI to the Power Sales Contract that in substance provides the opinion of the County's legal counsel and to deliver the same to UAMPS.

Section 5. Miscellaneous; Effective Date.

- (a) This Resolution shall be and remain effective until the expiration or termination of the Power Sales Contract in accordance with its terms.
- (b) All previous acts and resolutions in conflict with this Resolution or any part hereof are hereby repealed to the extent of such conflict.
- (c) 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.
- (d) This Resolution shall take effect immediately upon its approval and adoption.

PASSED AND ADOPTED this 10th day of April, 2018.

INCORPORATED COUNTY OF LOS ALAMOS

David Izraelevitz,
Council Chair

ATTEST:

Naomi D. Maestas,
Los Alamos County Clerk