

RESOLUTION NUMBER 7284

WHEREAS, the City of Beatrice ("City") participates in the Cottonwood Wind Farm ("Cottonwood"); and

WHEREAS, Cottonwood produces renewable energy credits; and

WHEREAS, the City desires to sell said Renewable Energy Credits to ACT Commodities, Inc., a Delaware corporation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the City Administrator is hereby authorized to enter into an Agreement for Purchase and Sale of Renewable Energy Certificates, Trade Number: T00248753, between the City of Beatrice, Nebraska and ACT Commodities, Inc. A copy of said Agreement, marked as Exhibit "A" respectively, is attached hereto and incorporated by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 15th day of April, 2024.

Attest:


Erin Saathoff, CMC, City Clerk


Mike McLain, Acting Mayor

Exhibit "A"

AGREEMENT FOR PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATES

The purpose of this letter ("Confirmation Letter") entered into on this Wednesday, March 27, 2024 ("Contract Date") is to confirm the terms and conditions of the transaction between **City of Beatrice** ("Seller") and **ACT Commodities Inc.** ("Buyer") as of the Contract Date (the "Transaction"). Seller and Buyer are each referred to as a "Party" and, collectively, as the "Parties." This Confirmation Letter, including the attached Terms and Conditions, shall constitute the entire agreement ("Agreement") between the Parties related to the subject matter hereof and supersedes and replaces any prior oral or written confirmation, including broker confirmations, regarding this Transaction.

The terms of the Transaction to which this Confirmation Letter relates are as follows:

Seller:	City of Beatrice	Buyer:	ACT Commodities Inc.
Product:	REC	Trade Number:	T00248753
Trade Date:	A) 3/27/2024 B) 3/27/2024	Delivery Date:	A) On or before Monday, April 15, 2024 B) On or before Monday, April 15, 2024
Product Price:		Product Vintage:	A) 1/1/2023 - 6/31/2023 B) 7/1/2023 - 12/31/2023
Product Quantity:		Deal Value:	
Payment Terms:	5 Business Days	Delivery Type:	Transfer

Special Conditions	
Technology: Wind Classification: Any Registry: NAR	
Product Siting: Yes Reporting Year: 2023 Commercial Online Date: Product Type: Nebraska Sited Wind State: Nebraska Other: Green-e CRS Listed Facility: Cottonwood Wind Project	

Capitalized terms used but not defined herein shall have the meanings given to them in the General Terms and Conditions.

Seller: City of Beatrice

By: 

Buyer: ACT Commodities Inc.

By: 

GENERAL TERMS AND CONDITIONS

ARTICLE 1: DEFINITIONS

1.1 Definitions. Capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Confirmation Letter. As used in this Agreement, the following capitalized terms shall have the meanings set forth below:

"Accept" or "Acceptance" means, if a retirement by Seller on behalf of the Buyer is not specified in the Confirmation Letter, Buyer's electronic acceptance in the applicable tracking system of the Delivery of the RECs in its Account in accordance with the operating rules and procedures of the Applicable Tracking System.

"Applicable Standard" means with respect to a Transaction, the provincial, state or federal RPS identified in the applicable program, other mandatory or voluntary standard(s), or set of rules specified in the Confirmation Letter.

"Bankrupt" means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 30 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debt when due.

"Business Day" means any day except a Saturday or Sunday, or a United States Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. Eastern Prevailing Time.

"Change in Law" means that, prior to the Delivery of the Product, a statute, rule, or regulation is enacted, amended or revoked which has the effect of (a) changing the transfer and sale procedures set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, (b) making this Agreement illegal or unenforceable, or (c) eliminating the existence of the Product.

"Deliver" or "Delivery" means the transfer from Seller to Buyer of the specified amount of the Product, or, if a retirement by Seller on behalf of the Buyer is specified in the Confirmation Letter, retirement of the specified amount of the Product by the Seller in the Registry tracking system on behalf of Buyer (or a party identified by Buyer in the Confirmation Letter).

"Delivery Date" means the date on which Seller initiates the Delivery in the Registry tracking system.

"Force Majeure Event" means any circumstances which were not foreseeable by the Parties at the time of entering this Agreement and could not have reasonably been anticipated and avoided by a Party or that are beyond a Party's reasonable control and which makes it impossible for the Party invoking the Force Majeure to perform its delivery or acceptance obligations under this Agreement, including but not limited to war, explosion or fire, natural calamities, general strike, riot, civil disturbances, sabotage, embargoes, Acts of God, IT failure, and failure of the Registry. A Force Majeure Event may not be based

on (i) the loss or failure of Buyer's markets; (ii) the loss or failure of Seller's supply; (iii) Seller's ability to sell the RECs to another Party on terms superior to Seller's terms herein; or (iv) Buyer's ability to purchase similar RECs from another Party on terms superior to the Buyer's terms herein; provided that the foregoing exclusions shall not apply to a Party's failure to make a payment when due.

"Product" means the RECs to be delivered in the Transaction, as specified in the Confirmation Letter, each associated with, but separate from, the generation of one (1) MWh of energy from a renewable energy facility.

"Product Price" shall mean the unit price for the Product agreed upon by the Parties for the Transaction as specified in the Confirmation Letter.

"Product Quantity" shall have the meaning ascribed to such term in the Confirmation Letter.

"Registry" means the environmental registry and information system set forth in the Confirmation Letter that tracks the environmental and fuel attributes of generation, and any successor tracking system that both Parties agree facilitates the sale and purchase of the Product specified in the Confirmation Letter.

"Replacement Purchase Price" means the price per REC at which Buyer, acting in a commercially reasonable manner, purchases replacement Product with the same Vintage as the Product that Seller failed to Deliver, plus any commercially reasonable costs of Buyer to obtain such replacement Product; or, absent any such purchase, the market price per REC of such Product as determined by Buyer in a commercially reasonable manner.

"Replacement Sales Price" means the price per REC at which Seller, acting in a commercially reasonable manner, resells the Product not Accepted by Buyer, deducting from such proceeds any commercially reasonable costs incurred by Seller to deliver such Product to a third party purchaser; or, absent any such sale, the market price per REC of such Product as determined by Seller in a commercially reasonable manner; provided, however, that in no event will the Replacement Sales Price include any penalties, stranded costs or similar charges, nor will Seller be required to utilize or change its utilization of its owned or controlled assets, including without limitation contractual assets, or market positions to minimize Buyer's liability.

"Renewable Energy Certificates" or "RECs" means a certificate, credit, allowance, green tag, or other transferable indicium, howsoever entitled, associated with, but separate from, the generation of one (1) MWh of Energy from a renewable energy facility.

"Renewable Portfolio Standard" or "RPS" means a local, state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy sold or used by specified entities to be generated from a renewable energy facility.

"Trade Date" mean the date that the Transaction was executed in the market, as specified in the Confirmation Letter.

"Vintage" means, with respect to a Transaction, the time period(s) (e.g. calendar year, energy year, reporting year, etc.) specified in the Confirmation Letter for which RECs produced during the generation

period are eligible for the purpose of complying with the Applicable Standard, as that time period is defined by the Applicable Standard.

ARTICLE 2: TRANSACTION, PAYMENT, TAXES AND TRANSFER OF TITLE

2.1 Transaction. The Parties desire to enter into the Transaction for the purchase and sale of Product under this Agreement. Such Transaction, unless otherwise agreed in writing signed by both Parties, will be governed by this Agreement. The Transaction will be confirmed pursuant to the Confirmation Letter.

2.2 Payment. Seller shall deliver an invoice to Buyer reflecting the purchase price for the Product in an amount equal to the product of (x) the quantity of Product Delivered and (y) the Product Price, following Seller's Delivery of the Product (the "Invoice"). The Invoice may be furnished to Buyer by e-mail. Unless otherwise specified in the Confirmation Letter above, within five (5) Business Days of the later of (a) Buyer's receipt of the Invoice and (b) Buyer's receipt of confirmation that the Product have been Delivered to Buyer's Registry account, Buyer shall pay Seller for the Product so Delivered. All payments made under this Agreement shall be made in immediately available United States Dollars by electronic transfer.

2.3 Taxes and Fees. Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product under this Agreement up to and including the time and place of its Delivery. Buyer will be responsible for any taxes imposed on the receipt or ownership of Product at or after the time and place of its Delivery. Buyer will also be responsible for any and all fees associated with payment. Each Party will be responsible for the payment of any fees, including brokers' fees, incurred by it in connection with any Transactions hereunder.

2.4 Transfer of Title. None of Seller's property interest in the Product will pass to Buyer until the Delivery and payment to Seller are complete. Upon such completion, all rights, title and interest in and to the Product, will transfer to Buyer.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. On the Contract Date, each Party represents and warrants to the other that:

- (a) It is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization;
- (b) It has the power and authority to enter into this Agreement and to perform its obligations hereunder;
- (c) Its execution and performance of this Agreement do not violate or conflict with applicable law, any provision of its constituent documents, or any contract binding on or affecting it or any of its assets or any order or judgment of any governmental authority applicable to it or its assets;
- (d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this

Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;

(e) No Event of Default, as defined in Section 4.1 has occurred and is continuing, and none will occur as a result of its entering into or performing this Agreement or any Transaction;

(f) It is not relying upon any representations of the other Party other than those expressly set forth herein, and it is acting for its own account, and not as agent or in any other capacity, fiduciary or otherwise;

(g) It has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; and

(h) All applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

(i) It is a "forward contract merchant" within the meaning of Section 101 (26) of the Bankruptcy Code, and this Agreement and all transactions hereunder constitute "forward contracts" within the meaning of Section 101 (25) of the Bankruptcy Code and that the remedies identified in this Agreement shall be "contractual rights" as provided for in 11 U.S.C. § 556, as these provisions may be amended from time to time.

3.2 Representations and Warranties of Seller. With respect to the Product, Seller represents and warrants to Buyer that as of the Delivery Date: (i) Seller has good and marketable title to such Product; (ii) all right, title and interest in and to such Product are free and clear of any liens, taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer; (iii) each REC meets the specifications set forth in the Confirmation Letter; and (iv) that such Product complies with any Applicable Standard, if any, specified on the Confirmation Letter.

3.3 LIMITATION OF WARRANTIES. EXCEPT AS SET FORTH HEREIN, ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO CONFORMITY WITH ANY MODEL OR SAMPLES, ARE DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY HEREUNDER WITH RESPECT TO ANY FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY.

3.4 Indemnity. Each Party will indemnify, defend and hold harmless the other Party from and against costs finally awarded or agreed to in settlement (including reasonable attorney's fees) for any claims or demands made by third parties arising from or out of an indemnifying Party's breach of the Agreement, except to the extent arising from the indemnified Party's own gross negligence or willful misconduct. Each Party will indemnify, defend and hold harmless the other Party against any fees or taxes for which such Party is responsible under Section 2.3.

3.5 Survival. Articles 3, 4, 5 and 6 shall survive the expiration or termination of this Agreement.

ARTICLE 4: EVENTS OF DEFAULT; REMEDIES

4.1 Events of Default. "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant hereto if such failure is not remedied within five (5) Business Days after written notice;
- (b) Failure to Deliver or receive Product when due pursuant to a Transaction if such failure is not remedied within five (5) Business Days after written notice;
- (c) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when repeated; and if capable of being cured, is not cured within ten (10) Business Days after written notice;
- (d) Such Party becomes Bankrupt; or
- (e) A Party's failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) business days after written notice.

4.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right to (i) upon two (2) Business Days' written notice to the Defaulting Party terminate this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties and to liquidate and terminate the Transaction between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a settlement amount as follows ("Settlement Amount"):

- (a) If Buyer is in default and Seller elects Early Termination: Buyer shall pay Seller an amount equal to the sum of (i) the Product Price for any Product Delivered to Buyer for which Seller has not been paid, and (ii) the positive difference, if any, obtained by subtracting (A) the Replacement Sales Price for any Product not received from (B) the Product Price for such Product not received multiplied by the amount of Product (in REC units) not received, plus reasonable third party fees (including broker fees) incurred by Seller in enforcement and protection of its rights under this Agreement.
- (b) If Seller is in default and Buyer elects Early Termination: Seller shall pay Buyer an amount equal to the positive difference, if any, obtained by subtracting (A) the Product Price for any Product not Delivered from (B) the Replacement Purchase Price for such Product not Delivered, multiplied by the amount of Product (in REC units) not Delivered, plus reasonable third party fees (including broker fees) incurred by Buyer in enforcement and protection of its rights under this Agreement.

4.3 Limitation of Liability. IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AS SET FORTH IN SECTION 4.2 AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MONETARY REMEDY HEREUNDER. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

ARTICLE 5: CHANGE IN LAW

5.1 Change in Law. If a Change in Law occurs, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform to such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement. However, in no event will a Change in Law that changes in any respect the value of the Product, have any effect on the obligations of the Parties to purchase and sell the Product on the terms and at the Product Price set forth in this Agreement. If the Parties are unable, despite such good faith efforts, to amend this Agreement within fifteen (15) Business Days following commencement of such negotiations, either Party may terminate this Agreement with no further payment or performance obligations except for any such obligations that have accrued prior to such termination.

ARTICLE 6: MISCELLANEOUS

6.1 Assignment. Neither Buyer nor Seller shall assign this Agreement nor delegate any of its duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that either Party, without the consent of the other Party, may assign this Agreement to any of its affiliates provided that such assignee's creditworthiness shall be equal to or greater than that of the assignor; and provided further that Seller may assign this Agreement without the consent of Buyer as collateral security to any lender (and in connection therewith, Buyer shall execute and deliver to such lender a consent agreement in a form reasonably acceptable to Buyer). Any assignment in violation of this Section 6.1 shall be voidable at the sole discretion of the non-assigning Party.

6.2 Notices. All notices, must be in writing and delivered by hand delivery, United States mail, overnight courier service or email to the addresses set forth in the attached notice contact schedule.

6.3 General.

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject matter hereof is superseded.

(b) No amendment or modification hereto or to any written Confirmation Letter is enforceable unless in writing and executed by both Parties.

(c) The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

(d) Except as provided in a writing or pursuant to Section 5.1, if any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the

other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

(e) This Agreement may be executed in counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same original instrument.

6.4 Performance Assurance. Should either Party have reasonable grounds to believe that the creditworthiness of the other Party has become unsatisfactory or the ability of the other Party to perform its obligations under this Agreement has become impaired, then the dissatisfied Party (the "Requesting Party") may demand in writing, with reasonable supporting explanations of the reason for such demand, that the other Party (the "Posting Party") provide assurance of its ability to perform its obligations hereunder in an amount determined by the Requesting Party in its commercially reasonable discretion. Such assurance may include (i) posting of a letter of credit in favor of the Requesting Party by an issuing bank reasonably acceptable to the Requesting Party, (ii) posting of cash collateral with the Requesting Party, or (iii) providing other security reasonably acceptable to the Requesting Party. The Posting Party shall provide such assurance within two (2) Business Days following such written demand.

6.5 Confidentiality. Neither Party will disclose the terms or conditions this Agreement to a third party (other than the Party's employees, guarantor, lenders, counsel, accountants, agents or advisors who have a need to know such information and have agreed to or otherwise have an obligation to keep such terms confidential) except:

- (a) In order to comply with any applicable law or regulation, or request of any regulatory agency having jurisdiction over the Party and requesting the confidential information in the ordinary course of business or
- (b) In connection with any court or regulatory proceeding

6.6 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of New York without giving effect to any conflict of law principles that would apply the laws of any other jurisdiction.

6.7 Dispute Resolution. Any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the American Arbitration Association, by an arbitrator chosen by both Parties. In the event of a disagreement, the arbitrators chosen by each Party will select a third arbitrator to arbitrate the issue.

6.8 Force Majeure. If a Party is prevented or delayed in its performance of any of its obligations under this Agreement by a Force Majeure Event (as defined above), that Party's performance of such obligations shall be suspended during the existence of such Force Majeure Event, provided that the Party invoking Force Majeure shall use reasonable efforts to mitigate the effect of a Force Majeure event. Where a Force Majeure Event results in suspension by the Party invoking the Force Majeure Event of any obligation under this Agreement, such obligation may be postponed, until the suspension of the obligations is no longer required as a result of the Force Majeure Event.

NOTICE SCHEDULE

If to Buyer:

Attn:

Address: 400 ELLA ST STE 1

BEATRICE, 68310

Phone:

Fax:

Email: ttempelmeyer@beatrice.ne.gov

PAYMENTS:

By Wire & ACH:

Company:

Bank:

Routing Number:

Account #:

If to Seller:

ACT Commodities Inc.

Attn: Brian Tohir

437 Madison Avenue, Suite 17A

New York, NY 10022

Phone: (212) 803-1253

Email: OperationsUSA@actcommodities.com

With Copy to: ACT_USA_Legal@actcommodities.com

INVOICES AND CONTRACTS:

ACT Commodities Inc.

Attn: Operations

437 Madison Avenue, Suite 17A

New York, NY 10022

Phone: (212) 803-1500

Email: OperationsUSA@actcommodities.com

With Copy to: ACT_USA_Legal@actcommodities.com



AGENDA ITEM

Subject: Resolution entering into an Agreement for the Purchase and Sale of RECs between the City and ACT Commodities, as recommended by BPW **For Agenda of:** April 15, 2024

Exhibit(s): **Date Submitted:** April 10, 2024

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Board the Cottonwood Wind Farm the City participates in, produces renewable energy certificates (REC), in which the City sells every six (6) months or so. Tempelmeyer stated ACT Commodities, Inc., provided the City with the best purchase price. Chairman Moran inquired if the City's participation in the Wind Farm has been positive and Tempelmeyer stated it has been. Boardmember Zarybnicky inquired if the City could hold the RECs until we wanted to sell them. Tempelmeyer stated the City could hold onto the RECS, however, there is no real value in holding on to them.

Moved by Zarybnicky, seconded by Leech, to recommend to the Mayor and City Council to enter into an Agreement for the Purchase and Sale of Renewable Energy Certificates between the City and ACT Commodities, Inc.

Roll Call: Yea: Hartley, Leech, Moran, Zarybnicky
Nay: None

MOTION CARRIED.