



Legal Committee Staff Report

Date: March 7, 2018

COMMITTEE MEETING DATE: March 12, 2018

SUBJECT: Potential Acquisition of the Assets of Hometown Connections International

AGENDA CATEGORY: Discussion/Action

FROM:	Jane E. Luckhardt	METHOD OF SELECTION:
	General Counsel	N/A
Division:	Executive Services	<i>If other, please describe:</i>
Department:	Legal	

IMPACTED MEMBERS:		
All Members	<input checked="" type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	
City of Biggs	<input type="checkbox"/>	
City of Gridley	<input type="checkbox"/>	
City of Healdsburg	<input type="checkbox"/>	
City of Lodi	<input type="checkbox"/>	
City of Lompoc	<input type="checkbox"/>	
City of Palo Alto	<input type="checkbox"/>	
City of Redding	<input type="checkbox"/>	
City of Roseville	<input type="checkbox"/>	
City of Santa Clara	<input type="checkbox"/>	
City of Shasta Lake	<input type="checkbox"/>	
City of Ukiah	<input type="checkbox"/>	
Plumas-Sierra REC	<input type="checkbox"/>	
Port of Oakland	<input type="checkbox"/>	
Truckee Donner PUD	<input type="checkbox"/>	
Other	<input type="checkbox"/>	
<i>If other, please specify</i>		

REQUESTED ACTION:

The Legal Committee is asked to provide comments on the draft documents and identify any concerns about whether the document terms adequately insulate and protect NCPA from liability should the Commission decide to become a founding member of the new Hometown Connections, Inc.

BACKGROUND:

Proposal. Several joint powers agencies including American Municipal Power, Inc., Missouri Public Utility Alliance, Vermont Public Power Supply Authority, Alabama Municipal Electric Authority and, if the Commission agrees, Northern California Power Agency, are considering becoming the founding members of a charitable nonstock Delaware corporation, organized under the Delaware General Corporation Law, to be called Hometown Connections, Inc. ("New HCI"). New HCI will acquire the assets of Hometown Connections International from the American Public Power Association and Alabama Municipal Electric Authority. In addition, American Municipal Power, Inc. ("AMP") will contribute its Advanced Metering Infrastructure ("AMI") program to New HCI.

New HCI Supports NCPA's Strategic Plan and Goals. Historically, our joint action agency has been focused on collaboration to build economies of scale. This same goal of public power entities joining together to obtain programs, equipment and services at large scale pricing is driving the creation of New HCI. New HCI would focus on expansion of services offered through NCPA's Support Services Program including AMI, public power management consulting and large scale pricing for vendor services. Joining New HCI would further the initiatives in NCPA's Strategic Plan. "New Services and/or new business structures" is one of NCPA's initiatives to help execute NCPA's Vision & Mission. NCPA's Vision is to be the premier provider of energy services to public entities. NCPA's Mission is to provide our members cost effective wholesale power, delivery support, energy-related services, and advocacy on behalf of public power consumers through joint action.

Through participation in New HCI, NCPA Members would have access to the robust AMI system AMP has created with Silver Spring at competitive rates. NCPA Members would also have access to public power management consulting, public power auxiliary staff to fill temporary positions and HCI's preferential pricing from vendors. HCI has preferential pricing in the areas of community solar, compensation studies, cost of service studies/rate design, customer and employee research, customer engagement, customer information solutions, cyber liability insurance, cybersecurity monitoring, energy analysis, energy trading & risk management, energy workforce solutions, interactive distributed generation, IT services, LED outdoor lighting, meter and operational data, mobile workforce solutions, performance management, property insurance, smart grid software, smart meters, and technology consulting. New HCI plans to further expand the value priced services into areas like AMI by acquiring AMP's existing program.

Legal Structure. Each entity that decides to become a founding member will contribute between two and three hundred thousand dollars to establish New HCI. Any further contributions will be at the discretion of each member. To keep the liability within New HCI, all binding agreements will be among New HCI and the selling entities. None of the members of New HCI, all of whom are joint powers type entities, will be pledging assets or providing security

for New HCI's acquisitions. New HCI will enter into an asset purchase agreement for the assets held by Hometown Connections International. New HCI will be assigned the current vendor discount agreements. New HCI will be the only signatory on the vendor discount agreements. The vendor agreements provide a commission to Hometown Connections International sales employees and affiliates when services or products are sold.

The small number of employees at Hometown Connections International have a defined bonus program structured to retain employees, the Long-term Retention Compensation Plan, and a 401K plan with a 3% match. Although New HCI will be taking all employees and their existing bonus structure, the retirement plan is employee funded and does not contain PERS like outstanding liabilities.

Documents. To effect the transaction described above there are several necessary agreements and documents. These agreements and documents are far enough along in development for review, but they are not final. Following is a list of the DRAFT documents:

- Non-binding Memorandum of Understanding as amended and supplemented (the MOU has been in place during the negotiations of the agreements to establish a framework for those negotiations)
- New HCI Bylaws, Articles of Incorporation and Certificate of Incorporation (governing documents for New HCI)
- IRS Section 15 Ruling Request (IRS determination that all entities meet the requirements of a public type agency that can be a member of a charitable nonstock corporation)
- HCI Asset Purchase Agreement (governs the purchase of assets of HCI and also includes the New HCI/APPA promissory note and APPA services agreement)
- AMI Assignment and Operations Agreement (establishes the orderly transfer of AMP's AMI system and operations, and ensures New HCI budget review of AMI expenses)
- Promissory Note from HCI to Alabama Municipal Electric Authority (provides for payment for AMEA's 35% ownership share of Hometown Connections International)

FISCAL IMPACT:

The total cost of participation by NCPA for acquisition of the assets of Hometown Connections International and creation of New HCI is currently estimated to be no more than \$300,000. The Commission has not resolved the method for cost allocation and distribution of benefits for this proposal should it be approved. There are three options under consideration for funding NCPA's participation in New HCI and distribution of benefits: 1) equal cost and equal benefit to each member, 2) 50% of cost and benefit equally divided to each Member and 50% of cost and benefit by Member size, and 3) cost and benefit allocated by Member size.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary.

Respectfully submitted,

/s/

JANE E. LUCKHARDT
General Counsel

Attachments:

1. HCI Memorandum of Understanding dated 8-14-17 (fully executed 11-1-17)
2. Supplement to Memorandum of Understanding dated 8-14-17 (12-5-17 composite copy)
3. Draft First Amended Memorandum of Understanding
4. Draft New HCI Certificate of Incorporation
5. Draft Bylaws Hometown Connections, Inc.
6. Draft New HCI Request for Private Letter Ruling under Section 115
7. Draft New HCI Asset Purchase Agreement
8. Draft Advanced Metering Infrastructure Assignment and Operation Agreement
9. Draft Alabama Municipal Electric Authority Promissory Note



AMP CONTRACT NO. 2017-004147-MAS

PRIVILEGED AND CONFIDENTIAL

TO: MOU PARTICIPANTS NEW HCI WORKING GROUP:

Brannndon Kelley	bkelley@amppartners.org
Pamala Sullivan	psullivan@amppartners.org
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Jeff Haas/APPA	jhaas@publicpower.org
Tim Blodgett/HCI	tblodgett@hometownconnections.com
Duncan Kincheloe/MPUA	dkincheloe@mpua.org
Doug Healy/MPUA	doug@healylawoffices.com
Jeff Peters/MRES	Jeff.Peters@mrenergy.com
Bob Caracristi/NCPA	Bob.Caracristi@ncpa.com
Kenneth Nolan/VPPSA	knolan@vppsa.com
Tom Paque/WPPI	tpaque@wppienergy.org
Tom Hanrahan/WPPI	thanrahan@wppienergy.org

FROM: John Bentine/AMP @ jbentine@amppartners.org

RE: Memorandum of Understanding – Hometown Connections International

DATE: August 14, 2017

All:

Attached as Appendix A, please find a (redline) final Execution Copy which represents the recent discussions between our organizations. It provides an agreed upon, non-binding, with a few exceptions, framework for continued good faith negotiations between American Municipal Power, Inc. ("AMP") and the other signatories hereto including any affiliate successors and assignees of such signatory, provided any successor or assignee otherwise meets the qualification to become a member of the new Hometown Connections International, LLC ("HCI") (collectively "Parties"), that are intended to result in the execution of the definitive agreements necessary for the Parties to create and fund a non-profit entity which will acquire the assets of HCI from its current owners at a fair and reasonable price, and thereafter operate the same under the HCI name.

DELAWARE DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENTHAM • BEREA • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN
MARYLAND BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER
 BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA • DESHLER
 DOVER • EDGERTON • EL DorADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAYTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD • HUDSON • HURON
 JACKSON • JACKSON CENTER • LAKEVIEW • LERANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTEPELIER • NAPOLEON • NEW BREMEN
 NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT • REPUBLIC • SEVILLE
 SHELBY • SILLCOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • VERSAILLES • WADSWORTH • WAPAKONETA • WAYNESFIELD • WELLINGTON • WESTERVILLE
 WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANSON • EAST CONEMAUGH • ELLWOOD CITY • EMIRATA • GIRARD
 GOLDSBORO • GROVE CITY • HATFIELD • HOOVERSVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIFFLINBURG • NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON
 SAINT CLAIR • SCHUYLKILL • HAVEN • SMETHPORT • SUMMERTOWN • WAMPUM • WATSONTOWN • WEATHERLY • ZELLENOPLE **VIRGINIA** BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS
WEST VIRGINIA NEW MARTINSVILLE • PHILIPPI

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Marc S. Gerken
[NAME]

10/5/2014
DATE

President/CEO
[TITLE]

American Municipal Power, Inc.
[ORGANIZATION]

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

Marc S. Gerken, P.E./AMP	mgerken@amppartners.org
Rachel Gerrick/AMP	rgerrick@amppartners.org
Sue Kelly/APPA	SueKelly@publicpower.org
Matt Hughey/Norton Rose Fulbright	matt.hughey@nortonrosefulbright.com
Tony Kington/Taft	tkington@taftlaw.com
Tom Heller/MRES	tom.heller@mrenergy.com
Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,



American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Susan N Kelly
[NAME]

10-6-17
DATE

President and CEO
[TITLE]

American Public Power
[ORGANIZATION] Ass'n

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

Marc S. Gerken, P.E./AMP	mgerken@amppartners.org
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Tony Kington/Taft	tkington@taftlaw.com
Tom Heller/MRES	tom.heller@mrenergy.com
Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Tim L. Blodgett
[NAME]

10/09/17
DATE

President and CEO
[TITLE]

Hometown Connections International, LLC
[ORGANIZATION]

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

Marc S. Gerken, P.E./AMP	mgerken@amppartners.org
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Sue Kelly/APPA	SueKelly@publicpower.org
Matt Hughey/Norton Rose Fulbright	matt.hughey@nortonrosefulbright.com
Tony Kington/Taft	tkington@taftlaw.com
Tom Heller/MRES	tom.heller@mrenergy.com
Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Duncan Kitchener
[NAME]

10/16/2014
DATE

President, General Manager & CEO
[TITLE]

Missouri Public Utility Alliance
[ORGANIZATION]

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

Marc S. Gerken, P.E./AMP	mgerken@amppartners.org
Rachel Gerrick/AMP	rgerrick@amppartners.org
Sue Kelly/APP	SueKelly@publicpower.org
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Tony Kington/Taft	tkington@taftlaw.com
Tom Heller/MRES	tom.heller@mrenergy.com
Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Jandy S. Hunt
[NAME]
General Manager
[TITLE]
NCPA
[ORGANIZATION]

10/26/17
DATE

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

Marc S. Gerken, P.E./AMP	mgerken@amppartners.org
Rachel Gerrick/AMP	rgerrick@amppartners.org
Sue Kelly/APPA	SueKelly@publicpower.org
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Tony Kington/Taft	tkington@taftlaw.com
Tom Heller/MRES	tom.heller@mrenergy.com
Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

If you concur that this transmittal and Appendix A represents our mutually-agreed path forward, please execute a copy of Memorandum of Understanding ("MOU") on behalf of your organization and return it to me at your earliest convenience but no later than August 15, 2017.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Kenneth A Nolan
[NAME]
General Manager
[TITLE]
Vermont Public Power Supply Authority
[ORGANIZATION]

10/6/17
DATE

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

Copy w/attachments:

- | | |
|-----------------------------------|-------------------------------------|
| Marc S. Gerken, P.E./AMP | mgerken@amppartners.org |
| Rachel Gerrick/AMP | rgerrick@amppartners.org |
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| Michael Peters/WPPI | mpeters@wppienergy.org |

Very truly yours,


American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:

Thomas J. Heller
[NAME] 8/29/17
DATE

Asst Sec / Asst Treas
[TITLE]

WMMPA
[ORGANIZATION]


Approved: DJB
Date: 8/28/17

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
 - Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

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Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

AGREED:



[NAME]

8-30-17

DATE

President/CEO

[TITLE]

WPPI Energy

[ORGANIZATION]

Attachment

- Appendix A – Draft MOU
 - Attachment 1 - Articles of Incorporation for New HCI
 - Attachment 2 - Bylaws for New HCI
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Copy w/attachments:

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Randy Howard/NCPA	randy.howard@ncpa.com
Michael Peters/WPPI	mpeters@wppienergy.org

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APPENDIX A

TO MEMORANDUM OF UNDERSTANDING

DATED AUGUST 15, 2017

A. Statement of Purpose

1. The Parties have been participating in discussions regarding the acquisition (the "Asset Purchase") of the assets of Hometown Connections International, LLC ("HCI") and the creation of a new non-profit entity ("New HCI") which will acquire those assets.
2. The Parties, with the exception of APPA and HCI, are expected to be the eventual initial Members ("Original Members") of New HCI. The Original Members are joint action agencies each of which, or an affiliate successor thereof, is either currently or will take the necessary steps to become a political subdivision as defined in Treas. Reg. Section 1.103-1 (a "Political Subdivision") or an entity whose revenue is excluded from the calculation of gross income for purposes of the Internal Revenue Code of 1986, as amended (the "Code") from federal income taxation under Section 115 of the Code (a "Section 115 Entity"). Should the Original Members determine that another tax and corporate strategy is acceptable and will not adversely affect the tax status of New HCI or any Original Member, they may do so under this MOU.
3. The seven (7) Original Members expect that a number of additional joint action agencies or larger public power systems may desire to become Members (each, an "Additional Member" and such Additional Members, together with the Original Members, the "Members"), as to be determined appropriate by the Original Members, may participate as Members of New HCI. Additional Members may be permitted to "buy in" to New HCI after its formation in a manner determined by the Original Members. As Additional Members are added, it is expected that the Membership Interests of then-current Members would be reduced, in the manner approved by the Members, likely *pro rata* in proportion to the Additional Member's respective Membership Interest in New HCI in a manner in which all Members would hold an equal Membership Interest (each, a "Membership Interest"). The capital requirements of the Members upon purchase of a Membership Interest shall be determined in accordance with the Definitive Agreements. Each such Member will hold a Membership Interest in New HCI.
4. In addition, the Parties envision that they will seek to permit the American Public Power Association's ("APPA") to continue to have a role in Hometown Connections in a capacity to be determined by the Parties. HCI is currently owned 65% by APPA through its for profit Public Power Inc. subsidiary ("PPI") and 35% by the Alabama Municipal Electric Association ("AMEA").
5. The Parties hereto acknowledge and agree that this Memorandum of Understanding ("MOU") is intended to document the current mutual understandings of the Parties with respect to the matters set forth herein. Except as expressly provided otherwise herein, the legally binding obligations of the Parties shall be set forth in one or more Agreements (the "Definitive Agreements") currently anticipated to include, but not limited to, the following:

1. Asset Purchase Agreements between certain of the Parties and APPA/PPI, AMEA and HCI;
2. Articles of Incorporation for New HCI;¹
3. Bylaws for New HCI;¹
4. New HCI Operating Agreement; and
5. AMI Project Acquisition Agreement.

Subject to negotiation of mutually agreed final terms and conditions and receipt of required corporate approvals by the Parties, the Parties intend to negotiate in good faith to enter into the Definitive Agreements, including but not limited to those discussed above.

6. The Parties hereto agree to negotiate in good faith and use reasonable efforts, to conclude detailed negotiations and execution of the Definitive Agreements prior to December 31, 2017.
7. After the closing of the Asset Purchase, HCI will be wound down and liquidated.

B. Strategic Plan

1. New HCI will continue HCI's stated goal of developing, owning and marketing services to public power entities.
2. Working on a cooperative basis with the Members and APPA, New HCI would offer targeted programs such as AMP's AMI Program that can bring significant savings associated with economics of scale to the ultimate consumers of the Members and other public power entities and APPA members.
3. Additional services and offerings could be added as appropriate and approved by the New HCI Board.
4. The Parties are not motivated by profit and anticipate that cost savings achieved by economies of scale by New HCI will be passed on to the Members and public power entities utilizing New HCI's services. Other public power entities subscribing to the services and programs may be charged prices which include a reasonable margin above New HCI's direct costs to reflect the Members' capital contributions in and the risks of participation as a Member in New HCI.

C. Acquisition

1. The Members will incorporate or register New HCI as a not-for-profit entity, most likely in Delaware, and contribute sufficient capital to provide for the purchase price set forth in the Asset Purchase Agreement with the current owners as well as working capital and any other capital requirements as set forth in the Definitive Agreements.
2. The particular assets to be acquired by New HCI would be determined after the Parties interested in acquiring an ownership interest conduct due diligence, but must include the Hometown Connections service mark and such additional assets that align with the strategic direction and tax status of New HCI.
3. The Parties anticipate, however, that certain of HCI's existing assets, including certain of its contractual rights and its ownership interests may not align with the strategic focus of New HCI or will otherwise be inconsistent with New HCI's new organizational structure and tax status and may not be subject to the Asset Purchase.
4. The Parties anticipate that New HCI will offer to retain all of HCI's existing full time employees and will take assignment of contractual relationships of most, if not all, of its independent contractor representatives.

¹ The initial discussion drafts of these documents are attached hereto as Attachments 1 and 2, respectively.

5. Following closing of the Asset Purchase, AMP would contribute certain contractual rights and other assets relating to its AMI project as set forth in the AMI Acquisition Agreement.
6. Subject to Paragraph A2 of this Appendix, continuing tax diligence and any state law restrictions placed on the Members, New HCI's organizational documents may provide that only Political Subdivisions or Section 115 Entities may hold a Membership Interest in New HCI.
7. New HCI will be governed by a board of directors ("Board"), whose members will be appointed by the Members.
8. While a majority vote of the New HCI Board may authorize most actions, a supermajority will be required to undertake major actions, including, but not limited to, winding down of New HCI, entering major new business lines and the hiring of executive-level officers.
9. Members' voting power on the New HCI Board is expected to reflect equal voting power for each Member, however, some form of weighted voting for certain decisions may be determined to be appropriate by the Original Members and set forth in the Definitive Agreements.

D. Development Costs

1. AMP has an estimate for additional legal due diligence to prepare and prosecute an IRS letter ruling request and for review of the Definitive Agreements drafts of \$110,000 ("Development Costs"). All such costs shall be paid by AMP and each other potential Member shall reimburse AMP for its allocated share of such costs as set forth in this Section D. Development Costs shared hereunder shall not exceed \$110,000 without the written agreement of each Party hereto which is responsible for a share of Development Costs.
2. Each Party agrees that it will be solely responsible for all costs of its own due diligence, whether internal or external, related to its determination of whether or not to proceed with the transactions contemplated herein.
3. For purposes of determining the allocation of the Development Costs and, for the avoidance of doubt, the Parties agree that AMEA, HCI and APPA will not be responsible for a share of the Development Costs hereunder.
4. The Parties executing this MOU shall be responsible for an equal share of Development Costs in proportion to their potential equal Membership Interest in New HCI. Each Member shall have the obligation to pay an equal share but no more than 25% of Development Costs and for the same shall receive an option, but not an obligation, to purchase an equal percentage Membership Interest of New HCI. To the extent potential Members' potential shares total greater than 100%, each obligation for Development Costs and related Membership Interest shall be decreased pro rata. To the extent that all potential Membership Interests aggregate to a total less than 100%, Parties shall have the option to increase their potential Membership Interests in amounts so as to total 100%. If after providing Parties the option to increase their potential Membership Interest the total remains less than 100%, this MOU shall be void.

E. Miscellaneous Provisions

1. The Parties have executed a Non-Disclosure Agreement dated as of October 29, 2015 ("NDA"), which covers the matters contemplated by this MOU up to July 17, 2017 and an Amended Non-Disclosure Agreement dated as of July 17, 2017 ("Amended NDA"), attached hereto.

2. Until the earlier of execution by some or all of the Parties of the Definitive Agreements and December 31, 2017 (the "Exclusivity Period"), APPA, including its affiliates and subsidiaries, and HCI agree that each of them shall not, and shall cause any respective affiliates or their respective officers, managers, employees, agents and other representatives not to, enter into or continue negotiations or other formal discussions regarding the sale of HCI with any other party.
3. The Parties agree that upon entering into Definitive Agreements, their relationship will be one of Members and/or independent entities. Accordingly, there will be no joint venture, partnership or similar arrangement between them and none owe any type of fiduciary duty to the other, other than as specifically set forth in the Definitive Agreements.
4. Other than the financial obligations set forth in Section D hereof, the Parties obligations with respect to the Exclusivity Period and under the NDA and Amended NDA, the provisions of this MOU are non-binding. Accordingly, the Parties agree that the termination of negotiations hereunder or any failure of a Party to execute the Definitive Agreements contemplated in this MOU shall not create any liability to the other for any type of damages whatsoever including but not limited to direct, consequential, punitive or special damages.
5. The Parties believe that the success of New HCI is predicated upon the continued participation of APPA.
6. As APPA is structured as a 501(c)(6) and is not a political subdivision for purposes of the Internal Revenue Code; and Public Power, Inc., the subsidiary through which APPA holds its interest in HCI, is a for-profit entity, it may not be advantageous to the Parties for APPA to hold a Membership Interest in New HCI.
7. The Parties desire to continue to have APPA participate in New HCI as an active marketing partner and, subject to continued tax diligence, should be able to permit APPA to appoint one (1) or two (2)² independent members to New HCI's Board.

Attachments

- Attachment 1 - Articles of Incorporation for New HCI
- Attachment 2 - Bylaws for New HCI
- Attachment 3 – Non-Disclosure Agreement Dated as of July 17, 2017.

4822-8233-2742, v. 13

² Such determination to be made taking into account the ultimate size of the New HCI Board.

ATTACHMENT 1

ARTICLES OF INCORPORATION FOR NEW HCI

[DRAFT]

[FINAL TO COME UNDER SEPARATE COVER]

7/27/2017 DRAFT
MARKED TO REFLECT CHANGES TO THE 6/7/2017 DRAFT

NOTE: Included as Attachment 1 to the Memorandum of Understanding – Hometown
Connections International

[These Articles will be conformed to the executed MOU and with such other modifications
after input from all Parties.]

**STATE OF DELAWARE
CERTIFICATE OF INCORPORATION
A NON-STOCK CORPORATION**

The undersigned Incorporator hereby certifies as follows:

ARTICLE ONE

Name

The name of the Corporation is: HOMETOWN CONNECTIONS, INC.

ARTICLE TWO

Registered Office and Registered Agent

The registered office of the Corporation in the State of Delaware is located at _____ . The name of the initial registered agent of the Corporation at such address upon whom process may be served is _____ .

ARTICLE THREE

The Corporation shall not have any capital stock.

ARTICLE FOUR

Nonprofit Corporation and Charitable Purposes

The Corporation shall be a charitable nonstock Corporation under the provisions of the Delaware General Corporation Law. It shall be organized, and at all times thereafter operated, exclusively for public charitable purposes, in such ways as the Board of Directors shall determine in its discretion, for the benefit of, to perform the functions of, or to carry out the purposes of its members, all with a view toward maximizing the efficient provision and use of electrical energy and/or other member natural gas and water utility resources and services, reducing operating costs, and increasing operating revenues of the members without impacting the safety and reliability of the electric system of each member, and thereby lessening the burdens of government and benefiting the general public. For purposes of this Certificate of

Incorporation, “charitable purposes” means those purposes related to lessening the burdens of government. In furtherance of such purposes, the Corporation shall have full power and authority:

(a) To provide and coordinate the provision of goods and services to its members, members of the American Public Power Association and other public power entities, but only to the extent the same would not adversely affect the Corporation’s tax status, in order to enable its members to efficiently operate electric systems and provide electric energy to their customers;

(b) To have and maintain one or more offices and in connection therewith to rent, lease or purchase office space, facilities and equipment, to engage and pay personnel and do such other acts and things and incur such other expenses on its behalf as may be necessary or advisable in connection with the maintenance of such offices or the conduct of the Corporation’s affairs;

(c) To open, maintain and close bank accounts, and to draw checks and orders for the payment of money;

(d) To employ and dismiss from employment any and all employees, agents or independent contractors;

(e) To sue and to defend suits, to prosecute, settle or compromise claims against others, to compromise, settle or accept judgments or Claims against the Corporation and to execute all documents and make any representations, admissions and waivers in connection therewith;

(f) To enter into, make, and perform all such contracts, agreements, and other undertakings; including indemnity agreements, as permitted by law, as necessary and advisable or incident to carrying out the foregoing purposes;

(g) To take such other actions as the Board of Directors deems necessary in connection with the foregoing, including the retention of agents, independent contractors, attorneys, accountants and other experts selected by the Board of Directors on behalf of and at the expense of the Corporation; and

(h) To perform all other acts necessary or incidental to the above and to do whatever is deemed necessary, useful, advisable, or conducive, directly or indirectly, as determined by the Board of Directors, to carry out any of the purposes of the Corporation, as set

forth in this Certificate of Incorporation including the exercise of all other power and authority enjoyed by Corporations generally by virtue of the provisions of the Delaware General Corporation Law applicable to charitable nonstock Corporations.

The Corporation shall serve only such purposes and functions and shall engage only in such activities as are consonant with the purposes set forth in this Article Four and as are consonant with the requirements for an organization the income of which is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986, as amended (the "Code").

ARTICLE FIVE

Tax-Exempt Nonprofit Corporation

The Corporation shall be neither organized nor operated for pecuniary gain or profit.

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any director, officer, or trustee of the Corporation, or any other private person; but the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth in Article Five hereof; and

(b) The Corporation shall not carry on propaganda, or otherwise attempt to influence legislation. The Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

It is intended that the Corporation shall have, and continue to have, the status of an organization the income of which is exempt from federal income tax under Section 115 of the Code. That is, it is intended that the Corporation shall satisfy, and shall continue to satisfy, the requirements applicable to an organization the income of which is exempt from federal income tax under Section 115 of the Code. All terms and provisions of these Certificate of Incorporation and the Bylaws of the Corporation, and all authority and operations of the Corporation shall be construed, applied and carried out in accordance with such intent.

ARTICLE SIX

Board of Directors

The Board of Directors shall have general charge of the affairs and any property and assets of the Corporation. It shall be the duty of the directors to carry out the purposes and functions of the Corporation. The directors shall be elected in accordance with the Bylaws of the

Corporation and shall have the powers and duties set forth in this Certificate of Incorporation and in the Bylaws, to the extent that such powers and duties are not inconsistent with the status of an organization the income of which is exempt from federal income tax under Section 115.

ARTICLE SEVEN

Members

The conditions of the membership shall be set forth in the Bylaws of the Corporation. The Board of Directors of the Corporation shall have the power to admit additional members to the Corporation in such manner, subject to such qualifications, and upon such terms and conditions and with such rights and privileges as may be provided from time to time in the Bylaws of the Corporation and as are not inconsistent with any provisions of this Certificate of Incorporation. Members may be divided into one or more classes. It is the intention of the members of the Corporation that the members be treated for all purposes of the laws of the State of Delaware as "members" within the meaning of the Delaware General Corporation Law.

ARTICLE EIGHT

Dissolution of Corporation

Upon dissolution of the Corporation the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation by distributing those net assets (assets less liabilities) to the Corporation's members, in proportion to their respective capital account balances.

ARTICLE NINE

Registered Office and Registered Agent

The registered office of the Corporation in the State of Delaware is located at _____ . The name of the initial registered agent of the Corporation at such address upon whom process may be served is _____ .

ARTICLE TEN

Principal Office

The mailing address of the principal office of the Corporation is

_____.

ARTICLE ELEVEN

Limitation of Director Liability

(a) To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or to its members for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of or repeal of this subparagraph (a) shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

(b) The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of directors of the Corporation. Any amendment, repeal or modification of this subparagraph (b) shall not adversely affect any right or protection hereunder

of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

(c) If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law.

(d) In the event that any of the provisions of this Article (including any provision within a single sentence) are held by a court of competent Jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the fullest extent permitted by law.

ARTICLE TWELVE

Amendments

This Certificate of Incorporation may be amended at any time and from time to time by the affirmative vote of all **[Member?]** directors present at a meeting at which quorum is present.

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Incorporation, this ____ day of _____, 2017.

Comment [JWB 7/261]:
Note: Can this be something less than "all"?
To be discussed.

By: _____

Name: _____

ATTACHMENT 2

BYLAWS FOR NEW HCI

[DRAFT]

[FINAL TO COME UNDER SEPARATE COVER]

AMP 9/18/2017 DRAFT

Deleted: 8/23/2017 DRAFT

Deleted: 9/13/2017

**BYLAWS
OF
HOMETOWN CONNECTIONS, INC.
Incorporated under the laws of the State of Delaware**

Adopted _____, 2017

DRAFT

Hometown Connections, Inc.
BYLAWS
TABLE OF CONTENTS

NOTE: Page numbers do not correspond with the accurate page number. This will be formatted for the final draft version.

		Page
ARTICLE ONE	NAME, LOCATION AND OFFICES	3
1.1	Name	3
1.2	Registered Office and Agent	3
1.3	Other Offices	3
ARTICLE TWO	PURPOSES AND GOVERNING INSTRUMENTS	3
2.1	Nonprofit Corporation.....	3
2.2	Charitable Purposes	3
2.3	Governing Instruments.....	3
ARTICLE THREE	MEMBERSHIP.....	3
3.1	Members.....	3
3.2	Classes for Members.....	4
3.3	Admission of New Members.....	4
3.4	Voting Rights.....	4
ARTICLE FOUR	MEETINGS OF MEMBERS.....	4
4.1	Place of Meetings.....	4
4.2	Annual Meeting	4
4.3	Substitute Annual Meeting.....	4
4.4	Notice of Annual Meeting.....	5
4.5	Regular Meetings; Notice.....	5
4.6	Special Meetings; Notice.....	5
4.7	Waiver	5

4.8	Quorum and Vote Required for Action.....	5
4.9	Proxy,	5
4.10	Presiding Officer.....	5
4.11	Telephone and Similar Meetings	6
4.12	Action by Members Without a Meeting.....	6
ARTICLE FIVE BOARD OF DIRECTORS		6
5.1	Authority and Responsibility of the Board of Directors	6
5.2	Number of Directors; Qualification of Directors.....	8
5.3	Manner of Election and Term of Office.....	8
5.4	Classes for Directors; Alternate Director	8
5.5	Removal	9
5.6	Vacancies	9
5.7	Compensation.....	9
ARTICLE SIX MEETINGS OF THE BOARD OF DIRECTORS		9
6.1	Place of Meetings.....	9
6.2	Annual Meeting; Notice	9
6.3	Regular Meetings; Notice.....	10
6.4	Special Meetings; Notice.....	10
6.5	Waiver.....	10
6.6	Quorum and Vote Required for Action.....	10
6.7	Super-Majority Vote Required for Action	10
6.8	Action by Directors Without a Meeting.....	11
6.9	Telephone and Similar Meetings	11
6.10	Adjournments	11

ARTICLE SEVEN	NOTICE AND WAIVER	12
7.1	Procedure.....	12
7.2	Waiver.....	12
ARTICLE EIGHT	OFFICERS.....	12
8.1	Number and Qualifications.....	12
8.2	Election and Term of Office.....	12
8.3	Other Agents.....	13
8.4	Removal	13
8.5	Vacancies	13
8.6	Chair.....	13
8.7	Vice Chairs	13
8.8	President/CEO	13
8.9	Vice Presidents	14
8.10	Secretary.....	14
8.11	Assistant Secretaries	14
8.12	Treasurer	15
8.13	Assistant Treasurers.....	15
ARTICLE NINE	COMMITTEES.....	15
9.1	Finance and Audit Committee and Operating Committee	15
9.2	Advisory and Other Committees	16
9.3	Term of Appointment.....	16
9.4	Chair.....	16
9.5	Vacancies	16
9.6	Quorum	16

9.7	Action Without a Meeting	16
9.8	Telephone and Similar Meetings; Rules	17
ARTICLE TEN	BOOKS AND RECORDS; AUDITS; CAPITAL ACCOUNTS	17
10.1	Books; Statements	17
10.2	Where Maintained; Access	17
10.3	Audits	18
10.4	Capital Accounts	18
10.5	Other Information	18
ARTICLE ELEVEN	MEMBERS	18
11.1	Withdrawal by Members	18
11.2	Termination of Members	19
11.3	Setoff of Amounts Due	20
ARTICLE TWELVE	DIRECTOR OR OFFICER CONFLICTS OF INTEREST	20
12.1	Conflict of Interest Transaction	20
12.2	Fairness to the Corporation	20
12.3	Remedies for Violation of Conflict of Interest Requirements	21
ARTICLE THIRTEEN	CONTRACTS, CHECKS, DEPOSITS AND FUNDS	21
13.1	Contracts	21
13.2	Checks, Drafts, Notes, Etc	21
13.3	Deposits	21
ARTICLE FOURTEEN	INDEMNIFICATION AND INSURANCE	21
14.1	Indemnification	21
14.2	Indemnification Not Exclusive of Other Rights	22

14.3 Insurance 22

ARTICLE FIFTEEN MISCELLANEOUS 23

15.1 Corporate Seal 23

15.2 Fiscal Year..... 23

15.3 Construction 23

15.4 Table of Contents; Headings 23

15.5 Relation to Certificate of Incorporation 23

ARTICLE SIXTEEN REVIEW OF AND AMENDMENTS TO BYLAWS..... 23

16.1 Periodic Review of Bylaws 23

16.2 Power to Amend Bylaws..... 23

16.3 Conditions 23

ARTICLE SEVENTEEN TAX-EXEMPT STATUS 23

17.1 Tax-Exempt Status..... 23

ARTICLE EIGHTEEN ADOPTION OF BYLAWS..... 24

DRAFT

BYLAWS
OF
HOMETOWN CONNECTIONS, INC.

Incorporated under the laws of the State of Delaware

ARTICLE ONE
Name, Location and Offices

- 1.1 **Name.** The name of this corporation shall be "Hometown Connections, Inc."
- 1.2 **Registered Office and Agent.** The corporation shall appoint and maintain a registered agent in the State of Delaware, in accordance with the requirements of the Delaware General Corporation Law.
- 1.3 **Other Offices.** The principal office of the corporation may be located within or without the State of Delaware, as determined by the Board of Directors. The corporation may have other offices at such place or places as the Board of Directors may determine from time to time or as the affairs of the corporation may require or make desirable.

ARTICLE TWO
Purposes and Governing Instruments

- 2.1 **Nonprofit Corporation.** The corporation shall be organized and operated as a charitable nonstock corporation under the provisions of the Delaware General Corporation Law. The corporation is a distinct and separate legal entity from its members.
- 2.2 **Charitable Purposes.** The corporation is a voluntary association of persons the purposes of which, as set forth in the Certificate of Incorporation, are exclusively charitable (as defined therein). The corporation was created for the benefit of its Members and its Members' members and to carry out the purposes of its Members with a view toward maximizing the efficient provision and use of electrical energy and/or Members' and Members' members natural gas or water utility resources and services; reducing operating costs; and increasing operating revenues of the Members without impacting the safety and reliability of the electric system of each

Member and Members' members, and thereby lessening the burdens of government and benefiting the general public. The corporation shall coordinate in education and training activities with the American Public Power Association ("APPA").

2.3 **Governing Instruments.** The corporation shall be governed by its Certificate of Incorporation and these bylaws.

ARTICLE THREE

Membership

3.1 **Members.** The initial Members of the corporation shall be the following political subdivisions or governmental instrumentalities:

1. American Municipal Power, Inc.
2. Missouri Joint Municipal Electric Utility Commission
3. Northern California Power Agency
4. Vermont Public Power Supply Authority
5. Western Minnesota Municipal Power Agency
6. WPPI Energy

As a condition of Membership in the corporation, an organization must be (a) a public power entity, however constituted as a matter of applicable law in the state of organization, including, but not limited to, a body corporate and politic or political subdivision of the state of organization, a joint powers agency, a municipal utility district, a municipal power agency, a public utility district or a not-for-profit corporation or, and either (b) (i) a political subdivision within the meaning of the Internal Revenue Code of 1986, as amended, (ii) an entity whose income is exempt from federal income taxation by reason of Section 115 of the Internal Revenue Code of 1986, as amended, or (iii) an entity who is a tax exempt affiliate of a governmental unit (a "Qualified Entity"). Any Member of the corporation which ceases to be a Qualified Entity

shall cease to be a Member of the corporation. A Member of the corporation which ceases to be a Qualified Entity shall have no rights or privileges as a Member of the corporation, shall have no beneficial interest in the corporation or its assets and shall have no right to receive any further distributions of income or assets from the corporation, except such distributions of income or assets applicable to the withdrawal or termination of a Member as set forth in Article Eleven of

Comment [DLH1]: Matt to check on whether the phrase 'public power utility' can be substituted here

Deleted: As a condition of Membership in the corporation, an organization must be (a) a municipal electric system or is an organization whose Membership is comprised principally of municipal electric systems, and either (b) (i) a political subdivision, (ii) an entity whose income is exempt from federal income taxation by reason of Section 115 of the Internal Revenue Code of 1986, as amended, or (iii) an entity who is a tax exempt affiliate of a governmental unit (a "Qualified Entity").

these bylaws. Each Member shall advise the Secretary of the corporation of the name(s) and address(es) of the individual person(s) authorized to represent such Member; the individual representative(s) of an organization which is a Member shall have, in such individual's representative capacity, all the rights and privileges of a Member of the corporation.

3.2 **Classes for Members.** There shall be only one class of Members.

3.3 **Admission of New Members.** Additional Members may be admitted to the corporation on terms determined by the Board of Directors by the affirmative vote of a Super Majority of Member Directors (as defined in Section 6.7 of these bylaws).

3.4 **Voting Rights.** Except as required by law or otherwise provided herein, Members of the corporation shall be entitled to vote only on election of Directors and on matters submitted to a vote of the Membership by the Board of Directors; and each Member shall be entitled to one vote on each such matter unless otherwise determined by a vote of a Super Majority vote of Member Directors. Anything in these bylaws to the contrary notwithstanding, except as determined from time to time by the Board of Directors or otherwise provided herein, Members shall not have voting rights.

ARTICLE FOUR

Meetings of Members

4.1 **Place of Meetings.** Meetings of the Members may be held at any place within or outside the State of Delaware as set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the principal office of the corporation.

4.2 **Annual Meeting.** An annual meeting of Members shall be held at such time as the Board of Directors shall determine and notify the Membership, for the purpose of appointing Directors and Alternate Directors and transacting any and all other business that may properly come before the meeting.

4.3 **Substitute Annual Meeting.** If the annual meeting is not held at the time designated in Section 4.2, any business which might properly have been acted upon at the meeting may be acted upon at any subsequent Members' meeting held pursuant to these bylaws.

4.4 **Notice of Annual Meeting.** Unless waived as contemplated in Section 7.2 or by attendance at the meeting, notice of the time and place of such annual meeting shall be given by the Secretary by mailing, electronic mailing or transmitting by facsimile a copy thereof to each Member or APPA Director, or by delivering same to such Member or APPA Director, not less than 10 days before such meeting.

4.5 **Regular Meetings; Notice.** Regular meetings of Members may be held from time to time between annual meetings at such times and at such places as the Board of Directors may prescribe. Notice of the time and place of each such regular meeting shall be given by the Secretary either personally or by telephone, mail, overnight delivery, electronic mail or facsimile transmission not less than 10 days before such regular meeting.

4.6 **Special Meetings; Notice.** Special meetings of the Members may be called at any time by the President/CEO or by the Board of Directors. Special meetings of the Members or a special meeting in lieu of the annual meeting of the Members may be called by the corporation upon the written request of no fewer than a majority of the Members. Notice of the time, place and purpose of any special meeting of the Members shall be given by the Secretary either personally or by telephone, mail, electronic mail or facsimile transmission at least 72 hours before the meeting.

4.7 **Waiver.** Attendance by a Member at a meeting shall constitute waiver of notice of such meeting, except where such Member attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called. See also Article Seven ("Notice and Waiver").

4.8 **Quorum and Vote Required for Action.** At all meetings of the Members the presence, in person or by proxy, of a majority of the Members shall constitute a quorum for the transaction of business. If a quorum is present, a majority of the Members who are present at any meeting shall determine any matter coming before the meeting, unless a different vote is required by statute, by the Certificate of Incorporation, or by these bylaws. At a meeting at which a quorum is

initially present, but Members withdraw from the meeting leaving less than a required quorum, the Members may continue to approve ministerial acts and adjourn said meeting.

4.9 **Proxy.** A Member may vote in person or by proxy executed in writing by the Member or the Member's individual representative. A proxy shall not be valid after 11 months from the date of its execution unless a longer period is expressly stated therein. If the validity of any proxy is questioned, it must be submitted to the Secretary of the Members' meeting for examination or to a proxy officer or committee appointed by the person presiding at the meeting. The Secretary of the meeting, or if appointed, the proxy officer or committee, shall determine the validity or invalidity of any proxy submitted; and reference by the Secretary in the minutes of the meeting to the regularity of a proxy shall be received as prima facie evidence of the facts stated for the purpose of establishing the presence of a quorum at such meeting and for all other purposes.

4.10 **Presiding Officer.** The Chair or Vice Chair of the corporation shall preside at all meetings of the Members, or in the absence of both the Chair and Vice Chair, the Treasurer shall preside and in the Treasurer's absence a Chair shall be chosen by the Members present. The Secretary of the corporation shall act as Secretary of all meetings of the Members; but in the absence of the Secretary and any assistant secretaries, the presiding officer may appoint any person to act as Secretary of the meeting.

4.11 **Telephone and Similar Meetings.** Members may participate in and hold a meeting by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE FIVE
Board of Directors

5.1 Authority and Responsibility of the Board of Directors.

(a) The supreme authority of the corporation and the government and management of the affairs of the corporation shall be vested in the Board of Directors; and all the powers, duties and functions of the corporation conferred by the Certificate of Incorporation, these bylaws, state statutes, common law, court decisions or otherwise shall be exercised, performed or controlled by or under the authority of the Board of Directors.

(b) Subject to Section 6.7 of these bylaws, the Board of Directors by its own action but not by delegation to officers or other employees of the corporation, shall, in addition to any other power granted to it in these bylaws, have the right, power and authority to take the following actions and no such action will be taken without the approval of the Board of Directors.

(1) Making overall policy decisions with respect to the business and affairs of the corporation;

(2) Approving the choice of bank depositories or the method and qualification for choosing such bank depositories;

(3) Approving the choice of the corporation's general counsel and independent accountants that perform the annual audit of the corporation's financial statements;

(4) Approving any change of the corporation's fiscal year;

(5) The employment, appointment and removal of the President/CEO;

(6) Election of the Chair, Vice Chair, Treasurer, Secretary and any assistant secretaries of the corporation;

(7) Approving any material change in accounting policies or principles used by the corporation;

(8) The location of the books, accounts and records of the corporation at any other office other than the principal office of the corporation;

(9) Approving all distributions to the Members;

(10) Approving any tax elections of the corporation; and

(c) Subject to Section 6.7 of these bylaws, the Board of Directors by its own action shall, in addition to any other power granted to it in these bylaws, have the right, power and authority to take the following actions and no such action will be taken without the approval of the Board of Directors; *provided, however*, the Board of Directors may, by resolution, delegate to one or more officers of the corporation or to a committee appointed by the Board of Directors (x) the authority to approve any agreement and other documents within the parameters set in such resolution and in accordance with the policies approved by the Board pursuant to Section 6.7 hereof and (y) the power to execute, deliver and implement any such agreements, ~~or other documents also in accordance with the policies approved by the Board pursuant to Section 6.7 hereof:~~

Deleted: ,

Deleted: or policy

(1) Approving all contracts that are proposed to be entered into by the corporation;

Deleted: which have a cost exposure, expenditure or value of more than \$_____

(2) The acquisition, sale and leasing by the corporation of real property;

(3) The authorization of any Member to act or to assume any obligation or responsibility on behalf of the corporation;

(4) The initiation or settlement of litigation to which the corporation is a party;

(5) The acquisition of any business or a business division from any person whether by asset purchase, stock purchase, merger or other business combination; and

(6) Approving all other matters which are not covered by subsections (b) and (d) of this Section 5.1.

(d) Subject to Section 6.7 of these bylaws, the Board of Directors may delegate to the President/CEO of the corporation the power and authority to take all necessary actions for the efficient day-to-day operation of the corporation, including entering into, executing and delivering contracts in the normal course of business which are not governed by subsections (b) and (c) of this Section 5.1; *provided*, that any costs associated with such actions, and not otherwise provided for, are allowable under the then current approved budget.

(e) The Board of Directors may adopt, by Super Majority vote, such policies, rules and regulations for the conduct of its business and the business of the corporation or modifications or amendments to the same, as shall be deemed advisable.

(f) The Board of Directors shall not permit any part of the net earnings, assets or capital of the corporation to inure to the benefit of any Director, officer or other private person or individual.

(g) The Board of Directors may, from time to time, appoint, as advisors, persons whose advice, assistance and support may be deemed helpful in determining policies, planning and formulating programs for carrying out the purposes and functions of the corporation.

(h) The Board of Directors is authorized to employ such person or persons, including officers, attorneys, agents and assistants, as in its judgment are necessary or desirable for the administration and management of the corporation, and to pay reasonable compensation for the services performed and expenses incurred by any such person or persons.

5.2 Number of Directors; Qualification of Directors. The Board of Directors shall consist of a total number equal to the sum of the number of Members; plus, so long as having the APPA have the right to appoint Directors does not jeopardize the corporation's tax status, one (1) Director to be appointed by the APPA, and the President/CEO and General Counsel who shall serve as *ex-officio* non-voting Members of the Board of Directors, unless any vacancy shall have occurred in the membership of the Board of Directors. In the case of any such vacancy, the Board of Directors shall consist of such reduced number as caused by the vacancy until such vacancy has been filled. Persons nominated or serving on the Board of Directors or alternates to Directors are required to be officers or employees of a Member of the corporation or of an affiliate of the Member or of an organization of which the Member is a member. If the Members

of the corporation equal thirteen (13) or more, then the Board of Directors shall consider granting APPA an additional Director.

5.3 Manner of Appointment and Term of Office. Each Member of the corporation shall have the right to appoint one qualified person for a position on the Board of Directors and for an Alternate Director position; *provided*, that there shall be no Alternate Director position for *ex-officio* members of the Board of Directors. . Each Director and Alternate Director shall serve until (i) his or her successor is appointed by the Member, or APPA as applicable, that made the previous appointment or (ii) his or her earlier death, resignation, inability to serve or removal or disqualification.

5.4 Classes of Directors; Alternate Director. A Member's appointed Director shall be referred to herein as a "Member Director." A Director who is appointed by the APPA shall be referred to as an "APPA Director". Unless otherwise provided herein, Member Directors and APPA Directors shall in connection with any action taken on which they cast votes, have one vote in connection with any action taken on which they cast votes. APPA and Members of the corporation shall appoint for each voting Director an Alternate Director from persons who are otherwise qualified to be elected as Directors of the corporation. Such Alternate Director shall be empowered to vote in place of the Director who is absent from any meeting at which a vote of Directors is taken or who has resigned, has been removed or no longer qualifies to serve as a Director. Such Alternate Director entitled to vote at a meeting shall be counted in determining whether a quorum is present.

5.5 **Removal.** Any Director or Alternate Director who is not qualified to serve shall be deemed removed as of the date of his or her disqualification.

5.6 **Compensation.** Except for ex-officio Directors, no Director or Alternate Director of the corporation shall receive, directly or indirectly, any salary, compensation or emolument therefrom as such Director or Alternate Director unless authorized by the unanimous vote of all of the remaining Directors or (notwithstanding any quorum requirement of these bylaws) by the concurring vote of all the disinterested Directors. However, nothing contained herein shall be construed to prevent any Director or Alternate Director from serving the corporation in any other capacity and receiving reasonable compensation for services rendered in furtherance of the purposes and functions of the corporation without the unanimous consent of the disinterested Directors. Such unanimous consent shall be effective for no more than one-hundred eighty days from when given, with such further consent requiring an additional unanimous vote at that time. The reasonable compensation afforded such Director or Alternate Director shall be paid to the Member whose Director or Alternate Director is providing services, or as otherwise directed by that Member.

ARTICLE SIX

Meetings of the Board of Directors

6.1 **Place of Meetings.** Meetings of the Board of Directors may be held at any place set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the principal office of the corporation.

6.2 **Annual Meeting; Notice.** An annual meeting of the Board of Directors may be held at such place as the Board of Directors may determine on such day and at such time as the Board of Directors may designate. Unless waived as contemplated in Section 7.2, if an annual meeting is held, notice of the time and place of such annual meeting shall be given by the Chair or the Secretary either personally or by telephone, mail, overnight service, electronic mail or by facsimile transmission not less than 10 days before such annual meeting.

6.3 **Regular Meetings; Notice.** Regular meetings of the Board of Directors shall be held from time to time at such times and at such places as the Board of Directors may prescribe; *provided*, that the Board of Directors shall hold at least one regular meeting during each year. Notice of the time and place of each such regular meeting shall be given by the Chair or the Secretary either personally or by telephone, mail, electronic mail or facsimile transmission not less than two days before such regular meeting.

6.4 **Special Meetings; Notice.** Special meetings of the Board of Directors may be called by or at the request of the Chair or the President/CEO or by any two of the Directors in office at that time. Notice of the time, place and purpose of any special meeting of the Board of Directors shall be given by the Chair or the Secretary either personally or by telephone, mail, overnight service, electronic mail or facsimile transmission at least two days before such meeting.

6.5 **Waiver.** Attendance by a Director at a meeting shall constitute waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called. See also Article Seven ("Notice and Waiver").

6.6 **Quorum and Vote Required for Action.** At meetings of the Board of Directors a majority of the total number of voting Directors then in office shall be necessary to constitute a quorum for the transaction of business. Except as otherwise provided in these bylaws or by law, the act of two thirds of Directors present at a meeting at which a quorum is present at the time shall be the act of the Board of Directors.

6.7 **Super-Majority Vote Required for Action.** Unless otherwise specified in this Section 6.7, the following actions shall require the affirmative vote of two thirds of all Member Directors (in either case, whether or not present at a meeting):

(1) Dissolution of the corporation or admission of new Members to the corporation.

~~(2) Adoption or amendment to the corporation's financial, investment banking, contracting, risk management or other corporate policies.~~

(3) Contracts binding the corporation for ~~greater time periods or for a value in excess of amounts as set forth in policies adopted by the Board from time to time.~~

(4) ~~Approval of the corporation's annual budget and strategic plan and any material amendments thereto.~~

(5) Entry of the corporation into any partnership or joint venture.

(6) ~~Determination of capital contributions from Members.~~

(7) ~~Creation of Board committees and any charters for the same.~~

(8) The amendment of the bylaws.

(9) The guarantee by the corporation of any indebtedness of any Person, or the guarantee of any contractual obligations of any other Person.

(10) Approving the transfer of any assets of the corporation, or any interest therein, other than in the ordinary course of business, the aggregate fair market value of which ~~exceeds the amounts set forth in policies adopted by the Board.~~

Deleted: more than thirty-six (36) months

Deleted: any contract with

Comment [DLH2]: Place holders for discussion

Deleted: \$10,000 or any group of related contracts with an aggregate value in excess of \$50,000

Deleted: <#>Adoption or amendment to the corporation's financial, banking, contracting, risk management policy or other corporate policies.¶

Deleted: <#>Changes to the operating procedures.¶

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Deleted: (Reserved)

Comment [DLH3]: Disposing of IT and office equipment comes to mind; not sure if currently 1% of the assets would cover that

Deleted: during any fiscal year may reasonably be expected to exceed the lesser of \$1,000, or one percent of the book value of the assets of the corporation as shown on the most recent monthly financial statements of the corporation

(11) Approval of borrowing money or issuing evidences of indebtedness, provided, however, that draws, or issuance of letters of credit, upon previously approved credit facilities, shall not be construed as falling under this subparagraph (13).

(12) Addition of or to, modification of, or removal of an activity deemed to be a Universal Project/Service shall require the unanimous consent of all Member directors. Universal Project/Service is defined as projects or services that are to be made available to (i) all Members and (ii) Non-Members as determined by the Board.

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(13) In addition to being approved by a Super-Majority of Member Directors, Member capital contributions/capital calls shall be governed as follows:

a. There shall be no mandatory capital calls. Initial capital contributions for Membership are not considered to be capital calls;

b. All capital calls are to be approved by Super Majority of Member Board Representatives;

c. For general capital calls or those related to “Universal Projects/Services”, these following provisions shall apply.

i. Should a Member decline to participate in a general or “Universal Project/Services” capital call, other Members may voluntarily “step up” to additional shares of such call and receive a corresponding increase in such Members’ Patronage Capital.

ii. Subsequent years’ margin distributions to Members which decline such capital calls shall be reduced, but by no more than fifty percent (50%) per year, until any such Member’s Patronage Capital is equal to the amount it would have been had it participated in the declined capital call(s) plus interest calculated in a policy adopted by the Board. Said Margin reductions shall be paid to the non-declining Members, thereby rebalancing Patronage Capital.

Deleted: as follows: [TO COME]

d. Initial capital calls associated with Non-Universal Projects/Services are applicable only to those Members who desire to participate in each such Non-Universal Project/Service (“Member Participants”). “Project Accounting” will be used to keep the benefits and burdens of such Non-Universal Projects/Services with that subset of Member Participants;

provided, however, that such Projects/Services shall be charged a reasonable allocation of the corporation's overhead. Members who participate in Non-Universal Projects/Services shall be required to enter into contracts with the corporation agreeing to make the corporation whole for any losses associated with such Non-Universal Service or Project as a condition of Board approval. Non-Universal Projects/Services are projects and services that are approved by the Board but sponsored by a subset of Members. Non-Participating Members and Non-Members may participate in such Non-Universal Services or Projects on a basis as determined by the Participating Members in the Non-Universal Service or Project. Subsequent capital calls for Non-Universal Projects/Services to Participating Members shall be treated as capital calls governed by subsections 6.7 (15)(a), (b) and (c) above.

(14) Any other adjustments to a Member Capital Accounts per section 10.4 that requires Board of Director approval.

6.8 Action by Directors Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all voting Members of the Board of Directors. Such consent shall have the same force and effect as an affirmative vote at a meeting duly called. Consent in the form of an electronic mail message from an electronic mail account of the Director with the name of the Director printed or in signature form at the end of the message shall be considered a signed consent by that Director. The signed consent, or a signed copy, or a copy of the electronic mail message shall be placed in the minute book. Alternate Directors may not execute consents.

6.9 Telephone and Similar Meetings. Directors may participate in and hold a meeting by means of telephone conference or similar communications equipment by means of which all Directors participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

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6.10 **Adjournments.** A meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by a majority of the Directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting which was adjourned.

ARTICLE SEVEN

Notice and Waiver

7.1 **Procedure.** Whenever these bylaws require notice to be given to any Director, the notice shall be given in accordance with this Section 7.1. Except as otherwise provided in these bylaws, notice under these bylaws shall be in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person, by telephone, mail, overnight service, electronic mail, facsimile transmission. Written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received or when delivered, properly addressed, to the addressee's last known principal place of business or electronic mail address;
- (2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with first-class postage prepaid and correctly addressed; or
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.

Oral notice is effective when communicated if communicated in a comprehensible manner.

In calculating time periods for notice, when a period of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

7.2 **Waiver.** A Member or Director may waive any notice before or after the date and time stated in the notice. Except as provided herein, the waiver must be in writing, signed by the

Member or Director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A Member's or Director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the Member or Director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

ARTICLE EIGHT

Officers

8.1 **Number and Qualifications.** The officers of the corporation shall consist of a Chair, Vice Chair, a President/CEO, one or more vice presidents as determined or designated by the Board of Directors, general counsel and a Secretary and a Treasurer. The Board of Directors shall from time to time create and establish the duties of such other officers or assistant officers as it deems necessary for the efficient management of the corporation; but the corporation shall not be required to have at any time any officers other than a Chair, Vice Chair and Treasurer, Secretary, President/CEO and general counsel. Any two or more offices other than Chair, Vice Chair, Secretary and Treasurer, President/CEO and general counsel may be held by the same person.

8.2 **Election and Term of Office.** The executive officers of the corporation, include only the Chair, the Vice Chair, the President/CEO, the general counsel, the Secretary and the Treasurer, who shall be elected by the Board of Directors. All executive officers, except the President/CEO and general counsel, shall serve for terms of two years, beginning on the date prescribed by the Board of Directors, and thereafter until their successors have been elected and qualified, or until their earlier death, resignation, removal, retirement or disqualification. The President/CEO and General Counsel shall be appointed by the Board of Directors and shall serve at the will of the Board of Directors, subject to any contractual rights any such officer may have as may be set forth in any executive employment or similar agreement, and until their successors have been elected and qualified, or until their earlier death, resignation, removal, retirement or disqualification. The Chair, Vice Chair, Secretary and Treasurer may not serve more than three consecutive terms.

8.3 **Other Agents.** The Board of Directors may appoint from time to time such agents as it may deem necessary or desirable, each of whom shall hold office during the pleasure of the board and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

8.4 **Removal.** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby. However, any such removal shall be without prejudice to the contract rights, if any, of the officer or agent so removed.

8.5 **Vacancies.** A vacancy in any office arising at any time and from any cause may be filled for the unexpired term by the Board of Directors at any meeting.

8.6 **Chair.** The Chair shall be elected from among the Directors and shall preside at all meetings of the Board of Directors and at all Membership meetings. The Chair shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

8.7 **Vice Chair.** The Vice Chair, shall be elected from among the Directors and shall in the absence or disability of the Chair, perform the duties and have the authority and exercise the powers of the Chair. The Vice Chair shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the Chair may from time to time delegate.

8.8 **President/CEO.**

(a) The President/CEO shall be the chief executive officer of the corporation and shall be qualified for his or her responsibilities through education and experience. As the chief executive officer of the corporation, the President/CEO shall exercise general supervision of all operations and personnel of the corporation, including without limitation recruiting, hiring and discharging employees of the corporation and determining compensation to be paid employees other than himself or herself for services rendered to the corporation, subject to the control of the Board of Directors.

(b) The President/CEO shall be authorized to sign (i) checks, drafts and other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation and (ii) grant requests and statements and reports required to be filed with state or federal officials or agencies; and the President/CEO shall be authorized to enter into any contract or agreement and to execute in the corporate name any instrument or other writing; and the President/CEO shall see that all orders, resolutions and policies of the Board of Directors are carried into effect.

(c) Under the direction and subject to the authority of the Board of Directors, the President/CEO shall have the right to supervise and direct the management and operation of the corporation and to make all decisions as to policy and otherwise which may arise between meetings of the Board of Directors, and the other officers and employees of the corporation shall be under his or her supervision and control during such interim.

(d) Unless otherwise determined by the Chair or by the Board of Directors, the President/CEO shall, in the absence or disability of the Chair and the Vice Chair, perform the duties and have the authority and exercise the powers of the Chair.

(e) The President/CEO shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

(f) The Board of Directors shall monitor, review, evaluate and assess the performance of the President/CEO on a regular basis but not less frequently than once every two years.

The review, evaluation and assessment of the President/CEO shall be based on the President/CEO's job description, on the President/CEO's role in assisting the Board of Directors in carrying out the purposes and functions of the corporation and on such other criteria as the Board of Directors may deem appropriate.

8.9 **Vice Presidents.** The vice presidents, in the order of their seniority in terms of tenure in the office of vice president, unless otherwise determined by the President/CEO or by the Board of Directors, shall, in the absence or disability of the President/CEO, perform the duties and have the authority and exercise the powers of the President/CEO. They shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time

prescribe or as the President/CEO may from time to time delegate. One such vice president shall be designated as the Corporation's chief financial officer, who, in addition to any other duties, shall be responsible for providing an annual budget to the Board of Directors for their approval, and for providing an investment policy that is acceptable to state standards for all Members to the Board of Directors for their approval.

8.10 **General Counsel.** The General Counsel shall be the chief legal officer of the corporation and shall be appointed and his or her compensation shall be determined by the Board of Directors. The general counsel shall be responsible directly to the Board of Directors for all legal matters concerning the corporation. The general counsel shall also be an assistant Secretary of the corporation.

8.11 **Secretary.**

(a) The Secretary shall be elected from the Directors and attend all meetings of the Board of Directors and record, or cause to be recorded, all votes, actions and the minutes of all proceedings in a book to be kept for that purpose and shall perform, or cause to be performed, like duties for the executive and other committees when required.

(b) The Chair or Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors.

(c) The Secretary shall keep in safe custody the seal of the corporation and, when authorized, affix it to any instrument requiring it. When so affixed, it may be attested by his or her signature or by the signature of the Treasurer or an assistant Secretary.

(d) The Secretary shall be under the supervision of the President/CEO. He or she shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the President/CEO may from time to time delegate.

8.12 **Assistant Secretaries.** The assistant secretaries, who need not be elected from among the Directors unless otherwise determined by the President/CEO or by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and have the authority and

exercise the powers of the Secretary. They shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the President/CEO may from time to time delegate.

8.13 **Treasurer.**

The Treasurer shall be elected from among the Directors and, in accordance with these by-laws and any policies approved by the Board of Directors, shall, for purposes of reporting to the Board of Directors, (i) oversee the custody of the corporate funds and securities; (ii) assure that full and accurate accounts of receipts and disbursements of the corporation are kept; and, (iii) assure that all monies and other valuables in the name and to the credit of the corporation are deposited into depositories designated by the Board of Directors. The Treasurer shall act as the Chair of the Board's finance and audit committee.

ARTICLE NINE

Assignment of Member Interest

[TO COME]

Comment [JWB 9/134]:
Note to Matt: Can you provide draft. Perhaps similar to our PSC assignment/sale provisions?

Deleted: **Committees**

Deleted: **COMMITTEES AND COMMITTEE CHARTERS**

ARTICLE TEN

Books and Records; Audits; Capital Accounts

10.1 **Books; Statements.** The corporation shall keep accurate, full and complete books and accounts showing its assets and liabilities, operations, transactions and financial condition. All financial statements shall be accurate in all material respects, shall present fairly the financial position, results of operations and cash flows of the corporation and shall be prepared on an accrual basis in accordance with generally accepted accounting principles consistently applied. The Board of Directors shall determine the methods to be used in the preparation of financial statements and federal, state and municipal income and other tax or information returns for the corporation. The method shall include, but not be limited to, valuation of assets, recording of income and expenses, the method of depreciation, elections, credits and accounting procedures. Following the commencement of activities by the corporation:

(a) The corporation shall cause to be prepared and submitted to each Member, within 30 days after the end of each month, an accrual basis balance sheet together with an accrual basis statement of operations and of cash flows for the month with a cumulative calendar year accrual basis statement of operations and of cash flows to date and with such other financial statement and information as reasonably may be requested by a Member, including any such information required to enable a Member or any of its affiliates to prepare quarterly reports to be filed pursuant to foreign, federal or state securities laws; and

(b) As soon as practicable after the end of each fiscal year of the corporation, a general accounting and audit shall be taken and made by the corporation's independent certified public accountants, covering the assets, liabilities and net worth of the corporation, and its dealings, transactions and operations during such fiscal year, and all other matters and things customarily included in such accounts and audits, and a full, detailed certified statement shall be furnished to each Member within 120 days after the end of such fiscal year, showing the assets, liabilities, properties, net worth, net revenues, net expenses and net income and cash flows of the corporation for such fiscal year. A full and complete report of the audit scope, opinion on the financial statements, and audit findings in the form of a management audit report shall also be furnished to each Member within 120 days after the end of such fiscal year.

10.2 **Where Maintained; Access.** The books, accounts and records of the corporation shall be at all times maintained at the principal office of the corporation or at such other places as designated by the vote of the Board of Directors. Each Member shall have access to and may inspect and copy the books, accounts and records of the corporation; *provided*, that any request for access to the books, accounts and records of the corporation must be reasonable.

10.3 **Audits.** In addition to the foregoing, any Member may, at its option and at its own expense, conduct internal audits of the books, records and accounts of the corporation. Audits may be on either a continuous or a periodic basis or both and may be conducted by employees of any Member, or of an affiliate of any Member, or by independent auditors retained by the corporation or by any Member.

10.4 **Capital Accounts.** A separate capital account shall be maintained for each Member. The initial capital account of each Member shall be equal to the dollar amount of the initial

capital contribution of each Member and, thereafter, shall be increased for any additional capital contribution of such Member and for such Member's periodic share of net income and decreased for such Member's periodic share of net losses and any distributions made to such Member. The capital account of any Member may be further adjusted as provided by written agreement between such Member and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors. No less frequently than annually, distributions shall be made by the corporation to its Members to the extent funds are available therefor after a reasonable amount is retained by the corporation for operating purposes.

10.5 **Other Information.** The corporation shall make available to each Member such information and financial statements in addition to the foregoing as shall be reasonably required by any of them in connection with the preparation of current and periodic reports.

ARTICLE ELEVEN

Members

11.1 **Withdrawal by Members.** Any Member may withdraw from Membership in the corporation upon 60 days written notice to the other Members. Upon a Member's written notice to withdraw, it's Member's Director shall be deemed to have resigned effective as of the date of the written notice to withdraw, and the Member who has submitted a notice to withdraw shall not be entitled to appoint another Member Director. Upon a Member's withdrawal as provided herein, its Membership shall terminate and the corporation shall calculate the Member's Membership Interest Book Value, computed as of the date of withdrawal, per the following formula:

(a) the amount contributed to the corporation by such Member and not previously distributed to it, plus (b) such Member's allocable share of margins and other revenues recognized, minus (c) such Member's allocable share of the corporation's costs and expenses, minus (d) all amounts previously distributed to it, all up to and including the date of withdrawal (but without duplication of any amount credited under (a) above).

If the withdrawing Member's Membership Interest Book Value is less than zero, then the withdrawing Member shall pay to the corporation the amount of such deficiency (but not more than amounts previously distributed to the withdrawing Member) as a condition of withdrawal. The amount, if any, described in the preceding sentence is referred to as the deficiency amount of a Member's Membership interest in the corporation. Any payment by the withdrawing Member pursuant to the foregoing shall be made within 90 days after the withdrawal. If the Member's Membership Interest Book Value is more than zero, the corporation shall pay ninety percent of such Book Value to the Member within 720 days of such notice to withdraw, with the remaining ten percent of said Member's Membership Interest Book Value of Member's Interest to be retained by the corporation as a condition of withdrawal.

Further provisions may be made in respect of the amount to be paid by or to a withdrawing Member in a written agreement between any Member and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors. If a Member shall have withdrawn from Membership in the corporation as provided in this Section 11.1, such withdrawn Member shall continue to be contractually obligated to take and pay for any service/projects that it has contracted with the corporation for in accordance with said contracts. The compensation charged by the corporation to such withdrawn Member for such service/project shall be that compensation which shall be established for non-Members of the corporation in effect at the date of withdrawal from Membership. The form of replacement contract which sets out the terms of the relationship between the corporation and the withdrawn Member for such services shall be the contract designated for such services to be provided to non-Members by resolution of the Board of Directors from time to time; *provided*, that the form of the contract for the withdrawn Member shall not be changed by the Board of Directors at any time from and after the notice of withdrawal shall have been received by the corporation from such Member.

11.2 **Termination of Members.**

A. If within 30 days after receiving a written notice from the corporation that a Member is in default of any of its obligations under contract or the bylaws to the corporation, the defaulting Member has not cured such default, then two thirds of the other Members may terminate the defaulting Member's Membership in the corporation. The corporation shall pay to

a terminated Member an amount equal to 75 percent of the Member's Membership Interest Book Value (as determined pursuant to Section 11.1) computed as of the termination date, provided such Membership Interest Book Value is more than zero. Such payment shall be made within 720 days following the determination of the amount of the Member's Membership Interest Book Value. If the amount is less than zero in such terminated Member's Membership Interest Book Value, such Member shall pay such deficiency amount to the corporation within 90 days following the termination date.

B. A Member of the corporation may have its Membership interest in the corporation terminated for any reason (other than reasons described in Section 11.2(A) of these bylaws) in the sole and absolute discretion of the remaining Members as effected by two separate unanimous votes of the remaining Members of the corporation, each vote being taken at meetings held no less than 30 days apart. In such event, the corporation shall pay to the terminated Member an amount equal to the Book Value of the terminated Member's Membership interest (computed as of the termination date) within 90 days after the termination date. If there is a deficiency amount in such Member's Membership interest in the corporation, such Member shall pay such deficiency amount to the corporation within 90 days after the termination date. The termination of a Member's Membership in the corporation shall be effective 60 days after the second meeting at which the second vote was taken.

C. The Membership of any Member in the corporation may be terminated as provided in any written agreement between such Member being terminated and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors.

11.3 Setoff of Amounts Due. In the case of a Member which withdraws as a Member of the corporation or its Membership is terminated, any amounts due from such Member to the corporation may be set off against any amounts due from the corporation to such withdrawing or terminated Member, whether or not pursuant to these bylaws, so that a single net amount is paid between such parties. In no case, however, shall amounts be setoff or netted unless they are then due and owing to be paid.

ARTICLE TWELVE

Director or Officer Conflicts of Interest

12.1 **Conflict of Interest Transaction.** No Director or officer of the corporation, or any family Member of such Director or officer, or any corporation, partnership, association, trust or other entity in which such Director or officer, or family Member of such Director or officer, serves as a Director, officer, partner or Director, or has a financial interest, shall be permitted to enter into any contract or transaction with the corporation unless:

(a) Such Director or officer discloses to the Board of Directors the material facts as to his or her or his or her family Member's relationship with or interest in the entity proposing to enter into the contract or transaction with the corporation, such Director or officer abstains and physically withdraws from all discussion of the contract or transaction by the Board of Directors, such Director or officer does not negotiate or otherwise participate in the development of the contract or transaction, and the Board of Directors authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors (even though the disinterested Directors may constitute less than a quorum); and

(b) The contract or transaction is fair to the corporation.

(c) For purposes of this Section 12.1, a Director who is an officer or Director of a Member shall not be considered to have a financial interest in any contract between the corporation and such Member.

12.2 **Fairness to the Corporation.** Factors to be considered in determining whether the contract or transaction is "fair" to the corporation include an examination of the following:

(a) The price and terms of the contract or transaction (the price and terms of the contract or transaction may vary, but must be on a level which the Board of Directors would accept in an arm's-length negotiation, in light of the knowledge that the Board of Directors would reasonably have acquired in the course of such negotiation); and

(b) Whether the Board of Directors would reasonably determine that the contract or transaction was in the best interests of the corporation.

12.3 **Remedies for Violation of Conflict of Interest Requirements.** If a Director or officer of the corporation, or any family member of such Director or officer, or any corporation, partnership, association, trust or other entity in which such Director, officer or family member of such Director or officer serves as a director, officer, partner or director, or has a financial interest, enters into any contract or transaction with the corporation without complying with the requirements of this Article, the Board of Directors may, at its sole discretion:

(a) Void the contract or transaction in its entirety and recover from such Director or officer any damages and expenses suffered or incurred by the corporation as a result of the contract or transaction; or

(b) Modify the price and terms of the contract or transaction so that the corporation receives a price and terms comparable to what the corporation would receive in an arm's-length negotiation.

ARTICLE THIRTEEN

Contracts, Checks, Deposits and Funds

13.1 **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation. Such authority must be in writing and may be general or confined to specific instances and conform to the policies adopted by the Board pursuant to Section 6.7 hereof.

13.2 **Deposits.** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories in accordance with corporation's financial or investment policies approved by the Board pursuant to Section 6.7 hereof.

13.3 Checks, Drafts, Notes, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be authorized and governed by the corporation's financial policy, approved by the Board pursuant to Section 6.7 hereof. such approval to be a condition precedent to the establishment of any such accounts or deposit made pursuant to Section 13.2 hereof.

Deleted: ¶

Moved (insertion) [1]

Deleted: 13.3 .

Deleted: as the Board of Directors

Deleted: may select pursuant to Section 5.1(b)(2) of these bylaws

Deleted: Corporation

Deleted: F

Deleted: P

Deleted: of which shall

Comment [DLH5]: Placeholder for J. Bentine

Deleted: 3

Deleted: , authorized by the Chair, the President/CEO, the chief financial officer, the Treasurer or such other officer or officers, agent or agents, of the corporation and in such manner as may from time to time be determined by resolution of the Board of Directors. All electronic transfers of an amount in excess of two-thousand five hundred dollars shall require the involvement of at least two employees of the corporation, neither of whom has the authority to complete the functions of the other or such other policies or protocols as the Board of Directors may approve from time to time

Moved up [1]: 13.3 . **Deposits.** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select pursuant to Section 5.1(b)(2) of these bylaws.¶

Deleted: ¶

ARTICLE FOURTEEN
Indemnification and Insurance

14.1 **Indemnification.** To the fullest extent permitted by law, a Director of the Corporation shall not be personally liable to the Corporation or to its Members for monetary damages for any breach of fiduciary duty as a Director. No amendment to, modification of or repeal of this Section 14.1 shall apply to or have any effect on the liability or alleged liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment. The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of Directors of the Corporation. Any amendment, repeal or modification of this Section 14.1 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

In the event that any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, seeks indemnification from the corporation against expenses, including attorneys' fees (and in the case of actions other than those by or in the right of the

corporation, judgments, fines and amounts paid in settlement), actually and reasonably incurred by him or her in connection with such action, suit or proceeding by reason of the fact that such person is or was a Director, Alternate Director, Member of a committee described in Section 9.1 of these bylaws, officer, employee, trustee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee, trustee or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise, then, unless such indemnification is ordered by a court, the corporation shall determine, or cause to be determined, in the manner provided under Delaware law whether or not indemnification is proper under the circumstances because the person claiming such indemnification has met the applicable standards of conduct set forth in Delaware law; and, to the extent it is so determined that such indemnification is proper, the person claiming such indemnification shall be indemnified to the fullest extent now or hereafter permitted by Delaware law.

14.2 Indemnification Not Exclusive of Other Rights. The indemnification provided in Section 14.1 above shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Certificate of Incorporation or bylaws, or any agreement, vote of Members or disinterested Directors or Alternate Director or a Member of a committee described in Section 9.1 of these bylaws or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Alternate Director, Member of a committee described in Section 9.1 of these bylaws, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

14.3 Insurance. To the extent permitted by Delaware law, the corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Alternate Director, Member of a committee described in Section 9.1 of these bylaws, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee, or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise.

ARTICLE FIFTEEN

Miscellaneous

15.1 **Corporate Seal.** The corporate seal (of which there may be one or more exemplars) shall be in such form as the Board of Directors may from time to time determine. Unless otherwise required by law, the corporation shall not be required to have or utilize a corporate seal.

15.2 **Fiscal Year.** The Board of Directors is authorized to fix the fiscal year of the corporation and to change the same from time to time as it deems appropriate.

15.3 **Construction.** Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion of these bylaws shall be invalid or inoperative, then, so far as is reasonable and possible:

- (a) The remainder of these bylaws shall be considered valid and operative; and
- (b) Effect shall be given to the intent manifested by the portion held invalid or inoperative.

15.4 **Table of Contents; Headings.** The table of contents and headings are for organization, convenience and clarity. In interpreting these bylaws, they shall be subordinated in importance to the other written material.

15.5 **Relation to Certificate of Incorporation.** These bylaws are subject to, and governed by, the Certificate of Incorporation.

ARTICLE SIXTEEN

Review of and Amendments to Bylaws

16.1 **Periodic Review of Bylaws.** The Board of Directors shall review these bylaws periodically (but not less frequently than once every two years) to ensure that the bylaws accurately reflect the governing structure of the corporation, that they are consistent with the management of the corporation and the administration of its affairs and that they comply with all applicable legal, regulatory and other requirements.

16.2 **Power to Amend Bylaws.** Subject to the provisions of Section 16.3 hereof, the Board of Directors shall have the power to alter, amend or repeal these bylaws, or adopt new bylaws, but no such amendment shall require additional capital contributions by a Member without such Member's consent.

16.3 **Conditions.** Action by the Board of Directors with respect to bylaws may be taken only as provided in Section 6.7 hereof

ARTICLE SEVENTEEN

Tax-Exempt Status

17.1 **Tax-Exempt Status.** The affairs of the corporation at all times shall be conducted in such a manner as to assure its status as a governmental instrumentality within the meaning of federal tax laws.

ARTICLE EIGHTEEN

Dissolution of Corporation

18.1 **Dissolution.** The corporation may be dissolved as provided in Section 6.7 (1).

18.2 **Terms of Dissolution.** Upon dissolution of the corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the Corporation by distributing those net assets (assets less liabilities) to the corporation's Members, in proportion to their respective capital account balances.

ARTICLE NINETEEN

Adoption of Bylaws

These bylaws were adopted by resolution of the Board of Directors, and became effective, on _____, 2017.

Adopted by the unanimous vote of the voting Members of the Board of Directors at a meeting thereof on _____, 2017.

4817-6605-3445, v. 18

DRAFT

ATTACHMENT 3

NON-DISCLOSURE AGREEMENT DATED AS OF JULY 17, 2017

[FINAL]

[COMPOSITE TO COME UNDER SEPARATE COVER]

**EXECUTION COPY
AMP CONTRACT NO. 2017-004080-NDA**

**CONFIDENTIALITY - NON-DISCLOSURE AGREEMENT
BETWEEN
AMERICAN MUNICIPAL POWER, INC.
AMERICAN PUBLIC POWER ASSOCIATION
HOMETOWN CONNECTIONS INTERNATIONAL
MISSOURI PUBLIC UTILITY ALLIANCE
NORTHERN CALIFORNIA POWER AGENCY
VERMONT PUBLIC POWER SUPPLY AUTHORITY,
WESTERN MINNESOTA MUNICIPAL POWER AGENCY (AND MISSOURI RIVER
ENERGY SERVICES AS ITS AGENT), AND
WPPI ENERGY**

This Confidentiality – Non-Disclosure Agreement (“Agreement”) is made effective as of the 17th day of July, 2017, between American Municipal Power, Inc., 1111 Schrock Road, Suite 100, Columbus, Ohio 43229, its Affiliates (as defined below), successors, and assigns (“AMP”), American Public Power Association, 2451 Crystal Drive, Suite 1000, Arlington, Virginia 22202, its Affiliates, successors, and assigns (“APPA”), Hometown Connections International, LLC, 12081 W. Alameda Parkway, Suite 464, Lakewood, Colorado 80228, its Affiliates, successors, and assigns (“HCI”), Missouri Public Utility Alliance, 1808 I-70 Drive SW, Columbia, MO 65203-1032, its Affiliates, successors, and assigns (“MPUA”), Missouri River Energy Services, 3724 West Avera Drive, Sioux Falls, SD 57109-8920, its Affiliates, successors, and assigns (“MRES”), Northern California Power Agency, 651 Commerce Drive, Roseville, CA 95678, its Affiliates, successors, and assigns (“NCPA”), Vermont Public Power Supply Authority, 5195 Waterbury Stowe Rd, Waterbury Center, VT 05677, its Affiliates, successors, and assigns (“VPPSA”), Western Minnesota Municipal Power Agency, 212 Second St. N.W., Ortonville, Minn. 56278, its Affiliates, successors, and assigns (“WMMPA”) and WPPI Energy, 1425 Corporate Center Drive, Sun Prairie, WI 53590, its Affiliates, successors, and assigns (“WPPI”) and each sometimes referred to individually as “Party” and collectively as “Parties.”

WHEREAS, the Parties desire to continue discussions, preliminary to the formation of a contractual or other business relationship and may, in connection with such discussions, disclose non-public business, financial, contractual, or technical information and documents that the Parties consider confidential;

NOW THEREFORE, based upon the foregoing and intending to be legally bound, the Parties agree as follows:

1. Definitions.

A. Affiliates of any Party shall mean any company or legal entity which (a) controls, either directly or indirectly, such Party; (b) is controlled, directly or indirectly, by such Party; (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party; (d) in the case of AMP, any joint ventures of its members managed by it, AMP's members and their respective consultants, and the Ohio Municipal Electric Association; or (e) in the case of WMMPA, MRES acting as its agent. "Control" means the right to exercise 50% or more of the voting rights in the appointment of the directors (or other managers having duties similar to those of directors) of such company or legal entity.

B. Confidential Information shall mean all non-public business, financial, contractual, or technical information, documents, and data, including this Agreement, related to the Purpose regardless of the form under which it is communicated, which one Party has provided to another Party specifically arising from the Parties discussions/negotiations in relation to the Purpose.

C. Person shall mean, without limitation, any individual, corporation, company, group, partnership or other entity.

D. Purpose shall mean the disclosure of Confidential Information to enable the Parties to discuss a potential business relationship and determine whether a contractual relationship in connection with such Purpose would be mutually beneficial to the Parties.

2. Confidential Information shall only be subject to obligations of confidentiality and restrictions on use or disclosure under this Agreement if it is either (a) in writing or other tangible form marked "Confidential" or (b) if not in tangible form (i.e. disclosed orally or observed), then clearly identified as confidential when revealed to any other Party. Unless otherwise agreed in writing, the Parties shall not disclose to any unauthorized third parties the fact that discussions related to the Purpose are in progress.

3. Exceptions to Confidential Treatment. Information will not be considered Confidential Information, and no obligation of confidentiality will apply thereto, if such information: i) is, or becomes, publicly available through no fault or breach of the receiving Party or its Authorized Representatives; ii) was in the receiving Party's or its Authorized Representatives' possession before receipt thereof from the disclosing Party; iii) is disclosed to a Party or its Authorized Representatives by a third party, so long as it reasonably appears to the Party or its Authorized Representatives that the third party is legally permitted to so disclose; iv) is developed by the receiving Party or its Authorized Representatives without the use of the Confidential Information of the disclosing Party; v) was approved in writing for release by the disclosing Party; or vi) is required to be disclosed by a regulatory agency or court of law. The Parties agree to provide advance notice to the Party whose Confidential Information is being disclosed, prior to any disclosure pursuant to subsection (vi), to the extent legally permissible and reasonably practicable under the circumstances, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with this Section. If, in the absence of a protective order or the receipt of a waiver hereunder, a receiving Party is nonetheless legally compelled to disclose Confidential Information or needs to disclose such Confidential Information in order to obtain or maintain regulatory or governmental approvals, it may, without liability hereunder, furnish that portion of such Confidential Information that is legally required and will exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

4. Obligation of Confidentiality. For two (2) years from the effective date of this Agreement, the Parties agree to use reasonable care and discretion to avoid disclosure, publication or distribution of Confidential Information to any unauthorized third party. Each Party may disclose Confidential Information to its respective trustees, directors, officers, employees (permanent or contract), attorneys, accountants, agents, representatives and consultants ("Authorized Representatives") who require Confidential Information for the Purpose as long as the disclosing Party requires such Persons to hold and use the Confidential Information in accordance with this Agreement. Further, each Party agrees to assume full responsibility for the acts and/or omissions of its Authorized Representatives in relation to this Agreement.

Each Party agrees that the Confidential Information it receives from any Party is proprietary and shall be kept confidential. The Confidential Information shall not be sold, traded, published, or otherwise disclosed by the receiving Party to anyone in any manner whatsoever, except as may be expressly provided for herein. The receiving Party shall not use the Confidential Information for any purpose, without the consent of the disclosing Party, other than concerning the Purpose. The Parties acknowledge that their Authorized Representatives will form and retain mental impressions based upon the Confidential Information and agree that it is not the intent of the Parties that the non-use restrictions contained in this Agreement will prevent these Authorized Representatives from performing their other work assignments for their respective employers. Without the prior written consent of the disclosing Party, the receiving Party will not, and will direct the receiving Party's Representatives not to, disclose to any other Person that such Confidential Information has been made available, that discussions or negotiations are taking place or any of the terms, conditions or other facts with respect to the Purpose including the status thereof or the terms of this Agreement.

5. Use of Confidential Information. The Parties will not utilize any of the Confidential Information they receive except as expressly permitted by this Agreement.

6. Ownership. All Confidential Information disclosed by the disclosing Party under this Agreement remains the property of the disclosing Party. The Parties agree that no license under any invention, patent, copyright, trade secret or other proprietary right is granted to the other Party by this Agreement.

7. Termination. This Agreement may be terminated by any Party upon written notice to the other Parties. Each Party agrees that it will within thirty (30) days of written notification return or destroy all tangible Confidential Information in its possession. Notwithstanding the foregoing, (i) the receiving Party shall not be obligated to return or destroy any documents created by it that may reflect or refer to Confidential Information; (ii) the receiving Party may create and retain an abstract describing the type of Confidential Information that it receives sufficient to document the nature and scope of the Parties' discussions under this Agreement; (iii) the receiving Party shall not be obligated to return or destroy any Confidential Information that the receiving Party is retaining pursuant to applicable legal or regulatory requirements or a

document retention hold established in connection with any civil or criminal investigations or litigation, in which event the Confidential Information shall be retained by the receiving Party until such time as those requirements or the document retention hold is no longer in effect, at which time the Confidential Information shall be returned to the disclosing Party or destroyed as aforesaid; and (iv) to the extent that receiving Party's computer back-up procedures create copies of the Confidential Information, the receiving Party may retain such copies in its archival or back-up computer storage for the period the receiving Party normally archives backed-up computer records. Any such documents or abstract so created will be retained subject to this Agreement until they are destroyed or erased.

8. General.

A. The laws of the State of Ohio will govern this Agreement (without regard to conflict of laws provisions). The Parties agree that the state and federal courts located in Franklin County, Ohio will have sole jurisdiction and venue in any proceeding arising out of this Agreement. **EACH PARTY HERETO HEREBY ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE PURPOSE, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE.**

B. This Agreement creates no agency, partnership, joint venture, or other joint enterprise.

C. No waiver or amendment of any provision of this Agreement shall be effective unless set forth in a writing signed by the Parties.

D. The invalidity or unenforceability of any provision of this Agreement shall not affect, or impair, the validity or enforceability of any other provision.

E. No Party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other Parties. The Parties acknowledge that this Agreement is the complete and exclusive agreement between the Parties related to the matters discussed herein.

F. This Agreement may be executed by the Parties in any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same Agreement. The Parties agree hereto that facsimile or similar electronically transmitted signature pages signed by the Parties hereto shall be binding to the same extent as original signature pages.

G. Without prejudice to any other rights or remedies the disclosing Party may have, the receiving Party agrees that money damages may not be an adequate remedy for any breach of this Agreement and that the disclosing Party may be entitled to seek the remedies of injunction, specific performance, and other equitable relief for any breach or threatened breach of this Agreement by the receiving Party or its Authorized Representatives. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES.

H. In providing any information hereunder, the disclosing Party makes no representations, either express or implied, as to the accuracy, sufficiency, or freedom from defect of the information, nor shall any Party incur any liability or obligation whatsoever by reason of such information. Notwithstanding the foregoing, the disclosing Party does represent and warrant to the receiving Party that the disclosing Party has the right to disclose and to provide the Confidential Information to the receiving Party.

I. Each Party agrees that unless and until a Definitive Agreement between the Parties has been executed, neither Party will be under any legal obligation of any kind with respect to such Definitive Agreement by virtue of this Agreement nor any written or oral expression with respect to such an agreement by such Party or its Authorized Representatives, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term "Definitive Agreement" does not include an executed letter of intent

or any other preliminary written agreement or offer unless specifically so designated in writing and executed by all Parties. This Agreement neither obligates a Party to deal exclusively with any other Party nor prevents a Party or any of its Affiliates from competing with any Party or any Affiliates of any Party.

J. Each Party understands and agrees that no failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.

K. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied.

L. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, or mailed by certified mail, return receipt requested, to the following addresses:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: President/ CEO

American Public Power Association
2451 Crystal Drive, Suite 1000
Arlington, Virginia 22202

Attn: _____

with a copies to:

with a copy to:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: General Counsel

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: General Counsel Emeritus

MISSOURI RIVER ENERGY SERVICES

By: _____

Name: _____

Title: _____

NORTHERN CALIFORNIA POWER AGENCY

By: _____

Name: _____

Title: _____

VERMONT PUBLIC POWER SUPPLY AUTHORITY

By: _____

Name: _____

Title: _____

WPPI ENERGY

By: _____

Name: _____

Title: _____

**WESTERN MINNESOTA MUNICIPAL POWER
AGENCY**

By: _____

Name: _____

Title: _____

4811-9369-8124, v. 8



AMP CONTRACT NO. 2017-004236-AMD

VIA ELECTRONIC MAIL

November 7, 2017

Fred D. Clark, Jr.
 Alabama Municipal Electric Authority
 President and CEO
 80 TechnaCenter Drive
 Montgomery, AL 36117

Re: Supplement to Memorandum of Understanding Dated August 14, 2017

Dear Fred:

Attached please find an executed copy of the Memorandum of Understanding ("MOU") dated August 14, 2017 regarding "New HCl" executed by the six (6) current members, plus APPA and HCl. As we have discussed the six (6), American Municipal Power, Inc. ("AMP"), Missouri Public Utility Alliance ("MPUA"), Western Minnesota Municipal Power Agency ("WMMPA") represented by its agent, Missouri River Energy Services ("MRES"), Northern California Power Agency ("NCPA"), Vermont Public Power Supply Authority ("VPPSA") and WPPI Energy ("WPPI") have all approved, by vote on October 16, 2017, AMEA joining our group as an original member on the same terms and conditions as AMP, MPUA, WMMPA (through MRES), NCPA, VPPSA and WPPI. If New HCl is established, it will commit that the purchase price of \$350,000 for your share of HCl's assets will be used as an in-kind contribution to fund AMEA's initial capital contribution. The balance shall be paid by New HCl to AMEA as either credits against future capital calls or refunded to you pro rata or before the fifth (5th), sixth (6th) and seventh (7th) anniversaries of the closing of the asset purchase from APPA, HCl and AMEA.

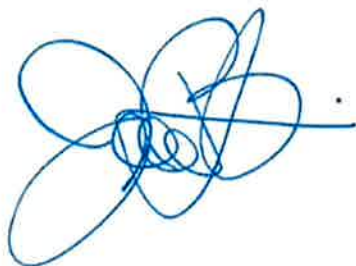
As you may be aware, New HCl's draft by-laws allow members of New HCl to withdraw with sixty (60) days' notice. See Section 11.1. Given AMEA's unique circumstances, the group will give AMEA a one-time option to withdraw to be effective not less than sixty (60) days but no more than one (1) year after the closing contemplated to close the purchase of HCl's assets and create New HCl. If AMEA withdraws in that time frame, AMEA would then receive the \$350,000 purchase price for its rights to HCl's assets in ten (10) annual payments from New HCl, secured with a New HCl promissory note. These arrangements, are to be set forth in detail in the Definitive Agreements contemplated under the MOU, in a manner satisfactory to AMEA and New HCl. Please note that the commitments of AMEA and the other parties outlined in this letter are subject to the terms of the MOU, including the rights of the parties to withdraw from the group before execution of the Definitive Agreements without liability to one another.

DELAWARE DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENHAM • BERIA • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN
MARYLAND BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER
 BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA • DESHLER
 DOVER • EDGERTON • ELDORADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD • HUDSON • HURON
 JACKSON • JACKSON CENTER • LAKEVIEW • LEBANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTPELIER • NAPOLEON • NEW BREMEN
 NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT • REPUBLIC • SEVILLE
 SHELBY • SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • VERSAILLES • WADSWORTH • WAPAKONETA • WAYNESFIELD • WELLINGTON • WESTERVILLE
 WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON • EAST CONEMALICH • ELLWOOD CITY • EPIRATA • GIRARD
 GOLDSBORO • GROVE CITY • HATFIELD • HOOVERVILLE • KLITZTOWN • JANSDALE • LEHICHTON • LEWISBERRY • MIFFLINBURG • NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON
 SAINT CLAIR • SCHUYLKILL HAVEN • SMETHPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE **VIRGINIA** BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS
WEST VIRGINIA NEW MARTINSVILLE • PHILIPPI

Fred D. Clark, Jr.
Alabama Municipal Electric Authority
November 7, 2017
Page 2

If you concur the above represents AMEA's understanding, please execute where indicated below to affect AMEA's entering into our group as an original member as set forth in the MOU attached. The other parties evidence their understanding by the execution of counterparts to this letter. Electronic copies shall be acceptable as originals.

Very truly yours,

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line extending to the right.

John W. Bentine
General Counsel Emeritus

Attachment

[Remainder of Page Left Blank Intentionally - Signature Page Follows This Page]

* * *

AGREED:




FRED D. CLARK, JR.
PRESIDENT AND CEO
ALABAMA MUNICIPAL ELECTRIC AUTHORITY

11-7-17

DATE

AGREED:



MARC S. GERKEN, P.E.
PRESIDENT/CEO
AMERICAN MUNICIPAL POWER, INC.

11/16/17

DATE

APPROVED AS TO FORM:



RACHEL GERRICK
SENIOR VICE PRESIDENT AND GENERAL COUNSEL FOR CORPORATE AFFAIRS

AGREED:

AMERICAN PUBLIC POWER ASSOCIATION

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

HOMETOWN CONNECTIONS INTERNATIONAL, LLC

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

FRED D. CLARK, JR.
PRESIDENT AND CEO
ALABAMA MUNICIPAL ELECTRIC AUTHORITY

DATE

AGREED:

MARC S. GERKEN, P.E.
PRESIDENT/CEO
AMERICAN MUNICIPAL POWER, INC.

DATE

APPROVED AS TO FORM:

RACHEL GERRICK
SENIOR VICE PRESIDENT AND GENERAL COUNSEL FOR CORPORATE AFFAIRS

AGREED:

AMERICAN PUBLIC POWER ASSOCIATION

BY: SMally

11/10/17
DATE

NAME: Susan W. Kelly

TITLE: President and CEO

AGREED:

HOMETOWN CONNECTIONS INTERNATIONAL, LLC

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

FRED D. CLARK, JR.
PRESIDENT AND CEO
ALABAMA MUNICIPAL ELECTRIC AUTHORITY

DATE

AGREED:

MARC S. GERKEN, P.E.
PRESIDENT/CEO
AMERICAN MUNICIPAL POWER, INC.

DATE

APPROVED AS TO FORM:

RACHEL GERRICK
SENIOR VICE PRESIDENT AND GENERAL COUNSEL FOR CORPORATE AFFAIRS

AGREED:

AMERICAN PUBLIC POWER ASSOCIATION

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

HOMETOWN CONNECTIONS INTERNATIONAL, LLC

BY: *Tim Blodgett*

11/09/17
DATE

NAME: TIM L. BLODGETT

TITLE: PRESIDENT AND CEO

AGREED:

MPUA RESOURCE SERVICES CORPORATION

BY: Duncan Kinchebe

11-7-17
DATE

NAME: Duncan Kinchebe

TITLE: Chair and CEO

AGREED:

NORTHERN CALIFORNIA POWER AGENCY

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

VERMONT PUBLIC POWER SUPPLY AUTHORITY

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

WESTERN MINNESOTA MUNICIPAL POWER AGENCY
(REPRESENTED BY MISSOURI RIVER ENERGY SERVICES)

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

MPUA RESOURCE SERVICES CORPORATION

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

NORTHERN CALIFORNIA POWER AGENCY

BY: Randy S Howard

11/7/17
DATE

NAME: Randy S. Howard

TITLE: General Manager

AGREED:

VERMONT PUBLIC POWER SUPPLY AUTHORITY

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

**WESTERN MINNESOTA MUNICIPAL POWER AGENCY
(REPRESENTED BY MISSOURI RIVER ENERGY SERVICES)**

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

MPUA RESOURCE SERVICES CORPORATION

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

NORTHERN CALIFORNIA POWER AGENCY

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

VERMONT PUBLIC POWER SUPPLY AUTHORITY

BY: Kenneth A Nolan

12/4/17
DATE

NAME: Kenneth A Nolan

TITLE: General Manager

AGREED:

**WESTERN MINNESOTA MUNICIPAL POWER AGENCY
(REPRESENTED BY MISSOURI RIVER ENERGY SERVICES)**

BY: _____

DATE

NAME: _____

TITLE: _____

AGREED:

MPUA RESOURCE SERVICES CORPORATION

BY: _____

DATE _____

NAME: _____

TITLE: _____

AGREED:

NORTHERN CALIFORNIA POWER AGENCY

BY: _____

DATE _____

NAME: _____

TITLE: _____

AGREED:

VERMONT PUBLIC POWER SUPPLY AUTHORITY

BY: _____

DATE _____

NAME: _____

TITLE: _____

AGREED:

WESTERN MINNESOTA MUNICIPAL POWER AGENCY
(REPRESENTED BY MISSOURI RIVER ENERGY SERVICES)

BY: Thomas J. Heller

11/8/17
DATE

NAME: Thomas J. Heller

TITLE: Ast Sec / Trcas

 MRES
Legal
Department
Approved: DJB
Date: 11/7/17



JWB 3/1/2018 DRAFT
AMP Contract No. [TO COME]

PRIVILEGED AND CONFIDENTIAL

TO:

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Sue Kelly/APPA	SueKelly@publicpower.org
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FROM: John Bentine/AMP @ jbentine@amppartners.org

RE: First Amended Memorandum of Understanding – Hometown Connections International

DATE: March _____, 2018

DELAWARE DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENHAM • BERE A • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN **MARYLAND** BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA • DESHLER DOVER • EDGERTON • ELDORADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD • HUDSON • HURON JACKSON • JACKSON CENTER • LAKEVIEW • LEBANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTEPELLIER • NAPOLEON • NEW BREMEN • NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT • REPUBLIC • SEVILLE SHELBY • SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • VERSAILLES • WADSWORTH • WAPAKONETA • WAYNESFIELD • WELLINGTON • WESTERVILLE WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON • EAST CONEMAUGH • ELLWOOD CITY • EPHRATA • GIRARD GOLDSBORO • GROVE CITY • HATFIELD • HOOVERSVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIFFLINBURG • NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON SAINT CLAIR • SCHUYLKILL HAVEN • SMETHPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE **VIRGINIA** BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI



All:

Attached as Appendix B, please find a (redline) final Execution Copy which represents the updated discussions between our organizations. This MOU transmittal and Appendix B, updates, amends and supercedes the August 2017 Memorandum of Understanding (“MOU”) and Appendix A thereto (AMP Contract No. 2017-004147-MAS). Appendix B updates our agreed upon, non-binding, with a few exceptions, framework for continued good faith negotiations between American Municipal Power, Inc. (“AMP”) and the other signatories hereto including any affiliate successors and assignees of such signatory, provided any successor or assignee otherwise meets the qualification to become a member of the new Hometown Connections International, LLC (“HCI”) (collectively “Parties”), that are intended to result in the execution of the definitive agreements necessary for the Parties to create and fund a non-profit entity which will acquire the assets of HCI from its current owners at a fair and reasonable price, and thereafter operate the same under the HCI name.

If you concur that this transmittal and Appendix B represents our updated mutually-agreed path forward, please execute a copy of this First Amended Memorandum of Understanding (“First Amended MOU”) on behalf of your organization and return it to me at your earliest convenience but no later than March _____, 2018.

Very truly yours,

American Municipal Power, Inc.
John W. Bentine
General Counsel Emeritus

Attachment

- Appendix B – Draft First Amended MOU

[Remainder of Page Left Blank Intentionally - Signature Page Follows This Page]

* * *

AGREED:

[SIGNATURE]

DATE

[PRINT NAME]

[TITLE]

[ORGANIZATION]

PRIVILEGED AND CONFIDENTIAL

APPENDIX B

TO FIRST AMENDED MEMORANDUM OF UNDERSTANDING

DATED _____, 2018

A. Statement of Purpose

1. The Parties hereto have been participating in discussions regarding the acquisition (the “Asset Purchase”) of the assets of Hometown Connections International, LLC (“HCI”) and the creation of a new non-profit entity (“New HCI”) which will acquire those assets. The Parties hereto, and WPPI, which is no longer a Party hereto, executed the August 2017 MOU and have continued discussions and now desire to update the August 2017 MOU through this First Amended MOU.
2. The Parties hereto, with the exception of APPA and HCI, are expected to be the eventual initial Members (“Original Members”) of New HCI. The Original Members are joint action agencies each of which, or an affiliate successor thereof, is either currently or will take the necessary steps to become a political subdivision as defined in Treas. Reg. Section 1.103-1 (a “Political Subdivision”) or an entity whose revenue is excluded from the calculation of gross income for purposes of the Internal Revenue Code of 1986, as amended (the “Code”) from federal income taxation under Section 115 of the Code (a “Section 115 Entity”). Should the Original Members determine that another tax and corporate strategy is acceptable and will not adversely affect the tax status of New HCI or any Original Member, they may do so under this First Amended MOU.
3. The six (6) Original Members expect that a number of additional joint action agencies or larger public power systems may desire to become Members (each, an “Additional Member” and such Additional Members, together with the Original Members, the “Members”), as to be determined appropriate by the Original Members, may participate as Members of New HCI. Additional Members may be permitted to “buy in” to New HCI after its formation in a manner determined by the Original Members. As Additional Members are added, it is expected that the Membership Interests of then-current Members would be reduced, in the manner approved by the Members, likely *pro rata* in proportion to the Additional Member’s respective Membership Interest in New HCI in a manner in which all Members would hold an equal Membership Interest (each, a “Membership Interest”). The capital requirements of the Members upon purchase of a Membership Interest shall be determined in accordance with the Definitive Agreements. Each such Member will hold a Membership Interest in New HCI.
4. In addition, the Parties envision that they will seek to permit the American Public Power Association’s (“APPA”) to continue to have a role in Hometown Connections in a capacity to be

determined by the Parties. HCI is currently owned 65% by APPA through its for profit Public Power Inc. subsidiary (“PPI”) and 35% by the Alabama Municipal Electric Association (“AMEA”).

5. The Parties hereto acknowledge and agree that this First Amended MOU is intended to document the current mutual understandings of the Parties with respect to the matters set forth herein. Except as expressly provided otherwise herein, the legally binding obligations of the Parties shall be set forth in one or more Agreements (the “Definitive Agreements”) currently anticipated to include, but not limited to, the following:

- a. An Asset Purchase Agreement between New HCI and APPA/PPI, AMEA and HCI and a Services Agreement between _____ and APPA;¹
- b. Articles of Incorporation for New HCI;¹
- c. Bylaws for New HCI;¹
- d. New HCI Operating Agreement¹; and
- e. AMP/HCI AMI Project Acquisition and Operating Agreement.¹

Subject to negotiation of any other mutually agreed final terms and conditions and receipt of required corporate approvals by the Parties, the Parties, as applicable, intend to continue to negotiate in good faith and enter into the Definitive Agreements in the forms attached hereto, including but not limited to those listed above.

6. The Parties hereto agree to negotiate in good faith and use reasonable efforts, to execute the Definitive Agreements and to close prior to May 1, 2018.

7. After the closing of the Asset Purchase Agreement, HCI will be wound down and liquidated.

B. Strategic Plan

1. New HCI will continue HCI's stated goal of developing, owning and marketing services to public power entities.
2. Working on a cooperative basis with the Members and APPA, New HCI would offer targeted programs such as AMP’s AMI Program that can bring significant savings associated with economics of scale to the ultimate consumers of the Members and other public power entities and APPA members.
3. Additional services and offerings could be added as appropriate and approved by the New HCI Board in accordance with New HCI’s by-laws.
4. The Parties are not motivated by profit and anticipate that cost savings achieved by economies of scale by New HCI will be passed on to the Members and public power entities utilizing New HCI's services. Other public power entities subscribing to the services and programs may be

¹ The current drafts of these documents as approved by the Original Members and where applicable, by APPA, PPI and HCI, are attached hereto as Exhibits 1 through 6, respectively.

charged prices which include a reasonable margin above New HCI's direct costs to reflect the Members' capital contributions in and the risks of participation as a Member in New HCI.

C. Acquisition

1. The Original Members will incorporate or register New HCI as a Delaware not-for-profit entity and contribute sufficient capital to provide for the purchase price set forth in the Asset Purchase Agreement with the current owners as well as working capital and any other capital requirements as set forth in the Definitive Agreements.
2. The particular assets to be acquired by New HCI would be determined after the Parties interested in acquiring an ownership interest conduct due diligence, but must include the Hometown Connections service mark and such additional assets that align with the strategic direction and tax status of New HCI.
3. The Parties anticipate, however, that certain of HCI's existing assets, including certain of its contractual rights and its ownership interests may not align with the strategic focus of New HCI or will otherwise be inconsistent with New HCI's new organizational structure and tax status and may not be subject to the Asset Purchase.
4. New HCI will offer to retain all of HCI's existing full time employees and will take assignment of contractual relationships of most, if not all, of its independent contractor representatives.
5. Following closing of the Asset Purchase, AMP would contribute certain contractual rights and other assets relating to its AMI project as set forth in the AMP/HCI AMI Acquisition and Operations Agreement.
6. Subject to Paragraph A2 of this Appendix, continuing tax diligence and any state law restrictions placed on the Members, New HCI's organizational documents shall provide that only Political Subdivisions or Section 115 Entities may hold a Membership Interest in New HCI.
7. New HCI will be governed by a board of directors ("Board"), whose members will be appointed by the Members.
8. While a majority vote of the New HCI Board may authorize most actions, a supermajority will be required to undertake major actions, including, but not limited to, winding down of New HCI, entering major new business lines and the hiring of executive-level officers as set forth in the New HCI's draft by-laws.
9. Members' voting power on the New HCI Board is expected to reflect equal voting power for each Member, however, some form of weighted voting for certain decisions may be determined to be appropriate by the Original Members and set forth in the New HCI's draft by-laws.

D. Development Costs

1. AMP has an estimate for additional legal due diligence to prepare and prosecute an IRS letter ruling request and for review of the Definitive Agreements drafts of \$110,000 (“Development Costs”). All such costs shall be paid by AMP and each other potential Member shall reimburse AMP for its allocated share of such costs as set forth in this Section D. Development Costs shared hereunder shall not exceed \$110,000 without the written agreement of each Party hereto which is responsible for a share of Development Costs, provided, however, that New HCI may determine it appropriate to pay for any development costs in excess of the \$110,000 cap.
2. Each Party agrees that it will be solely responsible for all costs of its own due diligence, whether internal or external, related to its determination of whether or not to proceed with the transactions contemplated herein.
3. For purposes of determining the allocation of the Development Costs and, for the avoidance of doubt, the Parties agree that AMEA (except to the extent it is an Original Member), HCI and APPA will not be responsible for a share of the Development Costs hereunder.
4. The Parties executing this MOU shall be responsible for an equal share of Development Costs in proportion to their potential equal Membership Interest in New HCI. Each Member shall have the obligation to pay an equal share but no more than 25% of Development Costs and for the same shall receive an option, but not an obligation, to purchase an equal percentage Membership Interest of New HCI. To the extent potential Members’ potential shares total greater than 100%, each obligation for Development Costs and related Membership Interest shall be decreased pro rata. To the extent that all potential Membership Interests aggregate to a total less than 100%, Parties shall have the option to increase their potential Membership Interests in amounts so as to total 100%. If after providing Parties the option to increase their potential Membership Interest the total remains less than 100%, this MOU shall be void.

E. Miscellaneous Provisions

1. The Parties have executed a Non-Disclosure Agreement dated as of October 29, 2015 (“NDA”), which covers the matters contemplated by this MOU up to July 17, 2017 and an Amended Non-Disclosure Agreement dated as of July 17, 2017 (“Amended NDA”), attached hereto.
2. Until the earlier of execution by some or all of the Parties of the Definitive Agreements and August 31, 2018 (the “Exclusivity Period”), APPA, including its affiliates and subsidiaries, and HCI agree that each of them shall not, and shall cause any respective affiliates or their respective officers, managers, employees, agents and other representatives not to, enter into

or continue negotiations or other formal discussions regarding the sale of HCI with any other party.

3. The Parties agree that upon entering into Definitive Agreements, their relationship will be one of Members and/or independent entities. Accordingly, there will be no joint venture, partnership or similar arrangement between them and none owe any type of fiduciary duty to the other, other than as specifically set forth in the Definitive Agreements.
4. Other than the financial obligations set forth in Section D hereof, the Parties obligations with respect to the Exclusivity Period and under the NDA and Amended NDA, the provisions of this MOU are non-binding. Accordingly, the Parties agree that the termination of negotiations hereunder or any failure of a Party to execute the Definitive Agreements contemplated in this MOU shall not create any liability to the other for any type of damages whatsoever including but not limited to direct, consequential, punitive or special damages.
5. The Parties believe that the success of New HCI is predicated upon the continued participation of APPA.
6. As APPA is structured as a 501(c)(6) and is not a political subdivision for purposes of the Internal Revenue Code; and Public Power, Inc., the subsidiary through which APPA holds its interest in HCI, is a for-profit entity, it may not be advantageous to the Parties for APPA to hold a Membership Interest in New HCI.
7. The Parties desire to continue to have APPA participate in New HCI as an active marketing partner and, subject to continued tax diligence, should be able to permit APPA to appoint one (1) or two (2)² independent members to New HCI's Board.

Attachments

- Exhibit 1 – Asset Purchase Agreement (2/14/2018 Draft)
- Exhibit 2 – Services Agreement (2/14/2018 Draft)
- Exhibit 3 – Articles of Incorporation for New HCI (7/27/2017 Draft)
- Exhibit 4 - Bylaws for New HCI (2/1/2018 Draft)
- Exhibit 5 – Non-Disclosure Agreement Dated as of July 17, 2017 (10/30/2017 Composite) (AMP Contract No. 2017-004080-NDA)
- Exhibit 6 – New HCI Operating Agreement ()

² Such determination to be made taking into account the ultimate size of the New HCI Board.

7/27/2017 DRAFT
MARKED TO REFLECT CHANGES TO THE 6/7/2017 DRAFT

NOTE: Included as Attachment 1 to the Memorandum of Understanding – Hometown
Connections International

[These Articles will be conformed to the executed MOU and with such other modifications
after input from all Parties.]

**STATE OF DELAWARE
CERTIFICATE OF INCORPORATION
A NON-STOCK CORPORATION**

The undersigned Incorporator hereby certifies as follows:

ARTICLE ONE

Name

The name of the Corporation is: HOMETOWN CONNECTIONS, INC.

ARTICLE TWO

Registered Office and Registered Agent

The registered office of the Corporation in the State of Delaware is located at _____ . The name of the initial registered agent of the Corporation at such address upon whom process may be served is _____ .

ARTICLE THREE

The Corporation shall not have any capital stock.

ARTICLE FOUR

Nonprofit Corporation and Charitable Purposes

The Corporation shall be a charitable nonstock Corporation under the provisions of the Delaware General Corporation Law. It shall be organized, and at all times thereafter operated, exclusively for public charitable purposes, in such ways as the Board of Directors shall determine in its discretion, for the benefit of, to perform the functions of, or to carry out the purposes of its members, all with a view toward maximizing the efficient provision and use of electrical energy and/or other member natural gas and water utility resources and services, reducing operating costs, and increasing operating revenues of the members without impacting the safety and reliability of the electric system of each member, and thereby lessening the burdens of government and benefiting the general public. For purposes of this Certificate of

Incorporation, “charitable purposes” means those purposes related to lessening the burdens of government. In furtherance of such purposes, the Corporation shall have full power and authority:

(a) To provide and coordinate the provision of goods and services to its members, members of the American Public Power Association and other public power entities, but only to the extent the same would not adversely affect the Corporation’s tax status, in order to enable its members to efficiently operate electric systems and provide electric energy to their customers;

(b) To have and maintain one or more offices and in connection therewith to rent, lease or purchase office space, facilities and equipment, to engage and pay personnel and do such other acts and things and incur such other expenses on its behalf as may be necessary or advisable in connection with the maintenance of such offices or the conduct of the Corporation’s affairs;

(c) To open, maintain and close bank accounts, and to draw checks and orders for the payment of money;

(d) To employ and dismiss from employment any and all employees, agents or independent contractors;

(e) To sue and to defend suits, to prosecute, settle or compromise claims against others, to compromise, settle or accept judgments or Claims against the Corporation and to execute all documents and make any representations, admissions and waivers in connection therewith;

(f) To enter into, make, and perform all such contracts, agreements, and other undertakings; including indemnity agreements, as permitted by law, as necessary and advisable or incident to carrying out the foregoing purposes;

(g) To take such other actions as the Board of Directors deems necessary in connection with the foregoing, including the retention of agents, independent contractors, attorneys, accountants and other experts selected by the Board of Directors on behalf of and at the expense of the Corporation; and

(h) To perform all other acts necessary or incidental to the above and to do whatever is deemed necessary, useful, advisable, or conducive, directly or indirectly, as determined by the Board of Directors, to carry out any of the purposes of the Corporation, as set

forth in this Certificate of Incorporation including the exercise of all other power and authority enjoyed by Corporations generally by virtue of the provisions of the Delaware General Corporation Law applicable to charitable nonstock Corporations.

The Corporation shall serve only such purposes and functions and shall engage only in such activities as are consonant with the purposes set forth in this Article Four and as are consonant with the requirements for an organization the income of which is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986, as amended (the "Code").

ARTICLE FIVE

Tax-Exempt Nonprofit Corporation

The Corporation shall be neither organized nor operated for pecuniary gain or profit.

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any director, officer, or trustee of the Corporation, or any other private person; but the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth in Article Five hereof; and

(b) The Corporation shall not carry on propaganda, or otherwise attempt to influence legislation. The Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

It is intended that the Corporation shall have, and continue to have, the status of an organization the income of which is exempt from federal income tax under Section 115 of the Code. That is, it is intended that the Corporation shall satisfy, and shall continue to satisfy, the requirements applicable to an organization the income of which is exempt from federal income tax under Section 115 of the Code. All terms and provisions of these Certificate of Incorporation and the Bylaws of the Corporation, and all authority and operations of the Corporation shall be construed, applied and carried out in accordance with such intent.

ARTICLE SIX

Board of Directors

The Board of Directors shall have general charge of the affairs and any property and assets of the Corporation. It shall be the duty of the directors to carry out the purposes and functions of the Corporation. The directors shall be elected in accordance with the Bylaws of the

Corporation and shall have the powers and duties set forth in this Certificate of Incorporation and in the Bylaws, to the extent that such powers and duties are not inconsistent with the status of an organization the income of which is exempt from federal income tax under Section 115.

ARTICLE SEVEN

Members

The conditions of the membership shall be set forth in the Bylaws of the Corporation. The Board of Directors of the Corporation shall have the power to admit additional members to the Corporation in such manner, subject to such qualifications, and upon such terms and conditions and with such rights and privileges as may be provided from time to time in the Bylaws of the Corporation and as are not inconsistent with any provisions of this Certificate of Incorporation. Members may be divided into one or more classes. It is the intention of the members of the Corporation that the members be treated for all purposes of the laws of the State of Delaware as “members” within the meaning of the Delaware General Corporation Law.

ARTICLE EIGHT

Dissolution of Corporation

Upon dissolution of the Corporation the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation by distributing those net assets (assets less liabilities) to the Corporation’s members, in proportion to their respective capital account balances.

ARTICLE NINE

Registered Office and Registered Agent

The registered office of the Corporation in the State of Delaware is located at _____. The name of the initial registered agent of the Corporation at such address upon whom process may be served is _____.

ARTICLE TEN

Principal Office

The mailing address of the principal office of the Corporation is

_____.

ARTICLE ELEVEN

Limitation of Director Liability

(a) To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or to its members for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of or repeal of this subparagraph (a) shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

(b) The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of directors of the Corporation. Any amendment, repeal or modification of this subparagraph (b) shall not adversely affect any right or protection hereunder

of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

(c) If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law.

(d) In the event that any of the provisions of this Article (including any provision within a single sentence) are held by a court of competent Jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the fullest extent permitted by law.

ARTICLE TWELVE

Amendments

This Certificate of Incorporation may be amended at any time and from time to time by the affirmative vote of all [Member?] directors present at a meeting at which quorum is present.

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Incorporation, this ____ day of _____, 2017.

Comment [JWB 7/261]:
Note: Can this be something less than "all"?
To be discussed.

By: _____

Name: _____

**BYLAWS
OF
HOMETOWN CONNECTIONS, INC.
Incorporated under the laws of the State of Delaware**

Adopted _____, 2018

DRAFT

Hometown Connections, Inc.
BYLAWS
TABLE OF CONTENTS

	Page
ARTICLE ONE NAME, LOCATION AND OFFICES	1
1.1 Name.....	1
1.2 Registered Office and Agent	1
1.3 Other Offices	1
ARTICLE TWO PURPOSES AND GOVERNING INSTRUMENTS	1
2.1 Nonprofit Corporation	1
2.2 Charitable Purposes	1
2.3 Governing Instruments	2
ARTICLE THREE MEMBERSHIP	2
3.1 Members	2
3.2 Classes for Members.....	3
3.3 Admission of New Members	3
3.4 Voting Rights.....	3
ARTICLE FOUR MEETINGS OF MEMBERS	3
4.1 Place of Meetings	3
4.2 Annual Meeting	3
4.3 Substitute Annual Meeting	4
4.4 Notice of Annual Meeting	4
4.5 Regular Meetings; Notice	4
4.6 Special Meetings; Notice.....	4
4.7 Waiver.....	4

4.8	Quorum and Vote Required for Action	4
4.9	Proxy,.....	5
4.10	Presiding Officer.....	5
4.11	Telephone and Similar Meetings	5
ARTICLE FIVE BOARD OF DIRECTORS		6
5.1	Authority and Responsibility of the Board of Directors.....	6
5.2	Number of Directors; Qualification of Directors.....	8
5.3	Manner of Appointment and Term of Office	9
5.4	Classes for Directors; Alternate Director	9
5.5	Removal.....	10
5.6	Compensation	10
ARTICLE SIX MEETINGS OF THE BOARD OF DIRECTORS		11
6.1	Place of Meetings	11
6.2	Annual Meeting; Notice	11
6.3	Regular Meetings; Notice	11
6.4	Special Meetings; Notice	11
6.5	Waiver	11
6.6	Quorum and Vote Required for Action	12
6.7	Super-Majority Vote Required for Action.....	12
6.8	Action by Directors Without a Meeting	14
6.9	Telephone and Similar Meetings	14
6.10	Adjournments	15

ARTICLE SEVEN	NOTICE AND WAIVER.....	15
7.1	Procedure	15
7.2	Waiver	16
ARTICLE EIGHT	OFFICERS.....	16
8.1	Number and Qualifications.....	16
8.2	Election and Term of Office.....	16
8.3	Other Agents.....	17
8.4	Removal.....	17
8.5	Vacancies.....	17
8.6	Chair	17
8.7	Vice Chairs	17
8.8	President/CEO	17
8.9	Vice Presidents	18
8.10	General Counsel.....	19
8.11	Secretary.....	19
8.12	Assistant Secretaries.....	20
8.13	Treasurer.....	20
ARTICLE NINE	ASSIGNMENT OF MEMBER INTEREST	20
9.1	Assignment	20
9.2	Mergers, Consolidations, Reorganizations	20
9.3	Void Assignment	21
9.4	Chair	21
ARTICLE TEN	BOOKS AND RECORDS; AUDITS; CAPITAL ACCOUNTS.....	21
10.1	Books; Statements	21

10.2	Where Maintained; Access	22
10.3	Audits	22
10.4	Capital Accounts	22
10.5	Other Information.....	22
ARTICLE ELEVEN MEMBERS.....		23
11.1	Withdrawal by Members	23
11.2	Termination of Members	24
11.3	Setoff of Amounts Due.....	25
ARTICLE TWELVE DIRECTOR OR OFFICER CONFLICTS OF INTEREST		25
12.1	Conflict of Interest Transaction.....	25
12.2	Fairness to the Corporation	26
12.3	Remedies for Violation of Conflict of Interest Requirements.....	26
ARTICLE THIRTEEN INDEMNIFICATION AND INSURANCE		27
13.1	Indemnification.....	27
13.2	Indemnification Not Exclusive of Other Rights	28
13.3	Insurance.....	28
ARTICLE FOURTEEN MISCELLANEOUS		29
14.1	Corporate Seal	29
14.2	Fiscal Year.....	29
14.3	Construction	29
14.4	Table of Contents; Headings	29
14.5	Relation to Certificate of Incorporation	29
ARTICLE FIFTEEN REVIEW OF AND AMENDMENTS TO BYLAWS.....		29
15.1	Periodic Review of Bylaws	29

15.2 Power to Amend Bylaws30

15.3 Conditions.....30

ARTICLE SIXTEEN TAX-EXEMPT STATUS30

16.1 Tax-Exempt Status30

ARTICLE SEVENTEEN DISSOLUTION OF CORPORATION30

17.1 Dissolution.....30

17.2 Terms of Dissolution30

ARTICLE EIGHTEEN ADOPTION OF BYLAWS30

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BYLAWS
OF
HOMETOWN CONNECTIONS, INC.

Incorporated under the laws of the State of Delaware

ARTICLE ONE

Name, Location and Offices

- 1.1 **Name.** The name of this corporation shall be "Hometown Connections, Inc."
- 1.2 **Registered Office and Agent.** The corporation shall appoint and maintain a registered agent in the State of Delaware, in accordance with the requirements of the Delaware General Corporation Law.
- 1.3 **Other Offices.** The principal office of the corporation may be located within or without the State of Delaware, as determined by the Board of Directors. The corporation may have other offices at such place or places as the Board of Directors may determine from time to time or as the affairs of the corporation may require or make desirable.

ARTICLE TWO

Purposes and Governing Instruments

- 2.1 **Nonprofit Corporation.** The corporation shall be organized and operated as a charitable nonstock corporation under the provisions of the Delaware General Corporation Law. The corporation is a distinct and separate legal entity from its members.
- 2.2 **Charitable Purposes.** The corporation is a voluntary association of persons the purposes of which, as set forth in the Certificate of Incorporation, are exclusively charitable (as defined therein). The corporation was created for the benefit of its Members and its Members' members and to carry out the purposes of its Members with a view toward maximizing the efficient provision and use of electrical energy and/or Members' and Members' members natural gas or water utility resources and services; reducing operating costs; and increasing operating revenues of the Members without impacting the safety and reliability of the electric system of each Member and Members' members, and thereby lessening the burdens of government and

benefiting the general public. The corporation shall coordinate in education and training activities with the American Public Power Association (“APPA”).

2.3 Governing Instruments. The corporation shall be governed by its Certificate of Incorporation and these bylaws.

ARTICLE THREE

Membership

3.1 Members. The initial Members of the corporation shall be the following political subdivisions or governmental instrumentalities:

1. Alabama Municipal Electric Authority
2. American Municipal Power, Inc.
3. MPUA Resource Services Corporation
4. Northern California Power Agency
5. Vermont Public Power Supply Authority
6. Western Minnesota Municipal Power Agency

As a condition of Membership in the corporation, an organization must be (a) a public power entity however constituted as a matter of applicable law in the state of organization, including, but not limited to, a body corporate and politic or political subdivision of the state of organization, a joint powers agency, a municipal utility district, a municipal power agency, a public utility district or a not-for-profit corporation, or a not-for-profit corporation that provides services to public power entities, and (b) either (i) a political subdivision within the meaning of the Internal Revenue Code of 1986, as amended, (ii) an entity whose income is exempt from federal income taxation by reason of Section 115 of the Internal Revenue Code of 1986, as amended, or (iii) an entity who is a tax exempt affiliate of an entity described in (b)(i) or (ii), above (a “Qualified Entity”). Any Member of the corporation which ceases to be a Qualified Entity shall cease to be a Member of the corporation. A Member of the corporation which ceases to be a Qualified Entity shall have no rights or privileges as a Member of the corporation, shall have no beneficial interest in the corporation or its assets and shall have no right to receive any further distributions of income or assets from the corporation, except such distributions of income or assets applicable to the withdrawal or termination of a Member as set forth in Article

Eleven of these bylaws. Each Member shall advise the Secretary of the corporation of the name(s) and address(es) of the individual person(s) authorized to represent such Member; the individual representative(s) of an organization which is a Member shall have, in such individual's representative capacity, all the rights and privileges of a Member of the corporation.

3.2 **Classes of Members.** There shall be only one class of Members.

3.3 **Admission of New Members.** Additional Members may be admitted to the corporation on terms determined by the Board of Directors by the affirmative vote of a Super Majority of Member Directors (as defined in Section 6.7 of these bylaws).

3.4 **Voting Rights.** Except as required by law or otherwise provided herein, Members of the corporation shall be entitled to vote only on election of Directors, expulsion of members as provided in section 11.2, and on matters submitted to a vote of the Membership by the Board of Directors; and each Member shall be entitled to one vote on each such matter unless otherwise determined by an affirmative vote of eighty-percent (80%) of the Member Directors, with any change to this Section 3.4 requiring an affirmative vote of eighty-percent (80%) of the Member Directors.

ARTICLE FOUR

Meetings of Members

4.1 **Place of Meetings.** Meetings of the Members may be held at any place within or outside the State of Delaware as set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the principal office of the corporation.

4.2 **Annual Meeting.** An annual meeting of Members shall be held at such time as the Board of Directors shall determine and notify the Membership, for the purpose of appointing Directors and Alternate Directors and transacting any and all other business that may properly come before the meeting.

4.3 **Substitute Annual Meeting.** If the annual meeting is not held at the time designated in Section 4.2, any business which might properly have been acted upon at the meeting may be acted upon at any subsequent Members' meeting held pursuant to these bylaws.

4.4 **Notice of Annual Meeting.** Unless waived as contemplated in Section 7.2 or by attendance at the meeting, notice of the time and place of such annual meeting shall be given by the Secretary by mailing, electronic mailing or transmitting by facsimile a copy thereof to each Member or APPA Director, or by delivering same to such Member or APPA Director, not less than 10 days before such meeting.

4.5 **Regular Meetings; Notice.** Regular meetings of Members may be held from time to time between annual meetings at such times and at such places as the Board of Directors may prescribe. Notice of the time and place of each such regular meeting shall be given by the Secretary either personally or by telephone, mail, overnight delivery, electronic mail or facsimile transmission not less than 10 days before such regular meeting.

4.6 **Special Meetings; Notice.** Special meetings of the Members may be called at any time by the President/CEO or by the Board of Directors. Special meetings of the Members or a special meeting in lieu of the annual meeting of the Members may be called by the corporation upon the written request of no fewer than a majority of the Members. Notice of the time, place and purpose of any special meeting of the Members shall be given by the Secretary either personally or by telephone, mail, electronic mail or facsimile transmission at least 72 hours before the meeting.

4.7 **Waiver.** Attendance by a Member at a meeting shall constitute waiver of notice of such meeting, except where such Member attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called. See also Article Seven ("Notice and Waiver").

4.8 **Quorum and Vote Required for Action.** At all meetings of the Members the presence, in person or by proxy, of a majority of the Members shall constitute a quorum for the transaction of business. If a quorum is present, a majority of the Members who are present at any meeting shall determine any matter coming before the meeting, unless a different vote is required by statute, by the Certificate of Incorporation, or by these bylaws. At a meeting at which a quorum is initially present, but Members withdraw from the meeting leaving less than a required quorum, the Members may continue to approve ministerial acts and adjourn said meeting.

4.9 **Proxy.** A Member may vote in person or by proxy executed in writing by the Member or the Member's individual representative. A proxy shall not be valid after 11 months from the date of its execution unless a longer period is expressly stated therein. If the validity of any proxy is questioned, it must be submitted to the Secretary of the Members' meeting for examination or to a proxy officer or committee appointed by the person presiding at the meeting. The Secretary of the meeting, or if appointed, the proxy officer or committee, shall determine the validity or invalidity of any proxy submitted; and reference by the Secretary in the minutes of the meeting to the regularity of a proxy shall be received as prima facie evidence of the facts stated for the purpose of establishing the presence of a quorum at such meeting and for all other purposes.

4.10 **Presiding Officer.** The Chair or Vice Chair of the corporation shall preside at all meetings of the Members, or in the absence of both the Chair and Vice Chair, the Treasurer shall preside and in the Treasurer's absence a Chair shall be chosen by the Members present. The Secretary of the corporation shall act as Secretary of all meetings of the Members; but in the absence of the Secretary and any assistant secretaries, the presiding officer may appoint any person to act as Secretary of the meeting.

4.11 **Telephone and Similar Meetings.** Members may participate in and hold a meeting by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE FIVE
Board of Directors

5.1 Authority and Responsibility of the Board of Directors.

(a) The supreme authority of the corporation and the government and management of the affairs of the corporation shall be vested in the Board of Directors; and all the powers, duties and functions of the corporation conferred by the Certificate of Incorporation, these bylaws, state statutes, common law, court decisions or otherwise shall be exercised, performed or controlled by or under the authority of the Board of Directors.

(b) Subject to Section 6.7 of these bylaws, the Board of Directors by its own action but not by delegation to officers or other employees of the corporation, shall, in addition to any other power granted to it in these bylaws, have the right, power and authority to take the following actions and no such action will be taken without the approval of the Board of Directors.

(1) Making overall policy decisions with respect to the business and affairs of the corporation;

(2) All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories in accordance with corporation's financial or investment policies approved by the Board pursuant to Section 6.7 hereof.

(3) All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be authorized and governed by the corporation's financial policy, approved by the Board pursuant to Section 6.7 hereof;

(4) Approving the choice of the corporation's general counsel and independent accountants that perform the annual audit of the corporation's financial statements;

(5) Approving any change of the corporation's fiscal year;

- (6) The employment, appointment and removal of the President/CEO;
- (7) Election of the Chair, Vice Chair, Treasurer, Secretary and any assistant secretaries of the corporation;
- (8) Approving any material change in accounting policies or principles used by the corporation;
- (9) The location of the books, accounts and records of the corporation at any other office other than the principal office of the corporation;
- (10) Approving all distributions to the Members; and
- (11) Approving any tax elections of the corporation.

(c) The Board of Directors may, by resolution, delegate to one or more officers of the corporation or to a committee appointed by the Board of Directors (i) the authority to approve any agreement or other documents within the parameters set forth in a policy or policies approved by the Board pursuant to Section 6.7 of these bylaws, and (ii) the power to execute, deliver and implement any such agreements or other documents also in accordance with the policies approved by the Board pursuant to Section 6.7 hereof. In addition, subject to Section 6.7 of these bylaws, the Board of Directors by its own action shall, in addition to any other power granted to it in these bylaws, have the right, power and authority to take the following actions and no such action will be taken without the approval of the Board of Directors:

- (1) Approving all contracts that are proposed to be entered into by the corporation that are not within the parameters set forth in a policy or policies approved by the Board pursuant to Section 6.7 of these bylaws;
- (2) The acquisition, sale and leasing by the corporation of real property;
- (3) The authorization of any Member to act or to assume any obligation or responsibility on behalf of the corporation;

(4) The initiation or settlement of litigation to which the corporation is a party;

(5) The acquisition of any business or a business division from any person whether by asset purchase, stock purchase, merger or other business combination; and

(6) Approving all other matters which are not covered by subsections (b) and (d) of this Section 5.1.

(d) Subject to Section 6.7 of these bylaws, the Board of Directors may delegate to the President/CEO of the corporation the power and authority to take all necessary actions for the efficient day-to-day operation of the corporation, including entering into, executing and delivering contracts in the normal course of business which are not governed by subsections (b) and (c) of this Section 5.1; *provided*, that any costs associated with such actions, and not otherwise provided for, are allowable under the then current approved budget.

(e) The Board of Directors may adopt, by Super Majority vote, such policies, rules and regulations for the conduct of its business and the business of the corporation or modifications or amendments to the same, as shall be deemed advisable.

(f) The Board of Directors shall not permit any part of the net earnings, assets or capital of the corporation to inure to the benefit of any Director, officer or other private person or individual.

(g) The Board of Directors may, from time to time, appoint, as advisors, persons whose advice, assistance and support may be deemed helpful in determining policies, planning and formulating programs for carrying out the purposes and functions of the corporation.

(h) The Board of Directors is authorized to employ such person or persons, including officers, attorneys, agents and assistants, as in its judgment are necessary or desirable for the administration and management of the corporation, and to pay reasonable compensation for the services performed and expenses incurred by any such person or persons.

5.2 Number of Directors; Qualification of Directors. The Board of Directors shall consist of a total number equal to the sum of the number of Members; plus, so long as having the APPA

have the right to appoint Directors does not jeopardize the corporation's tax status, one (1) Director to be appointed by the APPA, and the President/CEO and General Counsel who shall serve as *ex-officio* non-voting Members of the Board of Directors, unless any vacancy shall have occurred in the membership of the Board of Directors. In the case of any such vacancy, the Board of Directors shall consist of such reduced number as caused by the vacancy until such vacancy has been filled. Persons nominated or serving on the Board of Directors or alternates to Directors are required to be officers or employees of a Member of the corporation or of an affiliate of the Member or of an organization of which the Member is a member. If the Members of the corporation equal thirteen (13) or more, then the Board of Directors shall consider granting APPA an additional Director.

5.3 Manner of Appointment and Term of Office. Each Member of the corporation shall have the right to appoint one qualified person for a position on the Board of Directors and for an Alternate Director position; *provided*, that there shall be no Alternate Director position for *ex-officio* members of the Board of Directors. Each Director and Alternate Director shall serve until (i) his or her successor is appointed by the Member, or APPA as applicable, that made the previous appointment or (ii) his or her earlier death, resignation, inability to serve or removal or disqualification. Regardless of any other change to this Section 5.3 or these bylaws, the Members listed in Section 3.1 shall always have the right to appoint one qualified person for a position on the Board of Directors, unless that right is specifically waived by the affected Member, or by a unanimous vote of the Member Directors to amend the right of the Members listed in Section 3.1 to appoint a Member Director.

5.4 Classes of Directors; Alternate Director. A Member's appointed Director shall be referred to herein as a "Member Director." A Director who is appointed by the APPA shall be referred to as an "APPA Director." Unless otherwise provided herein, Member Directors and APPA Directors shall in connection with any action taken on which they cast votes, have one vote in connection with any action taken on which they cast votes. Only an affirmative vote of eighty-percent (80%) of the total number of Member Directors can alter this Section 5.4 provision that each Member Director has one vote. APPA and Members of the corporation shall appoint for each voting Director an Alternate Director from persons who are otherwise qualified to be elected as Directors of the corporation. Such Alternate Director shall be

empowered to vote in place of the Director who is absent from any meeting at which a vote of Directors is taken or who has resigned, has been removed or no longer qualifies to serve as a Director. Such Alternate Director entitled to vote at a meeting shall be counted in determining whether a quorum is present.

5.5 **Removal.** Any Director or Alternate Director who is not qualified to serve shall be deemed removed as of the date of his or her disqualification.

5.6 **Compensation.** Except for ex-officio Directors, no Director or Alternate Director of the corporation shall receive, directly or indirectly, any salary or compensation therefrom unless authorized by the unanimous vote of all disinterested Directors. However, nothing contained herein shall be construed to prevent any Director or Alternate Director from serving the corporation in any other capacity and receiving reasonable compensation for services rendered in furtherance of the purposes and functions of the corporation with the unanimous consent of the disinterested Directors. Such unanimous consent shall be effective for no more than one-hundred eighty days from when given, with any additional periods requiring an additional unanimous vote of the disinterested Directors. The reasonable compensation afforded such Director or Alternate Director shall be paid to the Member whose Director or Alternate Director is providing services, or as otherwise directed by that Member.

ARTICLE SIX

Meetings of the Board of Directors

6.1 **Place of Meetings.** Meetings of the Board of Directors may be held at any place set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the principal office of the corporation.

6.2 **Annual Meeting; Notice.** An annual meeting of the Board of Directors may be held at such place as the Board of Directors may determine on such day and at such time as the Board of Directors may designate. Unless waived as contemplated in Section 7.2, if an annual meeting is held, notice of the time and place of such annual meeting shall be given by the Chair or the Secretary either personally or by telephone, mail, overnight service, electronic mail or by facsimile transmission not less than 10 days before such annual meeting.

6.3 **Regular Meetings; Notice.** Regular meetings of the Board of Directors shall be held from time to time at such times and at such places as the Board of Directors may prescribe; *provided*, that the Board of Directors shall hold at least one regular meeting during each year. Notice of the time and place of each such regular meeting shall be given by the Chair or the Secretary either personally or by telephone, mail, electronic mail or facsimile transmission not less than two days before such regular meeting.

6.4 **Special Meetings; Notice.** Special meetings of the Board of Directors may be called by or at the request of the Chair or the President/CEO or by any two of the Directors in office at that time. Notice of the time, place and purpose of any special meeting of the Board of Directors shall be given by the Chair or the Secretary either personally or by telephone, mail, overnight service, electronic mail or facsimile transmission at least two days before such meeting.

6.5 **Waiver.** Attendance by a Director at a meeting shall constitute waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called. See also Article Seven ("Notice and Waiver").

6.6 **Quorum and Vote Required for Action.** At meetings of the Board of Directors a majority of the total number of voting Directors then in office shall be necessary to constitute a quorum for the transaction of business. Except as otherwise provided in these bylaws or by law, the act of two thirds of Directors present at a meeting at which a quorum is present at the time shall be the act of the Board of Directors.

6.7 **Super-Majority Vote Required for Action.** Unless otherwise specified in this Section 6.7, the following actions shall require the affirmative vote of a Super Majority (two-thirds) of all Member Directors (whether or not present at a meeting) after all vacancies have been filled:

- (1) Dissolution of the corporation or admission of new Members to the corporation.
- (2) Adoption or amendment to the corporation's financial, investment, banking, contracting, risk management or other corporate policies.

(3) Contracts binding the corporation for greater time periods or for a value in excess of amounts as set forth in policies adopted by the Board from time to time.

(4) Approval of the corporation's annual budget and strategic plan and any material amendments thereto.

(5) Entry of the corporation into any partnership or joint venture.

(6) Determination of capital contributions from Members.

(7) Creation of Board committees and any charters for the same.

(8) The amendment of the bylaws, except as otherwise provided in Sections 3.1, 3.4, 5.3, 5.4 and 6.7 (13)(b)(i).

(9) The guarantee by the corporation of any indebtedness of any Person, or the guarantee of any contractual obligations of any other Person.

(10) Approving the transfer of any assets of the corporation, or any interest therein, other than in the ordinary course of business, the aggregate fair market value of which exceeds the amounts set forth in policies adopted by the Board.

(11) Approval of borrowing money or issuing evidences of indebtedness, provided, however, that draws, or issuance of letters of credit, upon previously approved credit facilities, shall not be construed as falling under this subparagraph (11).

(12) Addition of or to, modification of, or removal of an activity deemed to be a Universal Project/Service shall require the unanimous consent of all Member directors. Universal Project/Service is defined as projects or services that are to be made available to (i) all Members and (ii) Non-Members as determined by the Board.

(13) In addition to being approved by a Super-Majority of Member Directors, Member capital contributions/capital calls shall be governed as follows:

a. There shall be no mandatory capital calls. Initial capital contributions for Membership are not considered to be capital calls;

b. For general capital calls or those related to “Universal Projects/Services”, these following provisions shall apply.

i. Should a Member decline to participate in a general or “Universal Project/Services” capital call, other Members may voluntarily “step up” to additional shares of such call and receive a corresponding increase in any such Members’ Capital Account. Only a unanimous vote of the Member Directors or Members may amend or remove the right to decline to participate in a general or “Universal Project/Services” capital call per this Section 6.7 (13)(b)(i).

ii. Subsequent years’ margin distributions to Members which decline such capital calls shall be reduced, but by no more than fifty percent (50%) per year, until any such Member’s Capital Account is equal to the amount it would have been had it participated in the declined capital call(s) plus interest calculated in a policy adopted by the Board. Said margin reductions shall be paid to the non-declining Members, thereby rebalancing their Capital Account

c. Initial capital calls associated with Non-Universal Projects/Services are applicable only to those Members who desire to participate in each such Non-Universal Project/Service (“Member Participants”). “Project Accounting” will be used to keep the benefits and burdens of such Non-Universal Projects/Services with that subset of Member Participants; provided, however, that such Projects/Services shall be charged a reasonable allocation of the corporation’s overhead. Members who participate in Non-Universal Projects/Services shall be required to enter into contracts with the corporation agreeing to make the corporation whole for any losses associated with such Non-Universal Service or Project as a condition of Board approval. Non-Universal Projects/Services are projects and services that are approved by the Board but sponsored by a subset of Members. Non-Participating Members and Non-Members may participate in such Non-Universal Services or Projects on a basis as determined by the Participating Members in the Non-Universal Service or Project. Subsequent capital calls for Non-Universal Projects/Services to Participating Members shall be treated as capital calls governed by subsections 6.7 (13)(a) and (b) above.

(14) Any other adjustments to a Member Capital Accounts per section 10.4 that requires Board of Director approval.

6.8 **Action by Directors Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all voting Members of the Board of Directors. Such consent shall have the same force and effect as an affirmative vote at a meeting duly called. Consent in the form of an electronic mail message from an electronic mail account of the Director with the name of the Director printed or in signature form at the end of the message shall be considered a signed consent by that Director. The signed consent, or a signed copy, or a copy of the electronic mail message shall be placed in the minute book. Alternate Directors may not execute consents.

6.9 **Telephone and Similar Meetings.** Directors may participate in and hold a meeting by means of telephone conference or similar communications equipment by means of which all Directors participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.10 **Adjournments.** A meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by a majority of the Directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting which was adjourned.

ARTICLE SEVEN

Notice and Waiver

7.1 **Procedure.** Whenever these bylaws require notice to be given to any Director, the notice shall be given in accordance with this Section 7.1. Except as otherwise provided in these bylaws, notice under these bylaws shall be in writing unless oral notice is reasonable under the

circumstances. Notice may be communicated in person, by telephone, mail, overnight service, electronic mail, or facsimile transmission. Written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received or when delivered, properly addressed, to the addressee's last known principal place of business or electronic mail address;

(2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with first-class postage prepaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.

Oral notice is effective when communicated if communicated in a comprehensible manner.

In calculating time periods for notice, when a period of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

7.2 **Waiver.** A Member or Director may waive any notice before or after the date and time stated in the notice. Except as provided herein, the waiver must be in writing, signed by the Member or Director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A Member's or Director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the Member or Director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

ARTICLE EIGHT

Officers

8.1 **Number and Qualifications.** The officers of the corporation shall consist of a Chair, Vice Chair, a President/CEO, one or more vice presidents as determined or designated by the Board of Directors, general counsel and a Secretary and a Treasurer. The Board of Directors shall

from time to time create and establish the duties of such other officers or assistant officers as it deems necessary for the efficient management of the corporation; but the corporation shall not be required to have at any time any officers other than a Chair, Vice Chair and Treasurer, Secretary, President/CEO and general counsel. Any two or more offices other than Chair, Vice Chair, Secretary and Treasurer, President/CEO and general counsel may be held by the same person.

8.2 Election and Term of Office. The executive officers of the corporation, include only the Chair, the Vice Chair, the President/CEO, the general counsel, the Secretary and the Treasurer, who shall be elected by the Board of Directors. All executive officers, except the President/CEO and general counsel, shall serve for terms of two years, beginning on the date prescribed by the Board of Directors, and thereafter until their successors have been elected and qualified, or until their earlier death, resignation, removal, retirement or disqualification. The President/CEO and General Counsel shall be appointed by the Board of Directors and shall serve at the will of the Board of Directors, subject to any contractual rights any such officer may have as may be set forth in any executive employment or similar agreement, and until their successors have been elected and qualified, or until their earlier death, resignation, removal, retirement or disqualification. The Chair, Vice Chair, Secretary and Treasurer may not serve more than three consecutive terms.

8.3 Other Agents. The Board of Directors may appoint from time to time such agents as it may deem necessary or desirable, each of whom shall hold office during the pleasure of the board and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

8.4 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby. However, any such removal shall be without prejudice to the contract rights, if any, of the officer or agent so removed.

8.5 Vacancies. A vacancy in any office arising at any time and from any cause may be filled for the unexpired term by the Board of Directors at any meeting.

8.6 Chair. The Chair shall be elected from among the Directors and shall preside at all meetings of the Board of Directors and at all Membership meetings. The Chair shall perform

such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

8.7 **Vice Chair.** The Vice Chair, shall be elected from among the Directors and shall in the absence or disability of the Chair, perform the duties and have the authority and exercise the powers of the Chair. The Vice Chair shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the Chair may from time to time delegate.

8.8 **President/CEO.**

(a) The President/CEO shall be the chief executive officer of the corporation and shall be qualified for his or her responsibilities through education and experience. As the chief executive officer of the corporation, the President/CEO shall exercise general supervision of all operations and personnel of the corporation, including without limitation recruiting, hiring and discharging employees of the corporation and determining compensation to be paid employees other than himself or herself for services rendered to the corporation, subject to the control of the Board of Directors.

(b) The President/CEO shall be authorized to sign (i) checks, drafts and other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation and (ii) grant requests and statements and reports required to be filed with state or federal officials or agencies; and the President/CEO shall be authorized to enter into any contract or agreement and to execute in the corporate name any instrument or other writing; and the President/CEO shall see that all orders, resolutions and policies of the Board of Directors are carried into effect.

(c) Under the direction and subject to the authority of the Board of Directors, the President/CEO shall have the right to supervise and direct the management and operation of the corporation and to make all decisions as to policy and otherwise which may arise between meetings of the Board of Directors, and the other officers and employees of the corporation shall be under his or her supervision and control during such interim.

(d) Unless otherwise determined by the Chair or by the Board of Directors, the President/CEO shall, in the absence or disability of the Chair and the Vice Chair, perform the duties and have the authority and exercise the powers of the Chair.

(e) The President/CEO shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

(f) The Board of Directors shall monitor, review, evaluate and assess the performance of the President/CEO on a regular basis but not less frequently than once every two years.

The review, evaluation and assessment of the President/CEO shall be based on the President/CEO's job description, on the President/CEO's role in assisting the Board of Directors in carrying out the purposes and functions of the corporation and on such other criteria as the Board of Directors may deem appropriate.

8.9 **Vice Presidents.** The vice presidents, in the order of their seniority in terms of tenure in the office of vice president, unless otherwise determined by the President/CEO or by the Board of Directors, shall, in the absence or disability of the President/CEO, perform the duties and have the authority and exercise the powers of the President/CEO. They shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the President/CEO may from time to time delegate. One such vice president shall be designated as the corporation's chief financial officer, who, in addition to any other duties, shall be responsible for providing an annual budget to the Board of Directors for their approval, and for providing an investment policy that is acceptable to state standards for all Members to the Board of Directors for their approval.

8.10 **General Counsel.** The General Counsel shall be the chief legal officer of the corporation and shall be appointed and his or her compensation shall be determined by the Board of Directors. The general counsel shall be responsible directly to the Board of Directors for all legal matters concerning the corporation. The general counsel shall also be an assistant Secretary of the corporation.

8.11 **Secretary.**

(a) The Secretary shall be elected from the Directors and attend all meetings of the Board of Directors and record, or cause to be recorded, all votes, actions and the minutes of all proceedings in a book to be kept for that purpose and shall perform, or cause to be performed, like duties for the executive and other committees when required.

(b) The Chair or Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors.

(c) The Secretary shall keep in safe custody the seal of the corporation and, when authorized, affix it to any instrument requiring it. When so affixed, it may be attested by his or her signature or by the signature of the Treasurer or an assistant Secretary.

(d) The Secretary shall be under the supervision of the President/CEO. He or she shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the President/CEO may from time to time delegate.

8.12 **Assistant Secretaries.** The assistant secretaries, who need not be elected from among the Directors unless otherwise determined by the President/CEO or by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and have the authority and exercise the powers of the Secretary. They shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the President/CEO may from time to time delegate.

8.13 **Treasurer.**

The Treasurer shall be elected from among the Directors and, in accordance with these by-laws and any policies approved by the Board of Directors, shall, for purposes of reporting to the Board of Directors, (i) oversee the custody of the corporate funds and securities; (ii) assure that full and accurate accounts of receipts and disbursements of the corporation are kept; and, (iii) assure that all monies and other valuables in the name and to the credit of the corporation are deposited into depositories designated by the Board of Directors. The Treasurer shall act as the Chair of the Board's finance and audit committee.

ARTICLE NINE

Assignment of Member Interest

9.1 Assignment. No Member may directly or indirectly sell, assign, transfer, pledge, lease, mortgage or encumber (each, a "Transfer") other than to a Qualified Entity. No Transfer shall be made without the prior written consent of a Super-Majority of the Board of Directors. In connection with any Transfer, the Member proposing such a Transfer shall deliver to the Board of Directors an opinion of counsel of recognized standing, acceptable to the Board of Directors, that the Transfer will not affect the tax status of the Corporation. For purposes of this Section, any ground that is reasonably likely to have an adverse effect on the Corporation or an individual Member may constitute a ground for withholding or conditioning consent.

9.2 Mergers, Consolidations, Reorganizations. Nothing contained in these by-laws shall be construed to prohibit any merger, consolidation or other reorganization of a Member or any affiliate thereof, but the surviving entity must be a Qualified Entity. Upon the request of the Board of Directors, the surviving entity may be required to provide an opinion of counsel of recognized standing, acceptable to the Board of Directors, that the Member action will allow it to remain a Qualified Entity as defined in Section 3.1.

9.3 Void Assignment. Any Transfer that is made in violation of this Section 9 shall be void ab initio.

ARTICLE TEN

Books and Records; Audits; Capital Accounts

10.1 Books; Statements. The corporation shall keep accurate, full and complete books and accounts showing its assets and liabilities, operations, transactions and financial condition. All financial statements shall be accurate in all material respects, shall present fairly the financial position, results of operations and cash flows of the corporation and shall be prepared on an accrual basis in accordance with generally accepted accounting principles consistently applied. The Board of Directors shall determine the methods to be used in the preparation of financial statements and federal, state and municipal income and other tax or information returns for the corporation. The method shall include, but not be limited to, valuation of assets, recording of

income and expenses, the method of depreciation, elections, credits and accounting procedures. Following the commencement of activities by the corporation:

(a) The corporation shall cause to be prepared and submitted to each Member, within 30 days after the end of each month, an accrual basis balance sheet together with an accrual basis statement of operations and of cash flows for the month with a cumulative calendar year accrual basis statement of operations and of cash flows to date and with such other financial statement and information as reasonably may be requested by a Member, including any such information required to enable a Member or any of its affiliates to prepare quarterly reports to be filed pursuant to foreign, federal or state securities laws; and

(b) As soon as practicable after the end of each fiscal year of the corporation, a general accounting and audit shall be taken and made by the corporation's independent certified public accountants, covering the assets, liabilities and net worth of the corporation, and its dealings, transactions and operations during such fiscal year, and all other matters and things customarily included in such accounts and audits, and a full, detailed certified statement shall be furnished to each Member within 120 days after the end of such fiscal year, showing the assets, liabilities, properties, net worth, net revenues, net expenses and net income and cash flows of the corporation for such fiscal year. A full and complete report of the audit scope, opinion on the financial statements, and audit findings in the form of a management audit report shall also be furnished to each Member within 120 days after the end of such fiscal year.

10.2 **Where Maintained; Access.** The books, accounts and records of the corporation shall be at all times maintained at the principal office of the corporation or at such other places as designated by the vote of the Board of Directors. Each Member shall have access to and may inspect and copy the books, accounts and records of the corporation; *provided*, that any request for access to the books, accounts and records of the corporation must be reasonable.

10.3 **Audits.** In addition to the foregoing, any Member may, at its option and at its own expense, conduct internal audits of the books, records and accounts of the corporation. Audits may be on either a continuous or a periodic basis or both and may be conducted by employees of any Member, or of an affiliate of any Member, or by independent auditors retained by the corporation or by any Member.

10.4 **Capital Accounts.** A separate capital account shall be maintained for each Member. The initial capital account of each Member shall be equal to the dollar amount of the initial capital contribution of each Member and, thereafter, shall be increased for any additional capital contribution of such Member and for such Member's periodic share of net income and decreased for such Member's periodic share of net losses and any distributions made to such Member. The capital account of any Member may be further adjusted as provided by written agreement between such Member and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors. No less frequently than annually, distributions shall be made by the corporation to its Members to the extent funds are available therefor after a reasonable amount is retained by the corporation for operating purposes.

10.5 **Other Information.** The corporation shall make available to each Member such information and financial statements in addition to the foregoing as shall be reasonably required by any of them in connection with the preparation of current and periodic reports.

ARTICLE ELEVEN

Members

11.1 **Withdrawal by Members.** Any Member may withdraw from Membership in the corporation upon 60 days written notice to the other Members. Upon a Member's written notice to withdraw, its Member's Director shall be deemed to have resigned effective as of the date of the written notice to withdraw, and the Member who has submitted a notice to withdraw shall not be entitled to appoint another Member Director. Upon a Member's withdrawal as provided herein, its Membership shall terminate and the corporation shall calculate the Member's Membership Interest Book Value, computed as of the date of withdrawal, per the following formula:

- (a) the amount contributed to the corporation by such Member and not previously distributed to it, plus (b) such Member's allocable share of margins and other revenues recognized, minus (c) such Member's allocable share of the corporation's costs and expenses, minus (d) all amounts previously distributed to it, all up to and including the date of withdrawal (but without duplication of any amount credited under (a) above).

If the withdrawing Member's Membership Interest Book Value is less than zero, then the withdrawing Member shall pay to the corporation the amount of such deficiency (but not more than amounts previously distributed to the withdrawing Member) as a condition of withdrawal. The amount, if any, described in the preceding sentence is referred to as the deficiency amount of a Member's Membership interest in the corporation. Any payment by the withdrawing Member pursuant to the foregoing shall be made within 90 days after the withdrawal. If the Member's Membership Interest Book Value is more than zero, the corporation shall pay ninety percent of such Book Value to the Member within 720 days of such notice to withdraw, with the remaining ten percent of said Member's Membership Interest Book Value of Member's Interest to be retained by the corporation as a condition of withdrawal.

Further provisions may be made in respect of the amount to be paid by or to a withdrawing Member in a written agreement between any Member and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors. If a Member shall have withdrawn from Membership in the corporation as provided in this Section 11.1, such withdrawn Member shall continue to be contractually obligated to take and pay for any service/projects that it has contracted with the corporation for in accordance with said contracts. The compensation charged by the corporation to such withdrawn Member for such service/project shall be that compensation which shall be established for non-Members of the corporation in effect at the date of withdrawal from Membership. The form of replacement contract which sets out the terms of the relationship between the corporation and the withdrawn Member for such services shall be the contract designated for such services to be provided to non-Members by resolution of the Board of Directors from time to time; *provided*, that the form of the contract for the withdrawn Member shall not be changed by the Board of Directors at any time from and after the notice of withdrawal shall have been received by the corporation from such Member.

11.2 Termination of Members.

A. If within 30 days after receiving a written notice from the corporation that a Member is in default of any of its obligations under contract or the bylaws to the corporation, the defaulting Member has not cured such default, then two-thirds of the other Members may terminate the defaulting Member's Membership in the corporation. The corporation shall pay to

a terminated Member an amount equal to 75 percent of the Member's Membership Interest Book Value (as determined pursuant to Section 11.1) computed as of the termination date, provided such Membership Interest Book Value is more than zero. Such payment shall be made within 720 days following the determination of the amount of the Member's Membership Interest Book Value. If the amount is less than zero in such terminated Member's Membership Interest Book Value, such Member shall pay such deficiency amount, but not more than amounts previously distributed to the terminated Member, to the corporation within 90 days following the termination date.

B. A Member of the corporation may have its Membership interest in the corporation terminated for any reason (other than reasons described in Section 11.2(A) of these bylaws) in the sole and absolute discretion of the remaining Members as effected by two separate unanimous votes of the remaining Members of the corporation, each vote being taken at meetings held no less than 30 days apart. In such event, the corporation shall pay to the terminated Member an amount equal to the Book Value of the terminated Member's Membership interest (computed as of the termination date) within 90 days after the termination date. If there is a deficiency amount in such Member's Membership interest in the corporation, such Member shall pay such deficiency amount to the corporation within 90 days after the termination date. The termination of a Member's Membership in the corporation shall be effective 60 days after the second meeting at which the second vote was taken.

C. The Membership of any Member in the corporation may be terminated as provided in any written agreement between such Member being terminated and the corporation, which agreement was entered into at the time of admission of such Member and was approved by the Board of Directors.

11.3 Setoff of Amounts Due. In the case of a Member which withdraws as a Member of the corporation or its Membership is terminated, any amounts due from such Member to the corporation may be set off against any amounts due from the corporation to such withdrawing or terminated Member, whether or not pursuant to these bylaws, so that a single net amount is paid between such parties. In no case, however, shall amounts be setoff or netted unless they are then due and owing to be paid.

ARTICLE TWELVE

Director or Officer Conflicts of Interest

12.1 **Conflict of Interest Transaction.** No Director or officer of the corporation, or any family Member of such Director or officer, or any corporation, partnership, association, trust or other entity in which such Director or officer, or family Member of such Director or officer, serves as a Director, officer, partner or Director, or has a financial interest, shall be permitted to enter into any contract or transaction, with the exception of any personal contracts between Hometown Connections, Inc. and the chief executive officer and the general counsel, with the corporation unless:

(a) Such Director or officer discloses to the Board of Directors the material facts as to his or her or his or her family Member's relationship with or interest in the entity proposing to enter into the contract or transaction with the corporation, such Director or officer abstains and physically withdraws from all discussion of the contract or transaction by the Board of Directors, such Director or officer does not negotiate or otherwise participate in the development of the contract or transaction, and the Board of Directors authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors (even though the disinterested Directors may constitute less than a quorum); and

(b) The contract or transaction is fair to the corporation.

(c) For purposes of this Section 12.1, a Director who is an officer or Director of a Member shall not be considered to have a financial interest in any contract between the corporation and such Member.

12.2 **Fairness to the Corporation.** Factors to be considered in determining whether the contract or transaction is "fair" to the corporation include an examination of the following:

(a) The price and terms of the contract or transaction (the price and terms of the contract or transaction may vary, but must be on a level which the Board of Directors would accept in an arm's-length negotiation, in light of the knowledge that the Board of Directors would reasonably have acquired in the course of such negotiation); and

(b) Whether the Board of Directors would reasonably determine that the contract or transaction was in the best interests of the corporation.

12.3 Remedies for Violation of Conflict of Interest Requirements. If a Director or officer of the corporation, or any family member of such Director or officer, or any corporation, partnership, association, trust or other entity in which such Director, officer or family member of such Director or officer serves as a director, officer, partner or director, or has a financial interest, enters into any contract or transaction with the corporation without complying with the requirements of this Article, the Board of Directors may, at its sole discretion:

(a) Void the contract or transaction in its entirety and recover from such Director or officer any damages and expenses suffered or incurred by the corporation as a result of the contract or transaction; or

(b) Modify the price and terms of the contract or transaction so that the corporation receives a price and terms comparable to what the corporation would receive in an arm's-length negotiation.

ARTICLE THIRTEEN

Indemnification and Insurance

13.1 Indemnification. To the fullest extent permitted by law, a Director of the Corporation shall not be personally liable to the Corporation or to its Members for monetary damages for any breach of fiduciary duty as a Director. No amendment to, modification of or repeal of this Section 14.1 shall apply to or have any effect on the liability or alleged liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment. The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation, an Alternate

Director, a Member of a committee described in Article Nine of these bylaws, or an officer, employee, trustee or agent of the Corporation, or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of Directors of the corporation. Any amendment, repeal or modification of this Section 13.1 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

In the event that any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, seeks indemnification from the corporation against expenses, including attorneys' fees (and in the case of actions other than those by or in the right of the corporation, judgments, fines and amounts paid in settlement), actually and reasonably incurred by him or her in connection with such action, suit or proceeding by reason of the fact that such person is or was a Director, Alternate Director, Member of a committee described in these bylaws, officer, employee, trustee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee, trustee or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise, then, unless such indemnification is ordered by a court, the corporation shall determine, or cause to be determined, in the manner provided under Delaware law whether or not indemnification is proper under the circumstances because the person claiming such indemnification has met the applicable standards of conduct set forth in Delaware law; and, to the extent it is so determined that such indemnification is proper, the person claiming such indemnification shall be indemnified to the fullest extent now or hereafter permitted by Delaware law.

13.2 **Indemnification Not Exclusive of Other Rights.** The indemnification provided in Section 13.1 above shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Certificate of Incorporation or bylaws, or any agreement, vote of Members or disinterested Directors or Alternate Director or a Member of a committee described in Section 9.1 of these bylaws or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Alternate Director, Member of a committee described in Section 9.1 of these bylaws, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

13.3 **Insurance.** To the extent permitted by Delaware law, the corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Alternate Director, Member of a committee described in Section 9.1 of these bylaws, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee, or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise.

ARTICLE FOURTEEN

Miscellaneous

14.1 **Corporate Seal.** The corporate seal (of which there may be one or more exemplars) shall be in such form as the Board of Directors may from time to time determine. Unless otherwise required by law, the corporation shall not be required to have or utilize a corporate seal.

14.2 **Fiscal Year.** The Board of Directors is authorized to fix the fiscal year of the corporation and to change the same from time to time as it deems appropriate.

14.3 **Construction.** Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion of these bylaws shall be invalid or inoperative, then, so far as is reasonable and possible:

- (a) The remainder of these bylaws shall be considered valid and operative; and

(b) Effect shall be given to the intent manifested by the portion held invalid or inoperative.

14.4 **Table of Contents; Headings.** The table of contents and headings are for organization, convenience and clarity. In interpreting these bylaws, they shall be subordinated in importance to the other written material.

14.5 **Relation to Certificate of Incorporation.** These bylaws are subject to, and governed by, the Certificate of Incorporation.

ARTICLE FIFTEEN

Review of and Amendments to Bylaws

15.1 **Periodic Review of Bylaws.** The Board of Directors shall review these bylaws periodically (but not less frequently than once every two years) to ensure that the bylaws accurately reflect the governing structure of the corporation, that they are consistent with the management of the corporation and the administration of its affairs and that they comply with all applicable legal, regulatory and other requirements.

15.2 **Power to Amend Bylaws.** Subject to the provisions of Section 15.3 hereof, the Board of Directors shall have the power to alter, amend or repeal these bylaws, or adopt new bylaws, but no such amendment shall require additional capital contributions by a Member without such Member's consent.

15.3 **Conditions.** Action by the Board of Directors with respect to bylaws may be taken only as provided in Section 6.7 hereof

ARTICLE SIXTEEN

Tax-Exempt Status

16.1 **Tax-Exempt Status.** The affairs of the corporation at all times shall be conducted in such a manner as to assure its status as a governmental instrumentality within the meaning of federal tax laws.

ARTICLE SEVENTEEN

Dissolution of Corporation

17.1 **Dissolution.** The corporation may be dissolved as provided in Section 6.7 (1).

17.2 **Terms of Dissolution.** Upon dissolution of the corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the Corporation by distributing those net assets (assets less liabilities) to the corporation's Members, in proportion to their respective capital account balances.

ARTICLE EIGHTEEN

Adoption of Bylaws

These bylaws were adopted by resolution of the Board of Directors, and became effective, on _____, 2018.

Adopted by the unanimous vote of the voting Members of the Board of Directors at a meeting thereof on _____, 2018.

Re: Request for private letter ruling under Section 115

Hometown Connections, Inc. (“New HCI”), a not-for-profit corporation organized under the General Corporation Law of the State of Delaware, which is owned by the Founding Group (as defined and described below) and which has been formed for the purposes of maximizing the efficient provision and use of electrical energy and natural gas or water utility resources and services of the Founding Group and other public power providers that constitute Qualified Entities (as defined below) choosing to acquire an ownership interest in New HCI (collectively, the Founding Group and such public power providers acquiring an ownership interest at a future date, the “Members”) and the members of the Members; reducing operating costs; and increasing operating revenues of the Members without impacting the safety and reliability of the electric systems of the Members and their members respectfully requests that the Internal Revenue Service (the “Service”) issue a private letter ruling to the Founding Group concluding that under Section 115 of the Internal Revenue Code (the “Code”). New HCI’s income will be derived from the exercise of an essential governmental function that accrues to States or political subdivisions thereof and is therefore excluded from gross income.

[Recitations relating to principal place of business and mailing address, tax ID]

I. Facts

A. The Founding Group

New HCI was initially created by six public power agencies or not-for-profit corporations providing services to public power agencies, (a) Alabama Municipal Electric Authority, a nonprofit joint action agency created under the laws of the State of Alabama (“AMEA”), (b) American Municipal Power, Inc., an Ohio non-profit corporation (“AMP”), (c) MPUA Resource Service Corporation, a Missouri nonprofit corporation (“MPUA RSC”), (d) Northern California Power Agency, a California joint exercise of powers agency (“NCPA”), (e) Vermont Public Power Supply Authority, a body politic and corporate and a public instrumentality created under the laws of the State of Vermont (“VPPSA”) and (f) Western Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota (“WMMPA” and, together with AMEA, AMP, MPUA RSC, NCPA and VPPSA, the “Founding Group”). Each member of the Founding Group is either (a) a political subdivision or instrumentality in its state of creation of the organization or is a not-for-profit corporation formed for the express purpose of providing resources relating to the operation of utilities and other facilities owned by political subdivisions or (b) an organization that has previously received a private letter ruling from the Service substantially to the effect that the income of such organization is exempt from federal income tax under Section 115 of the Code.

Details relating to each of the members of the Founding Group are set forth below.

AMEA. AMEA is a nonprofit joint action agency created under Act 81-681 (the “AMEA Act”), General Laws of Alabama. AMEA is a public corporation of the State of Alabama, created by the Alabama Legislature for the purpose of securing an adequate, dependable and economical power supply for its participating members. As of January 1, 2018, AMEA has 11 members (“AMEA Members”), including seven municipalities, three utility boards and one

electric board. Each AMEA Member owns and operates a municipal electric or integrated utility system.

AMEA has entered into a power sales contract (the “AMEA Power Sales Contracts”) with each AMEA Member, pursuant to the terms of which AMEA provides all power and energy to the AMEA Members in excess of their allocation of power and energy supplied by Southeastern Power Administration, a federal power and marketing agency. AMEA supplies the power and energy it is required to supply the AMEA Members under the AMEA Power Sales Contracts with a combination of long-term power supply agreements with an investor-owned utility and a public service corporation of another state and from the output of an AMEA-owned, natural-gas fired generating facility.

AMEA is governed by a board of directors, composed of nine members. Members of the board are elected by an election committee consisting of one representative appointed by each AMEA Member. The representative of each AMEA Member on the election committee is entitled to cast one full vote plus an additional vote or votes, weighted based roughly on the percentage of power purchased by such AMEA Member in the preceding calendar year compared to the power sold by AMEA to all AMEA Members during such calendar year. AMEA generates substantially all of its revenue from sales of power to AMEA Members pursuant to the AMEA Power Sales Contract. As an agency of the State of Alabama, AMEA’s income is exempt from federal and state income tax.

AMP. AMP is organized under the non-profit corporation laws of the State of Ohio for the sole purpose of benefiting its members (the “AMP Members”). All of the AMP Members are political subdivisions that own and/or operate municipal electric utility systems or are joint action agencies whose members are political subdivisions that own and operate municipal electric utility systems. By the existing terms of AMP’s regulations,¹ only municipalities² owning or initiating an electric, natural gas or communication utility system, or joint action agencies whose members own such systems, may be Members. As of January 1, 2018, there were 135 AMP Members – 84 municipalities in Ohio, 29 boroughs in Pennsylvania, six cities in Michigan, five municipalities in Virginia, six cities in Kentucky (three of which are members through their electric plant boards), two cities in West Virginia, one city in Indiana, one town in Maryland and the Delaware Municipal Electric Corporation (“DEMEC”), a political subdivision and joint action agency of the State of Delaware with nine municipal members who own and operate municipal electric systems.

AMP was organized to assist in procuring the most economical and reliable wholesale electric power supplies and transmission services available for AMP Members both on an individual basis and on a “pool” basis for groups of AMP Members. AMP also arranges for and provides technical services and training (such as engineering design and planning) and safety training for the AMP Members, acts as a clearinghouse for information, and assists Members with regard to project financings and other utility related issues. AMP also coordinates “mutual

¹ The regulations function as AMP’s bylaws. See Exhibit _.

² The term municipality is used herein to refer to local governmental units that are political subdivisions and may include municipalities, cities, boroughs and villages in various states, including Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia. The members of DEMEC, each of which constitutes a municipality of the State of Delaware, participate by and through DEMEC.

aid” among the AMP Members, wherein electric crews from AMP Members are, voluntarily, dispatched to other AMP Members to assist in emergency or disaster situations, such as tornadoes and floods. The scope and nature of the services provided by AMP will change over time as the needs of the AMP Members change, while remaining consistent with AMP’s governmental purposes.

AMP generates and buys, or otherwise arranges for, electric power for AMP Members for use in their individual municipal electric utility systems. It also arranges for the transmission of power to AMP Members. Some AMP Members obtain all of their power supply through AMP, others purchase only a portion of their needs through AMP and certain AMP Members purchase none of their power supply needs through AMP. In every situation, however, AMP’s activities are important to the essential governmental function of AMP Members.

AMP is governed by a board of trustees consisting of twenty AMP Members (the “AMP Board”). No individuals, non-member municipalities, or other entities or organizations are eligible to serve as trustees. AMP Members elected as trustees appoint an individual to represent them on the AMP Board. The President and General Counsel for Corporate Affairs serve as nonvoting, *ex officio* trustees. Currently AMP has twenty-one (21) trustees, thirteen (13) elected from thirteen (13) “service groups”³ and eight (8) elected at-large. The trustees serve three (3) year staggered terms.

AMP’s regulations provide that (1) AMP shall at all times be operated on a not-for-profit basis for the mutual benefit of AMP Members, and (2) in the event of dissolution or liquidation of AMP, after the payment of all debts and initial capital contributions of AMP Members, any remaining assets of AMP shall be disposed of as follows: (i) membership fees, including dues paid by AMP Members or former AMP Members, shall be refunded in order of receipt, and (ii) remaining assets, if any, shall be distributed to AMP Members and former AMP Members on the basis of their “patronage” while they were Members.

On May 28, 2004, AMP received PLR 200439003 (the “2004 Ruling”), in which the Service concluded that AMP’s income was excluded from gross income for federal income tax purposes under Section 115. See Exhibit __. On May 23, 2013, AMP received PLR 201338029 (the “2013 Ruling”), in which the Service affirmed the conclusion of the 2004 Ruling. See Exhibit __.⁴ We note that AMP’s organization and operations have not changed materially since the issuance of the 2013 Ruling.⁵

MPUA RSC. MPUA RSC is a nonprofit corporation and a public benefit corporation organized under the Missouri Nonprofit Corporation Act (MO Rev. Stat. § 355.001 et seq. (2016)) (the “Missouri Nonprofit Corporation Act”). MPUA RSC’s Amended and Restated Articles of Incorporation provide that it “is organized and will be operated exclusively for

³ DEMEC constitutes its own service group.

⁴ The 2013 Ruling was modified by and superseded by PLR 201509001 (the “2015 Letter”). The 2015 Letter is attached as Exhibit __.

⁵ AMP has also received rulings from the Service that AMP qualifies as an entity permitted to issue tax-exempt bonds on behalf of AMP Members (PLR 200629012)(the “On Behalf of PLR”), which On Behalf of PLR affirmed the conclusion of PLR 9632006. In the On Behalf of PLR, the Service concluded that AMP qualified as an “instrumentality” of AMP Members, affirming the conclusion of PLR 200306001.

charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, including the promotion of social welfare and lessening the burdens of government.” See Exhibit ___. Specifically, MPUA RSC is organized and operated for the purpose of “providing resources relating to the operation of utilities and other facilities owned by political subdivisions.” MPUA RSC has received a 501(c)(3) determination letter from the Service. See Exhibit ___. Pursuant to the determination letter, MPUA RSC is excused from filing Form 990 as an affiliate of a governmental unit described in Revenue Procedure 95-48.

MPUA RSC is an affiliate of three organizations and their respective governing members: the Missouri Joint Municipal Electric Utilities Commission (“MJMEUC”), The Municipal Gas Commission of Missouri (“MGMC”) and the Missouri Association of Municipal Utilities (“MAMU,” and collectively, the “Sponsoring Entities”). MJMEUC and MGMC were formed pursuant to the Joint Municipal Utility Commission Act (RSMo. §§ 393.700-770), they each have the power of eminent domain and are “Political Subdivisions” (as defined in United States Treasury Regulation § 1.103-1(b)). MAMU was organized under Missouri’s Nonprofit Corporations Act by Missouri cities. It is organized and operates as a public instrumentality of a governmental unit within the meaning of Revenue Ruling 57-128 (a “Governmental Instrumentality”). MAMU is an exempt organization described in §501(c)(6) of the Code, whose voting membership is limited to any municipality owning and operating its own utility.

Voting members of each of the Sponsoring Entities consist exclusively of municipalities and governmental instrumentalities (“Municipal Members”) that own water, sewer, natural gas and/or electric utility systems (“Municipal Utilities”). Each voting Municipal Member is a Political Subdivision or Governmental Instrumentality and appoints an individual to represent it in the governance and affairs of the respective Sponsoring Entity.

MPUA RSC was organized under the general nonprofit corporation law of the State of Missouri. It has no members. MPUA RSC’s Amended and Restated Articles of Incorporation provide that, upon dissolution of MPUA RSC, the Board of Directors of MPUA RSC, after making provisions for payment of all liabilities of MPUA RSC, is to dispose of the assets of MPUA RSC exclusively for the exempt purposes of MPUA RSC to the municipal members of the Sponsoring Entities.

The affairs of MPUA RSC are managed and controlled by various directors and officers of the Sponsoring Entities who serve in an *ex officio* capacity as the Board of Directors of MPUA RSC. Pursuant to the Bylaws of MPUA RSC, the Board of Directors consists of seven individuals serving in an *ex officio* capacity, all with voting rights as members of the Board of MPUA RSC:

1. Chief Executive Officer/General Manager of the MJMEUC
2. MJMEUC Board of Directors Chairperson
3. MJMEUC Board of Directors Vice-Chairperson
4. MAMU Board of Directors Chairperson
5. Missouri Public Water Council (MPWC) Council Chairperson
6. MGCM Board of Directors Chairperson

7. MGCM Board of Directors Vice-Chairperson

The MPWC is an unincorporated committee of certain Municipal Members of MAMU that own municipal water systems. If any individual serves as chair or vice chair on the Board of more than one of the Sponsoring Entities, or if a single Member Municipality would (by virtue of a leadership position held by representatives of that Member Municipality in the Sponsoring Entities) be entitled to more than one board member of MPUA RSC's Board of Directors, the Sponsoring Entities will select an alternative to serve for that person as the *ex officio* board member for MPUA RSC's board.

The Sponsoring Entities, acting through their respective Board of Directors, have caused MPUA RSC to be created as an instrumentality of the Municipal Members of the Sponsoring Entities for the charitable purposes of lessening the burdens of government and to further social welfare by providing the Municipal Members resources relating to the operation and management of their Municipal Utilities. Because of its close connection with the Sponsoring Entities and the Municipal Members, MPUA RSC expects to operate in accordance with Missouri's Open Meetings and Records Act, RSMo. §§610.010-610.225 which governs public open meetings and public disclosure of state and local government entities.

MPUA RSC is operated, supervised and controlled by the Sponsoring Entities acting on behalf of the Municipal Members and it possesses all five of the affiliation factors listed in Revenue Procedure 95-48, Section 4.03, specifically:

- 1) MPUA RSC was created by the Sponsoring Entities acting on behalf of the Municipal Members;
- 2) Substantially all MPUA RSC's support is to be provided entirely by the Sponsoring Entities and revenues collected for services provided to the Municipal Members;
- 3) MPUA RSC is financially accountable to the Sponsoring Entities and the Municipal Members because MPUA RSC's Board of Directors all serve in their *ex officio* capacity on the Board of MPUA RSC by virtue of their roles on the boards of the Sponsoring Entities, and each *ex officio* member of the Board was either elected by the Municipal Members of that Sponsoring Entity or is an employee of the Sponsoring Entity;
- 4) The Sponsoring Entities (each a Political Subdivision or Governmental Instrumentality) exercise control over all MPUA RSC's expenditures since Board members serve in their *ex officio* capacity on MPUA RSC's seven-member board; and
- 5) If MPUA RSC is dissolved, its assets will (pursuant to its articles of incorporation and Missouri State law) be distributed exclusively to the Municipal Members, each of which is a Political Subdivision or Governmental Instrumentality.

Accordingly, MPUA RSC was found by the Service to be an affiliate of the Sponsoring Entities and their Municipal Members (each a Political Subdivision or Governmental Instrumentality) and, pursuant to its 501(c)(3) determination letter, is excused from filing Form 990. We note that MPUA RSC's organization and operations have not changed materially since the issuance of its 501(c)(3) determination letter in 2017.

NCPA. NCPA is a joint exercise of powers agency and a public entity organized under the laws of the State of California⁶ and pursuant to a joint powers agreement (the “NCPA Joint Powers Agreement”) among eleven cities with publicly-owned electric utility distribution systems, one port authority and a transit authority (the “Full NCPA Members”). Under the terms of the NCPA Joint Powers Agreement, NCPA possesses the general powers to acquire, purchase, generate, transmit, distribute and sell electrical capacity and energy and the specific powers to enter into contracts, acquire and construct electric generating facilities, set rates, issue revenue bonds and notes and acquire property by eminent domain.

Full NCPA Members participate in projects of NCPA on an elective basis and have no financial or other responsibility associated with the acquisition, construction, maintenance, operation or financing of a particular project unless such Full NCPA Member shall authorize, execute and deliver the relevant project agreement. Pursuant to such project agreements, NCPA has financed the acquisition and construction of various generating resources, the output of which it sells to Full NCPA Members electing to participate and, in certain cases, to non-members, which non-members consist of cities and other joint exercise of powers agencies, pursuant to the related project agreement, which project agreements are structured as take-or-pay contracts. In addition, NCPA negotiates, on behalf of the Full NCPA Members and certain non-members, power purchase and other agreements.

[Title to two geothermal electrical generating projects (the “Geothermal Projects”) financed by NCPA is held by separate not-for-profit corporations, Northern California Municipal Power Corporation No. Two and Northern California Municipal Power Corporation No. Three (the “NCPA Associated Power Corporations”), which not-for-profit corporations are, in-turn, owned by NCPA. NCPA has authority to operate and manage the Geothermal Projects and the related assets. In consideration for NCPA financing the Geothermal Projects, NCPA receives all of the capacity and energy generated by the Geothermal Projects. The financial statements of the NCPA Associated Power Corporations are consolidated with those of NCPA for financial reporting purposes.]

NCPA is governed by a commission composed of one representative from each Full NCPA Member. NCPA principally derives its revenues from sales of power to Full NCPA Members, as well as sales to non-members who are participants in NCPA projects. As a joint exercise of powers agency organized under the laws of the State of California, NCPA’s income is exempt from federal income tax.

VPPSA. VPPSA, established by the laws of the State of Vermont (30 V.S.A. § 5001 et seq.), is a body politic and corporate and a public instrumentality of the State of Vermont exercising public and essential governmental functions to, among other things, arrange power supply resources for its members. As of January 1, 2018, VPPSA has [twelve] members (the “VPPSA Members”), each a municipality located in the State of Vermont that operates a municipal electric distribution system.⁷

⁶ In particular, Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended.

⁷ [Cooperatives may become members of VPPSA in accordance with the provisions of 30 V.S.A. § 5011(b), but none of the existing members are cooperatives.]

While VPPSA does own certain generation assets, the output of which it sells to the VPPSA Members and certain non-member project participants, its principal purposes are to provide central dispatch of power and energy for the VPPSA Members and certain non-members in Vermont, New Hampshire, Massachusetts and Maine; power supply and integrated resource planning, negotiating power purchases for the VPPSA Members, planning for the development of potential new resources and work relating to the setting of VPPSA Members' and non-members' rates, such as cost of service studies, revenue forecasts and budget projections.

VPPSA is governed by a board of directors, consisting of one director elected by the legislative body of each VPPSA Member. VPPSA generates a substantial portion of its revenues from resale of electric power to the VPPSA Members, while also receiving revenues from the sale of power from certain VPPSA-owned generation assets. VPPSA is a governmental entity and its income is exempt from federal income tax under Section 115 of the Internal Revenue Code.

WMMPA. WMMPA is a municipal corporation and political subdivision of the State of Minnesota organized under Section 453.51 et seq. of the Minnesota Statutes for the purpose of providing a means for its members to secure, by individual or joint action among themselves or by contract with other public and private entities within or outside the State of Minnesota, an adequate, economical and reliable supply of electric energy. As of January 1, 2018, WMMPA has twenty-three members (the "WMMPA Members"), each of which are Minnesota municipalities that own and operate a municipal electric utility.

WMMPA was formed in 1976 for the principal purpose of acquiring and owning generation facilities, the output of which is sold to Missouri Basin Municipal Power Agency (d/b/a Missouri River Energy Services, "MRES"). MRES is a body corporate and politic organized under the laws of the State of Iowa and existing under the intergovernmental cooperation laws of the States of Iowa, Minnesota, North Dakota and South Dakota. As of January 1, 2018, there are 61 members of MRES (the "MRES Members"), 24 in Minnesota⁸, 19 in Iowa, six in North Dakota and 12 in South Dakota, each of which is a municipality that owns and operates a municipal electric utility.

WMMPA sells all of the output of WMMPA-owned generating and transmission resources (the "WMMPA Projects") to MRES pursuant to the terms of a Power Supply Contract (the "MRES Power Supply Contract") with MRES. MRES, in turn, sells the power and energy it purchases under the MRES Power Supply Contract to MRES Members pursuant to take-and-pay power sales contracts (the "MRES Power Sale Agreements") with the MRES Members. MRES has pledged the revenues it receives under the MRES Power Sale Agreements to the payment of the revenue bonds issued by WMMPA to finance the WMMPA Projects.

WMMPA is governed by a seven member board of directors, four of whom are representatives of the four WMMPA Members that pay the largest amount of revenue under the MRES Power Sale Agreements and three of whom are elected by representatives of the WMMPA Members. MRES is governed by a board of directors comprised of 13 persons elected by the MRES Members that have executed MRES Power Sale Agreements that provide for all

⁸ Each Minnesota MRES Member is also a WMMPA Member, except for the City of Hutchinson, Minnesota.

power required by such MRES Member in excess of its Western Area Power Administration allocation⁹.

As a consequence of the contractual arrangements described above, the financial statements of WMMPA and MRES are presented on a consolidated basis. WMMPA derives substantially all of its revenue from the sale of power from WMMPA Projects to MRES pursuant to the MRES Power Supply Contract. MRES, in turn, derives a substantial portion of its revenues from MRES Members pursuant to the MRES Power Sale Agreements. MRES also generates a portion of its revenue from sales of power and energy delivered under the MRES Power Supply Contract to other market participants, [which sales are generally short-term, spot sales reflecting power and energy in excess of the needs of the MRES Members at a given time.] As a political subdivision of the State of Minnesota, WMMPA's income is exempt from federal income tax. [As a body corporate and politic of the State of Iowa, MRES' income is exempt from federal income tax.]

B. Hometown Connections International LLC.

Hometown Connections International LLC ("Old HCI") was formed on January 14, 1998 as a limited liability company organized under the laws of the State of Colorado. Old HCI was formed to invest in, develop, own, market, license and sell services and products to enable public power utilities to compete successfully in a deregulated electric utility environment. Old HCI is currently owned by Public Power, Inc. ("PPI") (65%), a wholly-owned, for-profit subsidiary of American Public Power Association ("APPA")¹⁰, and AMEA (35%). Old HCI is currently treated as a partnership for federal income tax purposes and its earnings and losses are included in the income tax returns of PPI and AMEA.

Old HCI principally serves as the utility services subsidiary of APPA, offering a suite of products and services to APPA members. Old HCI is focused primarily on two distinct product lines, (a) consultancy and (b) a third-party product endorsement model. In respect of the consultancy business line, Old HCI personnel and strategic partners provide consulting support in the areas of risk management, organization assessment, customer and employee research, strategic planning, financial planning, governance training and staffing. In respect of the third-party product endorsement model, Old HCI negotiates with preferred providers to provide discounted pricing on technology, services, and other solutions from industry-leading companies.¹¹

⁹ Currently 57 MRES Members have entered into such contracts, which MRES Members are referred to by WMMPA and MRES as "S-1 Members". Three other MRES Members have entered into MRES Power Sale Agreements that vary from the MRES Power Sale Agreement entered into by the S-1 Members. WMMPA and MRES refer to such MRES Members as "Non S-1 Members."

¹⁰ American Public Power Association ("APPA") is a not-for-profit corporation organized under the laws of the District of Columbia formed in 1940 to promote public power and help community-owned utilities deliver superior services through joint advocacy, education and collaboration. APPA is a service organization representing the interests of over 2,000 municipally-owned utilities throughout the United States. The income of APPA is generally exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code. See Exhibit ___.

¹¹ Note: We need to build out the detail of the legacy business lines, specifically, a more precise description of the services provided. We will review the next iteration of the business plan and follow up with Tim, as necessary, to fill in any gaps.

Old HCI is governed by the terms of an operating agreement, dated January 2002. The business and affairs of Old HCI are managed by a four person board (the “Old HCI Board”), two of whom are appointed by APPA, one of whom is appointed by AMEA and one independent member selected unanimously by the other persons on the board. Most decisions of the Old HCI Board require the approval of 50% of the individuals of the Old HCI Board, except for decisions relating to the offering of new products or services, which require a unanimous vote. [The Old HCI Board approved the terms of the proposed transaction described in Part D of this Section I on _____.]

C. New HCI.

The Founding Group proposes to form Hometown Connections, Inc. (“New HCI”) as a charitable, nonstock corporation under the laws of the Delaware. New HCI would be created for “the benefit of its Members and its Members’ members and to carry out the purposes of its Members with a view toward maximizing the efficient provision and use of electrical energy and/or Members’ and Members’ members natural gas or water utility resources and services; reducing operating costs; and increasing operating revenues of the Members without impacting the safety and reliability of the electric system of each Member and Members’ members, and thereby lessening the burdens of government and benefiting the general public.”¹² New HCI’s proposed Bylaws (the “Proposed Bylaws”) further provide that its governing body will not permit “any part of the net earnings, assets or capital of the corporation to inure to the benefit of any Director, officer or other private person or individual”¹³ and that New HCI will conduct its business in a manner to assure the tax status of the organization.¹⁴

Under the Proposed Bylaws, in order to be eligible to become a Member of New HCI “an organization must be (a) a public power entity however constituted as a matter of applicable law in the state of organization, including, but not limited to, a body corporate and politic or political subdivision of the state of organization, a joint powers agency, a municipal utility district, a municipal power agency, a public utility district or a not-for-profit corporation, or a not-for-profit corporation that provides services to public power entities, and (b) either (i) a political subdivision within the meaning of the Internal Revenue Code of 1986, as amended, (ii) an entity whose income is exempt from federal income taxation by reason of Section 115 of the Internal Revenue Code of 1986, as amended, or (iii) an entity who is a tax exempt affiliate of an entity described in (b)(i) or (ii), above (a “Qualified Entity”).”¹⁵ If, at any point, a Member ceases to be a Qualified Entity, such entity will cease to be a Member of New HCI and will not be entitled to receive any distributions of income or assets from New HCI except for the return of capital, if any, applicable upon the withdrawal or termination of a Member.¹⁶ In addition, Members may only transfer their interest in New HCI to another Qualified Entity.¹⁷ Any purported transfer made in violation of the transfer provision described in the preceding sentence would be void.

¹² See Section 2.2 of the proposed Bylaws of Hometown Connections, Inc. (the “Proposed Bylaws”) See Exhibit ___.

¹³ See Section 5.1(f) of the Proposed Bylaws.

¹⁴ See Section 16.1 of the Proposed Bylaws.

¹⁵ See Section 3.1 of the Proposed Bylaws.

¹⁶ See Sections 3.1 and 11.1 of the Proposed Bylaws

¹⁷ See Section 9.1 of the Proposed Bylaws.

New HCI would be governed by a board of directors (each, a “Director” and collectively, the “Board of Directors”).¹⁸ Each Member of New HCI is permitted to appoint one Director (each such Member-appointed Directors, a “Member Director”) and one Alternate Director (each, an “Alternate Director”). In addition, so long as a majority of the Members are also members of APPA, APPA is permitted to appoint one Director.¹⁹ In addition, New HCI’s President and Chief Executive Officer, who will be appointed by the Board of Directors, and General Counsel, whose appointment will be approved by the Board of Directors, will be non-voting *ex officio* Directors. Substantially all of the major decisions of the Board of Directors will require at least the approval of a majority of the Board of Directors, except for a subset of decisions, including the dissolution of New HCI, admission of new Members, approval of annual budgets, determination of capital contributions and amendment of the bylaws, which actions will require the approval of the affirmative vote of two-thirds of all Member Directors, whether or not present at the meeting.²⁰ Upon dissolution of New HCI, the Board of Directors “shall, after paying or making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the Corporation by distributing those net assets (assets less liabilities) to the corporation’s Members, in proportion to their respective capital account balances.”²¹

D. Proposed Transaction.

Pursuant to the terms of an asset purchase agreement (the “Asset Purchase Agreement”) between Old HCI, PPI, AMEA, APPA and New HCI, New HCI proposes to acquire substantially all of the assets of Old HCI (the “Acquired Assets”). See Exhibit __. New HCI will not acquire certain assets, primarily certain contractual rights of Old HCI that may conflict with certain of New HCI’s proposed business lines, nor will it acquire any of the liabilities of Old HCI, except those associated with retained employees and assumed contracts. The initial payment of the cash consideration to be paid to APPA described below for the Acquired Assets will be made by the members of the Founding Group on a pro rata basis.

New HCI proposes to pay APPA \$[500,000] for PPI’s 65% share of the Acquired Assets at closing of the acquisition (“Closing”) and an additional \$[100,000] annually (the “Annual Payment”) for ten years after Closing. [The obligation of New HCI will be secured by a promissory note of New HCI and will be subject to setoff by New HCI if APPA’s fails to performance of certain services for New HCI.²² APPA’s obligations to provide such marketing and other support services to New HCI will be set forth in a services agreement between New HCI and APPA.] See Exhibit __.

AMEA’s will receive no cash consideration at Closing for its 35% share of the Acquired Assets. Instead, AMEA will become a Member of New HCI with an initial capital balance of \$225,000, which equal to the initial capital contribution to be made by the other members of the Founding Group described in Part E of this Section I . Under the terms of the Asset Purchase

¹⁸ See Section 5.2 of the Proposed Bylaws.

¹⁹ See Section 5.2 of the Proposed Bylaws. APPA may only appoint a Director if such right to appoint a Director does not jeopardize the tax status of New HCI.

²⁰ See Section 5.1 and Section 6.7 of the Proposed Bylaws.

²¹ See Section 17.2 of the Proposed Bylaws.

²² See Section 2.03 of the draft Services Agreement. See Exhibit __. [Note: All subject to final terms of Asset Purchase Agreement and Services Agreement.]

Agreement, AMEA will be paid \$41,667 a year by New HCI in the fifth, sixth and seventh year following Closing, which amount may be reduced if and to the extent AMEA is required to make capital calls as a Member of New HCI.²³

E. Initial and Subsequent Capitalization of New HCI.

Each member of the Founding Group, except AMEA, will make an initial cash investment of \$225,000 each. AMEA will be recognized as having made a \$225,000 in-kind contribution in consideration of its transfer of its 35% share of the Acquired Assets. Coincident with the Closing, New HCI will also acquire AMP's interest, including certain contractual rights in its Advanced Metering Infrastructure Project (as described in more detail below, the "AMI Project") for \$200,000, with an additional \$650,000 to be represented as an additional capital contribution of AMP and repaid to AMP through distributions of margin, if any, from the other Members of New HCI. To the extent there are capital calls related to operation of the AMI Project [during the two-year period following the Closing], AMP will provide support in the form of cash contributions by AMP, which contributions will be represented as additional contributions of AMP. Such contributions will be governed by the terms of the Advanced Metering Infrastructure Assignment and Operation Agreement between AMP and [New HCI/the other Members of the Founding Group].²⁴ See Exhibit ___.

Thereafter, New HCI proposes to utilize "project" capital accounting for the services it provides. If the Board of Directors approves the provision of a new service (referred to herein for convenience as a "New Service") by New HCI, each Member will be given the option to participate in the New Service. If each Member elects to participate in the New Service, as evidenced by the unanimous consent of the Member Directors, such New Service will be considered a "Universal Project/Service."²⁵ If there is a capital call related to New HCI's general corporate purposes or a Universal Project/Service, each Member will have an option to meet the capital call or, if the Member declines a capital call, margin distributions to such Member will be reduced by up to 50% per year until the Member's capital account is equal to the amount it would have been had it met the capital call, including a reasonable rate of interest calculated on the amount of the declined capital call.²⁶

If the Board approves a New Service, but one or more Members chooses not to participate in such New Service, such New Service will constitute a "Non-Universal Project/Service." Members electing to participate in a Non-Universal Project/Service are referred to as "Member Participants." Each Member Participant will be required to enter into a contract to hold New HCI harmless for its share of losses incurred with respect to such Non-Universal Project/Service. If there is a capital call related solely to a Non-Universal Project/Service, Member Participants, but only Member Participants, will be subject to capital calls on the same basis and pursuant to the same conditions as Members are for capital calls for general corporate purposes and Universal Project/Services. Members choosing not to participate

²³ Is this amount to be paid from margin or reduced from new profits?

²⁴ Subject to final terms of definitive Advanced Metering Infrastructure Assignment and Operation Agreement.

²⁵ See Section 6.7(12) and (13) of the Proposed Bylaws.

²⁶ See Section 6.7(13)b of the Proposed Bylaws. If a Member declines a capital call for general corporate purposes or for a Universal Project/Service, other Members may voluntarily pay all or a portion of such declining Member's capital call and receive a correlative increase to its capital account.

in a Non-Universal Project/Service (any such Member, a “Non-Participating Member”) will not be subject to capital calls relating solely to Non-Universal Project/Services, but such Non-Participating Member will also not be eligible to receive any margin distributions allocable to such Non-Universal Project/Service.

The Members will make a reasonable allocation of New HCI expenses among Universal Project/Services and Non-Universal Project/Services.

F. Initial Business Plan of New HCI.

Initially, New HCI will be engaged in three principal business segments. Two of the three business segments are the existing business segments of Old HCI, (a) the third-party product endorsement segment and (b) the management consulting business segment, each of which were briefly described in Part B of this Section I. In addition, as discussed in Part E of this Section I, New HCI will acquire from AMP its AMI Project and offer the AMI Project as its third business segment. Each of these segments will constitute a Universal Project/Service.

[Historically, the third-party product endorsement segment has involved the negotiation of contracts for a wide array of services and technology of value to the public power community with trusted third-party consultants and vendors. Revenue is generated when members of the public power community utilize such preferred providers, for which New HCI would receive a commission. [New HCI may expand its offerings in the third-party endorsement sector, by adding supervisory control and data acquisition (SCADA), battery storage and predictive system analytics, demand response and energy efficiency partners.]²⁷ The third-party product endorsement segment is supported by a network of sales and marketing associates who are compensated on a commission basis.]

[In connection with the management consulting segment, the staff of New HCI and consultants will work with public power utilities to provide support for an array of functions vital to the operation of a modern municipal utility. The consulting services offered by New HCI would include engineering and operations services, such as cost of service studies and the provision of technology solutions, such as cyber security and SCADA, as well as business and finance support, such as billing, business planning and financial policy preparation.²⁸

As noted above, New HCI will acquire AMP’s AMI Project at Closing and offer AMI as its third business segment. AMI is a comprehensive advance metering infrastructure solution. AMP has entered into contracts with vendors who provide the meter, which consist of state-of-the-art electronic, water or natural gas meters capable of providing real-time data by means of internet connectivity, primarily through the virtual private networks, and back-end software and server support which integrates the real-time meter data into the municipal utility’s business systems. AMP has successfully implemented the components of AMI for certain AMP Members. Public power entities choosing to participate in the offering of New HCI’s AMI business segment will pay New HCI on a per-meter basis for the physical meter and a fee for technology hosting services.

²⁷ Note: Point here is that business that New HCI reasonably anticipates to undertake in the near-to-medium term.]

²⁸ Note: We will include additional detail upon review of revised business plan.

As with Old HCI, New HCI will offer all projects and services, including Universal Project/Services and Non-Universal Project/Services to Members and non-member public power providers. [In the case of the latter, such services will principally be provided to public power entities that would otherwise constitute Qualified Entities, but certain services may be provided to public power providers not constituting Qualified Entities]. [The pricing of projects and services provided to non-member public power entities will be based on schedules established by the Board and may include additional charges not payable by members of the Members to take into account the cost of capital invested by the Members and the risks attendant therewith.]²⁹

²⁹ It may be helpful to describe, if not in precise detail, the proposed pricing for non-members to frame the issue for the Service. The Proposed By-laws seem to anticipate differential pricing (see Section 11.1 of the Proposed By-laws), but the Draft Business Plan is noncommittal on the point.

ASSET PURCHASE AGREEMENT

between

**SELLER GROUP: HOMETOWN CONNECTIONS INTERNATIONAL, LLC
PUBLIC POWER INCORPORATED
ALABAMA MUNICIPAL ELECTRIC AUTHORITY
AMERICAN PUBLIC POWER ASSOCIATION**

And

BUYER: HOMETOWN CONNECTIONS, INC.

dated as of

_____, 2018

TABLE OF CONTENTS

ARTICLE I PURCHASE AND SALE 2

Section 1.01 Purchase and Sale of Assets...... 2

Section 1.02 Excluded Assets. 2

Section 1.03 Assumption of Liabilities...... 2

Section 1.04 Purchase Price. 3

Section 1.05 Payment of Cash Portion of Purchase Price...... 4

Section 1.06 Allocation of Purchase Price. 4

Section 1.07 Withholding Tax...... 4

ARTICLE II CLOSING 4

Section 2.01 Closing...... 4

Section 2.02 Closing Deliverables...... 4

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER 6

Section 3.01 Organization and Authority of Seller; Enforceability. 7

Section 3.02 No Conflicts; Consents...... 7

Section 3.03 Title to Purchased Assets...... 8

Section 3.04 Intellectual Property...... 8

Section 3.05 Assigned Contracts...... 9

Section 3.06 Intentionally Omitted...... 9

Section 3.07 Non-foreign Status...... 9

Section 3.08 Compliance With Laws...... 9

Section 3.09 Legal Proceedings...... 9

Section 3.10 Brokers. 10

Section 3.11 Full Disclosure. 10

Section 3.12 Additional Representations of Seller Group Members Other Than Seller...... 10

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER	10
Section 4.01 Organization and Authority of Buyer; Enforceability.	11
Section 4.02 No Conflicts; Consents.	11
Section 4.03 Legal Proceedings.	11
Section 4.04 Brokers.	11
ARTICLE V COVENANTS.....	12
Section 5.01 Public Announcements.	12
Section 5.02 Bulk Sales Laws.	12
Section 5.03 Transfer Taxes.	12
Section 5.04 Further Assurances.	12
ARTICLE VI INDEMNIFICATION.....	12
Section 6.01 Survival; Limitations on Indemnification.	13
Section 6.02 Indemnification By Seller.	13
Section 6.03 Indemnification By Buyer.	14
Section 6.04 Indemnification Procedures.	14
Section 6.05 Tax Treatment of Indemnification Payments.	15
Section 6.06 Effect of Investigation.	15
Section 6.07 Exclusive Remedies.	15
ARTICLE VII MISCELLANEOUS	15
Section 7.01 Expenses.	15
Section 7.02 Notices.	15
Section 7.03 Headings.	18
Section 7.04 Severability.	18
Section 7.05 Entire Agreement.	19
Section 7.06 Successors and Assigns.	19
Section 7.07 No Third-party Beneficiaries.	19

Section 7.08 Amendment and Modification. 19

Section 7.09 Waiver. 19

Section 7.10 Governing Law. 20

Section 7.11 Submission to Jurisdiction...... 20

Section 7.12 Waiver of Jury Trial. 20

Section 7.13 Specific Performance. 20

Section 7.14 Counterparts...... 20

DRAFT

APPENDICES AND DISCLOSURE SCHEDULE

Appendix 1 - APPA Services Agreement

Appendix 2 - AMEA Contribution Agreement

Appendix 3 - Purchased Assets

Appendix 4 – APPA Promissory Note

Appendix 5 – AMEA Promissory Note

Appendix 6 - Bill of Sale

Appendix 7 - Assignment and Assumption Agreement

Appendix 8 - Intellectual Property Assignments

Disclosure Schedule

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of _____, 2018 (the “**Effective Date**”), is entered into by and among Hometown Connections International, LLC, a Colorado limited liability company (“**Seller**”) and its owners, Public Power Incorporated, a District of Columbia Corporation (“**PPI**”) and a wholly owned subsidiary of American Public Power Association, a non-profit trade association organized under the laws of the District of Columbia (“**APPA**”), and Alabama Municipal Electric Authority, a public corporation of the State of Alabama (“**AMEA**” and collectively with Seller, PPI and APPA, the “**Seller Group**”) and Hometown Connections, Inc., a Delaware charitable non-stock corporation (“**Buyer**”).

RECITALS

WHEREAS, APPA, PPI and AMEA, in consideration of various covenants contained herein and the execution of various ancillary agreements between them and Buyer no later than the Closing (as hereinafter defined) are willing to cause Seller to enter into this Agreement providing for the transfer to Buyer of the Purchased Assets (as hereinafter defined) in exchange for Buyer’s assumption of the Assumed Liabilities (as hereinafter defined), payment of the Purchase Price (as hereinafter defined), and the other consideration set forth herein; and

WHEREAS, with the execution hereof, APPA has, as an inducement to Buyer to enter into this transaction, simultaneously entered into a services agreement providing Buyer with corporate member and other benefits for a ten (10) year period and on the additional terms and conditions set forth in the services agreement which is attached hereto as Appendix 1 (the “**APPA Services Agreement**”); and

WHEREAS, with the execution hereof, AMEA has, as an inducement to Buyer to enter into this transaction, simultaneously entered into a contribution agreement, providing for capital contributions to be made to Buyer in exchange for a membership interest in Buyer and on the additional terms and conditions set forth in that certain Contribution Agreement in the form of Appendix 2 to this Agreement (the “**AMEA Contribution Agreement**”); and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the rights and certain obligations of Seller to the Purchased Assets and the Assumed Liabilities (as defined herein), subject to the terms and conditions set forth herein.

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

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in the assets set forth on Section 1.01 of the disclosure schedules ("**Disclosure Schedules**") attached hereto as Appendix 3 (the "**Purchased Assets**")¹, free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance (collectively, "**Encumbrance**").

Section 1.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include [BUYER TO PROVIDE DESCRIPTION OF EXCLUDED ASSETS]., as also shown on Appendix 3.

Section 1.03 Assumption of Liabilities. Subject to the terms and conditions set forth herein, from and after the Closing (as defined herein), Buyer shall assume and agree to pay, perform and discharge the contractual liabilities and obligations related to or under (a) the contracts that are included in the Purchased Assets and being assigned to and assumed by Buyer and listed on Schedule 3.05 of the Disclosure Schedules and no other contracts (the "**Assigned Contracts**"), and (b) Seller's Long-Term Retention Compensation Plan² other than such

¹ NTD: Seller to provide proposed list of Purchased Assets

² APPA Note to Buyer: Seller will be transferring all bank accounts including the certificates of deposit that hold the deferred compensation payable under the Long-term Retention Plan. Accordingly, the obligations under that plan need to be transferred to Buyer. The further assurances section (5.04) has been revised to specifically call out

liabilities and obligations that relate to any breach, default or violation of an Assigned Contract by Seller on or prior to the Closing (collectively, the “**Assumed Liabilities**”). Other than the Assumed Liabilities, Buyer shall not assume any liabilities or obligations of Seller of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created, each of which is an “Excluded Liability”. Buyer agrees to establish a 403(b) plan, as soon as administratively practicable and no later than [90 days] after Closing, which will accept rollovers of account balances from the Seller’s 401(k) Plan for any Seller’s employee that becomes an employee of Buyer.

Section 1.04 Purchase Price. The aggregate purchase price for the Purchased Assets shall be the assumption of the Assumed Liabilities and the aggregate of the following (the “**Purchase Price**”):

- (a) The sum of five hundred thousand dollars (\$500,000) (the “**Initial Payment**”), to be paid in cash to APPA;
- (b) One million dollars (\$1,000,000) in ten (10) annual installments of one hundred thousand dollars (\$100,000) each, beginning on the first anniversary of the Effective Date, secured by a promissory note for the benefit of APPA in the form attached hereto as **Appendix 4** hereto (the “**APPA Promissory Note**”) and on the additional terms described therein as well as subject to the terms of the APPA Services Agreement; and
- (c) A membership interest in Buyer, to be distributed to AMEA by Seller as a liquidating distribution, subject to the terms of the AMEA Contribution Agreement and a promissory note in the amount of three hundred fifty thousand dollars (\$350,000) to be paid or otherwise satisfied on the terms set forth therein, in the form attached hereto as **Appendix 5** hereto (the “**AMEA Promissory Note**”).

Seller’s obligation to assist with documentation necessary for the 401k transfer (e.g. changing the plan’s authorized person).

Section 1.05 Payment of Cash Portion of Purchase Price. The Buyer shall pay the Initial Payment to APPA at the Closing in cash, by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 1.05 of the Disclosure Schedules.

Section 1.06 Allocation of Purchase Price. Seller Group and Buyer agree to allocate the Purchase Price among the Purchased Assets for tax purposes in accordance with Section 1.06 of the Disclosure Schedules as agreed by their respective accountants, negotiating in good faith on their behalf. Buyer and Seller Group shall file any required tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation. Such allocation may not be used or relied upon by any party for any purpose other than that set forth in this Section 1.06

Section 1.07 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all taxes that Buyer may be required to deduct and withhold under any applicable tax law. All such withheld amounts shall be treated as delivered to Seller hereunder.

ARTICLE II CLOSING

Section 2.01 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place simultaneously with the execution of this Agreement on the date of this Agreement (the “**Closing Date**”) through an escrow at the offices of Taft Stettinius & Hollister LLP, 65 E. State St. Columbus Ohio 43215. The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 a.m. on the Closing Date.

Section 2.02 Closing Deliverables.

(a) At the Closing, Seller, or members of the Seller Group, as applicable, shall deliver to Buyer the following:

(i) a bill of sale substantially in the form of Appendix 6 hereto (the “**Bill of Sale**”) and duly executed by Seller, transferring the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement substantially in the form of Appendix 7 hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Assigned Contracts and the Assumed Liabilities;

(iii) an assignment in form and substance satisfactory to Buyer (the “**Intellectual Property Assignments**”) and duly executed by Seller, to be set forth as Appendix 8 hereto transferring all of Seller’s right, title and interest in and to the trademark registrations and applications, copyright registrations and applications and domain name registrations included in the Purchased Assets/Purchased IP (as defined herein) to Buyer;

(iv) copies of all consents, approvals, waivers and authorizations referred to in Section 3.02 of the Disclosure Schedules;

(v) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code duly executed by Seller;

(vi) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Seller certifying as to (A) the resolutions of the board of directors or equivalent body of Seller, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of Seller authorized to sign this Agreement and the documents to be delivered hereunder;

(vii) the APPA Services Agreement, duly executed by APPA;

(viii) the AMEA Contribution Agreement, duly executed by AMEA;

(ix) evidence of approval by the board of directors or equivalent body of each member of the Seller Group, duly adopted and in effect, which authorizes the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and

(x) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller, or members of the Seller Group, as applicable, the following:

(i) To APPA, the Initial Payment pursuant to Section 1.04(a) of this Agreement;

(ii) To Seller, the Assignment and Assumption Agreement duly executed by Buyer;

(iii) copies of all consents and authorizations referred to in Section 4.02 of the Disclosure Schedules;

(iv) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying as to (A) the resolutions of the board of directors of Buyer, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of Buyer authorized to sign this Agreement and the documents to be delivered hereunder;

(v) To APPA, an executed counterpart of the APPA Services Agreement and an executed original of the Promissory Note; and

(vi) To AMEA, an executed counterpart of the AMEA Contribution Agreement granting AMEA a membership interest in Buyer and an executed original of the AMEA Promissory Note.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER AND OTHER MEMBERS OF
SELLER GROUP

Seller, and Seller Group with respect to Section 3.12 only, represents and warrants to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof. For purposes of this ARTICLE III, “Seller’s knowledge,” “knowledge of Seller” and any similar phrases shall mean the actual knowledge of Tim Blodgett, Colin Hansen, Hugh Grunden, or Jeff Haas, after due inquiry and knowledge of Seller Group shall mean the actual knowledge of Tim Blodgett, Colin Hansen, Hugh Grunden, Jeff Haas and Fred Clark, as applicable, after due inquiry.

Section 3.01 Organization and Authority of Seller; Enforceability. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Colorado. Seller has full power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite limited liability company action on the part of Seller. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

Section 3.02 No Conflicts; Consents. Assuming the consents listed on Section 3.02 of the Disclosure Schedules are obtained, the execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate of incorporation, by-laws or other organizational documents of Seller; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller or the Purchased Assets; (c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Seller is a party or to which any of the Purchased Assets are subject; or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. Other than the consents

listed on Section 3.02 of the Disclosure Schedules, no consent, approval, waiver or authorization is required to be obtained by Seller from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby.

Section 3.03 Title to Purchased Assets. Seller owns and has valid title or interest, as applicable, to the Purchased Assets, free and clear of Encumbrances.

Section 3.04 Intellectual Property.

(a) “**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) websites and internet domain name registrations; and (v) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present and future infringement and any other rights relating to any of the foregoing).

(b) Section 3.06(b) of the Disclosure Schedules lists all Intellectual Property included in the Purchased Assets (“**Purchased IP**”). Seller owns or has adequate, valid and enforceable rights to use all the Purchased IP, free and clear of all Encumbrances. Seller is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Purchased IP, or restricting the licensing thereof to any person or entity. With respect to the registered Intellectual Property listed on Section 3.06(b) of the Disclosure Schedules, (i) all such Intellectual Property is valid, subsisting and in full force and effect and (ii) Seller has paid all maintenance fees and made all filings required to maintain Seller’s ownership thereof. For all such registered Intellectual Property, Section 3.06(b) of the Disclosure Schedules lists (A) the jurisdiction where the application or registration is located, (B) the application or registration number, and (C) the application or registration date.

(c) Seller's prior and current use of the Purchased IP has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any person or entity and there are no claims pending nor, to the knowledge of Seller, threatened by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the Purchased IP. To the knowledge of Seller, no person or entity is infringing, misappropriating, diluting or otherwise violating any of the Purchased IP, and neither Seller nor any affiliate of Seller has made or asserted any claim, demand or notice against any person or entity alleging any such infringement, misappropriation, dilution or other violation.

Section 3.05 Assigned Contracts. Section 3.05 of the Disclosure Schedules includes each of the Assigned Contracts. Each Assigned Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to Seller's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. Complete and correct copies of each Assigned Contract have been made available to Buyer. There are no disputes pending or threatened in writing under any Assigned Contract.

Section 3.06 Intentionally Omitted

Section 3.07 Non-foreign Status. Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

Section 3.08 Compliance With Laws Seller has materially complied, and is now materially complying, with all applicable federal, state and local laws and regulations applicable to ownership and use of the Purchased Assets.

Section 3.09 Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation ("**Action**") of any nature pending or, to Seller's knowledge,

threatened against or by Seller (a) relating to or affecting the Purchased Assets or the Assumed Liabilities; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the knowledge of Seller, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 3.10 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 3.11 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 3.12 Additional Representations of Seller Group Members Other Than Seller. Each member of the Seller Group other than Seller represents that is has no knowledge that any representation or warranty by Seller in this Agreement or any statement contained in the Disclosure Schedules to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein in light of the circumstances in which they are made misleading. [Identify persons for each?? e.g. AMEA Fred Clark or if we add Fred and possibly others to persons already enumerated, do we get there?]

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE IV are true and correct as of the date hereof. For purposes of this ARTICLE IV, "Buyer's knowledge," "knowledge of Buyer" and any similar phrases shall mean the actual or constructive knowledge of any officer of Buyer, after due inquiry.

Section 4.01 Organization and Authority of Buyer; Enforceability. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has full corporate power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate of incorporation, by-laws or other organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. No consent, approval, waiver or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.03 Legal Proceedings. There is no Action of any nature pending or, to Buyer's knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

ARTICLE V COVENANTS

Section 5.01 Public Announcements. Unless otherwise required by applicable law, no party to this Agreement shall make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other parties (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 5.02 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 5.03 Transfer Taxes. Each of Buyer and Seller shall be responsible for one-half of any transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the documents to be delivered hereunder (“**Transfer Taxes**”). Seller Group shall, at each’s respective individual expense, timely file any tax return or other document with respect to any Transfer Taxes (and Buyer shall cooperate with respect thereto as necessary).

Section 5.04 Further Assurances. Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder including, but not limited to, the transfer of Seller’s Long-Term Retention Compensation Plan to Buyer as well as, as soon as administratively practicable and no later than [90 days] after Closing, establishment by Buyer of a 403(b) plan to accept rollovers of account balances from Seller’s 401(k) Plan of any of Seller’s employees that become Buyer’s employees[, including in kind rollovers of any outstanding loans under Seller’s 401(k) Plan] .

ARTICLE VI INDEMNIFICATION

Section 6.01 Survival; Limitations on Indemnification. All representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing for a period of twenty-four (24) months; provided, however, that Seller's obligation to indemnify Buyer for any losses related to liabilities and obligations that relate to any breach, default or violation of an Assigned Contract by Seller on or prior to the Closing³ shall survive from the date of discovery of such breach, default or violation for a period of twenty-four (24) months, but in no case shall any right to indemnification survive sixty months (60) after Closing. In no event shall the total cumulative amount of losses for which any party may be liable under this ARTICLE VI exceed an amount equal to Five Hundred Thousand Dollars (\$500,000) (the "**Cap**"). The Cap shall, however, not apply to any Excluded Liability. Notwithstanding anything to the contrary in this ARTICLE VI, no party shall be obligated to indemnify any other party pursuant to this ARTICLE VI unless and until the aggregate of all losses is greater than or equal to Ten Thousand Dollars (\$10,000) (the "**Deductible**"), at which point, subject to the other limitations of this ARTICLE VI, the Indemnifying Party (as defined herein) shall be obligated to indemnify the Indemnified Party (as defined herein) only from and against all such losses, in excess of the Deductible.

Section 6.02 Indemnification By Seller. Seller and the other members of the Seller Group, severally, but not jointly, on a pro rata basis in proportion to their interests in Seller (65% interest for APPA, including PPI, and 35% interest for AMEA), shall defend, indemnify and hold harmless Buyer, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement or any document to be delivered hereunder;

³ [Note to Buyer: This language is intended to track the language in 1.03 that excludes from "Assumed Liabilities" any breaches, defaults or violations of the Assigned Contracts prior to Closing.]

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any document to be delivered hereunder; or

(c) any Excluded Asset or Excluded Liability.

Section 6.03 Indemnification By Buyer. Buyer shall defend, indemnify and hold harmless Seller, APPA and PPI and their respective members, stockholders, trustees, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or any document to be delivered hereunder;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any document to be delivered hereunder; or

(c) any Assumed Liability.

Section 6.04 Indemnification Procedures. Whenever any claim shall arise for indemnification hereunder, the party entitled to indemnification (the "**Indemnified Party**") shall promptly provide written notice of such claim to the other party (the "**Indemnifying Party**"). In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a person or entity who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including, but not limited to, settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with

such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. The Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

Section 6.05 Tax Treatment of Indemnification Payments. All indemnification payments made by Seller under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.

Section 6.06 Effect of Investigation. Buyer's right to indemnification or other remedy based on the representations, warranties, covenants and agreements of Seller contained herein will not be affected by any investigation conducted by Buyer with respect to, or any knowledge acquired by Buyer at any time, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement.

Section 6.07 Exclusive Remedies. Except as provided in Section 7.13 of this Agreement, the rights and remedies provided in this ARTICLE VI shall be the sole and exclusive remedies available, and no party will have any other remedy (statutory, equitable, common law or otherwise).

ARTICLE VII MISCELLANEOUS

Section 7.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 7.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business

hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.02):

If to Seller: [SELLER ADDRESS]
HOMETOWN CONNECTIONS Facsimile: [FAX NUMBER]
INTERNATIONAL, LLC E-mail: [E-MAIL ADDRESS]
Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

with a copy to: [SELLER LAW FIRM]
Facsimile: [FAX NUMBER]
E-mail: [E-MAIL ADDRESS]
Attention: [ATTORNEY NAME]

If to Seller Group: c/o American Public Power Association
PUBLIC POWER INCORPORATED 2451 Crystal Drive, Suite 1000
Arlington, VA 22202, USA
E-mail: dpatterson@publicpower.org
Attention: Delia Patterson

With a copy to: K&L Gates, LLP
10100 Santa Monica Blvd., 8th Floor
Los Angeles, CA 90067
Facsimile: 310-552-5001
E-mail: andrea.lucan@klgates.com
Attention: Andrea Lucan

ALABAMA MUNICIPAL ELECTRIC [OWNERS ADDRESS]
AUTHORITY Facsimile: [FAX NUMBER]
E-mail: [E-MAIL ADDRESS]
Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

With a copy to: [OWNERS LAW FIRM]
Facsimile: [FAX NUMBER]
E-mail: [E-MAIL ADDRESS]

AMERICAN PUBLIC POWER
ASSOCIATION

Attention: [TITLE OF OFFICER TO RECEIVE
NOTICES]

American Public Power Association
2451 Crystal Drive, Suite 1000
Arlington, VA 22202, USA
E-mail: dpatterson@publicpower.org

With a copy to:

Attention: Delia Patterson
K&L Gates, LLP
10100 Santa Monica Blvd., 8th Floor
Los Angeles, CA 90067
Facsimile: 310-552-5001
E-mail: andrea.lucan@klgates.com
Attention: Andrea Lucan

If to Buyer:

Hometown Connections, Inc.

Attn: _____

with a copy to:

With copies to:

Alabama Municipal Electric Authority

Attn: _____

with a copy to:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: President/ CEO

with copies to:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: General Counsel

MPUA Resource Services Corporation

Attn: _____

with a copy to:

Northern California Power Agency

Attn: _____

with a copy to:

Vermont Public Power Supply Authority

Attn: _____

with a copy to:

Western Minnesota Municipal Power Agency

Attn: _____

with a copy to:

Section 7.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect

any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 7.05 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 7.07 No Third-party Beneficiaries. Except as provided in ARTICLE VI, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.08 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Section 7.09 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a

waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction).

Section 7.11 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this APPA Services Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Virginia in each case located in the city of Alexandria or the county of Arlington, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 7.12 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 7.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 7.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

HOMETOWN CONNECTIONS INTERNATIONAL, LLC

By: _____

Name: _____

Title: _____

SELLER GROUP:

PUBLIC POWER INCORPORATED

By: _____

Name: _____

Title: _____

ALABAMA MUNICIPAL ELECTRIC AUTHORITY

By: _____

Name: _____

Title: _____

AMERICAN PUBLIC POWER ASSOCIATION

By: _____

Name: _____

Title: _____

HOMETOWN CONNECTIONS INC.

By: _____

Name: _____

Title: _____

Appendix 1

APPA Services Agreement

[UNDER SEPARATE COVER]

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Appendix 2

AMEA Contribution Agreement

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ALABAMA MUNICIPAL ELECTRIC AUTHORITY
CONTRIBUTION AGREEMENT

This Contribution Agreement (“Contribution Agreement”) is executed by Alabama Municipal Electric Authority, a public corporation of the State of Alabama (“AMEA”), and Hometown Connections Inc., a Delaware Charitable Non-Stock Corporation (“Hometown”) effective this ____ day of _____, 2018 (the “Effective Date”).

Background Information

A. AMEA and Hometown are parties, among others, to that certain Asset Purchase Agreement (the “Asset Purchase Agreement”) relating to the sale of certain assets, subject to certain liabilities of Hometown Connections International, LLC (“HCI”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement.

B. AMEA is a Member of HCI and has agreed to receive, as a liquidating distribution from HCI, a membership interest in Hometown which is being delivered to HCI, for distribution to AMEA, in lieu of three hundred fifty thousand dollars (\$350,000) of purchase price which would otherwise be payable by Hometown for the Purchased Assets.

C. The parties wish to memorialize the contribution of an undivided interest (being the interest which would otherwise be beneficially owned by AMEA) to Hometown in exchange for the Hometown membership interest and the rights of AMEA as a Member in Hometown pursuant to the Bylaws adopted by the Members of Hometown (the “Hometown Bylaws”).

Agreement

The parties therefore, in consideration of the above premises, mutually agree as follows:

Section 1 **Contribution**

AMEA hereby consents to the conveyance of the Purchased Assets pursuant to the terms of the Asset Purchase Agreement in exchange, in part, for a membership interest in Hometown (the “Membership Interest”) to be distributed to AMEA as a liquidating distribution. AMEA

shall receive credit, as its initial capital account in Hometown, pursuant to Section 10.4 of the Hometown Bylaws, in the amount of three hundred fifty thousand dollars (\$350,000).

Section 2 Governance of Hometown

AMEA agrees that the Membership Interest will be subject to the terms and conditions of governance of Hometown, as provided in the Certificate of Incorporation and the Hometown Bylaws, with the exception that Section 11.1 of the Hometown Bylaws, governing withdrawal by Members until and after the seventh (7th) anniversary of this Contribution Agreement. Provided that AMEA shall have a one (1) time option to withdraw effective not less than sixty (60) days but no more than one (1) year after the effective date in exchange for the right to receive three hundred fifty thousand dollars (\$350,000) payable in ten (10) annual installments pursuant to the terms of a promissory note substantially in the form of Schedule 1 to this Contribution Agreement.

Section 3 Future Capital Calls

The initial capital contributions made by other Members of Hometown will be two hundred twenty five thousand dollars (\$225,000.00) each. To the extent that additional capital calls are made, other Members shall be required to make contributions in an amount equal to a total of three hundred fifty thousand dollars (\$350,000) each, prior to any additional contribution being required of AMEA. In the event that other Members of Hometown have not contributed a total of three hundred fifty thousand dollars (\$350,000) by the fifth (5th) anniversary of this Contribution Agreement, any excess of three hundred fifty thousand dollars (\$350,000) over the amount of such other capital accounts shall be refunded to AMEA in equal installments on the 5th, 6th and 7th anniversary of the Effective Date. Any amount to be repaid to AMEA as provided above shall be secured by a promissory note substantially in the form of Schedule 1, attached.

Section 4 Acceptance of Contribution

Hometown hereby accepts all of the right title and interest and in and to the Purchased Assets, in exchange, in part, for the issuance of the membership interest.

Section 5 Miscellaneous

This Contribution Agreement shall be governed by the laws of the State of New York, as applicable to agreements to be executed and performed in such state, without regard to its conflict of law provisions. This Contribution Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one in the same agreement. A signed copy of this Contribution Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contribution Agreement.

Section 6 Construction of Agreement

This Contribution Agreement shall be construed, and to the extent not inconsistent with the terms of the Asset Purchase Agreement, be governed by, the terms and conditions of the Asset Purchase Agreement.

In Witness whereof, the parties have executed this Contribution Agreement as of the Effective Date.

ALABAMA MUNICIPAL ELECTRIC AUTHORITY

By:

Date:

HOMETOWN CONNECTIONS INC.

By:

Date:

Appendix 3

Purchased Assets

[TO COME]

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Appendix 4

APPA Promissory Note

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**APPA
PROMISSORY NOTE**

\$1,000,000.00

Columbus, Ohio

[May 1], 2018

Promise To Pay. The undersigned, Hometown Connections, Inc., a Delaware charitable non-stock corporation (the “**Maker**”), for value received, promises to pay to the order of American Public Power Association, a non-profit trade association organized under the laws of the District of Columbia (the “**Holder**”), the principal sum of One Million and No/100 Dollars (\$1,000,000.00) U.S., with no interest. This Promissory Note (this “**Note**”) is executed and delivered pursuant to that certain Asset Purchase Agreement to which Maker and Holder, among others, are parties, and is referred to in that certain APPA Services Agreement between Maker and Holder of even date herewith (the “**Services Agreement**”), and this Note constitutes the “Promissory Note” as defined therein.

Payments. The outstanding principal balance of this Note shall be paid in ten (10) installments of One Hundred Thousand and No/100 Dollars (\$100,000.00) each, with the first payment due on the first anniversary of this Note and subsequent payments due on each subsequent anniversary until this Note has been paid in full, which shall be on or before the tenth (10th) anniversary hereof.

The Maker may prepay this Note, in whole or in part, without the payment of any penalty or premium, at any time during the term of this Note. Any payment made on this Note shall be applied to principal, in each case as a prepayment of the next principal amount(s) to become due. Payments are to be made in lawful money of the United States of America in immediately available funds at _____, or at such other address as the Holder may from time to time designate to the Maker in writing. Such notice shall be effective as of the next payment which is due if given at least ten (10) days prior to such payment date. Otherwise, it shall be effective as of the next successive payment.

A payment is timely made if it is actually received by Holder on or before the date on which it is due, or if it is mailed using the U.S. Postal Service and is postmarked at least one day prior to the date on which it is due. If the date a payment is due falls on a Saturday, Sunday, or a day that is a legal holiday under the laws of the United States, that payment shall be due on the next succeeding business day. Upon written request by Holder (provided such request is delivered to Maker at least five (5) business days before the date on which the payment is due), payments shall be made by electronic funds transfer. If Holder does not so request, Maker shall have the option to make any such payments by electronic funds transfer. In all cases, Maker shall only be required to make payments to a single payee or bank account specified by Seller in writing.

Events of Default. Upon the occurrence and during the continuance of any Event of Default hereunder, and, as provided in the Services Agreement, upon termination of the Services Agreement by mutual agreement between Maker and Holder, the Holder may declare the entire principal balance of this Note in default and immediately due and payable, and the Holder may take such legal actions as the Holder deems necessary or appropriate to collect the amounts in default. Each of the following events shall constitute an “**Event of Default**” under this Note:

- (1) any payment required hereunder shall not be paid within ten (10) days after Maker’s receipt of written notice from Holder that the payment is due and unpaid;
- (2) Maker materially defaults in the payment or performance of any other term, condition or obligation under this Note and fails to remedy such default within thirty (30) days after receiving written notice thereof from Holder, specifying such default in detail; or
- (3) any voluntary petition by or involuntary petition (which is not dismissed within ninety (90) days) against the Maker shall be filed pursuant to any chapter of the United States Bankruptcy Code or Maker makes an assignment for the benefit of creditors, or there shall be any other marshaling of the assets and liabilities of the Maker for the benefit of the Maker’s creditors

Right of Set-Off. As contemplated in the Services Agreement, and without limiting any other remedies available to the Maker, in the event the Maker has a claim for indemnification under the Services Agreement, or for any other damages whatsoever under the Services Agreement, the Maker shall have the

right to offset any amounts owed to the Maker as a result of any such good faith claim against any amounts payable by the Maker to the Holder hereunder.

Assignment; Binding Effect. This Note shall not be assigned or transferred by Holder without the express prior written consent of Maker. Any such purported assignment or transfer in violation of the preceding sentence shall be void *ab initio*. This Note shall be binding upon the Maker and upon successors and assigns of the Maker and shall inure to the benefit of the Holder and the permitted successors and assigns of the Holder.

Governing Law; Jurisdiction. This Note shall be governed by and construed in accordance with the laws of New York. Both Maker and Holder consent to exclusive jurisdiction in the federal courts of the United States of America or the courts of the State of Virginia in each case located in the City of Alexandria or the county of Arlington Virginia, for any action to enforce this Note, and waive any objection to venue laid therein, and agree that process may be served on them anywhere in the world.

Severability. If any term or provision of this Note or the application thereof to any person, property, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Note, or the application of such term or provision to persons, properties, and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Note shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first written above.

MAKER:

HOMETOWN CONNECTIONS, INC.

A Delaware Charitable non-stock Corporation

By: _____

Name: _____

Title: _____

Appendix 5

AMEA Promissory Note

[TO COME]

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Appendix 6

Bill of Sale

[TO COME]

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Appendix 7

Assignment and Assumption Agreement

[TO COME]

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Appendix 8

Intellectual Property Assignments

[TO COME]

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Disclosure Schedule

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**Disclosure Schedule to
Asset Purchase Agreement
Dated [____], 2018**

This is the Disclosure Schedule (this “**Disclosure Schedule**”) to the Asset Interest Purchase Agreement dated [____], 2018 (the “**Agreement**”) by and among Hometown Connections International, LLC, a Colorado limited liability company (“**Seller**”) and its owners, Public Power Incorporated, a District of Columbia Corporation (“**PPI**”) and a wholly owned subsidiary of American Public Power Association, a non-profit trade association organized under the laws of the District of Columbia (“**APPA**”), and Alabama Municipal Electric Authority, a public corporation of the State of Alabama (“**AMEA**” and collectively with Seller, PPI and APPA, the “**Seller Group**”) and Hometown Connections, Inc., a Delaware charitable non-stock corporation (“**Buyer**”).

The section numbers below correspond to the section numbers of the representations and warranties in the Agreement; provided, however, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated into any other section number under the Agreement to the extent the relevance to other representations and warranties is reasonably apparent from the face of the disclosed exception without reference to extrinsic documentation or independent knowledge on the part of the reader regarding the disclosed exception. Terms defined in the Agreement shall have the same meanings when used herein unless otherwise defined.

Nothing in this Disclosure Schedule is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant not otherwise contained in the Agreement. Inclusion of any item in this Disclosure Schedule shall not constitute, or be deemed to be, an admission to any third party concerning such item.

Section 1.01

Purchased Assets

1. Agreements
 - a. Each agreement listed under Assigned Contracts in Section 3.07 of this Disclosure Schedule.

2. All cash or cash equivalents in the following bank accounts:
 - a. First Bank
 - i. Account #2115553849 (Checking)
 - ii. Account #4914 (Savings)
 - iii. Account #3249 (2015 Certificate of Deposit)
 - iv. Account #1173 (2016 Certificate of Deposit)
 - b. Capital One
 - i. Account #17704648 (Savings)

3. All books, records and internal reports produced by the Seller for its own use during the course of its business.

4. The Purchased IP listed in Section 3.06(b) of this Disclosure Schedule.

5. Long-term Retention Compensation Plan for the Staff of Seller, dated September 23, 2011.

6. Seller's 401k Plan.

7. The tangible items listed in the table below.

<u>Item</u>	<u>Date in Service</u> <u>(For Identification Purposes)</u>
Video Projector	07/30/12

Conference Telephone	01/26/13
Ipads (4)	01/26/13
Laptop Computer-2014(TB)	03/31/14
Portable Booth-2014(TB)	05/15/14
Office Chair-2014(TB)	05/15/14
Printer - WS	03/18/15
Table Runners	04/30/15
Desk Chair (SV)	04/30/16
Laptop (WS)	08/11/16
MacBook (SV)	12/31/16
Veridesk (TB)	06/22/17
Ipad & Jet Drive (SV)	07/31/17
Ipad (WS)	08/18/17
I.T. Software	08/24/17

Section 1.05

Wire Instructions

Bank Name: Bank of America

Bank Address: MA5-527-02-07, 2 Morrisey Blvd

City, State, Zip Code: Dorchester, MA 02125

Bank Routing Number: 054001204

Bank Account Number: 001924669377

Reference: Hometown Connections International, LLC APA

Section 1.06

Purchase Price Allocation

[]

Section 3.02

Seller Third Party Consents

Consent is required to assign each agreement listed under Assigned Contracts in Section 3.07 of this Disclosure Schedule except for the VanderMeer Employment Agreement, the Smart Employment Agreement, and the Great Blue Marketing Agreement.

Section 3.06(b)

Purchased IP

1. Purchased IP includes all Intellectual Property (as defined in the Agreement) owned by the Seller, including:

a. The following trademarks:

<u>Mark</u>	<u>Country</u>	<u>Registration Number</u>	<u>Registration Date</u>
HOMETOWN CONNECTIONS (for training workbooks)	USA	2,336,207	March 28, 2000
HOMETOWN CONNECTIONS (for services)	USA	2,338,643	April 4, 2000
HOMETOWN CONNECTIONS	Canada	TMA557033	January, 29, 2002

b. The copyrights to Seller's internally developed training materials and programs, including:

- i. Organization Check Up (OCU); and
- ii. Strategic Planning for Public Power.

c. The rights to the web domain *hometownconnections.com*.

Section 3.07

Assigned Contracts

1. Assigned Contracts

- a. Letter Agreement, dated as of February 22, 2017, by and between Seller and AESI-US, Inc.
- b. Letter Agreement, dated as of July 10, 2017, by and between Seller and Apogee Interactive, Inc.
- c. Letter Agreement, dated as of April 28, 2016, by and between Seller and Clean Energy Collective, LLC.
- d. Definitive Agreement, dated as of March 22, 2017, by and between Seller and Minnesota Municipal Utilities Association.
- e. Letter Agreement, dated as of April 1, 2016, by and between Seller and Clevest Solutions, Inc.
- f. Letter Agreement, dated as of September 30, 2008, by and between Seller and Cogsdale Corporation, as amended to date including by that certain Letter Amendment dated as of March 27, 2017.
- g. Letter Agreement, dated as of May 14, 2011, by and between Seller and Electsolve Technology Solutions & Services, Inc., as amended to date including by that certain Letter Amendment dated as of January 7, 2016.
- h. Preferred Vendor Agreement, dated as of November 12, 2014, by and between Seller and Great Blue Research, Inc.
- i. Letter Agreement, dated as of February 26, 2015, by and between Seller and Katama Technologies, Inc.

- j. Letter Agreement, dated as of April 16, 2007, by and between Seller and Milsoft Utility Solutions, as amended to date including by that certain Letter Amendment dated as of October 22, 2012.
- k. Letter Agreement, dated as of February 28, 2015, by and between Seller and N-Dimension Solutions, Inc., as amended to date including by that certain Letter Amendment dated as of June 23, 2016.
- l. [Letter Agreement, dated as of August 1, 2013, by and between Seller and PowerSecure, Inc., as amended to date including by those certain Amendments to Letter Agreement dated as of October 14, 2015 and September 28, 2017.]⁴
- m. Amended and Restated Services Agreement, dated as of January 1, 2010, by and between Seller and The Energy Authority, Inc.
- n. Letter Agreement, dated as of October 1, 2015, by and between Seller and Utility Financial Solutions, LLC
- o. Letter Agreement, dated as of August 10, 2016, by and between Seller and John L. Wortham & Son L.P.
- p. Sales and Marketing Agreement, dated as of January 1, 2017, by and between Seller and Steven P. VanderMeer (the “VanderMeer Employment Agreement”).
- q. Sales and Marketing Agreement, dated as of January 1, 2017, by and between Seller and William Smart (the “Smart Employment Agreement”).
- r. Employment Agreement, dated as of September [21], 2017, by and between Seller and Timothy L. Blodgett.
- s. Marketing and Resale Agreement, dated as of December 4, 2017, by and among Seller, Great Blue Research, Inc., and the American Public Power Association (the “Great Blue Marketing Agreement”).

⁴ NTD: expired 12/31/17; HCI in process of renewing the agreement

Section 4.02

Buyer Third Party Consents

[None.]

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AMP 2/14/2018 DRAFT

AMP CONTRACT NO. _____

**ADVANCED METERING INFRASTRUCTURE
ASSIGNMENT AND OPERATION AGREEMENT**

between

AMERICAN MUNICIPAL POWER, INC.

and

HOMETOWN CONNECTIONS, INC.

Dated as of

_____, 2018

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TABLE OF CONTENTS

ARTICLE I EFFECTIVE DATE, CONTRIBUTION AND ACCEPTANCE 2

Section 1.01 Effective Date...... 2

Section 1.02 Contribution of Assets...... 2

Section 1.03 Excluded Assets. 2

Section 1.04 Assumption of Obligations. 2

Section 1.05 Cash Payment and Contribution Valuation...... 3

Section 1.06 Relation to Other Capital Contributions. 3

Section 1.07 Repayment of Capital. 4

ARTICLE II CLOSING 4

Section 2.01 Closing...... 4

Section 2.02 Closing Deliverables. 4

Section 2.03 Contingencies to Close...... 6

ARTICLE III REPRESENTATIONS AND WARRANTIES OF AMP 6

Section 3.01 Organization and Authority of AMP; Enforceability...... 6

Section 3.02 No Conflicts; Consents...... 6

Section 3.03 Title to AMI Project...... 7

Section 3.04 Intellectual Property...... 7

Section 3.05 Assigned Contracts. 8

Section 3.06 Non-foreign Status. 8

Section 3.07 Compliance With Laws 8

Section 3.08 Legal Proceedings. 8

Section 3.09 Brokers...... 9

1	ARTICLE IV REPRESENTATIONS AND WARRANTIES OF HCI	9
2	Section 4.01 Organization and Authority of HCI; Enforceability.	9
3	Section 4.02 No Conflicts; Consents.	9
4	Section 4.03 Legal Proceedings.	10
5	Section 4.04 Brokers.	10
6	ARTICLE V COVENANTS	10
7	Section 5.01 Public Announcements.	10
8	Section 5.02 Bulk Sales Laws.	10
9	Section 5.03 Transfer Taxes.	10
10	Section 5.04 Further Assurances.	11
11	ARTICLE VI INDEMNIFICATION	11
12	Section 6.01 Survival; Limitations on Indemnification.	11
13	Section 6.02 Indemnification By AMP.	11
14	Section 6.03 Indemnification By HCL.	12
15	Section 6.04 Indemnification Procedures.	12
16	Section 6.05 Effect of Investigation.	13
17	Section 6.06 Exclusive Remedies.	13
18	ARTICLE VII AMP'S RETAINED RIGHTS AND OBLIGATIONS	13
19	Section 7.01 AMP Operation, AMI Project Headquarters.	13
20	Section 7.02 AMP Financial Support.	14
21	Section 7.03 Transition of AMP AMI Project Operations to HCL.	14
22	Section 7.04 Return of Capital.	14
23	ARTICLE VIII AMI PROJECT DESCRIPTION, OPERATIONS, MARKETING	14
24	Section 8.01 AMP Services.	15
25	Section 8.02 Project Description.	15
26	Section 8.03 AMP's Current AMI Project Operations and Marketing.	15

1	Section 8.04 AMI Project Marketing	15
2	Section 8.05 AMI Project Budgets, Accounting and Financials	15
3	Section 8.06 Standard of Performance	15
4	Section 8.07 Facilities and Equipment	15
5	Section 8.08 Insurance	16
6	Section 8.09 Term and Termination	17
7	ARTICLE IX RIGHT TO REASSIGN AMI PROJECT	17
8	Section 9.01 Reassignment	17
9	Section 9.02 Notice, Terms and Conditions	18
10	ARTICLE X BREACHES, NOTICE AND DISPUTE RESOLUTION	18
11	Section 10.01 Breach	18
12	Section 10.02 Notice and Opportunity to Cure	18
13	Section 10.03 Alternative Dispute Resolution	18
14	Section 10.04 Governing Law	19
15	Section 10.05 Consequential Damages	19
16	Section 10.06 Specific Performance	20
17	Section 10.07 Survival of Provisions	20
18	ARTICLE XI MISCELLANEOUS	20
19	Section 11.01 Counterparts	20
20	Section 11.02 Independent Contractor	20
21	Section 11.03 Notices	20
22	Section 11.04 Headings	21
23	Section 11.05 Severability	21
24	Section 11.06 Entire Agreement	22
25	Section 11.07 Successors and Assigns	22
26	Section 11.08 No Third-party Beneficiaries	22

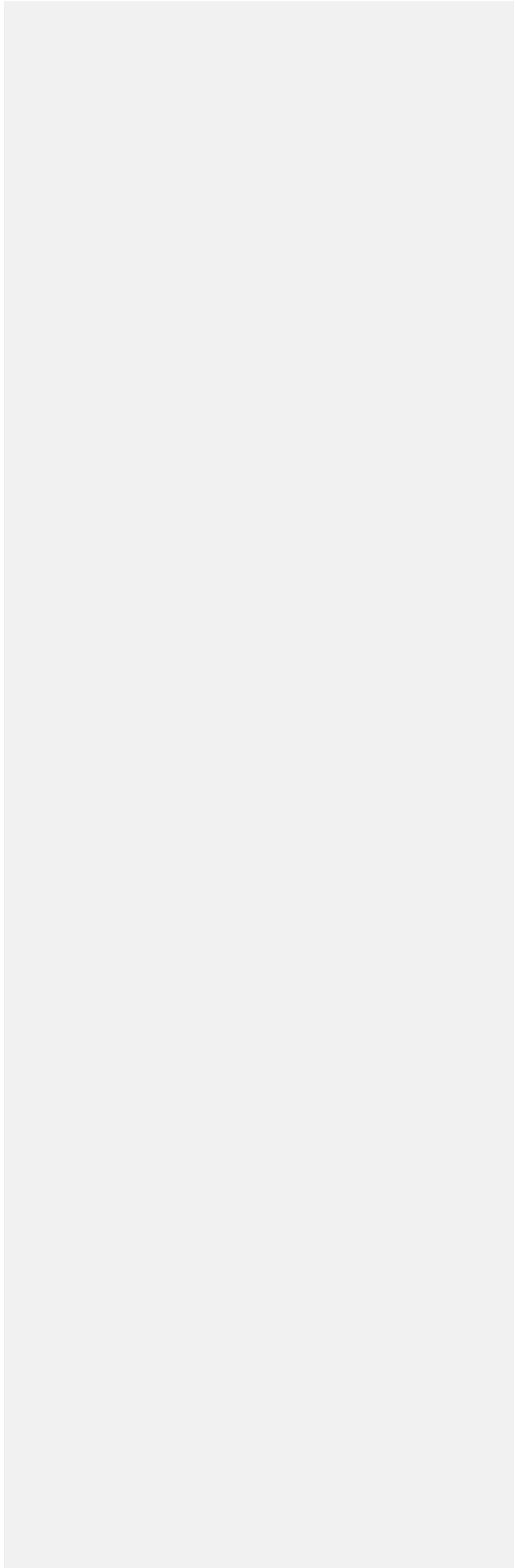
1 **Section 11.09 Amendment and Modification**..... 22

2 **Section 11.10 Waiver**..... 22

3

4

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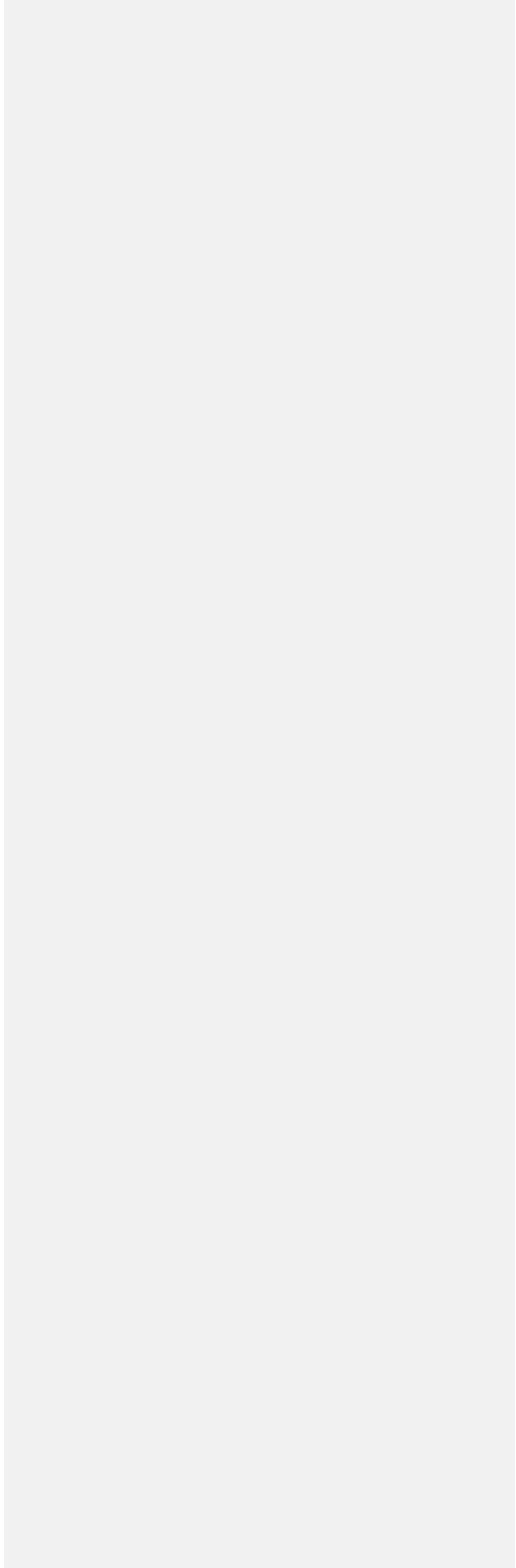


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APPENDICES

- Appendix 1 - Disclosure Schedules
- Appendix 2 - Bill of Sale
- Appendix 3 - Assignment and Assumption Agreement
- Appendix 4 - Intellectual Property Assignments
- Appendix 5 - Repayment of Capital
- Appendix 6 - Project Description and Current AMI Project Operations
- Appendix 7 - AMI Project Marketing
- Appendix 8 - HCI AMI Project Budget and Reporting Process
- Appendix 9 - Example of Current Agreements between AMP and its Members for its AMI

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1 **ADVANCED METERING INFRASTRUCTURE**
2 **ASSIGNMENT AND OPERATION AGREEMENT**

3
4 This Advanced Metering Infrastructure Assignment and Operations Agreement
5 (“Agreement” or “AMI Agreement”) is entered into by and between American Municipal Power,
6 Inc., an Ohio nonprofit corporation (“AMP”) and Hometown Connections, Inc., a Delaware
7 charitable nonstock corporation (“HCI”) created by its members, including AMP (each a
8 “Member”). Other than AMP, the Members are Alabama Municipal Electric Authority
9 (“AMEA”), MPUA Resource Services Corporation (“MPUA”), Northern California Power
10 Agency (“NCPA”), Vermont Public Power Supply Authority (“VPPSA”) and Western
11 Minnesota Municipal Power Agency (WMMPA).

12 **RECITALS**

13 WHEREAS, AMP and the other Members desire that AMP contribute and assign all its
14 right, title and interest in its advanced metering infrastructure project (“AMI” or “AMI Project”
15 as hereafter defined), except (i) to the extent specifically retained hereunder and (ii) to the extent
16 AMP acquires such rights as a Member, as a capital contribution to HCI and to continue to
17 operate the same for the benefit of HCI’s Members and their members, under the terms and
18 conditions set forth in this AMI Agreement; and

19 WHEREAS, AMP has developed, at significant costs, and is deploying its AMI Project to
20 certain of its contracting members; and

21 WHEREAS, the costs of the AMI Project are sensitive to economies of scale and
22 increasing the number of meters served by the AMI Project will decrease the costs of providing
23 the same to AMP’s members; and

24 WHEREAS, the other Members of HCI, desire that AMP’s AMI Project be transitioned
25 to HCI ownership and operation and be made available to the other HCI Members’ members on
26 similar terms and conditions as AMP is marketing the AMI Project to its members, thereby
27 lowering the per meter costs of providing those services for all; and

1 forth in Section 7.03 (“Transition”), HCI shall assume and agree to pay, perform and discharge
2 all obligations related to or under the AMI Project, other than such obligations that relate to any
3 breach, default or violation by AMP on or prior to the termination of this Agreement
4 (collectively, the “**Assumed Obligations**”). Other than the Assumed Obligations and the
5 obligations set forth in Section 1.05 and 1.07 hereof, HCI shall not assume any then current
6 liabilities or obligations of AMP of any kind, whether known or unknown, contingent, matured
7 or otherwise.

8 **Section 1.05 Cash Payment and Contribution Valuation.** The capital
9 contributions to be recognized as a part of AMP’s HCI capital account related to AMP’s
10 assignment of the AMI Project to HCI shall be the sum of the following (each an “**Additional**
11 **Capital Contribution**”):

12 (i) a recognition on HCI’s books of an additional capital contribution
13 of Eight Hundred Fifty Thousand Dollars (\$850,000) representing the balance of
14 AMP’s AMI development costs on AMP’s books through September 30, 2016;
15 less

16 (ii) Two Hundred Thousand Dollars (\$200,000) representing a portion
17 of AMP’s AMI development costs, to be paid by HCI in cash to AMP within
18 thirty (30) days of the Closing for a net of Six Hundred Fifty Thousand Dollars
19 (\$650,000); plus

20 (iii) any additional amounts contributed by AMP for the ongoing
21 operation of the AMI Project from the Closing Date (as herein defined) until the
22 end of that calendar year and for two (2) calendar years thereafter, including an
23 allocation of AMP’s direct personnel costs, overhead (at sixty percent (60%)), and
24 related direct expenses.

25 **Section 1.06 Relation to Other Capital Contributions.** AMP’s Additional Capital
26 Contributions set forth in Section 1.05 are in addition to any and all capital contributions
27 required of AMP as a member of HCI.

1 *service marks regarding AMI Project nor are any applications for the same*
2 *pending.]*

3 (iv) copies of all consents, approvals, waivers and authorizations
4 referred to in Section 3.02 of the Disclosure Schedules; *[We need list of AMI*
5 *contracts with assignment protocols. AMP has reserved a number of domain*
6 *names, a list of which will be shared with the Members.]*

7 (v) a certificate of the Secretary or Assistant Secretary (or equivalent
8 officer) of AMP certifying as to the resolution of its board of trustees, duly
9 adopted and in effect, which authorize the execution, delivery and performance of
10 this Agreement and the transactions contemplated hereby along with a copy of the
11 same;

12 (vi) such other customary instruments of transfer, assumption, filings
13 or documents, in form and substance reasonably satisfactory to HCI, as may be
14 required to give effect to this Agreement.

15 At the Closing, HCI shall deliver to AMP the following:

16 (i) the Assignment and Assumption Agreement duly executed by
17 HCI; and

18 (ii) copies of all consents and authorizations referred to in Section 4.02
19 of the Disclosure Schedules; and

20 (iii) a certificate of the Secretary or Assistant Secretary (or equivalent
21 officer) of HCI certifying as to (a) the resolutions of the board of directors of HCI,
22 duly adopted and in effect, which authorize the execution, delivery and
23 performance of this Agreement and the transactions contemplated hereby,
24 including a copy of the same, and (b) the duly adopted by-laws of HCI, including
25 a copy of the same.

1 of AMP; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or
2 regulation applicable to AMP or the AMI Project; (c) conflict with, or result in (with or without
3 notice or lapse of time or both) any violation of, or default under, or give rise to a right of
4 termination, acceleration or modification of any obligation or loss of any benefit under any
5 contract or other instrument to which AMP is a party or to which the AMI Project is subject; or
6 (d) result in the creation or imposition of any Encumbrance on the AMI Project. Other than any
7 consents listed on Section 3.02 of the Disclosure Schedules, no consent, approval, waiver or
8 authorization is required to be obtained by AMP from any person or entity (including any
9 governmental authority) in connection with the execution, delivery and performance by AMP of
10 this Agreement and the consummation of the transactions contemplated hereby.

11 **Section 3.03 Title to AMI Project.** AMP owns and has valid title or interest, as
12 applicable, to the AMI Project, free and clear of Encumbrances, except any listed in Section 3.03
13 of the Disclosure Schedules.

14 **Section 3.04 Intellectual Property.**

15 (A) **“Intellectual Property”** means any and all of the following in any
16 jurisdiction throughout the world: (i) trademarks and service marks, including all
17 applications and registrations and the goodwill connected with the use of and symbolized
18 by the foregoing; (ii) copyrights, including all applications and registrations related to the
19 foregoing; (iii) trade secrets and confidential know-how; (iv) websites and internet
20 domain name registrations; and (v) other intellectual property and related proprietary
21 rights, interests and protections (including all rights to sue and recover and retain
22 damages, costs and attorneys’ fees for past, present and future infringement and any other
23 rights relating to any of the foregoing).

24 (B) Section 3.04(b) of the Disclosure Schedules lists all Intellectual Property
25 included in the AMI Project. AMP owns or has adequate, valid and enforceable rights to
26 use such Intellectual Property, and to its knowledge such property is free and clear of all
27 Encumbrances. AMP is not bound by any outstanding judgment, injunction, order or
28 decree restricting the use of such Intellectual Property, or to its knowledge restricting the
29 licensing thereof to any person or entity.

1 (C) To the knowledge of AMP, its prior and current use of the Intellectual
2 Property has not and does not infringe, violate, dilute or misappropriate the Intellectual
3 Property of any person or entity and, to the knowledge of AMP, there are no claims
4 pending or threatened by any person or entity with respect to the ownership, validity,
5 enforceability, effectiveness or use of the Intellectual Property. To the knowledge of
6 AMP, no person or entity is infringing, misappropriating, diluting or otherwise violating
7 any of the Intellectual Property, and neither AMP nor any affiliate of AMP has made or
8 asserted any claim, demand or notice against any person or entity alleging any such
9 infringement, misappropriation, dilution or other violation.

10 **Section 3.05 Assigned Contracts.** Section 3.05 of the Disclosure Schedules includes
11 each contract included in the AMI Project and being assigned to and assumed by HCI (the
12 “**Assigned Contracts**”). Each Assigned Contract is valid and binding on AMP in accordance
13 with its terms and is in full force and effect. None of AMP or, to AMP’s knowledge, any other
14 party thereto is in breach of or default under (or is alleged to be in breach of or default under), or
15 has provided or received any notice of any intention to terminate, any Assigned Contract. No
16 event or circumstance has occurred that, with or without notice or lapse of time or both, would
17 constitute an event of default under any Assigned Contract or result in a termination thereof or
18 would cause or permit the acceleration or other changes of any right or obligation or the loss of
19 benefit thereunder. Complete and correct copies of each Assigned Contract have been made
20 available to HCI. There is one dispute pending or threatened in writing under one Assigned
21 Contract, noted in Section 3.05 of the Disclosure Schedule.

22 **Section 3.06 Non-foreign Status.** AMP is not a “foreign person” as that term is used in
23 Treasury Regulations Section 1.1445-2.

24 **Section 3.07 Compliance With Laws** AMP has materially complied, and is now
25 materially complying, with all applicable federal, state and local laws and regulations applicable
26 to ownership and operation of the AMI Project.

27 **Section 3.08 Legal Proceedings.** There is no claim, action, suit, proceeding or
28 governmental investigation (“**Action**”) of any nature pending or, to AMP’s knowledge,
29 threatened against or by AMP (a) relating to or affecting the AMI Project or the Assumed

1 Obligations; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions
2 contemplated by this Agreement. To the knowledge of AMP, no event has occurred or
3 circumstances exist that may give rise to, or serve as a basis for, any such Action.

4 **Section 3.09 Brokers.** No broker, finder or investment banker is entitled to any
5 brokerage, finder's or other fee or commission in connection with the transactions contemplated
6 by this Agreement based upon arrangements made by or on behalf of AMP.

7 **ARTICLE IV**
8 **REPRESENTATIONS AND WARRANTIES OF HCI**

9 As of the Effective Date, HCI represents and warrants to AMP that the statements
10 contained in this ARTICLE IV are true and correct. For purposes of this ARTICLE IV, "HCI's
11 knowledge," "knowledge of HCI" and any similar phrases shall mean the actual knowledge of
12 [Tim Blodgett and _____], after due inquiry.

13 **Section 4.01 Organization and Authority of HCI; Enforceability.** HCI is a
14 corporation duly organized, validly existing and in good standing under the laws of the state of
15 Delaware. HCI has full corporate power and authority to enter into this Agreement and the
16 documents to be delivered hereunder, to carry out its obligations hereunder and to consummate
17 the transactions contemplated hereby. The execution, delivery and performance by HCI of this
18 Agreement and the documents to be delivered hereunder and the consummation of the
19 transactions contemplated hereby have been duly authorized by all requisite corporate action on
20 the part of HCI. This Agreement and the documents to be delivered hereunder have been duly
21 executed and delivered by HCI, and (assuming due authorization, execution and delivery by
22 AMP) this Agreement and the documents to be delivered hereunder constitute legal, valid and
23 binding obligations of HCI enforceable against HCI in accordance with their respective terms.

24 **Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by HCI
25 of this Agreement and the documents to be delivered hereunder, and the consummation of the
26 transactions contemplated hereby, do not and will not: (a) violate or conflict with the certificate
27 of incorporation, by-laws or other organizational documents of HCI; or (b) violate or conflict
28 with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to HCI.

1 No consent, approval, waiver or authorization is required to be obtained by HCI from any person
2 or entity (including any governmental authority) in connection with the execution, delivery and
3 performance by HCI of this Agreement and the consummation of the transactions contemplated
4 hereby.

5 **Section 4.03 Legal Proceedings.** There is no Action of any nature pending or, to HCI's
6 knowledge, threatened against or by HCI that challenges or seeks to prevent, enjoin or otherwise
7 delay the transactions contemplated by this Agreement. No event has occurred or circumstances
8 exist that may give rise to, or serve as a basis for, any such Action.

9 **Section 4.04 Brokers.** No broker, finder or investment banker is entitled to any
10 brokerage, finder's or other fee or commission in connection with the transactions contemplated
11 by this Agreement based upon arrangements made by or on behalf of HCI.

12 **ARTICLE V**
13 **COVENANTS**

14 **Section 5.01 Public Announcements.** From and after the execution of this Agreement,
15 the parties shall cooperate and collaborate on any and all public announcements regarding this
16 Agreement, the AMI Project or the transactions contemplated hereby. For avoidance of doubt,
17 communications of a Member with its member does not constitute a public announcement as
18 used in this Section 5.01, nor does compliance with any applicable federal, state or local public
19 document, sunshine, freedom of information or like laws.

20 **Section 5.02 Bulk Sales Laws.** The parties hereby waive compliance with the
21 provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise
22 be applicable with respect to the sale of any or all of the AMI Project to HCI.

23 **Section 5.03 Transfer Taxes.** HCI shall be responsible for any transfer, documentary,
24 sales, use, stamp, registration, value added and other such taxes and fees (including any penalties
25 and interest) incurred in connection with this Agreement and the documents to be delivered
26 hereunder ("Transfer Taxes").

Commented [JWB 2/131]: Note: This is handled this way as given AMP's financial support during this time it would cash flow these costs in any event. Plus AMP is not recovering its full costs of AMI and will pay its Members share of any such costs. We are aware of no such costs.

1 (C) any Excluded Asset or Excluded Liability.

2 **Section 6.03 Indemnification By HCI.**

3 (A) HCI shall defend, indemnify and hold harmless AMP and its respective
4 members, trustees, directors, officers and employees from and against all claims,
5 judgments, damages, Obligations, settlements, losses, costs and expenses, including
6 attorneys' fees and disbursements, arising from or relating to:

7 (i) any inaccuracy in or breach of any of the representations or
8 warranties of HCI contained in this Agreement or any document to be delivered
9 hereunder;

10 (ii) any breach or non-fulfillment of any covenant, agreement or
11 obligation to be performed by HCI pursuant to this Agreement or any document
12 to be delivered hereunder; or

13 (iii) any Assumed Liability.

14 (B) The Limitations set forth in Section 6.01 does not in any way apply to or
15 limit HCI's obligations under Sections 1.04 and 1.06 hereof to repay AMP's Additional
16 Capital Contributions.

17 **Section 6.04 Indemnification Procedures.** Whenever any claim shall arise for
18 indemnification hereunder, the party entitled to indemnification (the "**Indemnified Party**") shall
19 promptly provide written notice of such claim to the other party (the "**Indemnifying Party**"). In
20 connection with any claim giving rise to indemnity hereunder resulting from or arising out of any
21 Action by a person or entity who is not a party to this Agreement, the Indemnifying Party, at its
22 sole cost and expense and upon written notice to the Indemnified Party, may assume the defense
23 of any such Action with counsel reasonably satisfactory to the Indemnified Party. The
24 Indemnified Party shall be entitled to participate in the defense of any such Action, with its
25 counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense
26 of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such
27 Action in such manner as it may deem appropriate, including, but not limited to, settling such

1 Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified
2 Party may deem appropriate and no action taken by the Indemnified Party in accordance with
3 such defense and settlement shall relieve the Indemnifying Party of its indemnification
4 obligations herein provided with respect to any damages resulting therefrom. The Indemnifying
5 Party shall not settle any Action without the Indemnified Party's prior written consent (which
6 consent shall not be unreasonably withheld or delayed).

7 **Section 6.05 Effect of Investigation.** HCI's right to indemnification or other remedy
8 based on the representations, warranties, covenants and agreements of AMP contained herein
9 will not be affected by any investigation conducted by HCI with respect to, or any knowledge
10 acquired by HCI at any time with respect to, the accuracy or inaccuracy of or compliance with,
11 any such representation, warranty, covenant or agreement.

12 **Section 6.06 Exclusive Remedies.** The rights and remedies provided in this ARTICLE
13 VI shall be the sole and exclusive remedies available for the indemnifications covered by this
14 Article VI, and no party will have any other remedy (statutory, equitable, common law or
15 otherwise).

16 **ARTICLE VII**
17 **AMP'S RETAINED RIGHTS AND OBLIGATIONS**

18 **Section 7.01 AMP Operation, AMI Project Headquarters.** Upon Closing, AMP
19 shall retain all rights and authority to continue to operate the AMI Project, including operating
20 and administrative control, control of all contractual arrangements and AMP AMI employees
21 ("AMP AMI Employees") and the operation of the AMI Project transition to HCI ("Initial
22 Operating Period") until (i) not less than fifty thousand (50,000) meters, other than AMP's
23 directly contracted meters, are under contract, and (ii) at least six (6) deployments of AMI are
24 under contract by non-AMP members. AMI operations and personnel shall be, unless otherwise
25 agreed by AMP, physically headquartered at AMP's Columbus offices until at least December
26 31, 2021. After which date HCI will determine where AMI operations and personnel shall be
27 based, assuming the thresholds for transition in Section 7.03 had been met as of that date.

1 **Section 8.01 AMP Services.** Subject to the terms and conditions set forth herein, AMP
2 shall provide to HCI all of the services related to the expansion of its AMI Project to be available
3 to HCI's members for utilization by their members as set forth in this Article VIII (the "AMI
4 Services") in the manner set forth herein. The AMI Services may be revised at any time during
5 the Term, as hereinafter defined, upon mutual agreement of both parties.

Commented [RNG 2/53]: Note: Need to discuss AMP legal counsel and HCI counsel roles.

6 **Section 8.02 Project Description.** AMP's AMI Project is a highly flexible, hosted
7 advanced metering information project as more fully described in Appendix 6 hereto.

8 **Section 8.03 AMP's Current AMI Project Operations and Marketing.** As of the
9 Closing Date, AMP's AMI operations and marketing are also described on Appendix 6 hereto.

10 **Section 8.04 AMI Project Marketing.** On and after the Closing Date, the operations
11 and marketing of the AMI Project shall proceed as described in Appendix 7 hereto. The parties
12 intend that the AMI Services contemporaneously offered to AMP members as well as to HCI
13 Members for sale to their members will be the same or similar prices, terms and conditions. An
14 example of current agreements between AMP and its members for its AMI Project is attached as
15 Appendix 9. Subsequent to the Closing, and during the Term hereof, the marketing and
16 operations of the AMI Project may be modified by HCI.

17 **Section 8.05 AMI Project Budgets, Accounting and Financials.** AMP shall provide
18 accounting services for the AMI Project in accordance with AMP's internal accounting protocols
19 and generally accepted accounting principles and arrange for the auditing of the same by an
20 auditing firm to be approved by both HCI and AMP. The AMI Project and Budgeting Process
21 shall be conducted in accordance with Appendix 8.

22 **Section 8.06 Standard of Performance.** Except as otherwise expressly set forth herein,
23 AMP shall perform the AMI Services at the level currently provided to its members.

24 **Section 8.07 Facilities and Equipment.** AMP shall, at its cost and expense, provide all
25 facilities and equipment that may be necessary to perform the AMI Services in accordance with
26 the approved AMI Project budgets; provided, however, (i) that AMP shall not be responsible for
27 the costs of AMI marketing performed by HCI or its other members; and (ii) for avoidance of
28 doubt to the extent such costs are paid by AMP as an Additional Capital Contribution as

1 contemplated by Section 1.05, AMP shall nonetheless be entitled to recover the same as set forth
2 in Section 1.06.

3 **Section 8.08 Insurance.** AMP shall procure and maintain the types and amounts of
4 insurance listed below for the Term of this Agreement:

5 (A) Workers Compensation. AMP shall maintain workers' compensation
6 insurance coverage and employer's liability insurance for any and all persons employed
7 directly by AMP meeting the requirements of applicable law and employers liability
8 coverage with:

9 (i) an each accident limit of not less than \$1M; and

10 (ii) a disease each employee limit of no less than \$1M; and

11 (iii) a disease policy limit of not less than \$1M.

12 (B) Commercial General Liability. AMP shall maintain commercial general
13 liability insurance for the Term of this Agreement covering any loss or liability including
14 the cost of defense of any action for bodily injury, death, personal injury and broad form
15 property damage which may arise out of the operations of AMP. The policy shall
16 provide a minimum limit of one million dollars (\$1,000,000) per occurrence two million
17 (\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO
18 Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis
19 covering comprehensive General Liability, with a self-insured retention or deductibles of
20 no more than \$100,000.

21 (C) Automobile Liability. AMP shall maintain automobile liability insurance
22 for the Term of this Agreement covering any loss or liability, including the cost of
23 defense of any action, arising from the operation, maintenance or use of any vehicle
24 whether or not owned by AMP. The policy shall provide a minimum limit of one million
25 dollars (\$1,000,000) per each accident, with a self-insured retention or deductible of no
26 more than one hundred thousand dollars (\$100,000). This insurance shall provide

1 contractual liability covering all motor vehicles and mobile equipment to the extent
2 coverage may be excluded from general liability insurance.

3 (D) General Liability/Umbrella Insurance. The coverage amounts set forth
4 above may be met by a combination of underlying and umbrella policies as long as in
5 combination the limits equal or exceed those stated.

6 (E) Waiver of Subrogation. AMP agrees to waive subrogation which any
7 insurer of AMP may acquire from AMP by virtue of the payment of any loss. AMP
8 agrees to obtain any endorsement that may be necessary to affect this waiver of
9 subrogation.

10 (F) Verification of Coverage. No later than thirty (30) days after Closing,
11 AMP shall provide HCI with (1) a Certificate of Insurance that demonstrates compliance
12 with all applicable insurance provisions contained herein and (2) except with respect to
13 workers' compensation coverage, a policy endorsement adding HCI as an additional
14 insured and declaring such insurance primary in regard to work performed pursuant to
15 this Agreement. AMP shall provide at least thirty (30) days' prior written notice to HCI
16 of any reduction in scope or amount, cancellation, or modification adverse to HCI of the
17 policies referenced above.

18 **Section 8.09 Term and Termination.** The term of this Agreement shall be for the
19 period from the Effective Date until the AMI Project operations have transitioned to HCI as set
20 forth in Section 7.03 (the "Term"). HCI and AMP may terminate this Agreement prior to the
21 end of the Term upon the mutual agreement of both parties. Termination of this Agreement shall
22 not affect HCI's obligations to repay AMP the Additional Capital Contributions.

23 **ARTICLE IX**

24 **RIGHT TO REASSIGN AMI PROJECT**

25 **Section 9.01 Reassignment.** (i) Should HCI determine to cease providing AMI Project
26 services, or (ii) if by December 31, 2021, the thresholds for transition contained in Section 7.01
27 have not been reached, or (iii) the AMI Project is deemed to be Non-Universal Project/Service

1 (as defined in HCI's by-laws), then AMP shall have the right, in its sole discretion, to require
2 HCI to reassign all aspects of the AMI Project to AMP in the case of clauses (i) and (ii) or, in the
3 case of clause (iii), to AMP and the other Members then participating in the AMI Project as a
4 Non-Universal Project/Service.

5 **Section 9.02 Notice, Terms and Conditions.** Should AMP determine to exercise its
6 rights under Section 9.01, it shall provide written notice to all other HCI members of such
7 determination by no later than March 1, 2022. Within twenty (20) days of such notice, the HCI
8 Board of Directors shall appoint a committee of its Directors to enter into good faith negotiations
9 with AMP regarding the terms and conditions of such reassignment. Such Committee and AMP
10 shall meet within forty-five (45) days of AMP's notice and shall, unless otherwise mutually
11 agreed, conclude such negotiations with forty-five (45) days of the initial meeting. Should the
12 parties fail to conclude the negotiations with an agreement, then the parties shall be governed by
13 Sections 10.03 (d) through (g) and 10.04 of this Agreement.

14 **ARTICLE X**

15 **BREACHES, NOTICE AND DISPUTE RESOLUTION**

16 **Section 10.01 Breach.** If either party materially breaches any of the terms of this
17 Agreement, the non-breaching party's remedies shall include, but not be limited to, the remedy
18 of specific performance.

19 **Section 10.02 Notice and Opportunity to Cure.** At any time should either party
20 become aware of the other materially breaching this Agreement, that party shall provide written
21 notice to the other of the breach. That party shall have thirty (30) days from the notice date to
22 correct the deficiency, or if the deficiency will take more than thirty (30) days to cure, will
23 provide a plan within that thirty (30) days to cure the deficiency within three (3) months. If the
24 deficiency is not cured within the time periods reflected in this Section, the breaching party will
25 be in default and the other party may exercise its rights under this Article X.

26 **Section 10.03 Alternative Dispute Resolution and Binding Arbitration.** If any dispute
27 arises between HCI and AMP that cannot be settled after engaging in good faith negotiations,
28 HCI and AMP agree to resolve the dispute in accordance with the following:

Commented [JWB 2/14c4]: Note: New Section 10.03 and related deletions were suggested by Doug Healy.

1 (A) Each party shall designate a senior management or executive level
2 representative to negotiate any dispute.

3 (B) The representatives shall attempt, through good faith negotiations, to
4 resolve the dispute by any means within their authority.

5 (C) If the issue remains unresolved after fifteen (15) days of good faith
6 negotiations, HCI and AMP shall attempt to resolve the disagreement by negotiation
7 between legal counsel.

8 (D) If the above process fails, the parties shall resolve any remaining disputes
9 through arbitration to expedite the resolution of the dispute.

10 (E) The arbitration process shall provide for the selection within fifteen (15)
11 days by both parties of a disinterested third person as an arbitrator, with the two
12 arbitrators selecting a disinterested third person to act as chairman of the arbitration
13 panel. If the parties cannot agree as to arbitrators or an arbitration panel within fifteen
14 (15) days, the matter shall be submitted to the American Arbitration Association (AAA)
15 for future proceedings, including the selection of an arbitration panel. The arbitration
16 procedural schedule shall be set by the arbitration panel, but shall be concluded within
17 ninety (90) days of the arbitration panel being selected. The procedural schedule must be
18 issued within ten (10) days of the arbitration panel being selected. Arbitration shall be
19 final and binding upon the parties. The parties shall equally bear the cost of any third
20 party in any alternative dispute resolution process.

21 **Section 10.04 Governing Law.** This Agreement shall be governed by and construed in
22 accordance with the internal laws of the State of New York without giving effect to any choice
23 or conflict of law provision or rule.

24 **Section 10.05 Consequential Damages.** Notwithstanding anything to the contrary in this
25 Agreement, except with respect to losses directly or indirectly caused by HCI's or AMP's
26 willful, wanton or reckless misconduct or fraud, in no event shall HCI or AMP, or any of their
27 respective officers, directors, trustees, members, partners, shareholders, employees, agents or
28 affiliates be liable for any special, indirect, non-compensatory, consequential, incidental,

1 punitive or exemplary damages, lost or prospective profits, loss of business opportunity or
2 business interruptions under or in respect to this Agreement or for any failure of performance
3 related hereto, irrespective of whether such damages are reasonably foreseeable or whether such
4 claims arise in contract, tort (including negligence, whether sole, joint, or concurrent or strict
5 liability) or otherwise.

6 **Section 10.06 Specific Performance.** The parties agree that irreparable damage would
7 occur if any provision of this Agreement were not performed in accordance with the terms hereof
8 and that the parties shall be entitled to specific performance of the terms hereof, in addition to
9 any other remedy to which they are entitled at law or in equity.

10 **Section 10.07 Survival of Provisions.** The provisions of Articles IX and X shall survive
11 the termination of this Agreement.

12 **ARTICLE XI**
13 **MISCELLANEOUS**

14 **Section 11.01 Counterparts.** This Agreement may be executed in counterparts,
15 each of which shall be deemed an original, but all of which together shall be deemed to
16 be one and the same agreement. A signed copy of this Agreement delivered by facsimile,
17 e-mail or other means of electronic transmission shall be deemed to have the same legal
18 effect as delivery of an original signed copy of this Agreement.

19 **Section 11.02 Independent Contractor.** AMP is an independent contractor and
20 not an employee of HCI. HCI shall not have the right to control the means by which
21 AMP accomplishes services rendered pursuant to this Agreement. AMP and any of its
22 employees, agents, and subcontractors providing services under this Agreement shall not
23 qualify for or become entitled to, and thereby agree to waive any and all claims to, any
24 compensation, benefit, or any incident of employment by HCI, except as otherwise
25 provided in this Agreement.

26 **Section 11.03 Notices.** All notices, requests, consents, claims, demands, waivers
27 and other communications hereunder shall be in writing and shall be deemed to have

1 been given (a) when delivered by hand (with written confirmation of receipt); (b) when
2 received by the addressee if sent by a nationally recognized overnight courier (delivery
3 confirmation requested); (c) on the date sent by facsimile or e-mail of a PDF document
4 (with confirmation of transmission) if sent during normal business hours of the recipient,
5 and on the next business day if sent after normal business hours of the recipient; or (d) on
6 the third day after the date mailed, by certified or registered mail, return receipt
7 requested, postage prepaid. Such communications must be sent to the respective parties at
8 the following addresses (or at such other address for a party as shall be specified in a
9 notice given in accordance with this Section 11.03:

10
If to:
AMERICAN MUNICIPAL POWER, INC. with a copy to:

Marc S. Gerken, P.E.
President/CEO
1111 Schrock Rd.
Columbus, OH 43229

Rachel Gerrick
Sr. VP and General Counsel for Corporate
Affairs
1111 Schrock Rd.
Columbus, OH 43229

11 **If to HOMETOWN CONNECTIONS , INC [TO COME]**

12 **Section 11.04 Headings.** The headings in this Agreement are for reference only
13 and shall not affect the interpretation of this Agreement.

14 **Section 11.05 Severability.** If any term or provision of this Agreement is invalid,
15 illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability
16 shall not affect any other term or provision of this Agreement or invalidate or render
17 unenforceable such term or provision in any other jurisdiction.

1 **Section 11.06 Entire Agreement.** This Agreement and the documents to be
2 delivered hereunder constitute the sole and entire agreement of the parties to this
3 Agreement with respect to the subject matter contained herein, and supersede all prior
4 and contemporaneous understandings and agreements, both written and oral, with respect
5 to such subject matter. In the event of any inconsistency between the statements in the
6 body of this Agreement and the documents to be delivered hereunder, and the
7 Appendices, the statements in the body of this Agreement will control.

8 **Section 11.07 Successors and Assigns.** This Agreement shall be binding upon
9 and shall inure to the benefit of the parties hereto and their respective successors and
10 permitted assigns. Neither party may assign its rights or obligations hereunder without
11 the prior written consent of the other party, which consent may be withheld in the non-
12 assigning Party's sole discretion. No assignment shall relieve the assigning party of any
13 of its obligations hereunder.

14 **Section 11.08 No Third-party Beneficiaries.** This Agreement is for the sole
15 benefit of the parties hereto and their respective successors and permitted assigns and
16 nothing herein, express or implied, is intended to or shall confer upon any other person or
17 entity any legal or equitable right, benefit or remedy of any nature whatsoever under or
18 by reason of this Agreement.

19 **Section 11.09 Amendment and Modification.** This Agreement, including the
20 Appendices hereto, may only be amended, modified or supplemented by an agreement in
21 writing signed by each party hereto.

22 **Section 11.10 Waiver.** No waiver by any party of any of the provisions hereof
23 shall be effective unless explicitly set forth in writing and signed by the party so waiving.
24 No waiver by any party shall operate or be construed as a waiver in respect of any failure,
25 breach or default not expressly identified by such written waiver, whether of a similar or
26 different character, and whether occurring before or after that waiver. No failure to
27 exercise, or delay in exercising, any right, remedy, power or privilege arising from this
28 Agreement shall operate or be construed as a waiver thereof; nor shall any single or

1 partial exercise of any right, remedy, power or privilege hereunder preclude any other or
2 further exercise thereof or the exercise of any other right, remedy, power or privilege.

3 [SIGNATURE PAGE FOLLOWS]

DRAFT

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
2 as of the date first written above by their respective officers thereunto duly authorized.

3

AMERICAN MUNICIPAL POWER, INC.

Signature

Marc S. Gerken, P.E.
President/CEO

Approved as to Form:

Signature

Rachel Gerrick
Senior VP and General Counsel for Corporate Affairs

4

HOMETOWN CONNECTIONS, INC.

Signature

Name

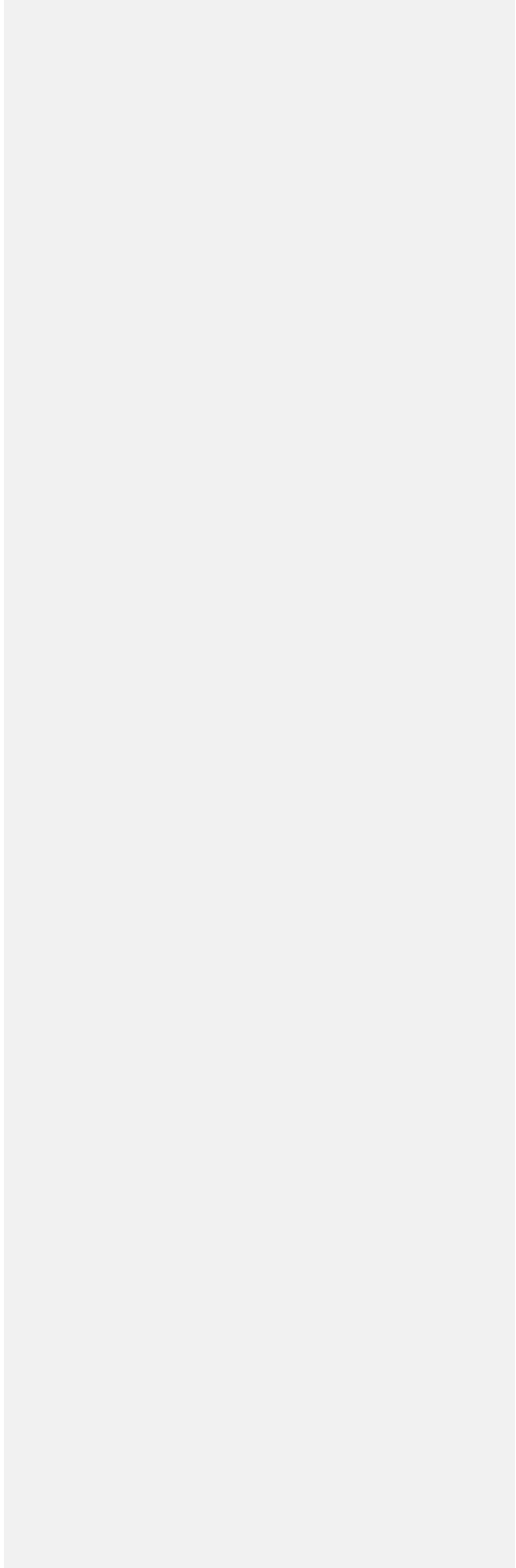
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APPENDIX 1

Disclosure Schedules

[TO COME]

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APPENDIX 2

Bill of Sale

[TO COME FROM TONY KINGTON]

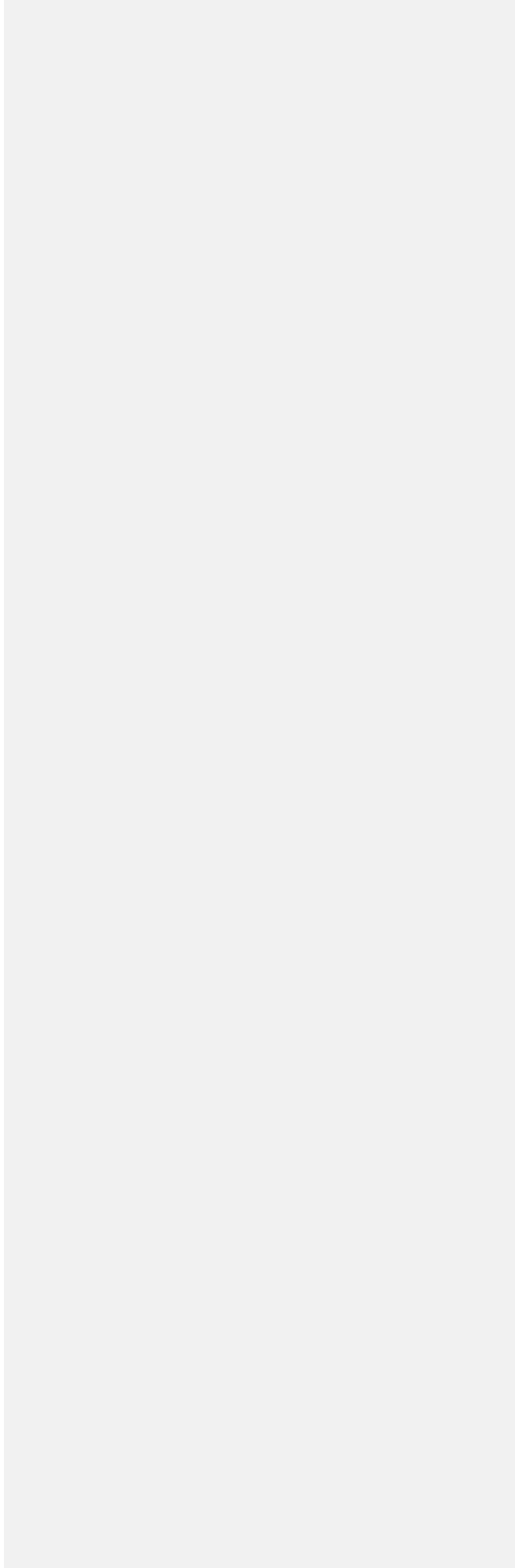
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APPENDIX 3

Assignment and Assumption Agreement

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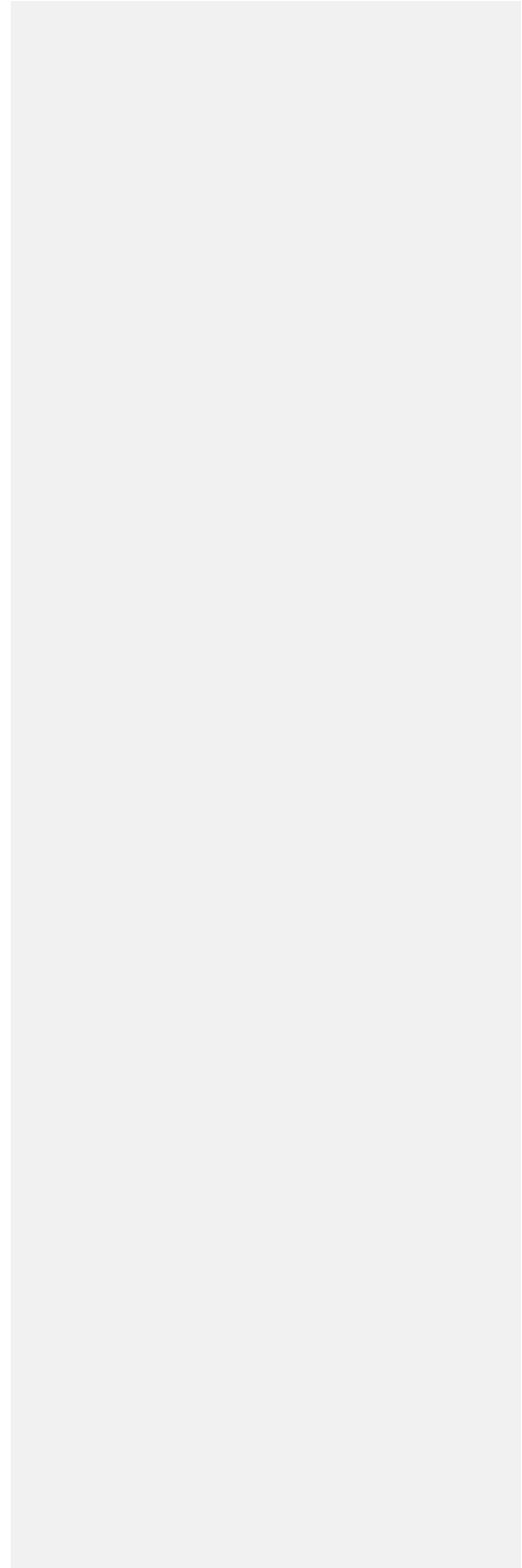


APPENDIX 4

Intellectual Property Assignments

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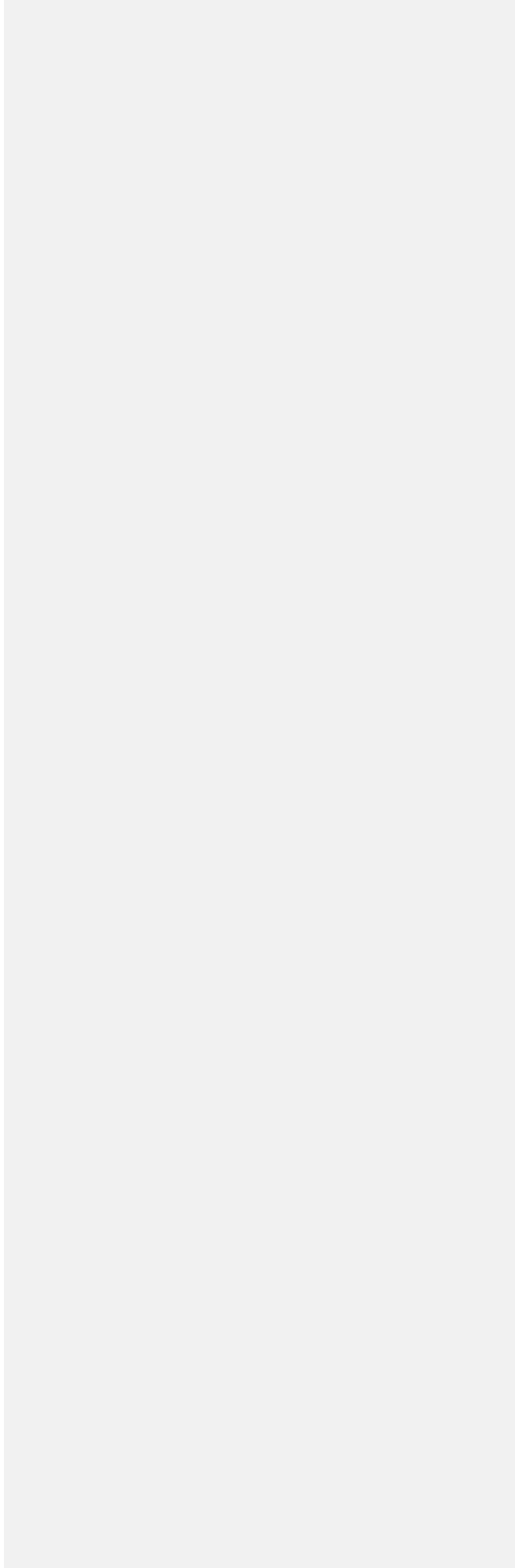
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APPENDIX 5

Repayment of Capital

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APPENDIX 5
Repayment of Capital

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It is anticipated that the AMI Business Segment will generate significant margins over time which will: 1) provide a reasonable return to the Members, 2) drive the growth of New HCI's Initial Business Segments, and 3) provide an opportunity for New HCI to expand into New Business Segments. Margins produced by the AMI Business Segment will be used as follows:

1. Up to twenty-five percent (25%) of margins will be used to provide annual cash distribution return on initial investment for each New Owner capped at 10% ROI. With an initial investment of Two Hundred Twenty-Five Thousand Dollars (\$225,000) for each Initial Member, this component would be initially capped at Twenty-Two Thousand Five Hundred Dollars (\$22,500) per member per year.
2. Not less than twenty-five percent (25%) of margins generated by the AMI project will be used to reimburse AMP for:
 - i) Six Hundred Fifty Thousand Dollars (\$650,000) of it AMI project development costs; and
 - ii) any additional dollars contributed to address cash flow shortages of the AMI Business Segment during ramp-up; and
3. remaining margins after meeting the obligations of 1 and 2 above will be retained by HCI to grow the business.

The margin distribution plan set forth above is outlined to build a general understanding of how margins will be distributed during the early years of New HCI. The New HCI board may modify this plan at any time, provided, however, that any change to the paragraph numbered 2 above prior to AMP's full repayment, must be approved by AMP.

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Do we want to limit?

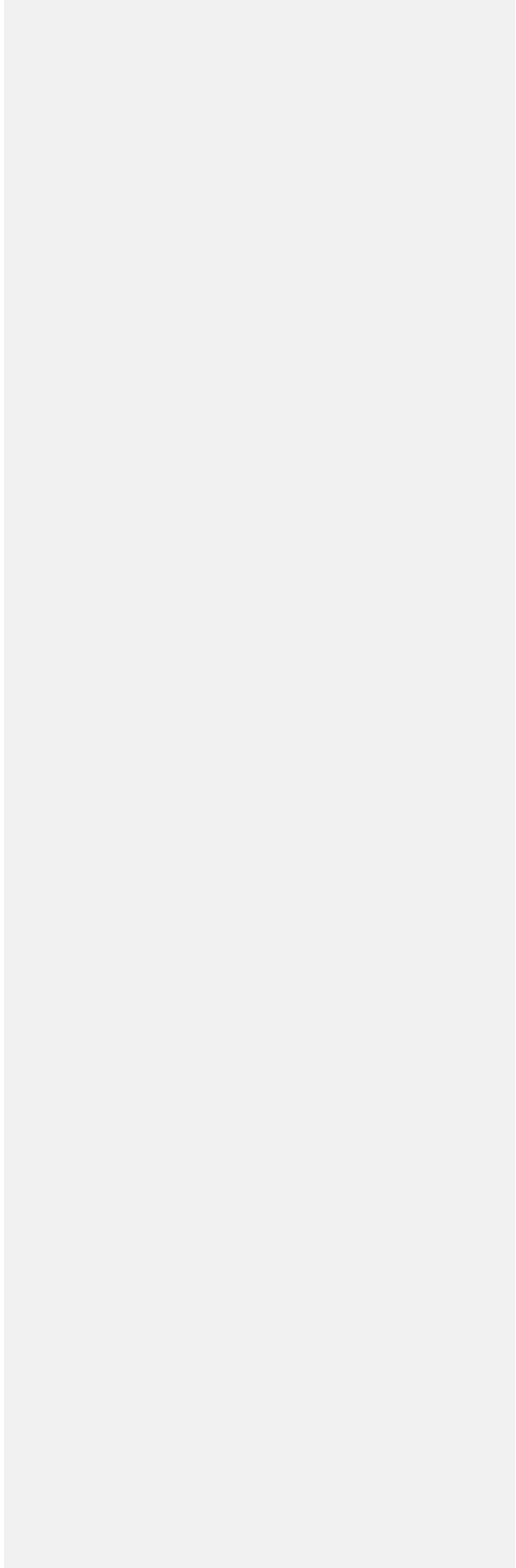
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APPENDIX 6

Project Description and Current AMI Project Operations

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APPENDIX 6
Project Description and Current AMI Project Operations

A. Program Overview & Member Subscriptions

AMP's Advanced Metering Program enables the Municipality to acquire Advanced Metering Infrastructure (AMI) equipment and services under contracts AMP has in place with its Vendors - Silver Spring Networks (Silver Spring), and ElectSolve Technology Solutions and Services (ElectSolve). The Program includes an operating model and associated roles and responsibilities for the deployment, operation and maintenance of all the components necessary to operate a fully functional AMI system.

A general description of the operating model can be described as follows:

- **Municipality's AMI Field Equipment.** AMP will oversee the deployment of advanced meters, AMI Communications network components, and integrations to the municipality's business systems to enable meter-to-cash processes. Additional integrations to other operational system are provided as required. These are provided as "Initial Services" and represent the one-time investment the municipality makes in advanced metering.
- **AMI applications, systems, and related technologies.** The ElectSolve applications, servers and related infrastructure, and the Silver Spring Networks AMI network application will be deployed by AMP and provided to the Municipality as "Ongoing Services".

AMP executes a Member Schedule to the Master Services Agreement in place with the Municipality to enable participation in the Program. The "Initial Services" described in the Schedule include advanced meters, communications network components and related field equipment, system integrations, training and project management.

All AMI software and hardware, along with network monitoring and head-end operations, are provided by AMP as Ongoing Services for an initial period of 10 years, with an annual escalation cap of 3%.

AMP's Board of Trustees approved the program in June of 2016. AMP subscribed its first Member, the Borough of Ephrata, Pennsylvania, in December of 2016. The Ephrata project included replacement of 6,745 electric meters and integrations to the Borough's Springbrook billing system as well as its GIS and SCADA systems. A full suite of engineering applications is being deployed, as well as a customer portal. The Borough's meter-to-cash processes began using AMI-collected meter reading data in September of 2017.

The City of Milford, Delaware is the second municipality to subscribe to the AMI Program. Milford is a member of the Delaware Municipal Electric Corporation, and DEMEC's membership in AMP allows the AMI Program to flow through to its members. Milford is replacing 7,169 electric meters and retrofitting 4,736 water meters. The AMI system will be integrated to its Sungard billing system, and a customer portal will be provided. The project is underway and mass meter deployment is expected in January, 2018.

The City of Seaford, Delaware is the third Municipality to join the program. Like Milford, Seaford is a member of DEMEC. Seaford is replacing 3,534 electric meters and retrofitting 1,029 water meters. Seaford is also replacing approximately 100 water meters with MasterMeter water meters made available under the AMP-Silver Spring Networks contract.

APPENDIX 6
Project Description and Current AMI Project Operations

B. Pricing.

AMP's Member Schedule with participating Members describes equipment and services separated into "Initial Services" and "Ongoing Services".

Initial Services (one-time costs) can be summarized according to the following groupings:

Field Equipment

- Network Infrastructure Equipment
(Installed & Spares)
- Network Infrastructure Tools
- Network Installation
- Integrated Electric Meters
- Electric Meter Installation
- Water Meter Modules
- Water Meter Module Installation
Services
- Water Network Infrastructure
Tools
- Silver Spring Networks Services

Applications & Integrations

Base Billing System Integration,
Training, & ElectSolve Services

Optional Interfaces, Optional
Configurations & Optional
Application Modules

**AMP Project Management (see
pricing table below)**

Ongoing Services (Annual Fees) can be summarized according to the following groupings:

AMP AMI Program Fees (see pricing table below)

SGCC Membership Fee

Support for Optional Application Modules

Cellular charges (if required)

(actual meters in service, count trued up monthly)

AMP Project Management Fee: \$7.02 per meter

AMP AMI Program Fees:

<u>Meters</u>	<u>Hosting charge Per Meter Per Month</u>
1 - 4,999	0.700
5,000 - 19,999	0.650
20000 - 39,999	0.600
40000 - 59,999	0.577
60000 - 89,999	0.555
90,000 +	0.555

C. AMI Deployment Responsibilities

AMP serves as overall project manager for the AMI deployment. Silver Spring Networks (SSN), ElectSolve (ETSS) and NexGen Utility Services, SSN's installation subcontractor and the Municipality all have key roles in the deployment effort. The major tasks associated with deployment of an AMI system include:

Member IT Infrastructure Review & Preparation

AMP Back Office Setup & Software Deployment

Business System Integration

RF Network Design & Deployment

Endpoint installation

Training

Once the deployment project is initiated, bi-weekly meetings are coordinated by AMP until the project is fully deployed.

APPENDIX 6

Project Description and Current AMI Project Operations

Member IT Infrastructure Review & Preparation

In preparation for the AMI deployment, AMP reviews the municipality's connectivity to the internet to ensure sufficient bandwidth is available and that site-to-site Virtual Private Network Tunnels are supported. Two paths of connectivity are required.

First, connectivity between the municipality's business systems and AMP's data center is required to allow the flow of AMI data back the local systems. Second, connectivity between the municipality's deployed AMI communications equipment and the Silver Spring Networks (SSN) Network Operations Center (NOC) is required. If cellular access points are deployed, a secure Virtual Private Network in place between Verizon and SSN's NOC is leveraged to provide this connectivity. If the municipality has a local fiber system, AMP IT personnel assist the municipality with configuration of the site-to-site VPN tunnel required. Firewall configurations are reviewed and new firewalls, if necessary, are deployed.

AMP Back Office Setup & Software Deployment

AMP uniquely deploys servers, storage and operating systems for each Member deployment. ElectSolve deploys the baseline uCentra application, along with any optional modules selected by the Member.

Business Systems Integrations

ElectSolve implements integrations between the municipality's business systems and the ElectSolve AMI software running in AMP's data center. An extensive set of data validation processes and a full System Acceptance Test is performed in conjunction with the Member's operating personnel.

RF Network Design & Deployment

In preparation for the AMI deployment, the Member provides a listing of all meter locations. If the municipality maintains this data in a GIS system, then the latitude & longitude of each meter is provided by the Member. In the absence of a GIS, the Member provides a listing of service addresses for all meters in the utility system. Silver Spring personnel either use lat/lon data provided by the Member, or convert addresses to latitude & longitude, and perform a preliminary network design. This design is field-verified to ensure that poles selected for access points and relays have sufficient clearance, available secondary, and a number of other criteria. Changes are incorporated into the final network design.

SSN has a contract in place with NexGen Utility Solutions, a field workforce provider. NexGen's employees deploy the as-designed AMI communications network in conjunction with the Member's overhead line personnel.

Once the meters are fully deployed, SSN's network engineers perform network optimization to confirm as-designed network performance. Additional access points and relays may be deployed as part of optimization. The network's performance is tested with each access point in failure mode, in confirm single contingency operational performance as designed.

Endpoint installation

APPENDIX 6

Project Description and Current AMI Project Operations

In preparation for meter installation & upgrades, SSN provides a meter manufacturer file to ElectSolve. ElectSolve prepares an export of the Member's customer location data and with the meter manufacturer file, exports meter locations to be upgraded according to the Member's deployment directives.

NexGen provides a field workforce to perform meter installation and upgrades. Data from the Member's billing system is exported to NexGen's Work Order Management System (WOMS). As meters are replaced, a photo of the existing meter, along with a photo of the new meter, is returned to the Member's systems along with all meter data required to update records. The installation locations are geo-coded and provided to the Member for inclusion in their systems.

Training

As part of Network Deployment, NexGen and SSN personnel provide a training workshop to the Member's overhead line personnel and to field personnel responsible for AMI Communications Network troubleshooting. The workshop's objectives are to practice the installation and activation of relays and access points and develop installation standards in accordance with the Member's overhead line requirements. Software is loaded onto the Member's laptop computers that enables communications with individual meters, relays and access points. A training session on the use of the software tools is provided by SSN personnel.

The most significant amount of engagement occurs between ElectSolve personnel and the Member's operations personnel. From the validation of data in the system interfaces, to the configuration of the ElectSolve software portfolio selected by the Member, a significant amount of time and effort is spent to ensure familiarity with the ElectSolve software products. At the end of each System Acceptance Test, ElectSolve personnel perform training sessions for all the Member's operating personnel.

D. Operations Responsibilities

AMP provides ongoing support for the Member's AMI deployment and provides a descriptive operating model as part of the agreement. AMP is fully accountable for end-to-end performance of the AMI system.

AMP's IT organization is well versed and deeply equipped to monitor and support advanced operational technologies, including the enterprises SCADA and generation control systems. Support for the AMI environments is provided with the same level of discipline and rigor. Augmenting the AMI IT support organization are the support teams from Silver Spring Networks and ElectSolve Technology Solutions & Services.

Silver Spring Networks' Network Operation Center (NOC) monitors each Member's access points and relays for connectivity. Should problems arise with any of the deployed AMI communications equipment, or connectivity between the devices and the NOC, the NOC personnel connect the Member directly and initiate restorative processes.

ElectSolve's support team is the first point of contact for Member issues with AMI data flowing into its business systems. Any issues related to connectivity between the AMI head-end and the deployed software is jointly resolved by SSN and ETSS. AMP IT

APPENDIX 6
Project Description and Current AMI Project Operations

Associated system operating model and associated roles and responsibilities for the operation and maintenance of the AMI application called UtilityIQ, provided by Silver Spring Networks (Silver Spring), and UCentra MDMS, provided by ElectSolve Technology Solutions and Services (ElectSolve).

- AMP (American Municipal Power), typically an IT systems person
- ETSS (ElectSolve) ElectSolve's Services team member assigned to AMP
- Municipality (any participating Municipality): typically an AMI lead at the Municipality
- SSN (Silver Spring Networks): Silver Spring's Network Operations Center

Exhibit B describes the detailed tasks related to ongoing support of an AMI system, and defines responsibilities in more detail.

The matrices define the roles and responsibilities for all headend and network tasks. It is meant to be applicable once the system goes into operation. (Responsibilities during deployment and test are defined in our responses to the AMP RFP.) The nomenclature used in the table is as follows:

- **R** = Responsible, the organization responsible for carrying out the task
- **P** = Participate, the organization responsible for providing the responsible party any needed support or coordination.
- **A** = Approving, the organization responsible for approving the intended actions of the responsible party in advance of the actions being executed. Approval also means that the Silver Spring and ElectSolve inform one another in advance of the pending activity to assure the activity does not impact the other party's platform or operations.
- **N** = Notification, the organization will be notified in advance by the responsible party before the activity takes place.

APPENDIX 6
Project Description and Current AMI Project Operations

EXHIBIT B - Overview of Operational Roles and Responsibilities for AMI and MDMS Systems

Roles and Responsibilities for SaaS UtilityIQ AMI Head

AMI 1.	Back Office Network Administration	Muni	AMP	SSN
a.	Maintain customer data center network and customer corporate network connections to support UtilityIQ environments.			R
b.	Maintain WAN backhaul network connections (APs to UtilityIQ system), monitoring and troubleshooting (including escalating to relevant provider (public WAN provider, utility, etc.).			R
c.	Maintain utility LAN-to-UtilityIQ connectivity, including monitoring and troubleshooting (fronthaul).			R
d.	Maintain monitors to enable the SSN NOC to respond to alerts and escalate internally and externally, as necessary.			R
e.	Maintain B2B network connections (VPN/DSL) and associated security and access control measures to enable SSN Remote Management			R
f.	Maintain back office network configuration management.			R
g.	Provide network connections capacity planning.			R
h.	Provide capacity planning procurement.			R
AMI 2.	Server Administration/Operating System (OS)	Muni	AMP	SSN
a.	Troubleshoot OS problems.			R
b.	Manage file systems			R
c.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.			R
d.	Apply OS patches and updates, and test.		A	R

APPENDIX 6
Project Description and Current AMI Project Operations

e.	Create user (shell) accounts, as required.			R
f.	Maintain all current software licensing requirements for applicable third-party software (Oracle, Red Hat Enterprise Linux, and so on).			R
g.	Maintain current hardware maintenance agreements for all equipment and servers in customer data center(s).			R
h.	Provide remote for activities requiring physical presence (power cycle hardware, escort vendors, etc.)			R
i.	Maintain server and OS configuration management			R
j.	Provide server capacity planning.			R
k.	Provide capacity planning procurement.			R
AMI 3.	<i>Storage Administration</i>	Muni	AMP	SSN
a.	Maintain external storage systems (SAN hardware and software), including updates, patches, and fixes.			R
b.	Maintain current maintenance agreements for SAN hardware and software			R
c.	Implement and maintain storage file system for UtilityIQ, according to Silver Spring performance specifications.			R
d.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.			R
e.	Maintain SAN configuration management.			R
f.	Provide storage capacity planning			R
g.	Provide capacity planning procurement			R
AMI 4.	<i>Database Administration</i>	Muni	AMP	SSN
a.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.			R
b.	Manage database table space usage and next extent sizes.			R

APPENDIX 6
Project Description and Current AMI Project Operations

c.	Perform database reorganizations.		A	R
d.	Backup database redo (archive) logs			R
e.	Resolve database problems			R
f.	Apply database updates and patches, and test.		A	R
g.	Perform regular (typically weekly) database purge/archive tasks (“retention”).		A	R
h.	Maintain current all software licensing requirements for applicable third-party software (Oracle).			R
i.	Maintain database configuration management.			R
j.	Provide database capacity planning.			R
k.	Provide capacity planning procurement			R
AMI 5.	<i>Backups</i>	Muni	AMP	SSN
a.	Provide backup infrastructure (hardware/software).			R
b.	Perform regular backups.			R
c.	Manage off-site backups.			R
d.	Monitor backup jobs.			R
e.	Restore from backup media, as necessary.			R
f.	Periodically validate/test backup restore procedure.			R
g.	Maintain backup configuration management.			R
AMI 6.	<i>Application Administration</i>	Muni	AMP	SSN
a.	Install and configure application updates, patches, and fixes.	N	A	R
b.	Maintain application tuning (configuration management).			R
c.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.			R

APPENDIX 6
Project Description and Current AMI Project Operations

d.	Monitor and respond to alerts, and escalate internally and externally, as necessary.			R
e.	Support testing of new UtilityIQ releases in test environments, and approve updates to upper environments (Production and Rapid Recovery), if applicable.			R
AMI 7.	<i>UIQ Administrative Tasks</i>	Muni	AMP	SSN
a.	Perform adds/deletes/change to UtilityIQ user accounts (user administration)		A	R
b.	Schedule/Run UtilityIQ Application batch jobs.			R
c.	Monitor critical-identified read and export batch jobs.			R
d.	Coordinate batch jobs and backups.			R
AMI 8.	<i>Security</i>	Muni	AMP	SSN
a.	Provide physical and logical security of equipment.			R
b.	Provide physical and logical security of data.		P	R
c.	Maintain VPN connection firewall.			R
d.	Create and maintain security policies to equipment and data.		A	R
e.	Maintain security of configuration management.		A	R
f.	Monitor and assess security strategies.			R
g.	Support and participate in system security reviews and audits.			R
h.	Conduct security penetration test of all critical Silver Spring components.			R
AMI 9.	<i>Operations Policies and Procedures</i>	Muni	AMP	SSN
a.	Tier 1 Support (<i>Note: UtilityIQ and network connectivity problems identified by AMP will be directed to the Silver Spring Help Desk. Issues identified by the Municipality's will be directed to the ElectSolve Help Desk.</i>)	See Note	See Note	See Note

APPENDIX 6
Project Description and Current AMI Project Operations

b.	Maintain Application Support Desk, Tier 2 (technical support to customer's support coordinators).			R
c.	Provide onsite coordination and tracking of Customer Support issues			R
d.	Allow direct escalation to Tier 3 (TAC and NOC) support personnel (via onsite Smart Grid Engineers)			R
e.	Modify Management policies and procedures.		A	R
f.	Update Incident Management policies and procedures.		A	R
g.	Monitor logs for non-security events.			R
h.	Report on SLA and other performance measurements.			R
i.	Review monthly performance and agree on Service Level credits.		P	R
AMI 10.	<i>Meter Deployment Management</i>	Muni	AMP	SSN
a.	Procure new meters as required.	R		
b.	Provide meter installation (post initial deployment).	R		
c.	Provide meter hardware replacement and maintenance.	R		
d.	Provide regular updates on Integrated meter deployment progress and plans.	R		
e.	Provide properly formatted device files for all meters.	P		R
f.	Manage import of device files for all meters into UtilityIQ.			R
g.	Provide properly formatted location files for all meter installations, including GPS coordinates. (Note: operation to be performed via ElectSolve MDMS.)	R		
h.	Manage import of location files for all meters into the MDMS. (Note: operation to be performed via ElectSolve MDMS and the MDMS will post the properly formatted data to SSN for UtilityIQ processing.)	R		
i.	Provide field troubleshooting of meters.	R		

APPENDIX 6
Project Description and Current AMI Project Operations

j.	Deploy NIC firmware updates (included in SaaS fees)		A	R
k.	Deploy meter firmware updates (service provided as a fee for service)		A	R
l.	Deploy meter program updates files (service provided as a fee for service)		A	R
AMI 11.	<i>Mesh Network Operations</i>	Muni	AMP	SSN
a.	Provision and install any new APs and Relays in accordance with operating procedures, installation guides and design documents. (post initial deployment).	R		P
b.	Provide properly formatted device files for all APs and Relays	P		R
c.	Provide properly formatted location files for all meter installations, including GPS coordinates (for all such devices moved or added after the deployment period or optimization)	R		P
d.	Manage import of device and location files for all APs and Relays into UtilityIQ (for all such devices moved or added after the deployment period and optimization).	P		R
e.	Validate APs after installation (after the deployment period and optimization, relevant for organic growth of meter locations or device replacement).			R
f.	Manage procurement/billing of WAN carrier (cellular operators).		R	P
g.	Perform AP and Relay firmware upgrades.		A	R
h.	Perform regular “network sweeps” to update firmware and configure newly deployed devices covered in the scope of the agreement.			R
i.	Monitor reachability of APs and Relays.			R
j.	Troubleshoot reachability of APs and Relays.			R
k.	Perform network operation statistics gathering, analysis, trending and reporting.			R

APPENDIX 6
Project Description and Current AMI Project Operations

l.	Provide field investigation of meters, APs, and Relays (as requested) to help determine root cause of meter deployment issues.	R		P
m.	Provide AP and Relay hardware replacement and maintenance.	R		
n.	Provide AP and Relay configuration management.			R
o.	Provide AP and Relay capacity planning.	P		R
p.	Procure new APs and Relays as required.	R		
q.	Initiate remote disconnects/reconnects. (Note: this would be initiated in the MDMS by the Municipality and executed via a integration with the UtilityIQ headend.)	R		
r.	Perform export verification via deployed SSN monitors			R
s.	Perform meter read verification via deployed SSN monitors			R
t.	Conduct performance reporting auditing.		N	R
u.	Perform SLA tracking.		N	R
v.	Perform data maintenance within the application, incorporating both meter and installation (location) information.			R
w.	Perform device swaps within the application.			R
x.	Coordinate field visits for faulty/suspect devices.	P		R
AMI 12.	Disaster Recovery	Muni	AMP	SSN
a.	Conduct annual Rapid Recovery walk-through exercise, and test failover drills.		P	R
b.	Maintain and provide an overall customer Rapid Recovery Plan, encompassing UtilityIQ and MDMS dependencies (including acceptance criteria).		R	P
c.	Maintain and update Rapid Recovery Plan, in accordance with changes to the environment.		P	R

APPENDIX 6
Project Description and Current AMI Project Operations

d.	Test customer data connections and backup communications with Silver Spring.		R		
e.	Maintain network connectivity between data center(s) to meet the design requirements (RPO).				R
f.	Provide adequate notice of Rapid Recovery walk-through schedule.		R		P
g.	Maintain and provide an overall customer Rapid Recovery Plan, encompassing UtilityIQ dependencies (including acceptance criteria).		R		P
h.	Install and configure application updates, patches, and fixes.	N	A		R
AMI 13.	<i>AMI/MDMS System DAILY Operations</i>		Muni	AMP	SSN
a.	Monitor MDMS daily to assure that all expected meter data has been properly feed to MDMS system.		R		
b.	Monitor CIS daily to assure that all expected meter data has been properly feed to CIS system.		R		
c.	Run the Communication Network Devices Status Report and investigates and troubleshoots issues found. Notify Municipality if in field assistance is needed.				R
d.	Runs read performance reports in the head-end, investigates causes and analyzes data in the MDM Notify Municipality if in field assistance is needed.				R
e.	Removes warehoused meters from read schedules and deletes retired meters from the AMI head-end.				R
f.	Resolve the meter edits		P		R
g.	Runs orphan meter and register read report for electric, investigates and resolves. Notify Municipality if in field assistance is needed.				R
h.	Runs unknown node report and leak reports for water, troubleshoots and resolves. Notify Municipality if in field assistance is needed.				R
i.	Runs the Gap and VEE reports to analyze estimated reads.		R		

APPENDIX 6
Project Description and Current AMI Project Operations

	Notify Municipality if in field assistance is needed.			
j.	Runs and reviews the MDM Consecutive Days Zero Consumption Report, Consumption on Inactive Meters Report, Exception Report for “Zero” reads, Negative Consumption Report, SQL Job Activity Report, and the Tamper Reads Report.	R		
k.	Contact Municipality to request field troubleshooting and repairs when required. Support field troubleshooting from the NOC. Test repairs when required.			R
l.	Monitor the list of open troubleshooting and repair requests.	N		R
m.	Conduct field troubleshooting and repairs on APs and relays when requested by Silver Spring NOC. Notify NOC of completion and coordinate with NOC for any required testing	R		
n.	Compiles and distributes AMI system information to Utility staff in the form of statistical reports to track system performance, growth and productivity.	N	N	R

Responsibilities for On-premise MDMS

MDM I.	Back Office Network Administration	Muni	AMP	ETSS
a.	Maintain customer data center network and customer corporate network connections to support UCentra environments.		R	
b.	Maintain WAN backhaul network connections (APs to UCentra system), monitoring and troubleshooting (including escalating to relevant provider (public WAN provider, utility, etc.)).		R	
c.	Maintain utility LAN-to-UCentra connectivity, including monitoring and troubleshooting (fronthaul).		R	
d.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.		R	

APPENDIX 6
Project Description and Current AMI Project Operations

e.	Maintain B2B network connections (VPN/DSL) and associated security and access control measures to enable SSN Remote Management		R	
f.	Maintain back office network configuration management.		R	
g.	Provide network connections capacity planning.	P	R	P
h.	Provide capacity planning procurement.		R	
MDM 2.	<i>Server Administration/Operating System (OS)</i>	Muni	AMP	ETSS
a.	Troubleshoot OS problems.		R	P
b.	Manage file systems		R	P
c.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.		R	
d.	Apply OS patches and updates, and test.		R	P
e.	Create user (shell) accounts, as required.		P	R
f.	Maintain all current software licensing requirements for applicable third-party software (Oracle, SQL Server, Red Hat Enterprise Linux, and so on).		R	
g.	Maintain current hardware maintenance agreements for all equipment and servers in customer data center(s).		R	
h.	Provide remote for activities requiring physical presence (power cycle hardware, escort vendors, etc.)		R	
i.	Maintain server and OS configuration management		R	P
j.	Provide server capacity planning.		R	P
k.	Provide capacity planning procurement.	P	R	P
MDM	<i>Storage Administration</i>	Muni	AMP	ETSS

APPENDIX 6
Project Description and Current AMI Project Operations

3.				
a.	Maintain external storage systems (SAN hardware and software), including updates, patches, and fixes.		R	P
b.	Maintain current maintenance agreements for SAN hardware and software		R	
c.	Implement and maintain storage file system for UCentra, according to ETSS performance specifications.		R	P
d.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.		R	
e.	Maintain SAN configuration management.		R	P
f.	Provide storage capacity planning		R	P
g.	Provide capacity planning procurement	P	R	P
MDM 4.	<i>Database Administration</i>	Muni	AMP	ETSS
a.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.		P	R
b.	Manage database table space usage and next extent sizes.		P	R
c.	Perform database reorganizations.			R
d.	Backup database redo (archive) logs			R
e.	Resolve database problems			R
f.	Apply database updates and patches, and test.			R
g.	Perform regular (typically weekly) database purge/archive tasks (“retention”).			R
h.	Maintain current all software licensing requirements for applicable third-party software (SQL).		R	

APPENDIX 6
Project Description and Current AMI Project Operations

i.	Maintain database configuration management.			R
j.	Provide database capacity planning.	P	P	R
k.	Provide capacity planning procurement	P	P	R
MDM 5.	<i>Backups</i>	Muni	AMP	ETSS
a.	Provide backup infrastructure (hardware/software).		R	
b.	Perform regular backups.		R	P
c.	Manage off-site backups.		R	
d.	Monitor backup jobs.		R	
e.	Restore from backup media, as necessary.		R	P
f.	Periodically validate/test backup restore procedure.		R	P
g.	Maintain backup configuration management.		R	P
MDM 6.	<i>Application Administration</i>	Muni	AMP	ETSS
a.	Install and configure application updates, patches, and fixes.		A	R
b.	Maintain application tuning (configuration management).			R
c.	Maintain monitors to enable the NOC to respond to alerts and escalate internally and externally, as necessary.			R
d.	Monitor and respond to alerts, and escalate internally and externally, as necessary.			R
e.	Support customer's testing of new UCentra releases in lower environments (such as test), and approve updates to upper environments (Production and Rapid Recovery), if applicable.		A	R
MDM	<i>UCentra Administrative Tasks</i>	Muni	AMP	ETSS

APPENDIX 6
Project Description and Current AMI Project Operations

7.				
a.	Perform adds/deletes/change to UCentra user accounts (user administration)	R	P	P
b.	Schedule/Run UCentra Application batch jobs.			R
c.	Monitor critical-identified read and export batch jobs.			R
d.	Coordinate batch jobs and backups.			R
MDM 8.	Security	Muni	AMP	ETSS
a.	Provide physical and logical security of equipment.	R	R	
b.	Provide physical and logical security of data.	R	R	
c.	Maintain VPN connection firewall.	R	R	
d.	Create and maintain security policies to equipment and data.		R	
e.	Maintain security of configuration management.		R	
f.	Monitor and assess security strategies.		R	
g.	Support and participate in system security reviews and audits.	P	R	P
h.	Conduct security penetration test of all critical Silver Spring components.		R	
MDM 9.	Operations Policies and Procedures	Muni	AMP	ETSS
a.	Tier 1 Support (<i>Note: UtilityIQ and network connectivity problems identified by AMP will be directed to the Silver Spring Help Desk. Issues identified by the Municipality will be directed to the ElectSolve Help Desk.</i>)	See Note	See Note	See Note
b.	Maintain Application Support Desk, Tier 2 (technical support to customer's support		P	R

APPENDIX 6
Project Description and Current AMI Project Operations

	coordinators).			
c.	Provide coordination and tracking of Customer Support issues		P	R
d.	Modify Management policies and procedures.		R	P
e.	Update Incident Management policies and procedures.		P	R
f.	Monitor logs for non-security events.		P	R
g.	Report on SLA and other performance measurements.		P	R
h.	Review monthly performance and agree on Service Level credits.		R	P
MDM 10.	Disaster Recovery	Muni	AMP	ETSS
a.	Participate in annual Rapid Recovery walk-through exercise, and test failover drills.	P	R	P
b.	Maintain and update Rapid Recovery Plan, in accordance with changes to the environment.	P	R	P
c.	Test customer data connections and backup communications	P	R	
d.	Maintain network connectivity between data center(s) to meet the design requirements (RPO).	R	R	
e.	Provide adequate notice of Rapid Recovery walk-through schedule.	P	R	
f.	Maintain and provide an overall customer Rapid Recovery Plan, encompassing UCentra dependencies (including acceptance criteria).	P	R	

APPENDIX 7

AMI Project Marketing

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APPENDIX 7
AMI Project Marketing

Market and Market Potential

The potential market for the AMI Business Segment is essentially all public power systems to some extent. Even communities that have recently deployed AMI may be interested in the back office services provided through the program. Based on a survey of the Initial Members, it is estimated that over 75 of the total 340 communities represented may have an interest in an AMI deployment. This represents over 900,000 meters (electric, water and gas).

It is anticipated that the Members will market the AMI Business Segment services directly to their respective members. If they do not have adequate marketing/member relations staff to perform this function, it will be performed by the New HCI staff or through the HCI Sales and Marketing associates.

HCI and Members' marketing staff will be trained to provide an overview of the program, the business proposition, and high level functions of the system. It is also anticipated that the marketing staff will be responsible for coordinating the collection of the data from the interested members in order for the AMI IT staff to develop a high-level cost estimate.

Role of Sales and Marketing Associates Under New HCI (DUNCAN WORKING ON)

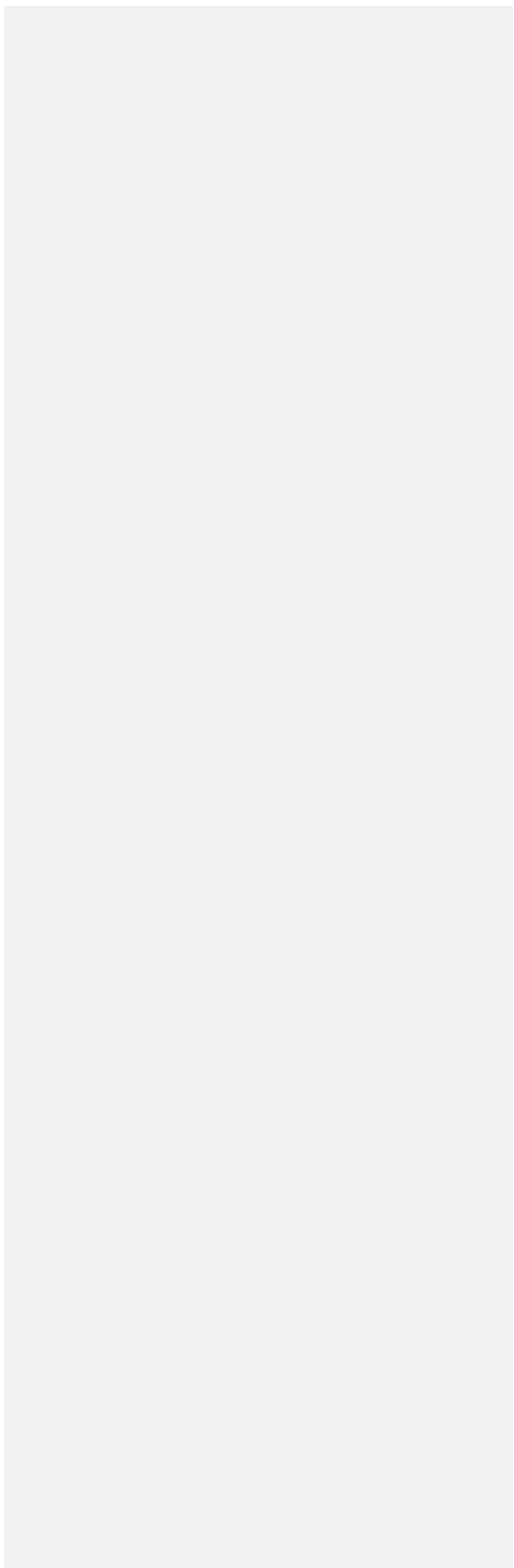
The role of Sales and Marketing Associates for Existing Business Segments will not change.

The role of Sales and Marketing Associates for the AMI Business Segment will be to introduce the AMI program to the public power systems in their territory. They will be supported by New HCI staff in their marketing efforts. The Marketing and Sales Affiliates will continue to have the same obligations and compensation under their current agreement with HCI. For AMI Business Segment sales to public power systems within a Marketing and Sales Affiliates territory, the Marketing and Sales Affiliate will receive a commission based on the number of meters deployed (TBD).

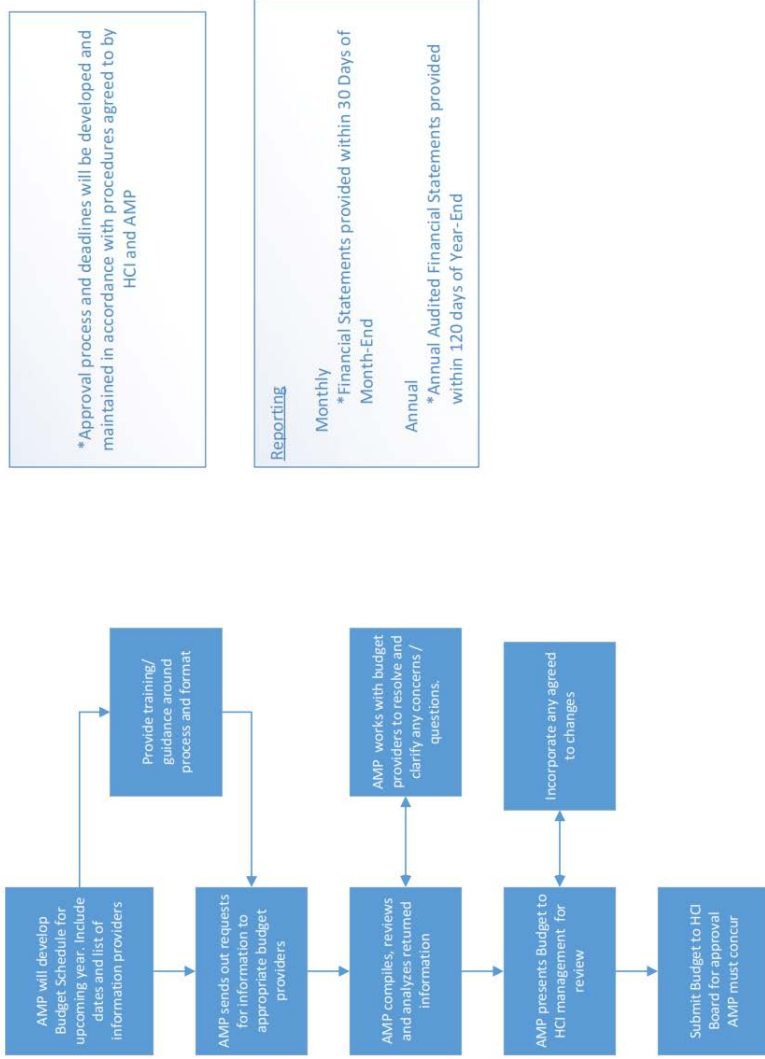
APPENDIX 8

HCI AMI Project Budget and Reporting Process

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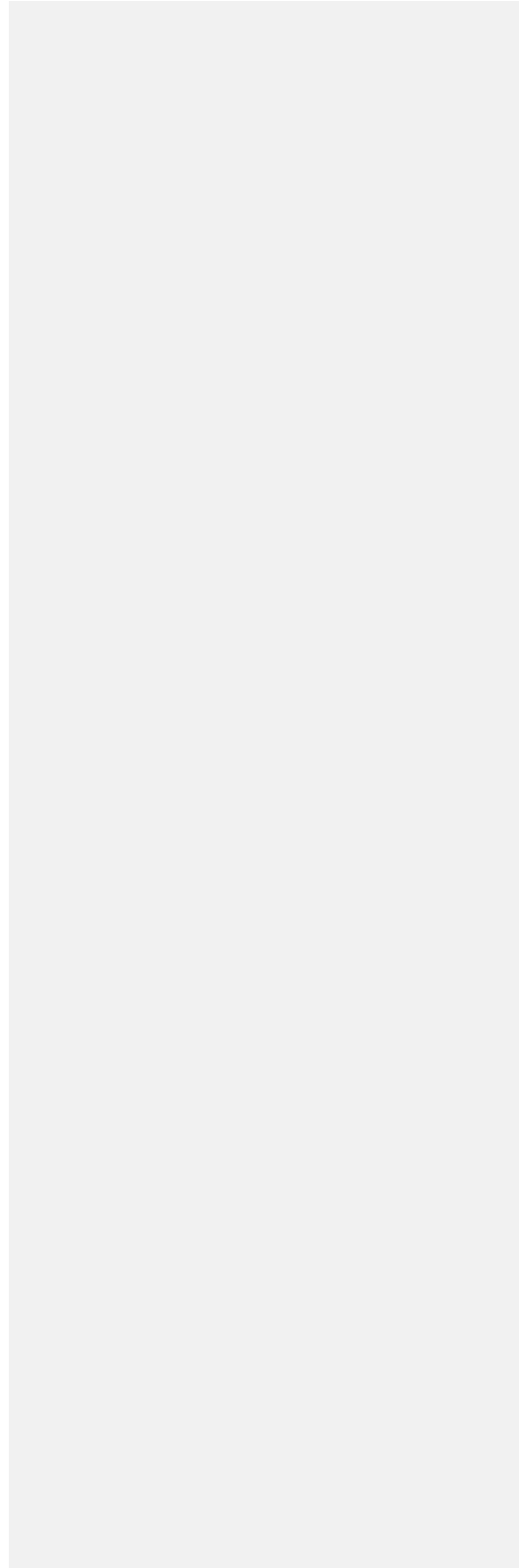
Appendix 8 Proposed HCI AMI Project Budget and Reporting Process



APPENDIX 9

Example of Current Agreements between AMP and its Members for its AMI

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Appendix 9 - AMI Assignment and Operations Agreement.pdf (Command Line)

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**ALABAMA MUNICIPAL ELECTRIC AUTHORITY
PROMISSORY NOTE**

Columbus, Ohio

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Date

Promise To Pay. The undersigned, Hometown Connections, Inc., a Delaware charitable non-stock corporation (the “**Maker**”), for value received, promises to pay to the order of Alabama Municipal Electric Authority, a public corporation of the State of Alabama (the “**Holder**”), the principal sum of _____ [Amount determined pursuant to Sections 2 and 3 of Contribution Agreement] and No/100 Dollars (\$) U.S., with no interest. This Promissory Note (this “**Note**”) is executed and delivered pursuant to that certain Contribution Agreement to which Maker and Holder are parties, dated _____.

Payments. The outstanding principal balance of this Note shall be paid in [Term determined pursuant to Sections 2 and 3 of Contribution Agreement] installments of _____ and No/100 Dollars (\$00) each, with the first payment due on the first anniversary of this Note and subsequent payments due on each subsequent anniversary until this Note has been paid in full, which shall be on or before the tenth (10th) anniversary hereof.

The Maker may prepay this Note, in whole or in part, without the payment of any penalty or premium, at any time during the term of this Note. Any payment made on this Note shall be applied to principal, in each case as a prepayment of the next principal amount(s) to become due. Payments are to be made in lawful money of the United States of America in immediately available funds at _____, or at such other address as the Holder may from time to time designate to the Maker in writing. Such notice shall be effective as of the next payment which is due if given at least ten (10) days prior to such payment date. Otherwise, it shall be effective as of the next successive payment.

A payment is timely made if it is actually received by Holder on or before the date on which it is due, or if it is mailed using the U.S. Postal Service and is postmarked at least one day prior to the date on

which it is due. If the date a payment is due falls on a Saturday, Sunday, or a day that is a legal holiday under the laws of the United States, that payment shall be due on the next succeeding business day. Upon written request by Holder (provided such request is delivered to Maker at least five (5) business days before the date on which the payment is due), payments shall be made by electronic funds transfer. If Holder does not so request, Maker shall have the option to make any such payments by electronic funds transfer. In all cases, Maker shall only be required to make payments to a single payee or bank account specified by Seller in writing.

Events of Default. Upon the occurrence and during the continuance of any Event of Default hereunder, and, as provided in the Services Agreement, upon termination of the Services Agreement by mutual agreement between Maker and Holder, the Holder may declare the entire principal balance of this Note in default and immediately due and payable, and the Holder may take such legal actions as the Holder deems necessary or appropriate to collect the amounts in default. Each of the following events shall constitute an “**Event of Default**” under this Note:

- (1) any payment required hereunder shall not be paid within ten (10) days after Maker’s receipt of written notice from Holder that the payment is due and unpaid;
- (2) Maker materially defaults in the payment or performance of any other term, condition or obligation under this Note and fails to remedy such default within thirty (30) days after receiving written notice thereof from Holder, specifying such default in detail; or
- (3) any voluntary petition by or involuntary petition (which is not dismissed within ninety (90) days) against the Maker shall be filed pursuant to any chapter of the United States Bankruptcy Code or Maker makes an assignment for the benefit of creditors, or there shall be any other marshaling of the assets and liabilities of the Maker for the benefit of the Maker’s creditors.

Assignment; Binding Effect. This Note shall not be assigned or transferred by Holder without the express prior written consent of Maker. Any such purported assignment or transfer in violation of the preceding sentence shall be void *ab initio*. This Note shall be binding upon the Maker and upon successors and assigns of the Maker and shall inure to the benefit of the Holder and the permitted successors and assigns of the Holder.

Governing Law; Jurisdiction. This Note shall be governed by and construed in accordance with the laws of New York. Both Maker and Holder consent to exclusive jurisdiction in the federal courts of the United States of America or the courts of the State of Virginia in each case located in the City of Alexandria or the county of Arlington Virginia, for any action to enforce this Note, and waive any objection to venue laid therein, and agree that process may be served on them anywhere in the world.

Severability. If any term or provision of this Note or the application thereof to any person, property, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Note, or the application of such term or provision to persons, properties, and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Note shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first written above.

MAKER:

HOMETOWN CONNECTIONS, INC.

A Delaware Charitable non-stock Corporation

By: _____

Name: _____

Title: _____

Appendix 5
AMEA Promissory Note
TO COME

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