

LETTER OF INTENT
San Juan Generating Station

This Letter of Intent (the “**Letter of Intent**”) is dated as of February 21, 2019 (the “**Effective Date**”), and is between Acme Equities LLC (“**Buyer**”), and City of Farmington, New Mexico, (“**Seller**”). Buyer and Seller are sometimes collectively referred to as the “**Parties**”, and individually as a “**Party**”.

A. Buyer and Seller have entered into discussions concerning a potential acquisition (the “**Proposed Transaction**”) by Buyer or its affiliate from Seller of all the assets and the assumption of certain identified liabilities of the San Juan Generating Station, a four unit generating station (only two of which are operational) located approximately 15 miles west of Farmington, New Mexico (the “**San Juan Project**”).

B. This Letter of Intent is intended to serve as a basis for further discussions and negotiations between the Parties with respect to the Proposed Transaction. The matters set forth in Article I are not intended to and do not constitute a binding agreement of the Parties with respect to the Proposed Transaction or otherwise. Any binding agreement with respect to Article I matters will arise only upon the successful negotiation, execution and delivery of mutually satisfactory definitive agreements for the Proposed Transaction (the “**Transaction Documents**”) and the satisfaction of the conditions set forth therein, including but not limited to due diligence, identification of the liabilities to be assumed and receipt of all necessary internal, governmental and third-party non-governmental approvals.

C. The Parties wish to state the basic terms of the Proposed Transaction and their understandings with respect thereto in this Letter of Intent to facilitate further negotiations, due diligence, and evaluation of the Proposed Transaction.

The Parties therefore agree as follows:

Article I. OBJECTIVE

Section 1.01 The Parties intend to negotiate an agreement under which Buyer would purchase all the Acquired Assets (as defined in the Term Sheet attached as **Appendix A** (the “**Term Sheet**”) and assume all the Assumed Liabilities (as defined in the Term Sheet) upon such terms and conditions as are mutually acceptable to the Parties. It is the goal of the Parties that if Buyer purchases all the Acquired Assets and assumes all the Assumed Liabilities, that the San Juan Project will continue to be operated as a coal-fired facility utilizing the existing labor force. The Term Sheet sets forth certain terms and conditions that are intended to serve as a basis for and to facilitate such negotiations.

Article II. EXCLUSIVITY

Section 2.01 Subject to Article III, Buyer and Seller agree to negotiate a Proposed Transaction and the terms and conditions of the Transaction Documents on an exclusive basis for thirty (30) days from the date hereof (the “**Exclusive Period**”). Buyer acknowledges that Seller entered into discussions with persons and entities about the San Juan Project prior to the Exclusive Period (each a “**Grandfathered Entity**” and collectively the “**Grandfathered Entities**”). Buyer agrees that Seller may continue to conduct due diligence with, and provide public and non-public information to, the Grandfathered Entities during the Exclusive Period solely for the purpose of entering into agreements for the sale of power, capacity and related services and products from the San Juan Project in accordance with the requirements of Section 2.03.. In consideration of the time and effort that each Party will devote to the aforesaid negotiations, due diligence and evaluation contemplated by this Letter of Intent, Seller

agrees that, during the Exclusive Period, it shall not and shall not permit its affiliates' officers, directors, agents, employees or representatives to:

(a) solicit or accept any offer from, or submit any proposal to, any person or entity other than Buyer relating to the financing, sale, purchase, acquisition or disposition (whether by transfer, merger, consolidation or other means) of all or a portion of the assets held by Seller or its affiliates or as to which Seller or any of its affiliates has the right to negotiate, in each case, relating to the San Juan Project (an "**Alternative Proposal**");

(b) participate in any negotiations with, or furnish any non-public information to, any person or entity other than Buyer regarding any Alternative Proposal; or

(c) enter into any agreement or understanding, whether oral or in writing, with respect to an Alternative Proposal.

If Seller receives an unsolicited Alternative Proposal during the Exclusivity Period, Seller will promptly notify Buyer and provide a copy of such Alternative Proposal; provided that if any such Alternative Proposal is submitted under a requirement of confidentiality, Seller shall advise the person or entity making such Alternative Proposal that Seller is required pursuant to this Letter of Intent to disclose the existence and terms of such Alternative Proposal. If such person or entity elects to withdraw such Alternative Proposal, Seller shall only be required to advise Buyer that it has received an Alternative Proposal that has been withdrawn (a "**Withdrawn Alternative Proposal**").

Seller shall not accept or negotiate any Alternative Proposal or Withdrawn Alternative Proposal until the earlier of the following occurs: (i) Seller receives written notice from Buyer that Buyer does not intend to proceed with the Proposed Transaction; and (ii) the expiration of the Exclusive Period or, in the case of a Withdrawn Proposal, 30 days after such expiration. The Parties agree that the foregoing obligations of Seller will not prevent Seller from engaging in ordinary course operation or activities of the San Juan Project or (ii) restrict Seller's discussions with its advisors. Buyer agrees to notify Seller promptly if at any time during the Exclusive Period it determines not to go forward with the Proposed Transaction.

Section 2.02 During the Exclusive Period, Seller grants Buyer and its representatives the right to conduct further diligence with respect to the Proposed Transaction. Seller shall reasonably cooperate with Buyer and its representatives to facilitate such diligence and shall provide Buyer access to all agreements, filings and other material documents available to Seller and its representatives and affiliates which relate to the Proposed Transaction.

Section 2.03 During the Exclusive Period, Buyer may seek to market the offtake of the San Juan Project; provided, however, that neither Buyer nor Seller shall bind, or purport to bind, said Party or the San Juan Project to any third party in connection with such marketing without the prior written consent of the other Party.

Article III. EFFECT OF THIS LETTER OF INTENT

Section 3.01 This Letter of Intent does not contain all matters upon which agreement must be reached in order for the Proposed Transaction to be completed. This Letter of Intent and any action taken or not taken (including any course of conduct), and any written or oral statement made or not made by either Party and any course of conduct, at any time before the execution of the Transaction Documents shall not, individually or collectively, (i) constitute a legally binding offer or agreement to consummate the Proposed Transaction or any other transaction or enter into any Transaction Document or (ii) be relied upon by a Party as the basis for a contract by estoppel or otherwise. No Party shall be bound by any

Transaction Document relating to the Proposed Transaction until (i) such Party shall have executed the Transaction Documents, and (ii) all conditions precedent to the effectiveness of any of such Transaction Document shall have been satisfied.

Section 3.02 This Letter of Intent shall terminate if the Transaction Documents have not been executed by the Parties on or before the expiration of the Exclusive Period or Buyer has notified Seller in writing that it has no further interest in proceeding with the Proposed Transaction. Upon such termination:

- (a) Articles I and II of this Letter of Intent shall not survive such termination.
- (b) Articles III, IV, V, VI, VII, VIII, IX, X and XI of this Letter of Intent are intended to be binding agreements and shall survive the termination of this Letter of Intent.

Article IV. COSTS

Section 4.01 Each Party shall bear its own costs and expenses, including fees of counsel and outside advisors, in connection with (i) preparation, negotiation and execution of this Letter of Intent, (ii) diligence investigation and evaluation of the Proposed Transaction, and (iii) negotiation, authorization, execution and delivery of any Transaction Documents, in each case, whether or not the Proposed Transaction is consummated.

Article V. REPRESENTATIONS AND AGREEMENTS OF SELLER

Section 5.01 Seller represents, warrants and agrees that:

- (a) it has full power and authority to act on behalf of each owner of an undivided interest in the San Juan Project in connection with negotiating the Proposed Transaction;
- (b) there are no commitments or arrangements with any other person or entity which would prevent Seller from negotiating or entering into this Letter of Intent, the Proposed Transaction or the Transaction Documents contemplated by this Letter of Intent;
- (c) to the extent that Seller has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid of execution or otherwise) with respect to itself or any of its property, Seller hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any proceeding related to this Letter of Intent to the fullest extent permitted by applicable law

Article VI. ANNOUNCEMENTS AND CONFIDENTIALITY

Section 6.01 No public announcement shall be made by or on behalf of either Party, or their agents or representatives, with respect to the subject matter of this Letter of Intent, unless:

- (a) the other Party has agreed in writing to permit such public announcement to be made; or
- (b) such public announcement is required by law and the Party required to make such announcement has given prior written notice thereof to the other Party.

Any public announcement made as permitted under this Section 6.01 shall be made only in accordance with a text mutually agreed upon by the Parties.

Section 6.02 Each Party shall treat information disclosed to it by the other Party, whether in writing or oral, pursuant to this Letter of Intent or otherwise in furtherance of the Proposed Transaction as information that is subject to the terms of the Mutual Non-Disclosure Agreement dated the date hereof (the “**Confidentiality Agreement**”).

Article VII. LIMITATION ON LIABILITY

Section 7.01 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY), ARISING OUT OF THIS LETTER OF INTENT.

Article VIII. NO THIRD-PARTY BENEFICIARIES; NO PARTNERSHIP

Section 8.01 This Letter of Intent is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on third parties.

Section 8.02 The Parties do not intend to create a partnership or joint venture by virtue of this Letter of Intent or any course of conduct and no Party owes any fiduciary duty to any other Party. This Letter of Intent is not intended to be an agreement not to compete.

Article IX. CHOICE OF LAW; JURISDICTION; JURY WAIVER

Section 9.01 This Letter of Intent shall be governed by the laws of the State of New Mexico, without reference to any such laws that would require the application of the laws of another state.

Section 9.02 If either Party brings against the other Party any proceeding arising out of this Letter of Intent, that Party must bring that proceeding only in the federal or state courts located in the City of Albuquerque, New Mexico, and each Party hereby irrevocably submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Each Party hereby waives any claim that any proceeding brought in accordance with this Section 9.02 has been brought in an inconvenient forum.

Section 9.03 Each of the parties hereby waives any right it may have to a jury trial in any proceeding arising out of or in connection with this Letter of Intent and in connection with any claim, counterclaim or defense asserted at any time by or against a party arising out of or in connection with this Letter of Intent.

Article X. ASSIGNMENT

Section 10.01 Neither Party has the right to assign any of its rights or delegate any of its obligations under this Letter of Intent without the prior written consent of the other Party. Any purported assignment or delegation in breach of this Section 10.01 will be void.

Article XI. MISCELLANEOUS

Section 11.01 This Letter of Intent constitutes the entire understanding between the Parties as to the subject matter of this Letter of Intent, and supersedes any other existing agreement between the Parties relating to the same subject matter other than the Confidentiality Agreement.

Section 11.02 To the full extent permissible under law, each paragraph of this Letter of Intent is to be interpreted so as to be effective and valid. If any provision is held to be prohibited, invalid or unenforceable, however, such provision shall be ineffective only to the extent of such prohibition, invalidity, or unenforceability, without invalidating this Letter of Intent as a whole.

Section 11.03 This Letter of Intent may be amended, modified or waived only by a writing signed by both Parties.

Section 11.04 If the Parties sign this Letter of Intent in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument.

Section 11.05 All notices, requests and demands to or upon the respective Parties to be effective shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, addressed as follows, or to such other address as may be hereafter notified by the respective Parties:

If to Seller:

City of Farmington
800 Municipal Drive
Farmington, NM 87401-2663
Attention: Jennifer Breakell, City Attorney
Telephone: (505) 599-1122
Email: jbekell@fmtn.org

with a copy to:

Thompson Hine LLP
Attention: Gregory D. Chafee
Two Alliance Center
3560 Lenox Road Suite 1600
Atlanta, GA 30326-4266
Telephone: (404) 407-3642
Email: greg.chafee@thompsonhine.com

If to Buyer:

Acme Equities LLC
745 Fifth Avenue
6th Floor
New York, New York 10151
Attention: Lawrence A. Heller
Telephone: (212) 457-1600
Mobile (917) 691-4971
Email: lheller@acmeequities.com

with a copy to:


Sidley Austin LLP
Attention: Irving L. Rotter
1000 Louisiana Street


Suite 6000
Houston, Texas 77002
Telephone: (713) 495-7707
Email: irotter@sidley.com

The Parties by their duly authorized representatives are signing this Letter of Intent on the Effective Date.

ACME EQUITIES LLC

CITY OF FARMINGTON, NEW MEXICO

By: 
Name: Lawrence A. Heller
Title: managing member.

By: 
Name: Robert Mayer
Title: City Manager

Attachment: Appendix A: Indicative, Non-Binding Term Sheet

Appendix A

INDICATIVE, NON-BINDING TERM SHEET

San Juan Project	A four unit coal-fired generating station (only two of which are operational) located approximately 15 miles west of Farmington, New Mexico and known as the San Juan Generating Station with a nameplate capacity of up to approximately 1000 MW (the “ San Juan Project ”).
Acquired Assets and Assumed Liabilities	<p>All assets used in connection with the San Juan Project (the “Acquired Assets”) including the following:</p> <ul style="list-style-type: none">• all real property (whether owned in fee or leased), improvements thereon (including any structures, the switchyard and all other facilities), easements and other rights in real property• all transmission and distribution lines• all machinery, equipment, tools, furniture, vehicles, rolling stock, telecommunications equipment and other tangible or intangible personal property whether located at the San Juan Project or offsite• all inventories including any coal, fuel oils, other consumables and spare parts;• any prepayments and all applicable warranties against manufacturers or vendors to the extent such warranties are transferable;• all transferable permits including all pending applications and renewals relating to the ownership or operation of the San Juan Project;• all contracts that are material to the ownership or operation of the San Juan Project and all other contracts that relate to the ownership and operation of the San Juan Project and which the Buyer elects to acquire;• all books and records related to the San Juan Project;• all intellectual property used in connection with the operation of the San Juan Project;• all rights of Seller in and to any claims, causes of action, rights of recovery, set-off, refund and similar rights against any person or entity relating to any Assumed Liability;• all environmental and reclamation funds;• all other assets that are related to the San Juan Project (other than contracts and assets that Buyer elects not to acquire) <p>The following liabilities (the “Assumed Liabilities”) solely to the extent exclusively used in the operation or maintenance of the San Juan Project and, in each case, arising on or after the closing of the Proposed Transaction:</p> <ul style="list-style-type: none">• all liabilities under assigned contracts, assigned leases, transferred permits and assigned intellectual property, in each case in accordance with the terms thereof; and

	<ul style="list-style-type: none"> • all liabilities relating to compensation and benefits for any transferred employees¹
Seller	City of Farmington, New Mexico as owner of all the assets and liabilities of the San Juan Project. ²
Buyer	Acme Equities LLC or its designated affiliate
Proposed Transaction	Seller and Buyer will enter into a purchase and sale agreement (the “ Purchase Agreement ”) and other Transaction Documents (as defined below) pursuant to which Seller will sell to Buyer, and Buyer will purchase from Seller, the Acquired Assets and assume the Assumed Liabilities, as agreed by the Parties.
Purchase Price	The Purchase Price for the Acquired Assets shall be \$1 and the assumption of the Assumed Liabilities ³ .
Conditions Precedent to Closing	<p>The sale and purchase of the Acquired Assets and Assumed Liabilities and payment of the Closing Payment (collectively, the “Closing”) will be subject to conditions precedent that are customary for transactions of this type, including those listed below.</p> <ul style="list-style-type: none"> • Accuracy of representations and warranties. • No Material Adverse Change; • No litigation seeking to enjoin or materially delay closing of the Proposed Transaction; • Evidence that all specified approvals and third-party consents required in connection with the proposed transaction have been obtained; • Buyer shall have entered into power purchase agreements with a term of not less than [] years for not less than []MW; • Buyer shall have been granted a tax holiday for a period of not less than [] years so that Buyer is exempt from all property, ad valorem, sales and other taxes or assessments imposed by the County of San Juan, City of Farmington or any agency or instrumentality of either of them including any school district, emergency services district etc.; and • Other reasonable and customary conditions which may be included in the Transaction Documents.
Representations and Warranties	The Purchase Agreement will include representations and warranties with respect to the San Juan Project as are customary for transactions of this type, including with respect to sufficiency of the assets being acquired.

¹ NTD: Remediation obligations TBD.

² NTD: City of Farmington to explain how it will convey all right, title and interest in the Acquired Assets to Buyer.

³ NTD: Assumptions with respect to the value of the coal pile and inventories TBD.

<p>Covenants</p>	<p>The Purchase Agreement will include interim covenants as are customary for transactions of this type including:</p> <ul style="list-style-type: none"> • Each party using commercially reasonable efforts to close the Proposed Transaction expeditiously; • Each party cooperating to obtain all necessary internal, governmental and other third party approvals; provided that Seller shall have primary responsibility for obtaining all third party consents to assignment of any of the Acquired Assets; • Seller will provide Buyer and its representatives with reasonable access to the San Juan Project, any of the Acquired Assets and to any employee that may become a transferred employee • Seller will permit Buyer to perform any Phase I environmental studies or assessments that Buyer deems necessary in its sole discretion; • Customary Seller operating covenants including <ul style="list-style-type: none"> ○ cause the San Juan Project to be operated in accordance with Good Utility Practice and, except for replacement of Acquired Assets in accordance with Good Utility Practice, in the ordinary course of business consistent with past practice; ○ not sell, lease, dispose of or encumber any of the Acquired Assets or permit any other owner or operator of the San Juan Project to do any of the foregoing; ○ not make (or allow any other owner or operator to make) any material change in the use or levels of the coal pile, fuels, consumables, spare parts and other inventories; ○ terminate or modify (or allow any other owner or operator to terminate or modify) any existing assigned contract or lease; ○ not enter into (or allow any other owner or operator to enter into) any new contracts relating to the ownership or operation of the San Juan Project other than contracts in the ordinary course of business consistent with past practice and that can be freely assigned to or terminated by Buyer in each case without payment; ○ not materially increase (or allow any other owner or operator to materially increase) compensation or benefits for any transferred employee; ○ make or commit to make (or allow any other owner or operator to make or commit) any capital expenditures except as agreed to in the transaction Documents; ○ [others TBD]
<p>Casualty Loss During the Interim Period</p>	<p>If any Acquired Asset is damaged or destroyed by a casualty loss or is subject to condemnation during the period between signing and closing and such loss is greater than \$[] then Buyer shall have the right either (i) to require Seller, at Seller's expense, to restore such damaged, destroyed or condemned Acquired Asset to a condition reasonably comparable to its condition before such casualty loss or condemnation and the completion of such restoration will be a condition to closing or (ii) to</p>

	terminate the Proposed Transaction; provided that if such casualty or condemnation loss is greater than \$[] either Party may terminate the Proposed Transaction.
Transfer Taxes	All transfer taxes in connection with the acquisition of the Acquired Assets and the assumption of the Assumed Liabilities will be borne by Seller
Indemnification	The Purchase Agreement will include post-closing indemnification provisions on terms customary for transactions of this type.
Survival of Representations and Warranties	Seller's representations will survive for a period of 24 months after closing other than (a) environmental matters and title to the Acquired Assets which would survive for 48 months; (b) tax matters, which would survive until 60 days after the statute of limitations, and (c) fundamental representations, which would survive until the statute of limitations.
Limitations of Liability	<p>The Purchase Agreement will include the following limitations of liability of Seller:</p> <ul style="list-style-type: none"> • Indemnity claims will be subject to a deductible in the aggregate amount of \$[]. • Seller's maximum aggregate liability shall not exceed \$ [] (the "Cap")⁴; <p>The fundamental and tax representations will not be subject to the deductible or Cap.</p>
Transaction Documents⁵	Counsel to [Buyer] will prepare the initial drafts of the Purchase Agreement and other related transaction documents (collectively, the "Transaction Documents").
Governing Law Jurisdiction	The Purchase Agreement and all other related Transaction Documents will be governed by and construed in accordance with the laws of New York, without regard to the conflicts of law provisions contained therein, and subject to the exclusive jurisdiction of state and federal courts sitting in the Borough of Manhattan, New York, New York.

⁴ NTD: Indemnification TBD.

⁵ NTD: Breakup Fee TBD.