

POWER AND RENEWABLE ENERGY CREDIT SALES AGREEMENT

BY AND BETWEEN

UNIPER GLOBAL COMMODITIES NORTH AMERICA, LLC, SELLER

AND

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, BUYER

COUNTY AGREEMENT No. AGR20-926

ATTACHMENT D

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POWER AND REC SALES AGREEMENT

THIS POWER AND RENEWABLE ENERGY CREDIT SALES AGREEMENT, dated as of the Effective Date, is entered into by and between Uniper Global Commodities North America, LLC, hereafter “Seller” and the Incorporated County of Los Alamos, New Mexico, hereafter “Buyer.”

RECITALS

WHEREAS, the Incorporated County of Los Alamos (“County”) was created pursuant to the New Mexico Constitution, Article X, Section 5 and is a political subdivision and local public body of the State of New Mexico; and

WHEREAS, the County is a properly incorporated home rule county and municipal body as provided and authorized in the New Mexico Constitution, Art. X, Section 6; and

WHEREAS, the New Mexico Constitution, the Municipal Electric Generation Act, NMSA 1978, §§ 3-24-11 *et seq.*, and NMSA 1978, §§ 3-24-1 authorize and sanction a municipal government’s purchase of electrical power through long term power purchase agreements for the supply of municipal electricity; and

WHEREAS, the County is not subject to the limitations of the Bateman Act, NMSA 1978, §§ 6-6-11 *et seq.*; and

WHEREAS, the County intends to increase its renewable energy power resources to meet its adopted future carbon neutral goals; and

WHEREAS, Seller wishes to sell, and Buyer wishes to buy, a firm and shaped block of energy, with associated environmental attributes, principally sourced from renewable generation facilities interconnected to the Public Service of New Mexico’s transmission system.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS; INTERPRETATION.

1.1 Definitions.

- a. “Agreement” means this Power and RECS Sales Agreement, including all exhibits attached hereto.
- b. “Alternate Point of Delivery” shall have the meaning specified in Section 4.1(a).
- c. “Applicable Program” means the program pursuant to which RECS are defined or such other scheme or standard agreed to by the Parties.

- e. “Bankrupt” or “Bankruptcy” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it which is not dismissed within thirty (30) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.
- f. “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.
- g. “Buyer” means the Incorporated County of Los Alamos through its Department of Public Utilities, a municipal utility agency located in Los Alamos, New Mexico.
- h. “Commercial Operation” means the Facility has been issued all full and final certifications required for achieving commercial operation of the Wind Resource and the Solar Resource and such resources are operationally capable of generating their full capacity and transmitting power.
- i. “Commercial Operation Date” means the date of Commercial Operation provided that if Commercial Operation is different in respect of the Wind Resource or the Solar Resource, the earlier of such dates.
- j. “Contract Quantity” means fifteen megawatts every hour in a twenty-four-hour day for the Term of the Agreement.
- k. “Default Rate” means the lower of (i) 400 basis points over the then-current U.S. prime rate, as listed in the Money Rates Section of the *Wall Street Journal* on the first day of the month in which such interest was calculated, and (ii) the maximum lawful rate. Except as otherwise expressly provided in the Agreement, interest shall be calculated on a monthly basis.
- l. “Defaulting Party” means a Party that is in default under this Agreement.
- m. “Delivered Rate” means (i) with respect to the Contract Quantity, \$36.67 per megawatt-hour and (ii) with respect to Supplemental Solar Energy or Supplemental Wind Energy, the relevant S&P Global Platts Megawatt Daily Palo Verde Day-Ahead On-Peak or Off-Peak price, as applicable, plus \$0.75 per REC.
- n. “Effective Date” means January 28, 2020.

- o. “Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Resource Energy or the Project, as applicable, and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any tax attributes.
- p. “Event of Default” means an uncured default as set forth in Section 9.
- q. “Expiration Date” means the date which is fifteen (15) years from the Commercial Operation Date.
- r. “Extension Term” has the meaning provided in Section 2.1.
- s. “Facility” means the asset(s) owned, controlled and operated by a third party or third parties with whom the Seller has contracted to provide the Resource Energy and RECs which includes both the Wind Resource and the Solar Resource and noticed to Buyer pursuant to Section 3.1. This definition of “Facility” as used throughout this Agreement shall encompass multiple Facilities if applicable and each Facility as described by the generator name, generator identification number, location and type of resource shall be provided by Seller to Buyer in the form of Exhibit A upon execution of the Seller’s contract with the asset and such Exhibit A will be incorporated into and made a part of this Agreement.
- t. “Force Majeure Event” means any cause, activity, event, condition or circumstance (1) beyond the reasonable control of the Party affected or the Facility, (2) not the result of acts or omissions by the Party affected, which (3) prevents the performance by such Party or the Facility hereunder, including:
 - i. natural phenomena, including flood, earthquake, storm, drought, fire, lightning strikes, pestilence, epidemic, or catastrophe;
 - ii. act of God, war, riot, civil disturbance or disobedience, strike, labor dispute, labor disturbance, shortage of labor or material, sabotage, restraint by court order or public authority; or
 - iii. in respect of RECs, the unavailability of WREGIS for transfers of the RECs or any governmental action which makes the RECs illegal, unenforceable or constitutes an abandonment of all or part of the Applicable Program with respect to RECs.

Notwithstanding the foregoing, a Force Majeure Event will not include any cause, activity, event, condition or circumstance resulting from a failure to exercise due care on the part of the Party asserting the existence of Force Majeure Event, provided that such Party shall in no case be obligated to settle strikes or other labor disturbances and provided further that with respect to Buyer as the Party declaring

Force Majeure, Force Majeure does not include any action taken by the Buyer in its governmental capacity.

- u. “Interest Rate” means the lower of (i) 200 basis points over the then-current U.S. prime rate, as listed in the Money Rates Section of the *Wall Street Journal* on the first day of the month in which such interest was calculated, and (ii) the maximum lawful rate. Except as otherwise expressly provided in this Agreement, interest shall be calculated on a monthly basis.
- v. “Market Purchased Energy” means power obtained from the market and provided to Buyer to meet the Contract Quantity provided however that such Market Purchased Energy shall not have associated RECS and further that such Market Purchased Energy may be purchased from non-wind and solar resources.
- w. “NITS Agreement” or “NITSA” means the service agreement for Network Integration Transmission Service between Buyer and PNM.
- x. “Non-Defaulting Party” means the Party that is not the Defaulting Party under this Agreement.
- y. “Index Price” means the published hourly price published by a verifiable third-party publication under the listing applicable to the geographic location closest in proximity to the Point of Delivery.
- z. “Party” means each of Seller and Buyer, and “Parties” means Seller and Buyer.
- aa. “Point of Delivery” means (i) with respect to the Purchased Energy, the Four Corners substation or any other point of delivery mutually agreed between the Parties or (ii) upon notice by Seller of the Facility location pursuant to Section 3.1 such other point of delivery added to Buyer’s NITSA to support such location.
- bb. “PNM” means Public Service Company of New Mexico.
- cc. “PNM OATT Schedule 4 Tariff” means the Schedule 4 in respect of Energy Imbalance Service pursuant to the PNM Open Access Transmission Tariff as such Schedule 4 may be amended by PNM from time to time.
- dd. “PNM OATT Schedule 9 Tariff” means the Schedule 9 in respect of Generator Imbalance Service pursuant to the PNM Open Access Transmission Tariff as such Schedule 9 may be amended by PNM from time to time.
- ee. “Purchased Energy” means all of the electric power scheduled to Buyer which may be energy from the Wind Resource or Solar Resource to satisfy all or part of the Contract Quantity, Supplemental Energy confirmed by Seller pursuant to Section 4.1(c) or Market Purchased Energy.
- ff. “Renewable Energy Certificate” or “RECs” means the Environmental Attributes, associated with the generation of one (1) MWh of Resource Energy from the Facility actually delivered to and accepted by Buyer.

- gg. “Resource Energy” shall mean power from the Wind Resource and the Solar Resource which may be attributable to the Contract Quantity or Supplemental Energy.
- hh. “Seller” means Uniper Global Commodities North America, LLC.
- ii. “Settlement Amount” means, with respect to a termination by a Non-Defaulting Party, an amount (positive or negative) equal to (a) the difference (positive or negative) to such Non-Defaulting Party between the present value of the payments to be made and received under this Agreement (less the costs and expenses to be incurred in performing this Agreement) during the remaining term of this Agreement and the present value of the payments to be made and received (less the costs and expenses to be incurred) under transaction(s) replacing this Agreement, plus (b) attorneys’ fees and expenses, brokerage fees and commissions and other third-party transaction costs and expenses to be reasonably incurred by the Non-Defaulting Party in entering into transaction(s) replacing this Agreement, attorneys’ fees and expenses to be reasonably incurred by the Non-Defaulting Party in connection with the termination of this Agreement and any other reasonable incremental costs and expenses to be reasonably incurred by such Non-Defaulting Party in connection with the termination of this Agreement and/or in entering into transaction(s) replacing this Agreement.
- jj. “Solar Resource” means the solar farm located at the Facility and interconnected with the transmission grid associated with the NITSA.
- kk. “Supplemental Energy” means additional Supplemental Wind Energy or Supplemental Solar Energy production in any given hour during the Term.
- ll. “Supplemental Solar Energy” means additional solar power offered by Seller, in its sole discretion, from the Solar Resource above the Contract Quantity which Seller has agreed, in its sole discretion, to provide.
- mm. “Supplemental Wind Energy” means additional wind power offered by Seller, in its sole discretion, from the Wind Resource above the Contract Quantity which Seller has agreed, in its sole discretion, to provide.
- nn. “Tax” or “Taxes” means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.
- oo. “Term” shall have the meaning specified in Section 2.1.
- pp. “Termination Notice” means a notice to terminate this Agreement delivered by a Non-Defaulting Party following an Event of Default by the other Party.

- qq. “Wind Resource” means the wind farm at the Facility and interconnected with the transmission grid associated with the NITSA.
- rr. “WECC” means the Western Electricity Coordinating Council.
- ss. “WREGIS” means the Western Renewable Energy Generation Information System.
- tt. “WSPP Agreement” means the WSPP Agreement effective March 26, 2018.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- a. time is of the essence;
- b. the singular number includes the plural number and vice versa;
- c. reference to any person includes such person’s successors and assigns (regardless of whether such person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually;
- d. reference to any agreement (including this Agreement), document, act, statute, law, instrument, or tariff means such agreement, document, act, statute, law, instrument, or tariff as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, or tariff, expressly refers to amendments, modifications, replacements, or successors;
- e. reference to any Section, or Exhibit means such Section of this Agreement, or such Exhibit to this Agreement, as the case may be;
- f. “including” (and with correlative meaning “include”) means including without limiting the generality of any description succeeding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;
- g. relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”; and
- h. the term “or” is not exclusive, regardless of whether “and/or” is used in the applicable provision.

2. TERM.

- 2.1 Term of the Agreement. This Agreement shall be binding and effective as of the Effective Date. The Term shall continue until the Expiration Date, unless terminated earlier in

accordance with the terms of Section 3.2 or Section 9 of this Agreement. The term may also be extended by an additional five (5) years beyond the Expiration Date (the “Extension Term”), which shall be accomplished by the Buyer providing notice to Seller of its intention to extend no earlier than five (5) years following the Effective Date and no later than one (1) year prior to the Expiration Date. Seller will then use reasonable efforts to extend its contract with the Facility for a term equal to the Extension Term, provided however that, if Seller is unable to so extend the Facility arrangement within six (6) months prior to the Expiration Date Seller may notify Buyer that the Term shall end on the Expiration Date. The Delivered Rate shall be renegotiated and mutually agreed between the parties for any Extension Term.

2.2 Expiration and Termination. Upon termination of this Agreement for any reason prior to the Expiration Date, or upon the expiration of this Agreement as of the Expiration Date, this Agreement will no longer be effective, subject, however, to the following provisions:

- a. Any payment obligation incurred by Buyer prior to such termination or expiration shall survive until payment is received by Seller in full, with interest as provided herein.
- b. Any other fixed or accrued obligation incurred by either Party prior to such termination or expiration, and all obligations hereunder with respect to indemnification and confidentiality, shall survive until the obligation is fully discharged.
- c. Termination by either Party shall not constitute a waiver of, and shall not otherwise prejudice, the terminating Party’s right to claim and recover damages for any default of the other Party under this Agreement, including a default that gave rise to such termination.

3. FACILITY DETERMINATION AND CONDITIONS PRECEDENT.

3.1 Seller’s Facility Determination. Seller shall negotiate with the Facility to obtain sufficient Wind Resource and Solar Resource to meet the Contract Quantity obligation. Seller’s contract with the Facility may be negotiated, executed and effective after the Effective Date of this Agreement. Upon the effectiveness of such Facility agreement between Seller and the Facility, Seller will provide notice to Buyer of the Facility and the Point of Delivery in respect of such Facility and Buyer will apply for and obtain, pursuant to Section 3.2(a) below the final approval for such Point of Delivery in its NITSA.

3.2 Conditions Precedent to Seller’s obligations. In order for the delivery of Purchased Energy to commence under this Agreement, all conditions precedent below must be met by both the Buyer and the Seller as specified:

- a. Buyer must obtain final approval to include all Points of Delivery in its NITSA, or alternate transmission arrangement, to accept physical delivery of Purchased Energy.

- b. Seller has executed such Facility contracts, on terms satisfactory to Seller in its sole discretion, to purchase the complete Contract Quantity.
- c. Buyer has promptly reviewed Seller-provided Facility specifications, as contracted by Seller pursuant to Section 1.1(s), and agreed in writing that such Facility is satisfactory for the purposes of this Agreement (including the estimated ability and capacity of the Facility to generate RECs). Such approval from Buyer shall not be unreasonably withheld. Once approved, the Parties agree to attach the Facility specifications as an Exhibit to this Agreement.
- d. The Facility has achieved full Commercial Operation provided however, if the Wind Resource or the Solar Resource achieve Commercial Operation at different times, the delivery of the Contract Quantity will commence on the date of such Commercial Operation of the first Facility to achieve full Commercial Operation.
- e. The Facility's approvals and plans must meet the requirements of the Applicable Program for the sale of RECs and be approved by such Applicable Program.

4. PURCHASE AND SALE.

4.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, throughout the Term, Buyer will purchase, and Seller will sell, the Purchased Energy and the RECs.

- a. The Contract Quantity shall be met by scheduling power first from the Wind Resource and the Solar Resource as available using Buyer's NITSA from the Point of Delivery. Seller will first deliver the power generated by the Facility and delivered to Seller from the Facility (absent a Force Majeure or Buyer failure) to satisfy the Contract Quantity prior to delivering Market Purchased Energy. In accordance with the preceding sentence, if all, or some Wind Resource or Solar Resources, are not available to satisfy the Contract Quantity in whole or in part Seller shall schedule Market Purchased Energy to meet the Contract Quantity on a day-ahead or real-time schedule delivered to an acceptable Point of Delivery on PNM's network (the "Alternate Point of Delivery"). If Contract Quantity purchased pursuant to this Section 4.1(a) becomes unavailable due to missed wind or solar forecasts, and Seller cannot resupply the Contract Quantity owed to Buyer with Market Purchased Energy, the Parties will settle each megawatt-hour of undelivered energy as follows: the Seller shall pay Buyer an amount for the positive difference, if any, when the Delivered Rate is subtracted from the amount paid by the Buyer per megawatt-hour in a commercially reasonable manner to replace such deficiency. If no such replacement is available, then the Seller shall pay Buyer an amount for the positive difference, if any, when the Delivered Rate is subtracted from the actual cost of replacement power per megawatt-hour or as assessed by PNM through the PNM OATT Schedule 4 Tariff and as evidenced by information provided by Buyer. Any Supplemental Energy shall be scheduled as available and agreed pursuant to Section 4.1(c) below.
- b. Buyer shall receive and accept all RECs. Seller will transfer all RECs through the WREGIS tracking system on a quarterly basis beginning four months after the

Commercial Operation Date of the relevant Wind Resource or Solar Resource. Quarterly transfers shall include all RECs minted by the Facility and received by Seller in its WREGIS account on the date of such transfer from both the energy supplied from the Facility as Contract Quantity pursuant to Section 4.1(a) and Supplemental Energy. Seller shall ensure that no transferred RECs have been retired through WREGIS or any other tracking system prior to transfer to Buyer. Buyer will accept such RECs within a commercially reasonable period of time after such transfer by Seller. If Buyer fails to accept any such transfer, Seller shall not be responsible for any imposed fines, sanctions, or losses administered by WREGIS.

- c. Seller will offer Buyer, on either a day-ahead or a real-time basis, such quantity of Supplemental Energy as it may have available from time to time in its sole discretion. Buyer may elect to purchase such Supplemental Energy at the price specified in Section 1.1(m) "Delivered Rate" as applicable and will promptly, but in no event later than the time specified by Buyer in its offer (which in respect of real-time offers may be immediate), notify Seller in writing using email or other instant messaging of its intent to purchase. Buyer and Seller will cooperate to nominate and schedule such Supplemental Energy to Buyer at the Point of Delivery associated with the relevant producing Solar Resource or Wind Resource and Buyer will accept such Supplemental Energy at such Point of Delivery. Supplemental Energy shall be scheduled as Service Schedule B (Unit Commitment Service) from the WSPP Agreement.
- d. Seller shall pay or cause to be paid all Taxes on or with respect to the Purchased Energy arising before the applicable Point of Delivery and with respect to RECS arising prior to transfer in WREGIS to Buyer. Buyer shall pay or cause to be paid all Taxes on Purchased Energy or the transaction from the applicable Point of Delivery and with respect to RECS arising at and after transfer in WREGIS to Buyer. If Seller is required by law to remit or pay Taxes that are the responsibility of Buyer hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost, or the benefit of such execution be reduced.
- e. Buyer shall be responsible for ensuring that the Purchased Energy is designated as a Network Resource under the NITSA. "Network Resource" shall have the same meaning as described in the NITSA.

4.2 Renewable Sources. Buyer agrees and understands that on network renewable resources will be delivered as Purchased Energy and also agrees that additional Purchased Energy needed to meet the Contract Quantity may be from market purchases that have no associated renewable attributes or qualities. It is Seller's intention under this Agreement to deliver the maximum available Resource Energy to fulfill the Contract Quantity. On

an annual basis starting in the calendar year after the Commercial Operation Date of the first operational Facility, Seller shall supply to Buyer a generation report for the Facilities with relevant information regarding each Facility's annual performance.

- 4.3 Point of Delivery. Except to the extent excused by Force Majeure or Buyer's failure to meet its obligations hereunder, Seller will deliver and sell to Buyer, and Buyer will receive and purchase from Seller, the Purchased Energy at the applicable Point of Delivery for such Purchased Energy, or, with respect to Purchased Energy which is Market Purchased Power, an Alternate Point of Delivery. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Purchased Energy prior to the applicable Point of Delivery, including any Alternate Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of the Purchased Energy at and from the Point of Delivery, including any Alternate Point of Delivery. Seller represents and warrants that it will deliver all Purchased Energy and RECs to Buyer free and clear of all liens, claims or encumbrances created by any person. With respect to RECs, title and risk of loss shall transfer to Buyer when Seller transfers the RECs to Buyer's account in WREGIS.
- 4.4 Delivered Rate. Buyer shall pay to Seller the Delivered Rate as applicable, which Delivered Rate shall be without escalation throughout the Term. The Delivered Rate shall be renegotiated and mutually agreed between the Parties for any Extension Term.
- 4.5 Costs of Transmission and Scheduling.
- a. Seller will arrange and pay the costs of, and will otherwise be responsible for, the transmission and delivery of the Purchased Energy to and at the applicable Point of Delivery, or any Alternate Point of Delivery. Seller will schedule or arrange for scheduling services with appropriate transmission providers to deliver the Purchased Energy to the Point of Delivery or any Alternate Point of Delivery, in accordance with WECC scheduling conventions.
 - b. Buyer will arrange and pay the costs of, and will otherwise be responsible for, the transmission and distribution of the Purchased Energy from the applicable Point of Delivery or any Alternate Point of Delivery, to its customers.
 - c. Buyer shall be responsible for all transmission and ancillary service agreements and shall be responsible for costs required to receive the Purchased Energy from the applicable Point of Delivery and to deliver such Purchased Energy to its own facilities or customers.
 - d. Buyer shall not be responsible for any Generator Imbalance Services, as defined in the PNM OATT as Schedule 9, that may arise in connection to the Purchased Energy.

4.6 Metering.

- a. Purchased Energy will be measured and determined by means of metering equipment installed by PNM in accordance with the NITSA at the applicable Point of Delivery or Alternate Point of Delivery.
- b. Seller will deliver and sell to Buyer, and Buyer will receive and purchase from Seller, the Purchased Energy at the Point of Delivery. Title to and risk of loss as to all Purchased Energy shall pass from Seller to Buyer at the applicable Point of Delivery, including any Alternate Point of Delivery, as applicable. Buyer has sole responsibility for the operation, maintenance and repair of the systems, facilities and other assets that it owns and shall bear all risk of loss with respect thereto. As between the Parties, Buyer shall bear all risk of liability to third parties with respect to the operation, maintenance and repair of the systems, facilities and other assets at and after the Point of Delivery or Alternate Point of Delivery, as applicable.

4.7 Credit Protections. If either party (“X”) has reasonable grounds for insecurity regarding the performance of any obligation under this Agreement (whether or not then due) by the other party (“Y”) (including, without limitation, as a result of the occurrence of a material change in the creditworthiness or financial condition of Y), X may demand Adequate Assurance of Performance. If Seller is party Y, “Adequate Assurance of Performance” shall mean reasonably sufficient security as mutually agreed between the parties. If Buyer is party Y, “Adequate Assurance of Performance” shall mean reasonably sufficient security as mutually agreed between the parties to the extent such security is permissible under New Mexico law, including Article IX (State, County and Municipal Indebtedness) of the New Mexico Constitution.

5. FORCE MAJEURE.

Neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

6. BILLING AND PAYMENT.

6.1 Invoices. As soon as reasonably practicable in the month following the month of delivery, Seller shall invoice Buyer for the amount of Purchased Energy delivered. Each Purchased Energy invoice shall include the amount of Purchased Energy for the month most recently ended, the payment due for the Purchased Energy, and the total amount due.

All invoices will be sent to Buyer, addressed as follows:

c/o Los Alamos County Utilities
Attn: Power System Supervisor
1000 Central Ave. Suite 130
Los Alamos NM, 87544
lacpower@lacnm.us
Phone: (505)662-8333
Fax: (505)662-8005

All payments under this Agreement shall be due and payable in full by wire transfer of immediately available funds, as designated by Seller, on the 20th calendar day of the month following the month of delivery or, if such day is not a Business Day, then on the next Business Day.

- 6.2 Payment Disputes. Undisputed amounts not paid when due shall accrue interest from (and including) the due date to (but excluding) the date of payment at the Interest Rate. If Buyer, in good faith, disputes any amount due pursuant to an invoice or statement rendered to it by Seller pursuant to this Agreement, Buyer will notify Seller in writing of the specific basis for the dispute and shall pay the undisputed portion on or before the date such payment is due. If any amount disputed by Buyer is determined to be due to Seller, or if the Parties otherwise resolve the dispute, the amount due shall be paid within ten (10) Business Days after such determination or resolution, along with interest accrued at the Interest Rate from (and including) the original date such payment was due to (but excluding) the date paid.
- 6.3 Records. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder in accordance with the New Mexico Public Records Act, NMSA 1978, Section 14-2-1 et seq.
- 6.4 Audits. Each Party, through its employees, authorized agents and/or professional advisors, shall have the right, at its sole expense and upon reasonable advance notice to the other Party, during normal business hours of the other Party, to request copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party such reasonable requested information which may include statements evidencing the quantities of energy delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due hereunder will be promptly paid and shall bear interest calculated at the Interest Rate from (and including) the date of the overpayment or underpayment to (but excluding) the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party asserts its challenge to the accuracy of such payment or statement within one (1) year after the date of such statement or payment.

7. NO WARRANTIES; LIMITATIONS OF LIABILITY; SOVEREIGN IMMUNITY.

- 7.1 NO WARRANTIES. NEITHER PARTY MAKES ANY WARRANTY EXCEPT AS SET FORTH HEREIN. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.
- 7.2 NO CONSEQUENTIAL DAMAGES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.
- 7.3 SOVEREIGN IMMUNITY. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR APPLIED, WHETHER DIRECTLY OR BY IMPLICATION, TO WAIVE, REDUCE OR LIMIT BUYERS'S RIGHTS, PRIVILEGES OR IMMUNITIES AS A POLITICAL SUBDIVISION OF THE STATE OF NEW MEXICO OR OTHER FORM OF PUBLIC OR GOVERNMENT ENTITY FROM (1) ANY LIABILITY FOR ANY TORT ARISING DIRECTLY UNDER THE NEW MEXICO TORT CLAIMS ACT EXCEPTING THE LIABILITY FOR DAMAGES CONTEMPLATED BY NMSA 1978, §41-4-8 OR OTHER PROVISIONS OF THAT ACT, AND (2) ANY SUIT, ACTION, CASE OR LEGAL PROCEEDING INVOLVING A CLAIM OF TITLE TO OR INTEREST IN REAL PROPERTY AS CONTEMPLATED BY NMSA 1978, §42-11-1.

8. REPRESENTATIONS AND WARRANTIES; COVENANTS.

- 8.1 Representations and Warranties. As of the Effective Date, each Party hereby represents and warrants to the other Party as follows:
- a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or establishment;
 - b. it has all regulatory authorizations necessary for it legally to perform its obligations under this Agreement, including obtaining the approval of any governmental agency, such as (if necessary) the New Mexico Department of Finance and Administration; the representative or representatives executing this Agreement on behalf of such Party are duly authorized by such Party to execute and deliver this Agreement; and the signature or signatures made on behalf of such Party at the end of this Agreement are sufficient legally to bind such Party to all the terms and conditions of this Agreement;
 - c. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

- d. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses;
- e. it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- f. there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- g. no Event of Default, or occurrence that with the passing of time or giving of notice or both would become an Event of Default, with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- h. it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

8.2 Buyer Representations and Warranties. As of the Effective Date, Buyer hereby represents and warrants to the Seller as follows:

- a. all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under any acts, ordinances, bylaws or other regulations;
- b. all persons making up the governing body of Buyer are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with applicable law;
- c. entry into and performance of this Agreement by Buyer is for a proper public purpose within the meaning of applicable law and all other relevant constitutional, organic or other governing documents;
- d. the term of this Agreement does not extend beyond any applicable limitation imposed by applicable law or other relevant constitutional, organic or other governing documents;
- e. the obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances

or indentures to which it is a party, applicable law and all other relevant constitutional, organic or other governing documents or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, applicable law and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Buyer's obligations hereunder;

- f. entry into and performance of this Agreement by the Buyer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Buyer otherwise entitled to such exclusion; and
- g. obligations to make payments hereunder do not constitute any kind of indebtedness of Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of applicable law or any other relevant constitutional, organic or other governing documents, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.
- h. Buyer shall provide Seller with the documents evidencing its authority to enter into, execute, deliver and perform this Agreement which may be in the form of ordinances, resolutions, public notices and other documents.

9. EVENTS OF DEFAULT; REMEDIES.

9.1 Events of Default. The following occurrences shall constitute Events of Default:

- a. Failure by a Party to make any payment required hereunder when due if such failure is not remedied within ten (10) Business Days after receipt by the Defaulting Party of written notice of such failure; provided, that the payment in question is not the subject of a good faith dispute pursuant to Section 6.2.
- b. Unexcused failure by a Party to perform any other material obligation hereunder, and such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided, that so long as a Defaulting Party has initiated and is diligently attempting to effect a cure, the Defaulting Party's cure period shall extend for an additional thirty (30) days or such longer period as is reasonably necessary to effect such cure.
- c. Any representation or warranty made by a Party pursuant to Section 8 shall have been false in any material respect when made that, if capable of being remedied, is not remedied within ten (10) days after receipt by the Defaulting Party of written notice of such falsity; provided, that so long as a Party has initiated and is diligently attempting to effect a cure, the Party's cure period shall extend for an additional thirty (30) days.

- d. A Party is or becomes Bankrupt.
- e. A Party assigns this Agreement in violation of Section 11.11.
- f. A Party fails to provide Adequate Assurance of Performance within five (5) Business Days of a request pursuant to Section 4.7.

9.2 Remedies. If an Event of Default occurs with respect to a Defaulting Party, then in addition to any other remedies available to the Non-Defaulting Party under this Agreement or at law or in equity, the Non-Defaulting Party in its sole discretion may give the Defaulting Party a Termination Notice, which shall designate the date upon which this Agreement shall be terminated. Interest on any overdue, unpaid amounts as of such date shall accrue at the Default Rate from (and including) the date of the Termination Notice to (but excluding) the date actually paid.

In addition to the above, upon termination of this Agreement as a result of an Event of Default, the Non-Defaulting Party shall (a) calculate, in a commercially reasonable manner, the Settlement Amount (whether positive or negative). The Settlement Amount, if positive, shall be payable by the Defaulting Party to the Non-Defaulting Party and, if negative, shall be payable by the Non-Defaulting Party to the Defaulting Party, in each case subject and according to this Section) and (b) give to the Defaulting Party a written statement explaining in reasonable detail the Non-Defaulting Party's calculations; provided, however, that the calculation of the Settlement Amount must be supported by reference to information supplied by one or more un-affiliated third parties, such as an Index Price, (or, only if information from un-affiliated third parties is unavailable, information from internal sources (including affiliates) that are of the same type used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions), which may include quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, credit quality or other relevant market data in the relevant markets, but it is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the Settlement Amount. The Settlement Amount included in the Non-Defaulting Party's statement shall be paid by the applicable Party within ten (10) Business Days after receipt of the written statement; provided, however, that, if the Non-Defaulting Party owes the Settlement Amount, the Settlement Amount shall not be due and payable until the Non-Defaulting Party has assured itself, in a commercially reasonable manner, that all amounts due and owing to it arising out of or relating to this Agreement have been irrevocably and indefeasibly paid in full (including not being subject to recoupment risk as a result of Bankruptcy or otherwise). In the event of any termination of this Agreement as a result of an Event of Default, the Non-Defaulting Party shall have the right to offset or set off against any amounts that may be owed to the Defaulting Party arising out of or relating to this Agreement against any amounts that are owed by the Defaulting Party to the Non-Defaulting Party arising out of or relating to this Agreement.

10. NOTICES.

10.1 Means of Notice. A written notice or other communication concerning this Agreement shall be effective upon receipt or refusal of delivery if given in writing and delivered by

hand, overnight courier, registered or certified mail (with return receipt requested or proof of delivery) or facsimile (with receipt confirmed), properly addressed or directed as set forth in the next subsection.

- 10.2 Notice Addresses. A notice or communication is properly directed for purposes of this Section 10.2 when it is directed or addressed to the following addresses:

Seller: Uniper Global Commodities North America LLC
Attn: Legal & Compliance
181 W Madison Street, Suite 3450
Chicago, IL 60602
UGCNALegal@uniper.energy

Buyer: Incorporated County of Los Alamos c/o Los Alamos County Utilities
1000 Central Ave. Suite 130
Los Alamos NM, 87544
lacpower@lacnm.us
Phone: (505)662-8333
Fax: (505)662-8005

- 10.3 Changes to Notice Addresses. Either Party may change any portion of its contact information above by giving written notice of such change to the other Party.

11. MISCELLANEOUS.

- 11.1 Entirety. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any representation, inducement, promise or agreement that is not expressly set forth or incorporated by reference in this Agreement shall be of no force or effect.

- 11.2 Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of the state of New Mexico, without regard to principles of conflicts of law.

- 11.3 Dispute Resolution.

- a. In the event of a dispute, within ten (10) days following the delivered date of a written request by either Party, (i) each Party shall appoint a representative, and (ii) the Parties' representatives shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally and inexpensively. If the Parties' representatives cannot resolve the dispute within thirty (30) days after commencement of negotiations, within ten (10) days following any request by either Party at any time thereafter, each Party's representative (a) shall independently prepare a written summary of the dispute describing the issues and claims, (b) shall exchange its summary with the summary of the dispute prepared by the other Party's representative, and (c) shall submit a copy of both summaries to a senior officer of each Party with authority to irrevocably bind the Party to a resolution of the dispute.

Within ten (10) Business Days after receipt of the dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the dispute. If the senior offices Parties are unable to resolve the dispute within fourteen (14) days following receipt of the dispute summaries, the Parties shall submit their dispute to binding arbitration and shall otherwise conform to the requirements set forth below.

- b. Arbitration as set forth herein shall be effected by a panel of three (3) arbitrators in accordance with the provisions of this Section 11.3(b) and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration; provided, however, that notwithstanding any provisions of such rules, the Parties shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration in accordance with the Federal Rules of Evidence. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitrators shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.
- c. Any Party desiring arbitration shall serve on the other Party and the New Mexico office of the American Arbitration Association, in accordance with the Commercial Arbitration Rules, its Notice of Intent to Arbitrate, which shall be filed in writing concurrently with the American Arbitration Association, and shall be accompanied by the name of an arbitrator suggested by the Party serving the notice. The Party served with the notice shall advise the other Party in writing of the name of its suggested arbitrator within ten (10) days after receipt of such notice. Within twenty (20) days after the notice has been made, the two arbitrators shall choose a third arbitrator who shall act as chairperson of the arbitral proceedings. If the two arbitrators chosen by the Parties do not agree upon a third arbitrator within twenty (20) days after the filing of the notice, then, upon the application of either Party, the third arbitrator shall be selected in accordance with the Commercial Arbitration Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. All arbitration proceedings shall be held in New Mexico. The Parties shall bear their own costs associated with any required travel to and from such location. The arbitrator shall make a determination within three (3) months after the dispute is submitted for arbitration.
- d. Notwithstanding the existence of a dispute, and until the expert or arbitrator, as applicable, renders a decision, each Party shall be obligated to fulfill its obligations and continue its performance in accordance with the terms hereof. Any payment due or payable by either Party to the other Party shall not be withheld on account of the occurrence or continuance of any expert resolution or arbitration proceedings. Neither Party shall make any public statements with respect to any disputes hereunder without the prior consent of the other Party unless compelled to do so in connection with the arbitration, or by a governmental or regulatory authority having jurisdiction over such Party or such dispute.

- 11.4 Headings; Attachments. The headings used for the Sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all exhibits and attachments referred to in this Agreement are, by such reference, incorporated in and made a part of this Agreement for all purposes.
- 11.5 Amendments. This Agreement shall not be altered or amended except by an instrument in writing executed by authorized officers of the Parties.
- 11.6 Further Assurances. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.
- 11.7 Relationship of the Parties. This Agreement shall not be interpreted or construed to (a) create an association, joint venture or partnership between the Parties or impose any partnership obligation or liability on either Party, (b) create any agency relationship between the Parties or impose any fiduciary duty of any kind on either Party, (c) create a trust or impose any trust obligations of any kind on either Party, or (d) constitute a lease of property of any kind. Other than as expressly set forth herein, neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party.
- 11.8 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.
- 11.9 Confidentiality. Neither Party shall disclose confidential information (other than to such Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any applicable law, regulation or any exchange, control area or independent system operator rule, including the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq.*, or in respect of the Applicable Program or (b) in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, without the need to post bond.
- 11.10 Non-Waiver. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not waive any subsequent default or any other matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not waive such right. The assertion or enforcement of any right hereunder at any time shall be without prejudice to the subsequent assertion or enforcement of the same right or any other right.

11.11 Assignment; No Third-Party Beneficiaries.

- a. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed provided however that, Seller may without the consent of the Buyer (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of the Seller or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the Seller. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.
- b. The obligations of Seller or Buyer hereunder, as applicable, will be binding upon any future purchaser, lessee, owner or operator of the facilities, assets or business comprising such Buyer's electric system.
- c. No provision hereof is intended to confer or shall confer a legal right or other benefit upon any person who is not a Party. No provision hereof is intended to create or shall create a legal duty or obligation to any person who is not a Party.

11.12 Joint Preparation. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated or executed.

11.13 Severability. If any of the terms, covenants or conditions of this Agreement shall be held invalid or unenforceable in whole or in part, the effectiveness and enforceability of the remainder of this Agreement shall not be affected thereby.

11.14 Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall have the same effect as though all signers had executed one and the same document.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have caused this Power Sales Agreement to be executed, effective as of the Effective Date.

UNIPER GLOBAL COMMODITIES NORTH AMERICA, LLC (“SELLER”)

By: _____
Title: _____

By: _____
Title: _____

INCORPORATED COUNTY OF LOS ALAMOS (“BUYER”)

By: _____
Title: _____

Attested by: _____
Name: _____

Date: