

1 WHEREAS, Sandia Peak Grid, LLC (the “Company”) is a corporation
2 organized under the laws of the State of Delaware and is authorized to do
3 business in New Mexico; and

4 WHEREAS, the Company has requested that the City issue its industrial
5 revenue bond pursuant to the Act for the purpose of providing funds to finance
6 the acquisition, improvement and equipping of renewable energy storage
7 facilities within the corporate limits of the City (the “Project”); and

8 WHEREAS, the City Council of the City of Albuquerque (the “Council”) has
9 adopted an ordinance establishing the Albuquerque Development Commission
10 (the “Commission”) to review projects proposed to be financed with an
11 industrial revenue bond pursuant to City Resolution No. 16-1985, as amended;
12 and

13 WHEREAS, the Company has presented to the City and the Commission a
14 proposal (the “Project Plan”) whereby the City shall, pursuant to the Act,
15 acquire certain property and equipment (the “Project Property”) for the
16 purpose of operating facilities at 7800 and 7850 Jacs Lane NE, covering
17 approximately 6.1 acres, for a renewable energy storage facility, within the
18 boundaries of the City, and pursuant to which the City would issue its taxable
19 industrial revenue bond in order to finance the Project; and

20 WHEREAS, the Commission has reviewed the Project Plan, and on May 17,
21 2022, has determined that the Company has complied with City Resolution No.
22 16-1985, and has recommended approval of the Project Plan by the Council;
23 and

24 WHEREAS, under the Company’s Project Plan, the City would enter into an
25 Indenture dated as of October 1, 2022 (the “Indenture”) between the City and a
26 corporate depository satisfactory to the City to be designated at a later date, as
27 depository (the “Depository”), pursuant to which, together with this ordinance
28 (the “Bond Ordinance”), the City would issue its bond designated as the City of
29 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Sandia Peak Grid
30 Project), Series 2022 (the “Bond”); and

1 WHEREAS, under the Company’s Project Plan, the City and the Company
2 would enter into a Lease Agreement dated as of October 1, 2022 (the “Lease”),
3 pursuant to which the Company will lease the Project Property from the City
4 and will make payments to the Depository sufficient to pay the principal of,
5 redemption premium, if any, and interest on the Bond, and to pay all other
6 obligations incurred pursuant to the provisions of the Lease and the Bond
7 Ordinance; and

8 WHEREAS, under the Company’s Project Plan, the Lease will provide that
9 the Company shall maintain the Project and carry all proper insurance with
10 respect thereto; and

11 WHEREAS, the proceeds of the Bond shall be used for the purpose of
12 financing the acquisition, improvement and equipping of the Project (the
13 “Financing”); and

14 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
15 other related documents and to issue the Bond pursuant to the Act and the
16 Bond Ordinance; and

17 WHEREAS, the Bond in an aggregate principal amount not to exceed
18 \$95,000,000 will be issued, sold, and delivered by the City in a private sale to
19 an affiliate of the Company (the “Purchaser”) pursuant to a bond purchase
20 agreement (the “Bond Purchase Agreement”) among the City, the Company,
21 and the Purchaser; and

22 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the
23 Project and to pay certain costs associated with the transaction; and

24 WHEREAS, after having considered the provisions of the Project Plan and
25 the Financing, the Council has concluded that it is in the best interest of the
26 City to authorize the issuance of the Bond to finance the Project, and that the
27 City’s issuance of the Bond shall constitute a valid public purpose under the
28 Act; and

29 WHEREAS, the Council has been advised by the Company that the
30 disclosure provisions of Rule 15c2-12 of the Securities and Exchange

1 Commission are not applicable to this transaction inasmuch as the Bond is
2 being sold to the Purchaser, which is an affiliate of the Company, in a private
3 sale without the participation of an underwriter; and

4 WHEREAS, there has been published in the Albuquerque Journal, a
5 newspaper of general circulation in the City, public notice of the Council's
6 intention to adopt this Bond Ordinance, which notice contained certain
7 information concerning the ownership, purpose, location, and size of the
8 Project and the Project Property, and the amount of the Bond to be issued to
9 finance the Project, which notice was published at least fourteen (14) days
10 prior to hearing and final action on this Bond Ordinance; and

11 WHEREAS, the proposed forms of the following documents have been filed
12 with the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
13 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond
14 Documents"); and

15 WHEREAS, the City has delivered notice to the County of Bernalillo, State of
16 New Mexico, of its intent to consider issuance of the Bond, which notice was
17 given at least thirty (30) days prior to the meeting at which final action is to be
18 taken on this Bond Ordinance as required by Section 3-32-6.1, New Mexico
19 Statutes Annotated, 1978 Compilation, as amended;

20 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
21 ALBUQUERQUE:

22 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
23 this Bond Ordinance previously taken by the Council and the officials of the City
24 directed toward approval of the issuance and sale of the Bond be approved and the
25 same hereby are ratified, approved and confirmed.

26 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
27 consists of the acquisition, improvement and equipping of facilities for a renewable
28 energy storage company. The Company may use additional available money to
29 accomplish the Project. The Project Plan is hereby approved in all respects.

30 Section 3. FINDINGS.

1 (A) General. The Council hereby declares that it has considered all
2 relevant information presented to it relating to the Bond and the Project and
3 hereby finds and determines that the issuance of the Bond pursuant to the
4 Bond Ordinance and the Act to provide funds for the Project is necessary and
5 advisable and in the interest of
6 the public, and will promote the public health, safety, morals, convenience,
7 economy, and welfare of the City and the residents of the City.

8 (B) The Council finds that:

9 (1) The Bond will be issued for the purpose of financing the
10 Project;

11 (2) The aggregate face amount of obligations to be issued for the
12 purpose of financing the Project is \$95,000,000;

13 (3) The developer and operator of the Project is the Company;
14 and,

15 (4) The Project Property is located in the City.

16 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
17 the cost of acquiring the Project Property, the City hereby authorizes and approves
18 the issuance and sale of its industrial revenue bond to be designated "City of
19 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Sandia Peak Grid
20 Project), Series 2022" in a principal amount not to exceed \$95,000,000 and the use
21 of the proceeds of the Bond to finance the cost of the Project and to pay expenses
22 relating thereto.

23 Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a
24 purchase price equal to the par amount of the Bond is hereby authorized and
25 approved.

26 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
27 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
28 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
29 interest, and subject to optional and mandatory redemption and defeasance in the
30 amounts, upon the conditions and at the times and prices set forth in the Indenture;
31 and, (iii) issued in a principal amount not to exceed \$95,000,000, bearing interest at
32 the rates and maturing on the dates set forth in the Indenture. The interest rate on

1 the Bond shall not exceed 12% per annum. The Mayor or the Chief Administrative
2 Officer of the City shall sign the Bond. The term of the Bond shall be for twenty (20)
3 years.

4 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

5 The form, terms, and provisions of the Bond Documents in the form on deposit
6 in the office of the City Clerk are in all respects approved, authorized, and
7 confirmed, and the City shall enter into such Bond Documents substantially in
8 the form of each such document on deposit with the City Clerk, with only such
9 changes as are not inconsistent with this Bond Ordinance or such other
10 changes as may be approved by supplemental resolution of the Council.

11 (A) The Council authorizes the Mayor or the Chief Administrative Officer
12 of the City to execute and deliver the Bond Documents in the name and on
13 behalf of the City, and the Council authorizes the City Clerk or Deputy City Clerk
14 to attest to, as necessary, the Bond Documents and the Bond with such
15 changes therein as are not inconsistent with this Bond Ordinance.

16 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
17 Treasurer, and City Clerk are further authorized to execute, authenticate, and
18 deliver such certifications, instruments, documents, letters, and other
19 agreements, including security agreements, and to do such other acts and
20 things, either prior to or after the date of delivery of the Bond, as are necessary
21 or appropriate to consummate the transactions contemplated by the Bond
22 Documents.

23 (C) The officers of the City shall take such action as is necessary to
24 effectuate the provisions of the Indenture and shall take such action as is
25 necessary in conformity with the Act and this Bond Ordinance to finance the
26 costs of the Project and for carrying out other transactions as contemplated by
27 this Bond Ordinance and the Bond Documents including, without limitation,
28 the execution and delivery of any closing documents to be delivered in
29 connection with the sale and delivery of the Bond.

30 Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond
31 Documents and the satisfaction of the conditions set forth in the Bond Documents,

1 the Bond shall be executed, authenticated, and delivered to the Purchaser. No
2 Bond shall be valid for any purpose until such Bond has been properly authenticated
3 as set forth in the Indenture.

4 Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND
5 INTEREST AND OTHER MATTERS. The Council makes the following
6 determinations and findings in accordance with the Act:

7 (A) The maximum amount necessary in each year to pay the principal of
8 and interest on the Bond, assuming issuance of the Bond on or about October
9 1, 2022 in the amount of \$95,000,000 and bearing interest at the rate of 3.12%,
10 with interest payable semi-annually in January and June of each year is as
11 follows:

12	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Each Interest Pmt.</u>	<u>Ann. Debt</u>
13	<u>Service</u>			
14	12/31/23	\$0	\$2,964,000	\$2,964,000
15	12/31/24	\$0	\$2,964,000	\$2,964,000
16	12/31/25	\$0	\$2,964,000	\$2,964,000
17	12/31/26	\$0	\$2,964,000	\$2,964,000
18	12/31/27	\$0	\$2,964,000	\$2,964,000
19	12/31/28	\$0	\$2,964,000	\$2,964,000
20	12/31/29	\$0	\$2,964,000	\$2,964,000
21	12/31/30	\$0	\$2,964,000	\$2,964,000
22	12/31/31	\$0	\$2,964,000	\$2,964,000
23	12/31/32	\$0	\$2,964,000	\$2,964,000
24	12/31/33	\$0	\$2,964,000	\$2,964,000
25	12/31/34	\$0	\$2,964,000	\$2,964,000
26	12/31/35	\$0	\$2,964,000	\$2,964,000
27	12/31/36	\$0	\$2,964,000	\$2,964,000
28	12/31/37	\$0	\$2,964,000	\$2,964,000
29	12/31/38	\$0	\$2,964,000	\$2,964,000
30	12/31/39	\$0	\$2,964,000	\$2,964,000
31	12/31/40	\$0	\$2,964,000	\$2,964,000

1	12/31/41	\$0	\$2,964,000	\$2,964,000
2	12/31/42	\$95,000,000	\$2,964,000	\$97,964,000

3 (B) The terms under which the Project Property is leased provide that the
4 Company shall maintain the Project Property and carry all proper insurance (or
5 self-insure) with respect to the Project Property.

6 (C) The lease rentals payable under the Lease shall be at least sufficient
7 to pay the principal and interest payments on the Bond set forth in Paragraph
8 (A) of this Section 9 when due and otherwise render the financing of the
9 acquisition of the Project Property entirely self-liquidating. There shall be no
10 payments to any reserve fund or sinking fund installment payments.

11 Section 10. NONTAXABLE TRANSACTION CERTIFICATES. The Company,
12 as agent for the City, will acquire the Project. The City will cooperate with the
13 Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates
14 ("Certificates") that have been properly executed for acquisition of tangible personal
15 property relating to the Project as applicable under the New Mexico Gross Receipts
16 and Compensating Tax Act. The Company shall not use the Certificates other than
17 for such things as may be permitted by law, if any, nor shall the Company use such
18 Certificates after the completion of the Project. No costs, expenses or other
19 monetary relief will be recoverable from the City by vendors of equipment.

20 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited
21 obligation of the City payable solely from the revenues derived from the Lease and
22 payable by the Company as described in the Indenture, and shall never constitute a
23 debt or indebtedness of the City or the State or any political subdivision thereof
24 within the meaning of any provision or limitation of the State Constitution, statutes, or
25 home-rule charter of the City, and shall not constitute or give rise to a pecuniary
26 liability of the City or a charge against its general credit or taxing power. Nothing
27 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
28 shall be construed as obligating the City (except with respect to the Project Property
29 and the application of the revenues therefrom and the proceeds of the Bond, all as
30 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
31 upon the general credit of the City or against its taxing power, nor shall the breach of
32 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,

1 or any other instrument be construed as obligating the City (except with respect to
2 the Project Property and the application of revenues therefrom and the proceeds of
3 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
4 liability or a charge upon the general credit of the City or against its taxing power, the
5 City having no power to pay out of its general funds, or otherwise contribute any part
6 of the costs of acquiring the Project Property, nor power to operate the Project as a
7 business or in any manner except as lessor and seller of the Project Property.

8 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
9 approves the provisions of the Lease relating to indemnification which provide that
10 the Company shall indemnify and hold harmless the City and its City Councilors,
11 officials, members, officers, employees, and agents against liability to the Company
12 or to any third parties that may be asserted against the City, its City Councilors,
13 officials, members, officers, employees, and agents with respect to the City's
14 ownership of the Project Property or the issuance of the Bond and arising from the
15 condition of the Project Property or the acquisition or operation of the Project
16 Property by the Company, except to the extent that Section 56-7-1, New Mexico
17 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
18 any loss or damage arising out of or resulting from the gross negligence or willful
19 misconduct of the City or any official, member, officer, employee, or agent of the
20 City.

21 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,
22 this Bond Ordinance shall be and remain irrevocable until the Bond, including all
23 interest thereon, is fully paid, cancelled, and discharged, or until there has been
24 defeasance of the Bond in accordance with the Indenture.

25 Section 14. SEVERABILITY. If any section, paragraph, clause or provision of
26 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
27 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
28 affect any of the remaining provisions of this Bond Ordinance.

29 Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or
30 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
31 Ordinance but only to the extent of that inconsistency. This repealer shall not be
32 construed to revive any by-law, ordinance, resolution, or order, or part thereof,
33 previously repealed.

1 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
2 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
3 be recorded in the ordinance book of the City, kept for that purpose, and shall be
4 there authenticated by the signature of the Mayor and the presiding officer of the
5 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
6 notice of adoption thereof shall be published once in a newspaper that maintains an
7 office in, and is of general circulation in, the City, and shall be in full force and effect
8 five (5) days following such publication

9 Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general
10 summary of the subject contained in the Bond Ordinance shall be published in
11 substantially the following form:

12 CITY OF ALBUQUERQUE, NEW MEXICO
13 NOTICE OF ADOPTION OF ORDINANCE

14 Notice is hereby given of the title and of a general summary of the subject matter
15 contained in City Ordinance F/S No. O-22-29 (the "Ordinance"), duly adopted and
16 approved by the City Council of the City of Albuquerque, New Mexico, on
17 September 7, 2022. Complete copies of the Ordinance are available for public
18 inspection during the normal and regular business hours of the City Clerk in the
19 office of the City Clerk, Albuquerque, New Mexico.

20 The title of the Ordinance is:

21 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
22 NEW MEXICO INDUSTRIAL REVENUE BOND (SANDIA PEAK GRID PROJECT),
23 SERIES 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$95,000,000 TO
24 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,
25 DEVELOPMENT, IMPROVEMENT AND EQUIPPING OF A FACILITY FOR A
26 RENEWABLE ENERGY STORAGE COMPANY; AUTHORIZING THE EXECUTION
27 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
28 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
29 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
30 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
31 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
32 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

33 The title sets forth a general summary of the subject matter contained in the

1 Ordinance.

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