
Memorandum

To: Mayor and Members of City Council
cc: City Manager, Finance Director, City Law Director
From: Roxanne
Regarding: General Information
Date: March 29, 2018



He Has Risen Indeed, Hallelujah

CALENDAR

AGENDA–City Council Meeting @7:00 pm

C. APPROVAL OF MINUTES: March 19, 2018

E. REPORTS FROM COUNCIL COMMITTEES

G. INTRODUCTION OF NEW ORDINANCES AND RESOLUTIONS

1. **Resolution No. 016-18**, a Resolution Authorizing the City Manager to Execute any and all Documents Necessary to Prepare, Apply for and Accept Funding through the Ohio Department of Transportation's (ODOT) Transportation Alternative Program (TAP) for the Project known as the Napoleon Nonmotorized Facilities Network GAPS Project; and Declaring an Emergency.
2. **Ordinance No. 017-18**, an Ordinance Amending Section 195.04 (Rule 4.1 Place of Examination and Administration, Rule 4.2, Notice of Examination for Original Appointment, Rule 4.4, Human Resource Department Assistance, 4.5.1 Examination for Original Appointment, Rule 4.5.3, Method of Examination, and Rule 4.16, Examination of Grading Methods), of the Civil Service Code of the City of Napoleon, Ohio; and Declaring an Emergency.

H. SECOND READINGS OF ORDINANCES AND RESOLUTIONS

1. **Ordinance No. 009-18**, an Ordinance Amending the City of Napoleon Traffic Schedules, specifically Schedule II, "Parking Time Limits" on Certain Streets as Listed in the Attached Exhibit A and Repealing Ordinance No. 037-16; and Declaring an Emergency. *(Suspension Requested)*
2. **Resolution No. 010-18**, a Resolution Authorizing the Expenditure of Funds Over Twenty-Five Thousand Dollars (\$25,000.00) for the Purpose of Preparing the City of Napoleon's Comprehensive Master Plan with Thoroughfare Plan Provisions in and for the City of Napoleon, Ohio, and to Sole Source said Comprehensive Master Plan to Reveille, LTD.; and Declaring an Emergency. *(Suspension Requested)*
 - a. *Included in the packet, is Chad's Memorandum on the request for sole sourcing this project.*
3. **Ordinance No. 011-18**, an Ordinance Amending a Certain Section of the Personnel Code Chapter 197 of the Codified Ordinances of the City of Napoleon, Ohio; and Declaring an Emergency. *(Suspension Requested)*
4. **Resolution No. 012-18**, a Resolution Approving a Fifty Dollar (\$50.00) Surcharge to City of Napoleon, Ohio Health Insurance Premiums; and Declaring an Emergency.
5. **Ordinance No. 014-18**, an Ordinance Authorizing the City Manager to enter into a Contract or Contracts for the Sale of City Owned Bulk Electric System (BES) 138KV Assets to American Municipal Power, Inc.; and Declaring an Emergency. *(Suspension Requested)*
 - a. In addition to the Ordinance, also enclosed are:
 - i. *a red-lined version of the Asset Management Agreement; and*
 - ii. *"Strategic Assessment Validation for the Northside Substation".*

I. THIRD READING OF ORDINANCES AND RESOLUTIONS

1. **Resolution No. 006-18**, a Resolution to Amend the City of Napoleon, Ohio Municipal Tax Code Section 194.134© to Correct a Scrivener's Error, Amending the Referenced Language.

J. GOOD OF THE CITY (Discussion/Action):

1. To Direct the Law Director to Prepare Legislation for First Quarter Budget Adjustments.
 - a. The first quarter budget adjustments were approved by the Finance and Budget Committee at their meeting on March 26, 2018.
2. Request to Sole Source Software Upgrade for SCADA at the Wastewater Treatment Plant to Koester's.
 - a. Please see the attached Memo from Dave Pike.
3. Approval of Change Order No. 12 for the Water Treatment Plant Rehabilitation Project, an Increase of \$41,297.00.
 - a. The enclosed Memorandum from Chad explains the Change Order.
4. Approval of Plans and Specifications for the Sanitary Sewer Cleaning Project (Phase 2).

INFORMATIONAL ITEMS

1. Cancellation – Technology and Communications Committee.
2. Press Release/Spring Fire Hydrant Flushing Program April 2-20, 2018
3. AMP Update/March 23, 2018

Records Retention - CM-11 - 2 Years

April 2018

◀ March May ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1 Easter Sunday 	2 7:00 pm City Council	3	4	5	6	7
8	9 6:15 pm Electric Comm BOPA 7:00 pm Water/Sewer Committee 7:30 pm Safety & Human Resources Committee	10 4:30 pm Board of Zoning Appeals 5:00 pm Planning Commission	11	12	13	14
15	16 6:00 pm Tree Comm. Parks & Rec Comm. 6:45 pm Housing Council 7:00 pm City Council	17 Tax Day - (Taxes Due)	18	19	20	21
22 Earth Day	23 6:30 pm Finance & Budget Committee 7:30 pm Safety & Human Resources Comm.	24 4:30 pm Civil Service Commission	25 6:30 pm Parks & Rec Board Mtg	26	27 Arbor Day	28 10:00 am – Arbor Day Observation
29	30 5 th Monday					

City of Napoleon, Ohio

CITY COUNCIL

AGENDA

Monday, April 02, 2018 at 7:00 pm

LOCATION: Council Chambers, 255 West Riverview Avenue, Napoleon, Ohio

A. Attendance *(Noted by the Clerk)*

B. Prayer and Pledge of Allegiance

C. Approval of Minutes *(in the absence of any objections or corrections, the minutes shall stand approved)*

1. March 19, 2018 Council Meeting Minutes

D. Citizen Communication

E. Reports from Council Committees

1. **Finance and Budget Committee** met on March 26, 2018; and
 - a. Heard a presentation by AccuMed on EMS billings and write-offs.
 - b. Tabled Municipal Tax Code Discussion until there is more information.
 - c. Approved the First Quarter Budget Adjustments.
2. **Safety and Human Resources Committee** did not meet on March 26, 2018 due to lack of agenda items.
3. **Technology Committee** did not meet earlier tonight due to lack of agenda items.

F. Reports from Other Committees, Commissions and Boards *(Informational Only-Not Read)*

1. **Civil Service Commission** met on March 27, 2018; and
 - a. Adopted the changes as presented in Civil Service Resolution No. 001-18; and,
 - b. Pending approval by City Council, approved the Police Department posting for the position of Patrolman and the Fire Department posting for the position of Firefighter/Paramedic for 60 days with the National Testing Network.
2. **Parks and Rec Board** met on March 28, 2018; and
 - a. Discussed the playground structure for Glenwood Park; and
 - b. was updated on the spring programming and capital improvements.

G. Introduction of New Ordinances and Resolutions

1. **Resolution No. 016-18**, a Resolution Authorizing the City Manager to Execute any and all Documents necessary to Prepare, Apply for and Accept Funding through the Ohio Department of Transportation's (ODOT) Transportation Alternative Program (TAP) for the project known as the Napoleon Nonmotorized Facilities Network Gaps Project; and Declaring an Emergency. *(Suspension Requested)*
2. **Ordinance No. 017-18**, an Ordinance Amending Section 195.04 (Rule 4.1, Place of Examination and Administration, Rule 4.2, Notice of Examination for Original Appointment, Rule 4.4, Human Resource Department Assistance, 4.5.1, Examination for Original appointment, Rule 4.5.3, Method of Examination, and Rule 4.16, Examination Grading Methods), of the Civil Service Code of the City of Napoleon, Ohio; and Declaring an Emergency. *(Suspension Requested)*

H. Second Readings of Ordinances and Resolutions

1. **Ordinance No. 009-18**, an Ordinance Amending the City of Napoleon Traffic Schedules, specifically Schedule II, "Parking Time Limits" on Certain Streets as Listed in the Attached Exhibit A and Repealing Ordinance No. 037-16; and Declaring an Emergency.
2. **Resolution No. 010-18**, a Resolution Authorizing the Expenditure of Funds Over Twenty-Five Thousand Dollars (\$25,000.00) for the Purpose of Preparing the City of Napoleon's Comprehensive Master Plan with Thoroughfare Plan Provisions in and for the City of Napoleon, Ohio, and to Sole Source said Comprehensive Master Plan to Reveille, LTD.; and Declaring an Emergency.

3. **Ordinance No. 011-18**, an Ordinance Amending a Certain Section of the Personnel Code Chapter 197 of the Codified Ordinances of the City of Napoleon, Ohio; and Declaring an Emergency.
4. **Resolution No. 012-18**, a Resolution Approving a Fifty Dollar (\$50.00) Surcharge to City of Napoleon, Ohio Health Insurance Premiums; and Declaring an Emergency
5. **Ordinance No. 014-18**, an Ordinance Authorizing the City Manager to enter into a Contract or Contracts for the Sale of City Owned Bulk Electric System (BES) 138KV Assets to American Municipal Power, Inc.; and Declaring an Emergency. *(Suspension Requested)*

I. Third Readings of Ordinances and Resolutions

1. **Resolution No. 006-18**, a Resolution to Amend the City of Napoleon, Ohio Municipal Tax Code Section 194.134R and to Correct a Scrivener's Error, Amending the Referenced Language.

J. Good of the City *(Any other business as may properly come before Council, including but not limited to):*

1. **Discussion/Action:** to Direct the Law Director to prepare legislation for First Quarter Budget Adjustments.
2. **Discussion/Action:** Request to Sole Source Software Upgrade for SCADA at the Wastewater Treatment Plant to Koester's.
3. **Discussion/Action:** Approval of Change Order No. 12 for the Water Treatment Plant Rehabilitation Project, an Increase of \$41,297.00.
4. **Discussion/Action:** Approval of Plans and Specifications for the Sanitary Sewer Cleaning (Phase 2) Project.

K. Executive Session. *(as may be needed)*

L. Approve Payment of Bills and Approve Financial Reports *(In the absence of any objections or corrections, the payment of bills and financial reports shall stand approved.)*

M. Adjournment



Gregory J. Heath
Finance Director/Clerk of Council

A. ITEMS REFERRED OR PENDING IN COMMITTEES OF COUNCIL

1. **Technology & Communication Committee (1st Monday)**
(Next Regular Meeting: April 2, 2018 @6:15 pm)
 2. **Electric Committee (2nd Monday)**
(Next Regular Meeting: Monday, April 09, 2018 @6:15 pm)
 - a. Review of Power Supply Cost Adjustment Factor for April 2018
 - b. Status of Transmission Ownership.
 - c. Electric Department Report.
 3. **Water, Sewer, Refuse, Recycling & Litter Committee (2nd Monday)**
(Next Regular Meeting: Monday, April 09, 2018 @7:00 pm)
 4. **Municipal Properties, Buildings, Land Use & Economic Development Committee (2nd Monday)**
(Next Regular Meeting: Monday, April 09, 2018 @7:30 pm)
 - a. Updated Information from Staff on Economic Development (as needed)
 5. **Parks & Recreation Committee (3rd Monday)**
(Next Regular Meeting: Monday, April 16, 2018 @6:00 pm)
 7. **Finance & Budget Committee (4th Monday)**
(Next Regular Meeting: Monday, April 23, 2018 @6:30 pm)
 - a. Municipal Tax Code (Tabled).
 8. **Safety & Human Resources Committee (4th Monday)**
(Next Regular Meeting: Monday, April 23, 2018 @7:30 pm)
 9. **Personnel Committee (as needed)**
- B. Items Referred or Pending In Other City Committees, Commissions & Boards**
1. **Board of Public Affairs (2nd Monday)**
(Next Regular Meeting: Monday, April 09, 2018 @6:15 pm)
 - a. Review of Power Supply Cost Adjustment Factor for April 2018
 - b. Status of Transmission Ownership.
 - c. Electric Department Report
 2. **Board of Zoning Appeals (2nd Tuesday)**
(Next Regular Meeting: Tuesday, April 10, 2018 @4:30 pm)
 3. **Planning Commission (2nd Tuesday)**
(Next Regular Meeting: Tuesday, April 10, 2018 @5:00 pm)
 4. **Tree Commission (3rd Monday)**
(Next Regular Meeting: Monday, April 16, 2018 @6:00 pm)
 5. **Civil Service Commission (4th Tuesday)**
(Next Regular Meeting: Tuesday, April 24, 2018 @4:30 pm)
 6. **Parks & Recreation Board (Last Wednesday)**
(Next Regular Meeting: Wed., April 25, 2018 @6:30 pm)
 7. **Privacy Committee (2nd Tuesday in May & November)**
(Next Regular Meeting: Tuesday, May 8, 2018 @10:30 am)
 8. **Records Commission (2nd Tuesday in June & December)**
(Next Regular Meeting: Tuesday, June 12, 2018 @4:00 pm)
 9. **Housing Council (April 16, 2018 at 6:45 pm)**
 10. **Health Care Cost Committee (as needed)**
 11. **Preservation Commission (as needed)**
 12. **Napoleon Infrastructure/Economic Development Fund Review Committee [NIEDF] (as needed)**
 13. **Tax Incentive Review Council (as needed)**
 14. **Volunteer Firefighters' Dependents Fund Board (as needed)**
 15. **Volunteer Peace Officers' Dependents Fund Board (as needed)**
 16. **Lodge Tax Advisory & Control Board (as needed)**
 17. **Board of Building Appeals (as needed)**
 18. **ADA Compliance Board (as needed)**

CITY COUNCIL

MEETING MINUTES

MONDAY, MARCH 19, 2018 AT 7:00 PM

PRESENT	
Councilmembers	Joseph D. Bialorucki-Council President, Dan Baer-Council President Pro-Tem, Jeff Comadoll, Jeff Mires, Lori Sicclair, Ken Haase
Mayor	Jason P. Maassel
City Manager	Joel L. Mazur
Law Director	Billy D. Harmon
Finance Director/Clerk	Gregory J. Heath
Recorder	Roxanne Dietrich
City Staff	David J. Mack, Chief of Police Clayton O'Brien, Fire Chief Chad Lulfs, Public Works Director
Others	NCTV, Newsmedia
ABSENT	
Councilmember	Travis Sheaffer
Call to Order	Council President Bialorucki called the meeting to order at 7:00 pm with the Lord's Prayer followed by the Pledge of Allegiance.
Swearing-in of Patrolman	The newest City of Napoleon Patrolman, Kyle Wright, was sworn in by Mayor Maassel.
Fire Captain Sworn In	Fire Captain Tyler Reiser was sworn in by Mayor Maassel.
Approval of Minutes	Hearing no objections or corrections, the minutes from the March 05, 2018 meeting stand approved as presented.
Citizen Communication	None.
Reports from Council Committees	Electric Committee for March 12, 2018 was canceled by the chair. Water, Sewer, Refuse, Recycling and Litter Committee met on March 12, 2018; and Chairman Comadoll reported numerous things were discussed including, cost-based billing, the water rate review study and the digester at the wastewater treatment plant needs cleaned but they are going to hold off for another year. Acting Chair Mires reported the Municipal Properties, Building, Land Use and Economic Development Committee met on March 12, 2018 and the committee's recommendation was that a moratorium be set on the fees for single family residential homes starting in July of 2018 and ending in December in 2020 and to bring back to Council in 2020 as well.
Introduction of Resolution No. 007-18 Repair of Perry Street	Council President Bialorucki read by title, Resolution No. 007-18 , a Resolution Authorizing the Expenditure of Funds Over Twenty-Five Thousand Dollars (\$25,000.00) for the purpose of Repairing the Roller Supports and Insulation of

**Motion to Approve First
Read of 010-18
Discussion**

Motion: Mires Second: Comadoll
to approve First Read of Resolution No. 010-18.
City Manager Mazur reported that Reveille completed the 2009 Master Plan for the City and the plan for the CIC therefore he is familiar with the area and there will be a lot less learning in putting together the master plan. We are requesting first read tonight, after taking a look at the budget, it was observed the master plan was removed from engineering, the intent was to have it in the administration budget, I went through the budget meeting minutes I know this was discussed and cannot answer why this did not get in the budget. I would request this item be put on the agenda for the Finance and Budget meeting and reviewed again on April 2nd. Maassel asked how much are we looking at. Mazur answered \$35,000 was put in engineering; but it did not belong there and somehow just got dropped. Maassel asked how the plan would be used. Mazur replied, it will take a year to put together the wants and needs for the City, we wanted to have it done so we know what to budget for next year. Lulfs added, engineering and planning refer to the master plan often when developers come in, for the most part a lot of the things in the 2009 master plan were followed. Mazur said the Ohio TAP grant asked if we have a master plan, there are a lot of grants out there that require master plan updates for grant writing. Suspension will be requested at the next meeting.

**Passed
Yea-6
Nay-0**

Roll call vote on the above motion:
Yea- Mires, Haase, Siclair, Comadoll, Baer, Bialorucki
Nay-

**City Master Plan Referred
to Finance & Budget Comm**

Council President Bialorucki referred *City Master Plan* to the Finance and Budget Committee.

**Introduction of Resolution
No. 011-18
Amend Personnel Code
Chapter 197**

Council President Bialorucki read by title, **Ordinance No. 011-18**, an Ordinance Amending a Certain Section of the Personnel Code Chapter 197 of the Codified Ordinances of the City of Napoleon, Ohio; and Declaring an Emergency.

**Motion to Approve First
Read of 011-18**

Motion: Mires Second: Comadoll
to approve First Read of Ordinance No. 011-18.

Discussion

Mazur said the Health Care Cost Committee has been working on putting together a wellness program based on the recommendation from Chapman & Chapman. The Health Care Cost Committee approved this language and are encouraging employees to participate in the wellness program. We will be receiving approximately \$6,700 in funding from Aetna that can be used for employee incentives to participate in the wellness program. The committee has not made any recommendations for incentives yet.

**Passed
Yea-6
Nay-0**

Roll call vote to approve First Read of Resolution No. 011-18:
Yea-Mires, Haase, Siclair, Comadoll, Baer, Bialorucki
Nay-

	<p>with people being sick.</p> <p>I would request the first quarter budget adjustment be referred to the Finance and Budget Committee for next week and also request that a presentation by AccuMed on write-offs and EMS billings be referred out also.</p>
First Quarter Budget Adjustment and AccuMed Presentation Referred to Finance and Budget Committee	Council President Bialorucki referred to the Finance and Budget Committee First Quarter Budget Adjustments and Presentation by AccuMed on write-offs and EMS billings.
Siclair	I would ask that <i>Disposal of Excess Property in the City</i> be referred to the Municipal Properties committee for discussion.
Disposal of Excess Property in the City Referred to Municipal Properties Committee	Council President Bialorucki referred to the Municipal Properties, Building, Land Use and Economic Development Committee Discussion on Disposal of Excess Property in the City.
Comadoll	I had a gentleman come into the hardware, he was upset that on Friday night the code enforcement people put a letter on his front door without knocking and physically giving him the letter, I checked into the situation, and the gentleman had a sanitary sewer replacement done without using a contractor registered with the City of Napoleon, the gentleman or contractor is to come down to the City and talk to them.
Baer	<p>Canceled the Safety and Human Resources Committee meeting for next week.</p> <p>Chief Mack, are we still down one patrolman?</p> <p>Chief Mack replied yes sir, at the next Civil Service Commission meeting we will be talking about going to the National Testing Network, trying to beef up that list. A presenter will be there to talk about what they can do for the Police and Fire.</p>
Bialorucki	Want to commend the Chief of Police on a great job, obviously Napoleon is not where you want to rob places, pretty much everybody is caught that attempts to commit a robbery. Good job, much appreciated.
Maassel	<p>There was a ribbon cutting for Spherion who opened an office at Walmart.</p> <p>I went to the Northern Ohio ED annual meeting, they talked about water in the Toledo area with all the satellite communities, that was interesting.</p> <p>I received a hand-written note from Senator Brown thanking me for our input during the APPA rally.</p>
Appointments to Housing Advisory Board	<p>Mayor Maassel made the following appointments to the Housing Advisory Board:</p> <p>Greg Beck – Builder</p> <p>Trudie Wachtman - Realtor</p> <p>Chris Chamberlain - Business Owner</p> <p>Kelly Burkhart – Agency</p> <p>Joe Moser – Citizen-at-Large</p>



City of Napoleon, Ohio

Department of Public Works

255 West Riverview Avenue, P.O. Box 151

Napoleon, OH 43545

Chad E. Lulfs, P.E., P.S., Director of Public Works

Telephone: (419) 592-4010 Fax: (419) 599-8393

www.napoleonohio.com

Memorandum

To: Joel L. Mazur, City Manager
From: Chad E. Lulfs, P.E., P.S., Director of Public Works
cc: Mayor & City Council
Gregory J. Heath, City Finance Director
Date: March 19, 2018
Subject: 2018 Transportation Alternatives Program Grant
Application – Legislation of Support and Authority
to Sign Documents

Staff is currently pursuing funding to cover a portion of the costs associated with designing and constructing a multi-use path on Jahns Road, W. Riverview Avenue, and other minor locations to increase connectivity between the area around the school, the trail system in Ritter Park, and our downtown. As part of this program, legislation illustrating City Council's support of this project, as well as authorization to sign all documents, is required. Please direct the Law Director to draft the appropriate legislation.

CEL

RESOLUTION NO. 016-18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO PREPARE, APPLY FOR AND ACCEPT FUNDING THROUGH THE OHIO DEPARTMENT OF TRANSPORTATION'S (ODOT) TRANSPORTATION ALTERNATIVE PROGRAM (TAP) FOR THE PROJECT KNOWN AS THE NAPOLEON NONMOTORIZED FACILITIES NETWORK GAPS PROJECT; AND DECLARING AN EMERGENCY

WHEREAS, the City of Napoleon, Ohio is in the process of upgrading its sidewalks and multi-use paths; and,

WHEREAS, the Ohio Department of Transportation (ODOT) through the Transportation Alternative Program (TAP), provides funds to local governments for projects that enhance the transportation experience by improving the cultural, aesthetic, and environmental aspects of transportation infrastructure; and,

WHEREAS, the City of Napoleon, Ohio intends to apply for TAP funds from ODOT for the purpose of rendering improvements to gaps in the existing network of nonmotorized facilities, including City owned sidewalks and bike paths; and,

WHEREAS, the City of Napoleon, Ohio has previously submitted a letter of interest to ODOT for TAP funding; and,

WHEREAS, the City of Napoleon, Ohio has received from ODOT an invitation to complete a full application for said funding; and,

WHEREAS, City Staff has identified the potential project as being eligible to support an official application and recommends that the City Council authorize the submittal of an application for said project; **Now Therefore**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the City Manager is directed to execute any and all documents necessary to prepare, apply for and accept funding through the Ohio Department of Transportation's (ODOT) Transportation Alternative Program (TAP) for the project known as the Napoleon Nonmotorized Facilities Network Gaps Project.

Section 2. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 3. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 4. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to receive essential Federal and State grants; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law. Further, the Emergency Clause is necessary to enter into the stated contract in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Section 5.

Passed: _____
Joseph D. Bialorucki, Council President

Approved: _____
Jason P. Maassel, Mayor

VOTE ON PASSAGE _____ Yea _____ Nay _____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Resolution No. 016-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

ORDINANCE NO. 017-18

AN ORDINANCE AMENDING SECTION 195.04 (RULE 4.1, PLACE OF EXAMINATION AND ADMINISTRATION, RULE 4.2, NOTICE OF EXAMINATION FOR ORIGINAL APPOINTMENT, RULE 4.4, HUMAN RESOURCE DEPARTMENT ASSISTANCE, 4.5.1, EXAMINATION FOR ORIGINAL APPOINTMENT, RULE 4.5.3, METHOD OF EXAMINATION, AND RULE 4.16, EXAMINATION GRADING METHODS), OF THE CIVIL SERVICE CODE OF THE CITY OF NAPOLEON, OHIO; AND DECLARING AN EMERGENCY

WHEREAS, the Civil Service Commission met on March 26, 2018 and adopted rule changes as found in 195.04 of the Codified Ordinances of Napoleon, Ohio, subject to Council's approval; **Now Therefore**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, Section 195.04 of the City of Napoleon, Ohio Codified Ordinances, being a part of the Civil Service Rules, shall be amended and enacted as follows:

“Rule 4.1 Place of Examination and Administration

Commission examinations may be held at such places as the commission deems advisable and shall be administered under its direction. The commission may designate others to conduct examinations on their behalf, subject to its review and approval. Absent written legislation or motion properly approved by this Commission establishing a different procedure, the Commission shall use the National Testing Network to administer the examinations for original appointment for City of Napoleon, Ohio Police Officer and Firefighter/Paramedic positions.

Rule 4.2 Notice of Examination for Original Appointment

Absent written legislation or motion properly approved by this Commission establishing a different procedure, notice of competitive examinations for original appointment shall be provided by the ~~office of the finance director (or council clerk when one exists).~~ National Testing Network. ~~The commission may authorize the clerk's providing of publication of notice to be completed by the city's human resource department when such department exists.~~ Absent written legislation or motion properly approved by this Commission establishing a different procedure, notice shall be accomplished through ~~a newspaper of general circulation in the municipality and by posting notices conspicuously on the municipal building bulletin boards in the department where appointment is needed, i.e., police department or fire department, and in such other places as may be deemed advisable, not less than two (2) weeks prior to such examinations. Such notice shall contain a clear statement showing the following:~~

- ~~1) The title of the position for which the examination is to be held.~~
- ~~2) The duties of the position or a summary of the duties.~~
- ~~3) The minimum qualifications of age, education, and experience required of all applicants.~~

- ~~4) The last day and hour on which applications will be received.~~
- ~~5) Examination fees required, if any.~~
- ~~6) A statement whether a medical or psychological exam is required.~~
- ~~7) Proof required for veteran's preference (or military/veteran's service credit on examinations if allowed) and requirement that proof be filed with application.~~
- ~~8) Proof required of educational credit, when allowed.~~
- ~~9) The place where application blanks may be secured and the place where they must be filed, the place where classification specifications and/or position descriptions may be secured, and any other information that may be deemed necessary."~~ the current procedure used by the National Testing Network, including several recruitment channels such as links to National Testing Network department websites, and online and local job advertising.

Rule 4.3 Promotional Examination for Competitive Classified Positions

Notice of competitive examinations for promotion shall be provided by the office of the finance director (or council clerk when one exists). The commission may authorize the clerk's providing of this notice to be completed by the city's human resource department when such department exists. Notice of competitive promotional examinations to be held shall be given by posting of bulletins in conspicuous places in the departments whose employees may be interested. Such notice shall be given not less than (30) days prior to the examination. Such notice shall contain the following information:

- 1) The title of the position for which the promotional examination is to be held.
- 2) The class or classes of employees who are eligible to make application for admission to the examination.
- 3) The salary range for the position.
- 4) The last day and hour on which applications will be received.
- 5) The minimum qualifications of education and experience required for all applicants, if any.
- 6) The place where application blanks may be secured and the place where they must be filed, and any other information that may be deemed necessary."

Rule 4.4 Human Resource Department Assistance

In addition to examination notice and publication assistance by the human resource department pursuant to Rules ~~4.2 and~~ 4.3, the commission may authorize city's human resource department, when one exists, to accept applications, preliminarily evaluate the same for consideration by the Commission, and to distribute study guides.

Rule 4.5 Examination Scope: Subjects and Weight Thereof

Rule 4.5.1 Examination for Original Appointment

Examinations for original appointment shall be practical in character and shall relate directly to those matters which will fairly test the relative capacity of the person examined to discharge the particular duties of the position for which appointment is sought. ~~The commission shall prescribe the subjects of each examination and the relative weights to be attached thereto provided that any such determination must have been adopted prior to the date of such examination.~~ Absent written legislation or motion properly approved by this Commission establishing a different procedure, the Commission shall use the services of the National Testing Network for original appointment examinations for Police Officer and Firefighter/Paramedic.

Rule 4.5.2 Promotional Examination

Promotional examinations shall relate to those matters that test the relative capacity of the person examined to discharge the particular duties of the position for which promotion is sought.

Rule 4.5.3 Method of Examination

Examinations may include written examination, oral examination, performance examination, evaluation of experience, practical demonstrations of skills, and/or such other forms of examination as the Civil Service Commission deems appropriate. Structured interviews conducted by the appointing authority after an eligible list is certified shall not be construed as

part of the testing process by the commission, but merely a process of selection by the appointing authority.

Rule 4.6 Medical and/or Psychological as a Requirement for Appointment to the Competitive Classified Service

When a medical or psychological examination is required for appointment to the competitive service, such requirement shall be published in the examination announcement. Disclosure of any reports prepared by the examining practitioner is subject to Chapter 1347 of the Ohio Revised Code. Medical examinations shall be required for all competitive examinations (conducted in the police and fire departments), including examinations required by the Police and Fire Disability and Pension Fund. Such medical examinations shall be post-offer, pre-employment, except any examinations necessary to determine whether an applicant is fit to participate in the examination process. Psychological examinations may be conducted at the request of the appointing authority.

Rule 4.7 Admitting Applicants to Examination

No applicant shall be admitted to any assembled examination more than thirty (30) minutes after the advertised time for beginning such examination, or after any applicant competing in any such examination has completed his or her work and left the examination room, except by special permission of the person in charge, who, at his or her discretion, may admit the applicant conditionally, subject to the final approval or disapproval of such admission by the commission.

Rule 4.8 No Extension of Time to be Given

No applicant in any examination shall be given a longer time on any subject than prescribed by the commission. The commission may establish separate time limits for reasonable individual accommodation of otherwise qualified applicants with disabilities.

Rule 4.9 Examination Fraud Prohibited

No person or office shall:

- 1) Willfully or corruptly by himself or herself or in cooperation with one (1) or more persons defect, deceive, or obstruct any person in respect of his or her right of examination, appointment, or employment arising under these Rules and Procedures; or
- 2) Willfully or corruptly, falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of these Rules and Procedures, or aid in so doing; or
- 3) Willfully or corruptly make any false representations concerning the results of such examinations or concerning any person examined; or

- 4) Willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, or to be appointed, employed or promoted; or
 - 5) Willfully personate any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination, registration, or appointment, or application or request to be examined, registered or appointed; or
 - 6) Furnish any false information about himself or herself, or any other person, in connection with any examination, registration, or appointment or application or request to be examined, registered or appointed; or
 - 7) Make known or assist in making known to any applicant for examination, any question to be asked on such examination; or
 - 8) Being an applicant, take an examination to assist any other applicant in any manner whatsoever; or
 - 9) Personally solicit a favor from any member of the commission, appointing authority, or have any person in his or her behalf solicit a favor; or
 - 10) Being an applicant in any examination, be found to be using any means of information, other than that provided in the examination itself, such as memoranda, pamphlets or books of any kind to assist him or her in answering the questions.
- Any applicant found in violation of this rule, in addition to any other penalty found in rule or law, shall have his or her examination papers taken up and filed with a zero marking when the circumstances justify such action.

Rule 4.10 Visitors at Examination

No visitors shall be admitted to the examination room during any examination except by special permission of the examiner in charge. The examiner in charge may provide for assistance for applicants with disabilities who are otherwise qualified, provided, however, that such applicants notify the commission, in writing, no later than forty-eight (48) hours prior to the examination that such assistance will be required. Any such assistance shall be limited to reading the examination and/or marking the answers as directed by the applicants. Any outside assistants shall be approved and/or provided by the commission.

Rule 4.11 Inspection of Examination Papers

Any competitor shall have the right at any time within the period of fifteen (15) days after receiving his or her notice of examination grade to review own papers and inform himself or herself as to the markings given him or her on each subject or question and to submit in writing for the commission's consideration, any objection or protest he or she may wish to make concerning the grades given him or her. No objection or protest concerning an examination, not submitted in writing, shall be considered unless it relates to the conduct of examiners, the securing of unlawful assistance by a competitor or such other circumstances in connection with an examination as would call for an investigation on the part of the commission, and which would require that the information submitted be given in confidence. An applicant who exercises the right to inspect his or her examination papers shall not be permitted to again take an examination for the same classification within a six (6) month period following the inspection, unless an alternate form of examination is given. Inspection shall not be permitted of standardized tests prepared by experts outside the city service, where such inspection would tend to reduce the validity of test results.

Rule 4.12 Examinations Postponed

Examinations, unless postponed, must be held upon dates fixed by the commission. Examinations may be postponed by order of the commission, which order shall designate the reason therefor. Reasonable efforts shall be made to inform applicant of cancellation or postponements. The type of notice is within the sole discretion of the commission.

Rule 4.13 Educational Prerequisites – Educational Credit

The Civil Service Commission may establish specific educational requirements as prerequisites for examination for positions under its jurisdiction, or for certification of persons for appointment to such positions. Educational credit, which may include education credit by way of certification, and/or by way of prior in service training within the department for which an eligible list is being created, shall not be a part of, but shall be a credit to be added to the person's base earned grade given in the regular examination in which the person receives a passing grade resulting from the competitive examination for original appointment to positions under the jurisdiction of the commission where the commission has elected to grant such credit. The commission may grant such credit in an amount and under conditions deemed appropriate by the commission when determining fitness and merit; provided, that such amount is established in advance of any affected examination; and provided, that no such credit shall be added to a person's examination grade unless the applicant achieves at least the minimum passing grade as established in Rule 4.17 on the examination without counting any additional credit; moreover, in order to be eligible to receive the credit, the applicant must submit proof of such education at the time of filing the application. Any additional credit given under this provision shall be in terms of a percent of the person's base earned grade given in the applicant's regular examination, unless otherwise method is authorized by the commission.

Rule 4.14 Release Time for Examinations

City employees shall be allowed necessary time off without loss of pay to compete in any civil service examination conducted by the commission for the classification in which the employee is serving as a provisional. The appointing authority may grant time off without loss of pay for up to two (2) additional examinations during any one (1) calendar year. If the employee wishes to take additional examinations, the appointing authority may require that the employee take vacation leave, compensatory time or leave without pay.

Rule 4.15 Rating of Applicants

Exclusions and extra credits:

Rule 4.15.1 Credit for Veteran's Service Credit in Examinations For Original Appointment

In the case of an original appointment, the commission may grant veteran's service credit, which shall also mean military service credit, to any applicant who has completed service in the uniformed services and who has (1) been honorably discharged from the uniformed services or (2) transferred to the reserve with evidence of satisfactory service; and, any member of the national guard or a reserve component of the armed forces of the United States who has completed more than one hundred eighty days (180) of active duty service pursuant to an executive order of the President of the United States or an act of the Congress of the United States. Credit for service in the armed forces of the United States shall not be a part of but shall be a credit to be added to the applicant's base earned grade resulting from the competitive examination for original appointment to positions under the commission's jurisdiction where the commission has elected to grant such

credit. The commission may grant veteran's service credit in an amount and under conditions deemed appropriate by the commission when determining fitness and merit; provided that such amount is established in advance of any affected examination; and provided that no such credit shall be added to an applicant's examination grade unless the applicant achieves at least the minimum passing grade as established in Rule 4.17 on the examination without counting any additional credit; moreover, in order to be eligible to receive the credit, the applicant must submit proof of honorable discharge or applicable military service (a certificate of service or honorable discharge or equivalent as determined by the commission) at the time of filing the application. Any additional credit given under this provision shall be in terms of a percent of the person's base earned grade given in the applicant's regular examination, unless another method is authorized by the commission.

Rule 4.15.2 Seniority Credit Prohibited

Except as otherwise provided in Rule 9.5.2(1) of these rules and procedures, in promotional examinations, no additional credit for seniority or efficiency in the civil service of the city, the state, or any other political subdivision of Ohio shall be added to the examination grade. This provision shall not be construed as limiting the commission's ability to use seniority as a tie breaker.

Rule 4.15.3 Political or Religious Questions Prohibited

No questions in any examination shall relate to political or religious opinions or affiliations.

Rule 4.16 Examination Grading Methods

The total grade attainable in each examination, except for special credits as outlined above, shall be one hundred (100%) percent. In examinations composed of more than one (1) part the method of scoring shall be:

- 1) Each part of the examination shall be separately rated and the proficiency of each competitor determined on the basis of a scale of one hundred (100%) percent for maximum possible attainment.
- 2) Each part shall be assigned a weight which shall be based on the relative value of the part to that of the entire examination expressed in terms of tenth (1-10th) of the total.
- 3) The earned grade of each examinee in each part of the examination shall be multiplied by the weight assigned to the part and the sum of the total shall be the earned grade for the participant.
- 4) Notwithstanding the above, any physical agility portion of the examination for original appointment to the position of Police Officer shall be administered by the commission and shall be ~~merely pass or fail with no specific weight assigned~~ based on the Cooper Standards. In the event that an applicant fails the physical agility portion, no further consideration to the applicant for appointment shall be given. If the applicant has passed the physical certification process of the Ohio Peace Officer Training Academy (OPOTA) within the previous year, but not more than one (1) year prior to the date of the original examination for Police Officer, the commission will accept that certification for the physical agility portion of the original examination for Police Officer. The physical agility portion of the original examination for Firefighter/Paramedic will be administered by the National Testing Network using the standard of the Firefighter's Mile. The commission will accept the Firefighter Mile card for the physical agility portion of the original examination for Firefighter/Paramedic.

Upon completion of the grading process, each applicant shall be notified by regular U.S. mail, with proof of mailing required to his or her last address on file with the commission, as to his or her grade.

Rule 4.17 Passing Grade

The passing grade of any examination administered pursuant to these Rules and Procedures, exclusive of any additional credits that may offered, shall be a minimum of seventy (70%) percent.

Rule 4.18 Changing of Grades

No grades given in any examination shall be changed after the posting of an eligible list, except after the consideration of reasons submitted in writing by the competitor objecting and report thereon by the commission's properly authorized examiners; provided that the commission may correct clerical errors of examiners or employees at any time before the cancellation of such lists.

Rule 4.19 Repeating Examinations

An applicant who has competed in a civil service examination may not repeat that examination or take an examination for the same classification within six (6) months from the date of original examination, unless an alternative form of examination is given, or unless other standards are specified in the examination announcement, provided that the commission may waive in writing this rule upon written request from an applicant stating substantial reasons for granting such waiver.

Rule 4.20 Preservation of Examination Papers

Applications and final scores of all candidates for employment in the classified service shall be secured on file in the office of the finance director, or in the case when a specific council clerk exists, then such clerk, until such time as a new examination is given.

(Ord. 039-10. Passed 6-7-10.)”

Section 2. That, Sections 195.04, Rule 4.1, Rule 4.2, Rule 4.4, Rule 4.5.1, and Rule 4.16 as existed prior to the enactment of this Resolution shall be amended subject to City Council approving the changes as contained in the Resolution by Ordinance or Resolution of the City Council.

Section 3. That, it is found and determined that all formal actions of this Civil Service Commission concerning and relating to the adoption of this Resolution were adopted in open meetings of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon, Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 5. That, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Further, the Emergency Clause is necessary to commence the amendments in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Passed: _____

Joseph D. Bialorucki, Council President

Approved: _____

Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 017-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

CIVIL SERVICE RESOLUTION NO. 001-18

A RESOLUTION AMENDING SECTION 195.04 (RULE 4.1, PLACE OF EXAMINATION AND ADMINISTRATION, RULE 4.2, NOTICE OF EXAMINATION FOR ORIGINAL APPOINTMENT, RULE 4.4, HUMAN RESOURCE DEPARTMENT ASSISTANCE, 4.5.1, EXAMINATION FOR ORIGINAL APPOINTMENT, AND RULE 4.16, EXAMINATION GRADING METHODS), OF THE CIVIL SERVICE CODE OF THE CITY OF NAPOLEON, OHIO

WHEREAS, the Civil Service Commission desires to amend sections of Rule 4.1, Rule 4.2, Rule 4.4, Rule 4.5.1, and Rule 4.16 as contained in Section 195.04 of the City of Napoleon, Ohio Codified Ordinances, subject to approval by City Council; **Now Therefore,**

BE IT RESOLVED BY THE CIVIL SERVICE COMMISSION OF THE CITY OF NAPOLEON, OHIO, WITH A MAJORITY OF ITS MEMBERS CONCURRING THERETO:

Section 1. That, Section 195.04 of the City of Napoleon, Ohio Codified Ordinances, being a part of the Civil Service Rules, shall be amended and enacted as follows:

“Rule 4.1 Place of Examination and Administration

Commission examinations may be held at such places as the commission deems advisable and shall be administered under its direction. The commission may designate others to conduct examinations on their behalf, subject to its review and approval. ~~Absent written legislation or motion properly approved by this Commission establishing a different procedure, the Commission shall use the National Testing Network to administer the examinations for original appointment for City of Napoleon, Ohio Police Officer and Firefighter/Paramedic positions.~~

Rule 4.2 Notice of Examination for Original Appointment

~~Absent written legislation or motion properly approved by this Commission establishing a different procedure, notice of competitive examinations for original appointment shall be provided by the office of the finance director (or council clerk when one exists). National Testing Network. The commission may authorize the clerk's providing of publication of notice to be completed by the city's human resource department when such department exists.~~ Absent written legislation or motion properly approved by this Commission establishing a different procedure, notice shall be accomplished through ~~a newspaper of general circulation in the municipality and by posting notices conspicuously on the municipal building bulletin boards in the department where appointment is needed, i.e., police department or fire department, and in such other places as may be deemed advisable, not less than two (2) weeks prior to such examinations. Such notice shall contain a clear statement showing the following:~~

- ~~1) The title of the position for which the examination is to be held.~~
- ~~2) The duties of the position or a summary of the duties.~~
- ~~3) The minimum qualifications of age, education, and experience required of all applicants.~~
- ~~4) The last day and hour on which applications will be received.~~
- ~~5) Examination fees required, if any.~~

~~6) A statement whether a medical or psychological exam is required.~~
~~7) Proof required for veteran's preference (or military/veteran's service credit on examinations if allowed) and requirement that proof be filed with application.~~
~~8) Proof required of educational credit, when allowed.~~
~~9) The place where application blanks may be secured and the place where they must be filed, the place where classification specifications and/or position descriptions may be secured, and any other information that may be deemed necessary."~~ the current procedure used by the National Testing Network, including several recruitment channels such as links to National Testing Network department websites, and online and local job advertising.

Rule 4.3 Promotional Examination for Competitive Classified Positions

Notice of competitive examinations for promotion shall be provided by the office of the finance director (or council clerk when one exists). The commission may authorize the clerk's providing of this notice to be completed by the city's human resource department when such department exists. Notice of competitive promotional examinations to be held shall be given by posting of bulletins in conspicuous places in the departments whose employees may be interested. Such notice shall be given not less than (30) days prior to the examination. Such notice shall contain the following information:

- 1) The title of the position for which the promotional examination is to be held.
- 2) The class or classes of employees who are eligible to make application for admission to the examination.
- 3) The salary range for the position.
- 4) The last day and hour on which applications will be received.
- 5) The minimum qualifications of education and experience required for all applicants, if any.
- 6) The place where application blanks may be secured and the place where they must be filed, and any other information that may be deemed necessary."

Rule 4.4 Human Resource Department Assistance

In addition to examination notice and publication assistance by the human resource department pursuant to Rules ~~4.2 and~~ 4.3, the commission may authorize city's human resource department, when one exists, to accept applications, preliminarily evaluate the same for consideration by the Commission, and to distribute study guides.

Rule 4.5 Examination Scope: Subjects and Weight Thereof

Rule 4.5.1 Examination for Original Appointment

Examinations for original appointment shall be practical in character and shall relate directly to those matters which will fairly test the relative capacity of the person examined to discharge the particular duties of the position for which appointment is sought. ~~The commission shall prescribe the subjects of each examination and the relative weights to be attached thereto provided that any such determination must have been adopted prior to the date of such examination.~~ Absent written legislation or motion properly approved by this Commission establishing a different procedure, the Commission shall use the services of the National Testing Network for original appointment examinations for Police Officer and Firefighter/Paramedic.

Rule 4.5.2 Promotional Examination

Promotional examinations shall relate to those matters that test the relative capacity of the

person examined to discharge the particular duties of the position for which promotion is sought.

Rule 4.5.3 Method of Examination

Examinations may include written examination, oral examination, performance examination, evaluation of experience, practical demonstrations of skills, and/or such other forms of examination as the Civil Service Commission deems appropriate. Structured interviews conducted by the appointing authority after an eligible list is certified shall not be construed as part of the testing process by the commission, but merely a process of selection by the appointing authority.

Rule 4.6 Medical and/or Psychological as a Requirement for Appointment to the Competitive Classified Service

When a medical or psychological examination is required for appointment to the competitive service, such requirement shall be published in the examination announcement. Disclosure of any reports prepared by the examining practitioner is subject to Chapter 1347 of the Ohio Revised Code. Medical examinations shall be required for all competitive examinations (conducted in the police and fire departments), including examinations required by the Police and Fire Disability and Pension Fund. Such medical examinations shall be post-offer, pre-employment, except any examinations necessary to determine whether an applicant is fit to participate in the examination process.

Psychological examinations may be conducted at the request of the appointing authority.

Rule 4.7 Admitting Applicants to Examination

No applicant shall be admitted to any assembled examination more than thirty (30) minutes after the advertised time for beginning such examination, or after any applicant competing in any such examination has completed his or her work and left the examination room, except by special permission of the person in charge, who, at his or her discretion, may admit the applicant conditionally, subject to the final approval or disapproval of such admission by the commission.

Rule 4.8 No Extension of Time to be Given

No applicant in any examination shall be given a longer time on any subject than prescribed by the commission. The commission may establish separate time limits for reasonable individual accommodation of otherwise qualified applicants with disabilities.

Rule 4.9 Examination Fraud Prohibited

No person or office shall:

- 1) Willfully or corruptly by himself or herself or in cooperation with one (1) or more persons defect, deceive, or obstruct any person in respect of his or her right of examination, appointment, or employment arising under these Rules and Procedures; or
- 2) Willfully or corruptly, falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of these Rules and Procedures, or aid in so doing; or
- 3) Willfully or corruptly make any false representations concerning the results of such examinations or concerning any person examined; or
- 4) Willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, or to be appointed, employed or promoted; or

- 5) Willfully personate any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination, registration, or appointment, or application or request to be examined, registered or appointed; or
 - 6) Furnish any false information about himself or herself, or any other person, in connection with any examination, registration, or appointment or application or request to be examined, registered or appointed; or
 - 7) Make known or assist in making known to any applicant for examination, any question to be asked on such examination; or
 - 8) Being an applicant, take an examination to assist any other applicant in any manner whatsoever; or
 - 9) Personally solicit a favor from any member of the commission, appointing authority, or have any person in his or her behalf solicit a favor; or
 - 10) Being an applicant in any examination, be found to be using any means of information, other than that provided in the examination itself, such as memoranda, pamphlets or books of any kind to assist him or her in answering the questions.
- Any applicant found in violation of this rule, in addition to any other penalty found in rule or law, shall have his or her examination papers taken up and filed with a zero marking when the circumstances justify such action.

Rule 4.10 Visitors at Examination

No visitors shall be admitted to the examination room during any examination except by special permission of the examiner in charge. The examiner in charge may provide for assistance for applicants with disabilities who are otherwise qualified, provided, however, that such applicants notify the commission, in writing, no later than forty-eight (48) hours prior to the examination that such assistance will be required. Any such assistance shall be limited to reading the examination and/or marking the answers as directed by the applicants. Any outside assistants shall be approved and/or provided by the commission.

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Any competitor shall have the right at any time within the period of fifteen (15) days after receiving his or her notice of examination grade to review own papers and inform himself or herself as to the markings given him or her on each subject or question and to submit in writing for the commission's consideration, any objection or protest he or she may wish to make concerning the grades given him or her. No objection or protest concerning an examination, not submitted in writing, shall be considered unless it relates to the conduct of examiners, the securing of unlawful assistance by a competitor or such other circumstances in connection with an examination as would call for an investigation on the part of the commission, and which would require that the information submitted be given in confidence. An applicant who exercises the right to inspect his or her examination papers shall not be permitted to again take an examination for the same classification within a six (6) month period following the inspection, unless an alternate form of examination is given. Inspection shall not be permitted of standardized tests prepared by experts outside the city service, where such inspection would tend to reduce the validity of test results.

Rule 4.12 Examinations Postponed

Examinations, unless postponed, must be held upon dates fixed by the commission.

Examinations may be postponed by order of the commission, which order shall designate the reason therefor. Reasonable efforts shall be made to inform applicant of cancellation or postponements. The type of notice is within the sole discretion of the commission.

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The Civil Service Commission may establish specific educational requirements as prerequisites for examination for positions under its jurisdiction, or for certification of persons for appointment to such positions. Educational credit, which may include education credit by way of certification, and/or by way of prior in service training within the department for which an eligible list is being created, shall not be a part of, but shall be a credit to be added to the person's base earned grade given in the regular examination in which the person receives a passing grade resulting from the competitive examination for original appointment to positions under the jurisdiction of the commission where the commission has elected to grant such credit. The commission may grant such credit in an amount and under conditions deemed appropriate by the commission when determining fitness and merit; provided, that such amount is established in advance of any affected examination; and provided, that no such credit shall be added to a person's examination grade unless the applicant achieves at least the minimum passing grade as established in Rule 4.17 on the examination without counting any additional credit; moreover, in order to be eligible to receive the credit, the applicant must submit proof of such education at the time of filing the application. Any additional credit given under this provision shall be in terms of a percent of the person's base earned grade given in the applicant's regular examination, unless otherwise method is authorized by the commission.

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City employees shall be allowed necessary time off without loss of pay to compete in any civil service examination conducted by the commission for the classification in which the employee is serving as a provisional. The appointing authority may grant time off without loss of pay for up to two (2) additional examinations during any one (1) calendar year. If the employee wishes to take additional examinations, the appointing authority may require that the employee take vacation leave, compensatory time or leave without pay.

Rule 4.15 Rating of Applicants

Exclusions and extra credits:

Rule 4.15.1 Credit for Veteran's Service Credit in Examinations For Original Appointment

In the case of an original appointment, the commission may grant veteran's service credit, which shall also mean military service credit, to any applicant who has completed service in the uniformed services and who has (1) been honorably discharged from the uniformed services or (2) transferred to the reserve with evidence of satisfactory service; and, any member of the national guard or a reserve component of the armed forces of the United States who has completed more than one hundred eighty days (180) of active duty service pursuant to an executive order of the President of the United States or an act of the Congress of the United States. Credit for service in the armed forces of the United States shall not be a part of but shall be a credit to be added to the applicant's base earned grade resulting from the competitive examination for original appointment to positions under the commission's jurisdiction where the commission has elected to grant such credit. The commission may grant veteran's service credit in an amount and under conditions deemed appropriate by the commission when determining fitness and merit; provided that such

amount is established in advance of any affected examination; and provided that no such credit shall be added to an applicant's examination grade unless the applicant achieves at least the minimum passing grade as established in Rule 4.17 on the examination without counting any additional credit; moreover, in order to be eligible to receive the credit, the applicant must submit proof of honorable discharge or applicable military service (a certificate of service or honorable discharge or equivalent as determined by the commission) at the time of filing the application. Any additional credit given under this provision shall be in terms of a percent of the person's base earned grade given in the applicant's regular examination, unless another method is authorized by the commission.

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- 1) Each part of the examination shall be separately rated and the proficiency of each competitor determined on the basis of a scale of one hundred (100%) percent for maximum possible attainment.
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Upon completion of the grading process, each applicant shall be notified by regular U.S. mail, with proof of mailing required to his or her last address on file with the commission, as to his or her grade.

Rule 4.17 Passing Grade

The passing grade of any examination administered pursuant to these Rules and Procedures, exclusive of any additional credits that may offered, shall be a minimum of seventy (70%) percent.

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No grades given in any examination shall be changed after the posting of an eligible list, except after the consideration of reasons submitted in writing by the competitor objecting and report thereon by the commission's properly authorized examiners; provided that the commission may correct clerical errors of examiners or employees at any time before the cancellation of such lists.

Rule 4.19 Repeating Examinations

An applicant who has competed in a civil service examination may not repeat that examination or take an examination for the same classification within six (6) months from the date of original examination, unless an alternative form of examination is given, or unless other standards are specified in the examination announcement, provided that the commission may waive in writing this rule upon written request from an applicant stating substantial reasons for granting such waiver.

Rule 4.20 Preservation of Examination Papers

Applications and final scores of all candidates for employment in the classified service shall be secured on file in the office of the finance director, or in the case when a specific council clerk exists, then such clerk, until such time as a new examination is given. (Ord. 039-10. Passed 6-7-10.)”

Section 2. That, Sections 195.04, Rule 4.1, Rule 4.2, Rule 4.4, Rule 4.5.1, and Rule 4.16 as existed prior to the enactment of this Resolution shall be amended subject to City Council approving the changes as contained in the Resolution by Ordinance or Resolution of the City Council.

Section 3. That, it is found and determined that all formal actions of this Civil Service Commission concerning and relating to the adoption of this Resolution were adopted in open meetings of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon, Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 5. That, upon passage, this Resolution shall take effect at the earliest time permitted by law.

Passed: March 27, 2018

Bill Finnegan
Bill Finnegan, Commission Chair

VOTE ON PASSAGE 3 Yea 0 Nay 0 Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director



City of Napoleon, Ohio

Department of Public Works

255 West Riverview Avenue, P.O. Box 151

Napoleon, OH 43545

Chad E. Lulfs, P.E., P.S., Director of Public Works

Telephone: (419) 592-4010 Fax: (419) 599-8393

www.napoleonohio.com

Memorandum

To: Joel L. Mazur, City Manager
From: Chad E. Lulfs, P.E., P.S., Director of Public Works
cc: Mayor & City Council
Gregory J. Heath, City Finance Director
Date: March 19, 2018
Subject: 2017 Downtown Improvements Project – Revised Parking

As part of the above referenced project, a large portion of the downtown parking was modified. I am requesting that Council approve the revisions to the parking schedule as attached to the proposed legislation.

CEL

ORDINANCE NO. 009-18

AN ORDINANCE AMENDING THE CITY OF NAPOLEON TRAFFIC SCHEDULES, SPECIFICALLY SCHEDULE II, "PARKING TIME LIMITS" ON CERTAIN CITY STREETS AS LISTED IN THE ATTACHED EXHIBIT A; AND REPEALING ORDINANCE NO. 037-16; AND DECLARING AN EMERGENCY

WHEREAS, the City Manager, pursuant to authority granted in the Charter of the City of Napoleon, establishes traffic control in the City of Napoleon;

WHEREAS, the current parking time limits and parking restrictions need to be updated on certain City streets as provided in the attached Exhibit A due to the recent Downtown Improvement Project; **Now Therefore**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the City of Napoleon Ohio hereby amends Schedule II of the City of Napoleon Traffic Schedules to reflect parking time limits and restrictions on certain City streets as provided in the attached Exhibit A.

Section 2. That any changes needed to pages, page numbers, or appendixes are hereby approved to accommodate for the above amendment.

Section 3. That, Ordinance No. 037-16 as existed prior to the enactment of this Ordinance, is repealed in its entirety.

Section 4. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 5. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 6. That, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law. Further, the Emergency Clause is necessary to enforce the stated changes in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Passed: _____

Joseph D. Bialorucki, Council President

Approved: _____

Jason P. Maassel, Mayor

VOTE ON PASSAGE _____ Yea _____ Nay _____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 009-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the ____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances Of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

Exhibit A – Ord. No. 009-18

Street	Between	Side	Restriction	Spaces
Clinton St., E.	Perry St./Monroe St.	S	30 Min. (2A-5A) 2 Hour (5A - 6P) Handicapped Parking Only	1
Clinton St., E.	Perry St./Monroe St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	2-17
Clinton St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking Only	1
Clinton St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6 P)	2
Clinton St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking Only	3
Clinton St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6 P)	4-18
Clinton St., W.	Scott St./Perry St.	N	No parking except during Church service; and at times of special events approved by Chief of Police.	1 (166 Feet)
Clinton St., W.	Webster St./Scott St.	S	None	1-7
Clinton St., W.	Scott St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-9
Main St. Parking Lot	Main St./Alley	W	30 Min. (2A - 5A) 2 10 Hour 5A-2A	1-8
Main St. Parking Lot	Main St./Alley	W. Center	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-11
Main St. Parking Lot	Main St./Alley	W		9-12
Main St. Parking Lot	Main St./Alley	E. Center	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-10
Main St. Parking Lot	Main St./Alley	E	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-10
Main St. W.	Perry St./Scott St.	S	No parking all day	5-21
Main St. W.	Perry St./Scott St.	N	No parking all day	1-2
Main St. W.	Webster St./Scott St.	S	No Parking (7:30A - 8:30A) No Parking (2:30 P - 3:30P) on	17-27

			school days	
Main St., W.	Scott St./Webster St.	N		1-8
Main St., W.	Scott St./Webster St.	S		1-2
Main St., W.	Webster St./Avon Pl.	N		1-15
Main St., W.	Webster St./Avon Pl.	S	4 Hour (7:30A - 3:30P) on school days	1-2
Main St., W.	Avon Pl./Webster St.	S		3-7
Main St., W.	Avon Pl./Webster St.	S	No Parking (7:30A - 8:30A) No Parking (2:30P - 3:30P) on school days	8-14
Main St., W.	Avon Pl./Webster St.	S	Handicapped Parking Only	15-16
Main St., W.	Webster St./Scott St.	S		28-29
Main St., W.	Perry St./Scott St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-4
Main St., W.	Perry St./Scott St.	N	Handicapped Parking only	1
Main St., W.	Perry St./Scott St.	N	None	2-3
Meekison St.	Perry St./Appian Ave.	Both	No Parking at all times	
Monroe St. Parking Lot	Shelby St./Clinton St., E.	E	County Government use only	1-6
Monroe St. Parking Lot	Shelby St./Clinton St., E.	E	30 Min (2A - 5P)	7-18
Monroe St. Parking Lot	Shelby St./Clinton St., E.	W	30 Min (2A - 5A)	1-16
Monroe St.	Alley/to sign	E	No Parking 8A - 3:30P on school days	1 (50 Feet)
Monroe St.	Sign/Clinton St.	E	No Parking 8A - 9A and 3P - 3:30P school days only	1 (110 Feet)
Monroe St.	Shelby St./Clinton St., E.	W		1-11
Monroe St.	Shelby St./Clinton St.	W	Handicapped Parking only	12
Monroe St.	Washington St., E./Riverview Ave.	W	No Parking	0
Monroe St.	Clinton St./Washington St.	W	30 Min. (2A - 5A) Handicapped Parking only	1
Monroe St.	Clinton St./Washington St.	W	30 Min. (2A - 5A)	2-16
Monroe St.	Washington St./Alley	E	30 Min. (2A - 5A)	1-5
Monroe St.	Clinton St./Shelby St.	E	30 Min. (2A - 5A)	1-14

Oakwood Ave.	Railroad St./Perry St.	W		1-25
Oakwood Ave.	Perry St./Monroe St.	E		1-11
Perry St.	Riverview Ave./Front St.	W	5 Min. - (loading zone)	1 (40 Feet)
Perry St.	Riverview Ave./Washington St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-8 2-6, 9
Perry St.	Riverview Ave./Washington St.	E	Handicapped Parking only	9 1, 7-8
Perry St.	Riverview Ave./Washington St.	E	Police use only	10
Perry St.	Shelby St./Railroad St.	E	30 Min. (2A-5P) All Day	9-11
Perry St.	Shelby St./Railroad St.	W	2 Hour	1-6
Perry St.	Clinton St./Washington St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking only	1
Perry St.	Clinton St./Washington St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P)	2-11
Perry St.	Clinton St./Washington St.	W	2 Hour (5A - 6P) 30 Min. (2A - 5A) Handicapped Parking only	1, 7
Perry St.	Clinton St./Washington St.	W	30 Min. (2A - 5A) 2 Hour (5A - 6P)	2-11 2-6, 8-11
Perry St.	Clinton St./Shelby St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-4
Perry St.	Clinton St./Shelby St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking only	5
Perry St.	Shelby St./Railroad St.	E	30 Min. (2A - 5A) All Day	10-12
Perry St.	Shelby St./Clinton St.	W	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-5
Perry St.	Washington St./Main St.	W	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1- 9 4
Scott St.	Clinton St./Washington St.	W	2 Hour (5A - 6P) 30 Min. (2A - 5A)	1-6
Scott St.	Washington St./Main St.	W	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-10
Scott St.	Main St./Washington St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-7

Scott St.	Washington St./Clinton St.	E	2 Hour (5A - 6P) 30 Min. (2A - 5A) Handicapped Parking only	1
Scott St.	Washington St./Clinton St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P)	2-5
Scott St.	Clinton St./Shelby St.	E	30 Min. (2A - 5A) 2 Hour (5A - 6P) Special Event parking within block only with Chief of Police approval	1 (80 Feet)
Shelby St. Parking Lot	Alley/Perry St.	N	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-13
Shelby St. Parking Lot	Alley/Perry St.	Center	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-13
Shelby St. Parking Lot	Alley/Perry St.	S	30 Min. (2A - 5A) 10 Hour (5A - 2A)	1-11
St. Paul Methodist Church Parking Lot	Washington St./Alley	E	30 Min. (2A - 5A)	1-14
St. Paul Methodist Church Parking Lot	Washington St./Alley	W	30 Min. (2A - 5A)	1-5
St. Paul Methodist Church Parking Lot	Washington St./Alley	W	30 Min. (2A - 5A) Handicap Parking Only	6-7
St. Paul Methodist Church Parking Lot	Washington St./Alley	W	30 Min. (2A - 5A)	8-13
Washington St., E.	Hobson St./Monroe St.	S	30 Min.	1-5
Washington St., E.	Hobson St./Monroe St.	S	5 Min. (loading zone only)	6
Washington St., E.	Hobson St./Monroe St.	S		7-9
Washington St., E.	Hobson St./Monroe St.	N		1-11
Washington St., E.	Monroe St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-4
Washington St., E.	Monroe St./Perry St.	S	Sheriff use only	11-13
Washington St., W.	Webster St./Avon Pl.	S		1-5
Washington St., W.	Webster St./Avon Pl.	S	Handicap Parking Only	6
Washington St., W.	Webster St./Avon Pl.	S		7
Washington St., E.	Monroe St./Perry St.	N	30 Min. (2A-5A) 2 Hour (5A-6P)	1-5 1, 5

			Handicap Parking Only	
Washington St., E.	Monroe St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	6-10 6-7, 9-10
Washington St., E.	Monroe St./Perry St.	S	30 Min.	5
Washington St., E.	Monroe St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	14-18
Washington St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6P)	2-4, 6-15
Washington St., E.	Monroe St./Perry St.	N	30 Min.	16
Washington St., E.	Monroe St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6P)	17-19
Washington St., W.	Scott St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-10
Washington St., W.	Scott St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking only	11-12
Washington St., W.	Scott St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	13-22
Washington St., E. W.	Scott St./Perry St.	N	30 Min. (2A - 5A) 2 Hour (5A - 6P)	1-6
Washington St., E. W.	Scott St./Perry St. needs restriction sign	N	30 Min. (2A - 5A) 2 Hour (5A - 6P) Handicapped Parking only	7
Washington St., E. W.	Scott St./Perry St.	S	30 Min. (2A - 5A) 2 Hour (5A - 6P)	8-21
Washington St., W.	Scott St./Webster St.	N	Handicapped Parking only 30 Min.	1
Washington St., W.	Scott St./Webster St.	N	30 Min.	2-4
Washington St., W.	Scott St./Webster St.	N		5-7
Washington St., W.	Scott St./Webster St.	S	Special event parking within block only with Chief of Police approval	1 (180 Feet)
Washington St., W.	Scott St./Webster St.	N	No Parking except during Church services and at times of special events approved by Chief of Police	8-10
Webster St.	Washington St./Clinton St.	E	Handicap Parking Only	1
Webster St.	Washington St./Clinton St.	E	4 Hour (7A - 5P) 30 Min. (2A - 5A)	2-5

Webster St.	Washington St./Clinton St.	E	Handicapped Parking only	6-7
Webster St.	Washington St./Clinton St.	E	4 Hour (7A - 5P) 30 Min. (2A - 5A)	8-9
Webster St.	Washington St./Main St.	W	4 Hour (7A - 5P) 30 Min. (2A - 5A)	1-8
Webster St.	Washington St./Main St.	W	Handicapped Parking only	9
Webster St.	Washington St./Main St.	W	18 Hour	10-18
Webster St.	Main St./Washington St.	E	18 Hour	1-17
Webster St.	Washington St./Clinton St.	E	18 Hour	10-22
Webster St.	Clinton St./Washington St.	W	18 Hour	1-22
Briarheath Ave.	Clairmont Ave./Westmont Ave.	W		1-3
Briarheath Ave.	Westmont Ave./Westchester Ave.	W		1-3
Main St. Concrete Parking Lot	Main St./Alley	E (side)		1-5
Main St. Concrete Parking Lot	Main St./Alley	E (side center)		1-3
Main St. Concrete Parking Lot	Main St./Alley	W (side center)		1-3
Main St. Concrete Parking Lot	Main St./Alley	E (side West)		1-4
Main St. Concrete Parking Lot	Main St./Alley	W (side West)		1-4
Main St. Concrete Parking Lot	Main St./Alley	W (side West)	Motorcycle Only	5



City of Napoleon, Ohio

Engineering Department

255 West Riverview Avenue, P.O. Box 151

Napoleon, OH 43545

Chad E. Lulfs, P.E., P.S., Director of Public Works

Telephone: (419) 592-4010 Fax: (419) 599-8393

www.napoleonohio.com

Memorandum

To: Joel L. Mazur, City Manager
From: Chad E. Lulfs, P.E., P.S., Director of Public Works
cc: Mayor & City Council
Gregory J. Heath, City Finance Director
Date: March 19, 2018
Subject: 2018 City Comprehensive Plan Update – Sole Source Request

Included in the 2018 Budget is the update of the City's Comprehensive Plan. I request that this project be sole sourced to Reveille, LTD. The staff of Reveille prepared the previous Comprehensive Plan for the City of Napoleon, as well as the most recent Comprehensive Plan for Henry County. Staff from Reveille also assisted with the most recent Zoning Code updates for the City of Napoleon.

Because of Reveille's knowledge of the City, Henry County, and our experience working with them, I am requesting that the 2018 City Comprehensive Plan Update be sole sourced to Reveille, LTD.

CEL

RESOLUTION NO. 010-18

A RESOLUTION AUTHORIZING THE EXPENDITURE OF FUNDS OVER TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) FOR THE PURPOSE OF PREPARING THE CITY OF NAPOLEON'S COMPREHENSIVE MASTER PLAN WITH THOROUGHFARE PLAN PROVISIONS IN AND FOR THE CITY OF NAPOLEON, OHIO, AND TO SOLE SOURCE SAID COMPREHENSIVE MASTER PLAN TO REVEILLE, LTD.; AND DECLARING AN EMERGENCY

WHEREAS, the City originally adopted a Master Plan in the year 1957; and,
WHEREAS, over the years, changes in the City required revisions to the Master Plan which includes "Thoroughfare Plan" [referred to as "Comprehensive Plan"] and were adopted pursuant to Ordinance No.(s) 017-03 and 008-09; and,

WHEREAS, the preparation of the City of Napoleon's Comprehensive Master Plan was previously approved by City Council in the City of Napoleon 2018 Budget; and,

WHEREAS, the cost to prepare said Master Plan and asset management exceeds twenty-five thousand dollars (\$25,000.00); and,

WHEREAS, the City of Napoleon desires to sole source this project to Reveille, LTD. because of Reveille's intimate knowledge of the City's infrastructure (the staff of Reveille has prepared the previous Comprehensive Master Plan and Zoning Code updates for the City of Napoleon, as well as the most recent Comprehensive Plan for Henry County) will expedite the project; therefore, it is the opinion of this Council that it is in the best interest of the City of Napoleon to eliminate the necessity for competitive bidding and/or quality based selection; **Now Therefore**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the City of Napoleon authorizes the expenditure of funds in excess of twenty-five thousand dollars (\$25,000.00) to prepare the City of Napoleon's Comprehensive Master Plan with thoroughfare plan provisions in and for the City of Napoleon, Ohio.

Section 2. That, Council finds it to be in the best interest of the City to eliminate the necessity for competitive bidding and/or quality based selection.

Section 3. That, the City Manager is authorized to enter into a Contract with Reveille, LTD. to prepare said Comprehensive Master Plan.

Section 4. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 5. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 6. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to begin the preparation in a timely manner, which is related to the public peace, health or safety accessible to our citizens; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Passed: _____
Joseph D. Bialorucki, Council President

Approved: _____
Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Resolution No. 010-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances Of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

ORDINANCE NO. 011-18

AN ORDINANCE AMENDING A CERTAIN SECTION OF THE PERSONNEL CODE CHAPTER 197 OF THE CODIFIED ORDINANCES OF THE CITY OF NAPOLEON, OHIO; AND DECLARING AN EMERGENCY

WHEREAS, City Council acknowledges that from time to time it must review the various codes and policies of the City of Napoleon; and,

WHEREAS, City Council now desires to amend the Personnel Code of the City of Napoleon, Ohio; **Now Therefore**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the City of Napoleon, Ohio does hereby amend and enact Chapter 197.15(a)(3) of the Codified Ordinances of the City of Napoleon, Ohio as follows:

“197.15 MAJOR PAID BENEFITS

(a) Hospital and Medical Benefits

(1) Applicability

This section (Major Paid Benefits) applies to all members or officers of the appointing authority and other full-time regular employees, both classified and unclassified; specifically exempt from this section are members of city council, the mayor, and, except as herein provided, the judge of the municipal court. Section 197.15(d) (Pensions) applies to members of council and the mayor. The judge of the municipal court shall receive City shared contributions towards benefits as contained in this Section 197.15 to the extent permitted by law. Unless specifically authorized for part-time, permanent part-time or temporary employees by this Code or other controlling law, such part-time, permanent part-time or temporary employees are not eligible for major benefits, paid leave, or any other benefits described in this Code.

(2) Scope of Health Benefits

Subject to reasonable cost containment measures, the City provides group hospitalization, surgical, and extended medical benefits for each full-time regular employee in accordance with the benefit schedule provided in the City’s plan as on file in the office of the City Finance Director marked “City of Napoleon Health Benefit Plan (#HBP-1)” and as may be amended from time to time by resolution of Council. The Health Benefit Plan shall include covered services, co-pays and premium contribution.

(3) Preventative Care Wellness Program

The City of Napoleon cares about the health and safety of employees. The goal of a Preventative Care Wellness program is to educate employees on how to use their benefits wisely and to promote participation in health and wellness programs. As determined by the Healthcare Cost Committee, employee premiums may be adjusted for employees that choose to participate or not. In addition, employee incentives may be provided to employees who choose to participate in the wellness

program. Should funding be made available by the healthcare provider, all incentives must be pre-approved by said healthcare provider.
Examples of incentives may include Wellness Fairs, wellness magazine subscriptions, registration fees for walkathons (5k, etc.), athletic shoes, water bottles, fitness trackers, discounted diet programs, discounted gym memberships on-site chair massages, healthy eating cookbooks, etc.
Wellness events and challenges may take place throughout the year to earn incentives. If an employee has an idea for a program or event they are encouraged to submit them to a member on the Healthcare Cost Committee or Human Resources.”

Section 2. That, it is found and determined that all formal action of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon, Ohio.

Section 3. That, unless otherwise stated, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City and for the further reason that this Ordinance is required to be immediately effective in order to effectuate the changes prior to personnel issues that may arise due to the conflict in past practices versus the actual Code; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: _____

Joseph D. Bialorucki, Council President

Approved: _____

Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 011-17 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances Of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

RESOLUTION NO. 012-18

**A RESOLUTION APPROVING A FIFTY DOLLAR (\$50.00)
SURCHARGE TO CITY OF NAPOLEON, OHIO HEALTH
INSURANCE PREMIUMS; AND DECLARING AN EMERGENCY**

WHEREAS, Section 197.15 (a) (2) of the Codified Ordinances (Personnel Code) provides that: Subject to reasonable cost containment measures, the City provides group hospitalization, surgical, and extended medical benefits for each full-time regular employee in accordance with the benefit schedule provided in the City's plan as on file in the office of the City Finance Director marked "BORMA Benefit Plan" and as may be amended from time to time by Resolution of Council. The BORMA Benefit Plan shall include covered services, co-pays, and premium contribution; and,

WHEREAS, the Health Care Cost Committee has recommended to City Council to approve a surcharge to City of Napoleon employees' health insurance premiums as follows: to add a fifty dollar (\$50.00) monthly surcharge to employees' health insurance premiums starting December 7, 2018 to employees that do not complete a wellness check by a licensed physician prior to November 30, 2018. Further, employees that complete the wellness check during the dates of December 1, 2017 through November 30, 2018 and turn in the Preventative Care Physician form by November 30, 2018, will not be assessed a surcharge. New employees will be afforded an opportunity to get a wellness check in their first year prior to being assessed a surcharge; and,

WHEREAS, there was no recommendation to change the health plan in the year 2018 regarding the out-of-pocket in network deductible currently; **Now Therefore**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, upon recommendation of the Health Care Committee, in and for the year 2018, this Council approves a fifty dollar (\$50.00) monthly surcharge to employees' health insurance premiums starting December 7, 2018 to employees that do not complete a wellness check by a licensed physician prior to November 30, 2018. Further, employees that complete the wellness check during the dates of December 1, 2017 through November 30, 2018 and turn in the Preventative Care Physician form by November 30, 2018, will not be assessed a surcharge. New employees will be afforded an opportunity to get a wellness check in their first year prior to getting assessed a surcharge.

Section 2. That, all provisions of the BORMA Benefit Plan shall remain in full force and effect.

Section 3. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 1. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law. Further, the Emergency Clause is necessary to enter into the stated surcharge in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Passed: _____
Joseph D. Bialorucki, Council President

Approved: _____
Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Resolution No. 012-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

ORDINANCE NO. 014-18

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT OR CONTRACTS, FOR THE SALE OF CITY OWNED BULK ELECTRIC SYSTEM (BES) 138KV ASSETS TO AMERICAN MUNICIPAL POWER, INC.; AND DECLARING AN EMERGENCY

WHEREAS, the City of Napoleon, Ohio owns Bulk Electric System (BES) 138KV assets at the Northside Substation and related equipment; and,

WHEREAS, American Municipal Power, Inc. (“AMP”), is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric capacity and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of AMP members (“Members”), such Members, including Municipality, being political subdivisions that operate municipal electric utility systems in Delaware, Indiana, Kentucky, Ohio, Maryland, Michigan, Pennsylvania, Virginia and West Virginia; and,

WHEREAS, recent Federal Energy Regulatory Commission (“FERC”), North American Electric Reliability Corporation (“NERC”) and PJM Interconnection, L.L.C. (“PJM”) regulations require Municipality to become a NERC and PJM transmission owner, thereby substantially increasing the number of regulations imposed upon Municipality; and,

WHEREAS, AMP is willing to purchase Municipality’s transmission facilities in order to relieve Municipality of the transmission owner obligations and responsibilities associated with the ownership and operation of the aforementioned equipment. **Now Therefore,**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, The City Manager is hereby authorized to enter into a contract or contracts with AMP for the sale of Bulk Electric System (BES) Transmission Elements and related Protection System equipment and appurtenances.

Section 2. That, any other Ordinances and Resolutions or portions of Ordinances and Resolutions inconsistent herewith are hereby repealed, but any Ordinances and Resolutions or portions of Ordinances and Resolutions not inconsistent herewith and which have not previously been repealed are hereby ratified and confirmed.

Section 3. That, it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 5. That, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law. Further, the Emergency Clause is necessary to enter into the stated contract in a timely manner which affects the public peace, health, and safety accessible to our citizens, and for further reasons as stated in the Preamble hereof.

Passed: _____
Joseph D. Bialorucki, Council President

Approved: _____
Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 014-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director

ASSET PURCHASE AND SALE AGREEMENT

between

THE CITY OF NAPOLEON, OHIO

(Seller)

and

AMERICAN MUNICIPAL TRANSMISSIONPOWER, LLINC.

(Buyer)

Dated ●

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (this “Agreement”) is made and entered into this ___ day of _____, 2018 (the “Effective Date”), by and between The City of Napoleon, Ohio, an Ohio municipal corporation (“Seller”), and American Municipal ~~Transmission Power, LLC Inc.~~, an Ohio nonprofit ~~corporation~~ limited liability company (“Buyer”). Seller and Buyer are referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Seller owns four 138 kV SF6 Siemens breakers and associated equipment, including 138kV current and voltage transformers, wave traps, station post insulators and associated equipment, as more particularly described on Exhibit A (collectively the “Equipment”).

B. Seller also owns certain ancillary equipment used or useful in connection with the operation of the Equipment, including certain galvanized steel structures, substation equipment, insulators, ground components, a bus conductor, fittings, supervisory control and data access equipment, and protection and control panels, as more particularly described on Exhibit B (collectively, the “Ancillary Equipment”).

C. As a result of Seller’s ~~continued~~ ownership of the Equipment, recent Federal Energy Regulatory Commission (“FERC”) ~~and~~, North American Electric Reliability Corporation (“NERC”) ~~and PJM Interconnection, L.L.C. (“PJM”)~~ regulations would require Seller to become a NERC ~~and PJM~~ transmission owner, and recent FERC and PJM Interconnection, L.L.C. (“PJM”) regulations would require Seller to become a PJM transmission owner, thereby substantially increasing the number of regulations imposed upon Seller, if it continues to own the Equipment.

D. Buyer is an Ohio nonprofit ~~corporation~~ limited liability company, ~~and a subsidiary of American Municipal Power, Inc. (“AMP”)~~, organized to own and operate facilities, or to provide otherwise, for the ~~generation, transmission or distribution~~ of electric ~~capacity and energy, or any combination thereof~~, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of ~~its~~ AMP’s members, including Seller.

E. Buyer has been developing certain programs and services to be provided to ~~its participating Members~~ AMP’s members and Buyer is willing to purchase Seller’s Equipment to relieve Seller of the transmission owner obligations and responsibilities associated with the ownership and operation of the Equipment.

F. Seller desires to sell, and Buyer desires to purchase, the Equipment and related rights, as set forth more fully herein (collectively, the “Transferred Assets”) and to provide a lease to Buyer granting access to Buyer to the Transferred Assets and Ancillary Equipment, in the form attached as Exhibit C (the “Lease”), on the terms and conditions set forth in this Agreement. The Lease will, among other things, have a term of 35 years, have a total aggregate rent payment of \$22,000 for the full term of the lease (\$628.57/year), which shall be fully prepaid at the Closing, be renewable for additional 35-year periods ~~[RGI]~~ so long as Buyer or its successors or assigns own any of the Equipment, or replacements thereof or additions thereto,

and shall require Seller to maintain the Ancillary Equipment in a fashion to permit the continued safe and efficient operation of the Equipment.

G. To further protect Buyer's rights to access the Transferred Assets and the Ancillary Equipment, after the transfer of the Transferred Assets, Seller agrees to grant to Buyer perpetual easements and rights of way to access, operate, maintain and otherwise deal with the Transferred Equipment and any replacements and substitutions thereof, pursuant to that certain Easement in the form attached as Exhibit D (the "Easement").

H. The Parties seek to enter into an Operation and Maintenance Agreement (the "O&M Agreement"), ~~in the form attached as Exhibit E~~, pursuant to which Seller agrees to assume certain responsibilities and implement procedures with respect to the operation and maintenance of the Transferred Assets on behalf of Buyer.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Certain Defined Terms. For purposes of this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings specified:

"Acquisition Proposal" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or a material portion of the Transferred Assets, excluding sales of power or other assets in the ordinary course of business except as would materially interfere with the consummation of the Transactions.

"Affiliate" of a specified Person means any other Person which, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by contract or otherwise. In no event shall Seller or Buyer be deemed to be "Affiliates" of each other for purposes of this Agreement.

"Approvals" means notices to, and approvals, consents, authorizations and waivers from, Persons who are not Governmental Authorities, other than Buyer and Seller.

"Assigned Contracts" mean those contracts listed on Schedule 3.9(a) attached hereto.

"Business Day" means any day other than Saturday, Sunday, or any day on which banks located in the State of ~~New York or~~ Ohio are authorized or obligated to close.

"Buyer's Required Regulatory Approvals" means all approvals specified on Schedule 4.4(b).

“Capital Projects” means those capital projects listed on Schedule 1.1(a), if any.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.

“Closing” means the consummation of the Transactions, as measured on the date Buyer transmits the wire for payment of the Estimated Purchase Price made by or on behalf of Buyer to the order of Seller. The Closing shall be deemed to have occurred at 11:59 p.m. on the Closing Date.

“Commercially Reasonable Efforts” means efforts in accordance with reasonable commercial practice for owners and operators of similar assets and without incurrence of unreasonable expense in light of the objective to be accomplished.

“Contract” means any written agreement, lease, license, option, guaranty, right-of-way, evidence of indebtedness, mortgage, indenture, security agreement, purchase order, promissory note or other contract.

“Dispute” means any dispute, controversy or claim arising out of or relating to this Agreement or the other Transaction Documents, or the Transactions, or the breach, termination or invalidity hereof or thereof.

“Dollars” and “\$” mean the lawful currency of the United States of America.

“Encumbrance” means any lien, deed of trust, easement, right of way, equitable interest, option, right of first refusal, preferential purchase right or similar right, pledge, security interest, mortgage, encumbrance of or exception to title, or other similar lien or encumbrance in or on the Transferred Assets.

“Environmental Law” means all Laws relating to pollution or protection of the environment, natural resources or human health and safety, as the same may be amended or adopted, including Laws relating to Releases or threatened Releases of Hazardous Materials (including Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Materials, including CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 8 2601 through 2629; the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; and any similar Laws of the State of Ohio or of any other Governmental Authority having jurisdiction over the Transferred Assets; and regulations implementing the foregoing.

“Environmental Matters” means any matter, fact or circumstance relating to the Seller or the Transferred Assets ~~or Transferred Assets~~, as applicable, pertaining to Environmental Laws,

Hazardous Materials, Licenses required pursuant to the Environmental Laws, Releases, and Contracts or Approvals principally related to compliance with the Environmental Laws.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any (i) federal, state, local, tribal, municipal, foreign or other government, (ii) any governmental, regulatory or administrative agency, board, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, including NERC and FERC, (iii) any court or governmental tribunal, or (iv) any other organization having governmental, regulatory, administrative, taxing or police powers, in each case acting within the scope of its authority or jurisdiction, provided that neither Party shall be deemed to be a “Governmental Authority” for purposes of determining whether its approval of this Agreement is a required governmental consent or License.

“Hazardous Materials” means any chemicals, materials or substances, in whatever form they exist, in each case, which are regulated as pollutants or contaminants, or as toxic or hazardous under Environmental Law, including petroleum products, asbestos, urea formaldehyde foam insulation, and lead-containing paints and coatings.

“Indebtedness” means indebtedness for borrowed money of a Person, including without duplication: (a) all obligations of the Person evidenced by notes, bonds, debentures or other similar instruments, (b) all obligations of the Person under letters of credit to the extent drawn, (c) obligations of the Person under guarantees by the Person of the Indebtedness of another Person, (d) any obligations of the Person under any capitalized leases, and (e) any obligations of the Person in respect of any interest rate or other hedge agreements.

“Independent Accountant” means _____, or if it is not independent from both Parties or is unwilling or unable to serve, a mutually agreeable nationally recognized independent certified public accounting firm, independent as to both Buyer and Seller, more fully described in Section 2.9.

~~“Intellectual Property” means the following intellectual property rights, both statutory and common law rights under domestic and foreign Laws, if applicable: (a) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (b) trademarks, service marks, trade names, slogans, domain names, logos, trade dress, and registrations and applications for registrations thereof together with all of the goodwill associated therewith; (c) mask works and registrations and applications for registration thereof; (d) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, patent disclosures and inventions, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom; (e) computer software programs, applications, data, data bases and related technical documentation; (f) trade secrets and confidential information, including ideas, formulas, compositions, research and development information, customer and supplier lists and~~

~~information, drawings, specifications, designs, concepts, compilations of information, plans, proposals, methods, techniques, procedures, processes and other know how and inventions, whether or not patentable and whether or not reduced to practice; and (g) copies and tangible embodiments thereof (in whatever form or medium), excluding in each case shrink wrapped, click wrapped or other off the shelf or other generally commercially available licenses.~~

“Interim Operational Period” means the period from the Effective Date of this Agreement until the earlier of the Closing or termination of this Agreement.

“Inventory” means ~~(a)~~ Seller’s interest in any inventory or spare parts used primarily in, on or for the Transferred Assets and a proportionate share of other spare parts owned by Seller that are used for the Transferred Assets and other purposes, based on Seller’s reasonable estimates of the total value of the Power Station compared to the Estimated Purchase Price, including Inventory that is in transit to or from the Power Station.

“Knowledge” of a Party means (y) with respect to Seller, the knowledge (after due inquiry) of all the Persons listed on Schedule 1.1(b) and, (z) with respect to Buyer, the knowledge (after due inquiry) of all the Persons listed on Schedule 1.1(c).

“Laws” means all statutes, rules, regulations, ordinances, orders, decrees, injunctions, judgments and codes, or other authorization, ruling or restriction having the force of law of any applicable Governmental Authority.

“Licenses” means registrations, licenses, permits, authorizations, notices to, authorizations of, waivers from and other consents or approvals of Governmental Authorities.

“Maintenance Projects” means those maintenance and repair projects to be performed on or with respect to the Transferred Assets on or before the Closing Date, as set forth on Schedule 1.1(d).

“Major Maintenance Spare Parts” means those parts and equipment typically installed and repaired in connection with all significant maintenance performed during scheduled outages and forced outages that relate to the -Transferred Assets.

“Material Adverse Effect” means any one or more changes, events, circumstances, conditions or effects, whether known or unknown, accrued or unaccrued, actual or contingent, that is, or would be reasonably likely to be, materially adverse to the results of operations or condition (physical or financial) of the Transferred Assets, taken as a whole, or the ability of a Party (to which the applicable representation, warranty, covenant or condition relates) to own or operate the Transferred Assets or to consummate the Transactions.

“Permitted Encumbrances” means (a) any Encumbrance for Taxes not yet due and payable or for Taxes that are being contested in good faith by appropriate proceedings, including those that are listed on the Schedules as contested proceedings, (b) any Encumbrance arising by operation of Law not due to the willful violation of Law by Seller or its Affiliates, (c) any other imperfection or irregularity of title or other Encumbrance that would not, individually or in the aggregate, materially detract from the value of, or materially interfere with the present use of, the Transferred Assets, (d) zoning, planning, and other similar limitations and restrictions on,

including all rights of any Governmental Authority to regulate, a Transferred Real Property Asset, and (e) those Encumbrances listed on Schedule 1.1(e).

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

“Power Station” means the [Power Station located in Napoleon, Ohio], with a nominal rating of _____ MW as of the Effective Date, and any substitutions and replacements thereof.[RG2]

“Site” means the real property underlying the Transferred Assets, as more particularly described on Exhibit F, together with all the rights, easements, and appurtenances pertaining thereto.

“Proceeding” means any action, suit, litigation, arbitration, audit, investigation, hearing or other similar proceeding, including any civil, criminal, administrative, or appellate proceeding conducted by any Governmental Authority, third party or any arbitrator, arbitration panel or mediator.

“Prudent Operating Practices” means the practices, methods, standards and procedures that are consistent with Law and are generally accepted, engaged in and followed during the relevant time period by reasonably skilled, competent, experienced, and prudent owners and operators of generating and transmission facilities in the United States similar to the Power Station and which, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision is made, would reasonably be expected to accomplish the desired result in a manner consistent with applicable Laws, codes and standards, equipment manufacturer’s recommendations, insurance requirements, manuals, environmental protection, good business practices, reliability, safety and expedition and taking into consideration the requirements of all applicable Licenses, Contracts and, from and after the [date hereof Effective Date](#), this Agreement.

“Release” means any release, spill, emission, leaking, pumping, emptying, dumping, abandonment, dispersal, leaching, migration, injection, deposit, disposal, or discharge of Hazardous Materials into or within the environment, including air, soil, subsurface, strata, surface or groundwater, and water supply.

“Schedule” means a schedule to this Agreement.

“Tax” or “Taxes” means (i) all sales, use or transaction privilege taxes, real or personal property taxes, recordation and transfer taxes, payroll deduction taxes, franchise taxes, taxes on gross or net income or other monetary obligations imposed, assessed or exacted by any Governmental Authority, and (ii) any interest, penalties, adjustments and additions attributable to any of the foregoing, including any liability for any of the foregoing taxes or other items arising as a transferee, successor, by contract or otherwise.

“Tax Return” means any report, return, information return or other information required to be supplied to a taxing authority in connection with Taxes.

“Transaction Documents” means this Agreement and the Closing Agreements and any other agreement, consent, License, Approval or other document or instrument provided in connection with the Transactions.

“Transactions” means the transactions contemplated on the part of each of the Parties, collectively, by this Agreement and the other Transaction Documents.

“Transmission Rights” means all of Seller’s transmission and other rights under _____.

“Warranty Claims” means any claims of Seller arising under any express or implied warranties by the manufacturers, vendors or lessors of any of the Transferred Assets.

Index of Other Defined Terms-

Defined Term	Reference
“ <u>Agreement</u> ”	<u>Introductory Paragraph</u>
“ <u>Ancillary Equipment</u> ”	<u>Recitals</u>
“ <u>and/or</u> ”	<u>Section 1.3</u>
“ <u>Assumed Liabilities</u> ”	<u>Section 2.3</u>
“ <u>Buyer</u> ”	<u>Introductory Paragraph</u>
“ <u>Buyer Confidential Information</u> ”	<u>Section 5.6(a)(i)</u>
“ <u>Buyer Indemnified Party</u> ”	<u>Section 11.2</u>
“ <u>Casualty Estimate</u> ”	<u>Section 5.10(a)</u>
“ <u>Claim Notice</u> ”	<u>Section 11.4(a)</u>
“ <u>Closing Adjustment</u> ”	<u>Section 2.5</u>
“ <u>Closing Agreements</u> ”	<u>Section 9.1</u>
“ <u>Closing Certificate</u> ”	<u>Section 8.10</u>
“ <u>Closing Date</u> ”	<u>Section 9.1</u>
“ <u>Confidential Information</u> ”	<u>Section 5.6(a)(i)</u>
“ <u>Confidentiality Agreement</u> ”	<u>Section 5.6(e)</u>
“ <u>Cure Period</u> ”	<u>Section 10.1(e)</u>
“ <u>Easement</u> ”	<u>Recitals</u>
“ <u>Effective Date</u> ”	<u>Introductory Paragraph</u>
“ <u>Enforceability Exceptions</u> ”	<u>Section 3.2(b)</u>
“ <u>Equipment</u> ”	<u>Recitals</u>
“ <u>ERISA Affiliate</u> ”	<u>Section 2.4(f)</u>
“ <u>Estimated Adjustments</u> ”	<u>Section 2.7</u>
“ <u>Estimated Closing Statement</u> ”	<u>Section 2.7</u>
“ <u>Estimated Purchase Price</u> ”	<u>Section 2.7</u>
“ <u>Event of Loss</u> ”	<u>Section 5.10</u>
“ <u>Excluded Assets</u> ”	<u>Section 2.2</u>
“ <u>Excluded Liabilities</u> ”	<u>Section 2.4</u>
“ <u>Executive(s)</u> ”	<u>Section 12.9(c)(i)A.</u>
“ <u>Expiration Date</u> ”	<u>Section 11.1(a)</u>
“ <u>FERC</u> ”	<u>Recitals</u>

<u>“Fundamental Representations”</u>	<u>Section 11.1(a)</u>
<u>“includes” and “including”</u>	<u>Section 1.3</u>
<u>“Indemnitee”</u>	<u>Section 11.4</u>
<u>“Indemnitor”</u>	<u>Section 11.4(a)</u>
<u>“Indemnity Basket”</u>	<u>Section 11.2</u>
<u>“Indemnity Cap”</u>	<u>Section 11.2</u>
<u>“Initial Negotiation End Date”</u>	<u>Section 12.9(c)(i)A.</u>
<u>“Initial Purchase Price”</u>	<u>Section 2.5</u>
<u>“Lease”</u>	<u>Recitals</u>
<u>“Losses”</u>	<u>Section 11.2</u>
<u>“Manager”</u>	<u>Section 12.9(c)(i)A.</u>
<u>“Negotiation Request”</u>	<u>Section 12.9(c)(i)A.</u>
<u>“NERC”</u>	<u>Recitals</u>
<u>“O&M Agreement”</u>	<u>Recitals</u>
<u>“Party” and “Parties”</u>	<u>Introductory Paragraph</u>
<u>“Pending Claim”</u>	<u>Section 6.8(d)</u>
<u>[“PJM”</u>	<u>Recitals][if needed]</u>
<u>“Post-Closing Dispute Notice”</u>	<u>Section 2.8(a)</u>
<u>“Post-Closing Statement”</u>	<u>Section 2.8</u>
<u>“Prorations”</u>	<u>Section 2.6</u>
<u>“Purchase Price”</u>	<u>Section 2.5</u>
<u>“Referral Date”</u>	<u>Section 12.9(c)(i)A.</u>
<u>“Representatives”</u>	<u>Section 5.6(a)(ii)</u>
<u>“Schedule Update”</u>	<u>Section 6.6</u>
<u>“Seller”</u>	<u>Introductory Paragraph</u>
<u>“Seller Indemnified Party”</u>	<u>Section 11.3</u>
<u>“Seller Confidential Information”</u>	<u>Section 5.6(a)(ii)</u>
<u>“Seller’s Environmental Reports”</u>	<u>Section 3.7(a)</u>
<u>“Seller’s Response”</u>	<u>Section 5.3(d)</u>
<u>“Subject Property”</u>	<u>Section 3.8(a)</u>
<u>“Taking”</u>	<u>Section 5.10</u>
<u>“Third Party Claims”</u>	<u>Section 11.4(a)</u>
<u>“Transferred Assets”</u>	<u>Recitals</u>
<u>“Transferred Intellectual Property”</u>	<u>Section 3.14</u>
<u>“Transferred Licenses”</u>	<u>Section 3.5</u>
<u>“Transferred Personal Property Assets”</u>	<u>Section 2.1(b)</u>
<u>“Transferred Real Property Assets”</u>	<u>Section 2.1(a)</u>

1.2081.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires:

- (a) the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa,

- (b) “includes” or “including” shall mean “including without limitation,” regardless of whether so stated,
- (c) “and/or” shall mean any or all of the conjoined items, references to a Section, Article, Exhibit or Schedule shall mean the applicable Section, Article, Exhibit or Schedule of this Agreement, and reference to a given agreement, instrument or Law shall be a reference to that agreement, instrument or Law as modified, amended, supplemented and restated from time-to-time,
- (d) this Agreement and any Transaction Documents or other documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the various provisions of the same,
- (e) the representations, warranties and covenants in this Agreement shall have independent significance. Accordingly, if a Party has breached any representation, warranty or covenant contained in this Agreement in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached shall not detract from or mitigate the fact the Party is in breach of the first representation, warranty or covenant.
- (f) if any time period set forth in this Agreement expires on a day that is not a Business Day, then the performance period shall be extended until the next Business Day.

1.2091.3 Intention Regarding Classification. The classification of certain items as personal or real property for purposes of this Agreement is intended to be solely for the convenience of reference of the Parties and is not intended as an election to classify, or an admission regarding the classification of, those items as real or personal property, fixtures, improvements or otherwise for any other purposes, including accounting, recordation or perfection of liens, taxation, including real or personal property taxes and transfer taxes, title insurance coverage or any other purposes whatsoever.

ARTICLE 2 BASIC TRANSACTIONS

2.1 Transferred Assets. On the terms and subject to the conditions contained in this Agreement, at Closing, Buyer shall purchase from Seller, and Seller shall sell, convey, assign, transfer and deliver to Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Seller’s right, title and interest in, to and under the following Transferred Assets:

- (a) The “Transferred Real Property Assets” consisting of:
 - (i) the easements in favor of Buyer granted under the Easement ~~Agreement~~; and
 - (ii) Seller’s interest in any real property interests included in the Transferred Personal Property Assets.

(b) The “Transferred Personal Property Assets” consisting of:

- (i) ~~t~~The Equipment;
- (ii) the Transmission Rights;
- (iii) the Assigned Contracts;
- (iv) the Inventory;
- (v) [the Major Maintenance Spare Parts];
- (vi) [the Transferred Licenses];
- ~~(vii) the Transferred Intellectual Property, other than the Intellectual Property set forth on Schedule 2.1(b)(vii) (the “Excluded Intellectual Property”);~~
- ~~(viii)~~(vii) Seller’s interest in any personal property included in the Transferred Real Property Assets; and
- ~~(ix)~~(viii) Seller’s interest in all unexpired and transferrable manufacturers’ and other third-party warranties, guarantees and outstanding Warranty Claims relating to the Transferred Assets.

2.2 Excluded Assets. No assets, rights, Licenses, Contracts or other property of Seller shall be sold, conveyed, assigned, transferred or delivered to Buyer, other than the Transferred Assets, and the Transferred Assets specifically shall not include any other assets, rights, Licenses, Contracts or other property of Seller (collectively, the “Excluded Assets”).

2.3 Assumed Liabilities. From and after Closing, Buyer shall assume and pay, discharge and perform only those obligations and liabilities first arising after the Closing Date that are related to or incurred in connection with the ~~Assigned~~Assumed Contracts or Transferred Licenses ~~after the Closing Date~~ and other matters noted on Schedule 2.3, if any (collectively, the “Assumed Liabilities”), but excluding in all cases the Excluded Liabilities. Notwithstanding anything in this Agreement or any other Transaction Document to the contrary, Buyer is not assuming any other liability, responsibility or obligation hereunder, and all those liabilities, rights or obligations are deemed to be Excluded Liabilities, as further defined below. By way of clarification, if a liability arose on or prior to ~~the Closing Date, or if it is not clear whether the liability is an Assumed or Excluded liability~~, the liability shall be an Excluded Liability.

2.4 Excluded Liabilities. Buyer shall neither assume nor be obligated to pay, perform or otherwise discharge or be responsible for any of the liabilities or obligations, except for the Assumed Liabilities. All obligations and liabilities of Seller or its Affiliates relative to the Transferred Assets, other than the Assumed Liabilities are referred to herein as the “Excluded Liabilities.” Seller shall be liable for and shall pay and discharge those Excluded Liabilities of Seller or its Affiliates which directly impact the ownership, funding or operation of the Transferred Assets as and when they become due, except to the extent that and for so long as

Seller is ~~reasonably~~ contesting those liabilities or obligations in good faith. ~~Without limiting the foregoing, the Excluded Liabilities include the following:~~

- ~~liabilities or obligations associated with or arising from the Excluded Assets or other assets that are not part of the Transferred Assets and the ownership, operation and conduct of any business in connection therewith or therefrom, whether before, on or after the Closing;~~
- ~~any obligations or liabilities of Seller or its Affiliates relating to the Transferred Assets to the extent incurred, arising or accrued (whether or not then known) prior to Closing;~~
- ~~any of the liabilities or obligations of Seller or any Affiliate of Seller (including any liabilities or obligations under any Tax sharing agreements) with respect to Taxes, the nonpayment of which could result in a lien on, or that are attributable to the ownership, sale, operation or use of, the Transferred Assets prior to Closing or to the sale of the Transferred Assets pursuant to this Agreement (whether or not the applicable Tax period(s) ends on, before or after Closing), except to the extent Buyer receives a credit to the Initial Purchase Price therefor at or after Closing as provided in Section 2.5 or 2.6;~~
- ~~liabilities of Seller or its Affiliates or obligations arising from or associated with the failure of Seller or its Affiliates to pay or perform any obligation or other breach by Seller or its Affiliates of any term, covenant or provision of any of their Contracts;~~
- ~~liabilities of Seller or its Affiliates to third parties for violations of Law, personal injury, tort or any other causes of action associated with or arising from the ownership, use or operation of the Transferred Assets as a result of any event, fact or circumstance arising or occurring on or prior to Closing;~~
- ~~liabilities of Seller or its Affiliates incurred in connection with its obtaining or failing to obtain any License or Approval or make any filing with any Governmental Authority necessary for it to own or operate any of the Transferred Assets on or before the Closing or to sell, convey, assign, transfer or deliver the Transferred Assets to Buyer hereunder;~~
- ~~any liability of Seller or its Affiliates representing Indebtedness, including any refinancing thereof;~~
- ~~any liability or obligation of Seller to any of its Affiliates or arising from or associated with any transactions between Seller and any of its Affiliates;~~
- ~~any liabilities or obligations of Seller resulting from the violation of, or failure of Seller or any of its Affiliates to comply with Laws and Licenses;~~
- ~~any liabilities or obligations of Seller resulting from the use, treatment, storage, presence, disposal or Release of Hazardous Materials by or on behalf of Seller on, under, above or from any of the Transferred Real Property Assets or in connection with the development or operation of the Transferred Assets or liabilities resulting from the use, treatment, storage, presence, disposal or Release of Hazardous Materials by or on behalf of Buyer;~~
- ~~any liabilities or obligations of Seller relating to any Seller employees or any ERISA plan or other employee compensation or benefit plan, program, or arrangement of any kind (including any equity or equity-based or other incentive plan, employment agreement, severance, obligation or other agreement) providing compensation or benefits to employees or other service providers (each, a “Benefit Plan”), maintained by or on behalf of Seller or any corporation, trade, business or entity under common control with Seller, within the meaning of Section 414(b), (c), (m) or (o) of the United States Internal Revenue Code, as amended (the “Code”) or Section 4001 of ERISA (“ERISA Affiliate”), including any liability with respect to any of those plans: (i) for benefits payable under the plan; (ii) to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (iii) relating to any of those plans that are a multi-employer plan within the meaning~~

~~of Section 3(37) of ERISA; (iv) for non-compliance with the notice and benefit continuation requirements of COBRA; (v) for noncompliance with ERISA or any other applicable Laws; or (vi) arising out of or in connection with any Proceeding or claim which is brought in connection with any of those plans;~~
~~any liabilities or obligations of Seller relating to the employment or termination of employment of any individual by or on behalf of Seller, including discrimination, wrongful discharge, unfair labor practices, constructive termination prior to, before, on or after the Closing Date; and any costs or expenses for which Seller is liable under this Agreement.~~^[RG3]

2.192.5 Purchase Price.

The purchase price for the Transferred Assets shall be Nine Hundred Eighty-Three Thousand, Two Hundred ~~and~~ Twenty-Two Dollars (\$983,222) (the "Initial Purchase Price"). ~~As applicable, after the Closing, the Initial Purchase Price shall be adjusted (the "Closing Adjustments"), without duplication, to account for the Prorations (as defined below). The sum of the Initial Purchase Price and the Closing Adjustments are referred to as the "Purchase Price."~~

~~**Prorations.** In addition to and without duplication of any adjustments necessary as a result of Section 5.10, Buyer and Seller agree that the following items relating to the Transferred Assets shall be prorated as of the Closing Date between Buyer and Seller with Seller liable to the extent those items relate to any time on or prior to the Closing Date, and Buyer liable to the extent the items relate to any time after the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days) (the "Prorations"):~~

~~(-) personal property Taxes, and any other ad valorem Taxes or assessments representing liens on the Transferred Assets, in each case without regard for whether the Taxes are assessed or due and payable as of the Closing Date; **[All Tax provisions subject to review by the Tax professionals]**~~

~~(-) [rent, licensing fees or other fixed regular charges or registration fees payable under leases or Licenses];~~

~~(-) [any prepayments under Assigned Contracts, and any prepaid expenses and deposits relating to the Transferred Assets, including security deposits, if any, and rents]; and~~

~~(-) any other periodic or recurring charges imposed on or assessed against the Transferred Assets by any Governmental Authority, other than fines and penalties imposed for violations of Law.~~

~~In the event that actual Taxes or the actual figures for any of the Prorations are not known or available on the Closing Date, for purposes of determining the Estimated Purchase Price, the Prorations shall be based upon the actual Taxes paid for the most recent year (or other appropriate period) for which actual Taxes paid are available, and based upon the respective amounts accrued through the Closing Date or paid for the most recent year or other, appropriate period for which those amounts paid are available. The prorated Taxes or other amounts shall be recalculated to reflect those Taxes as set forth on a Tax Return prepared and filed by Buyer in a manner consistent with past practice of Seller except as required by Law and (i) set forth in the Post-Closing Statement (in which case any amounts owed by one Party to another shall be paid~~

~~in accordance with Section 2.7) or (ii) if unavailable at the time the Post-Closing Statement is prepared and delivered in accordance with Section 2.8, any amounts owed by one Party to the other Party shall be paid to the other Party within ten (10) Business Days of that recalculation. The Prorations shall be based on the actual number of days elapsed (prior to the Closing Date, on the one hand, and from and after the Closing Date, on the other hand) in the year or other applicable period. Seller and Buyer agree to furnish each other documents and other records as may be reasonably requested to confirm all adjustments and Prorations calculated pursuant to this Section 2.6.~~

~~[Notwithstanding anything herein to the contrary, with respect to capital expenditures (including those expenditures related to the Capital Projects) or maintenance expenditures (including those expenditures related to the Maintenance Projects), related to any of the Transferred Assets that were authorized by Seller and/or the owners of the Other Power Blocks on or before the Closing Date, Seller shall be liable for all those charges solely to the extent incurred and unpaid for work already done prior to the Closing Date, and Buyer shall be liable for the charges that first are incurred on or after the Closing Date.]~~

~~**Estimated Closing Statement.** At least fifteen (15) Business Days prior to the Closing Date, Seller, in consultation with Buyer, shall prepare and deliver to Buyer a written estimated closing statement (the “Estimated Closing Statement”) in the format set forth in Exhibit E that shall set forth the Initial Purchase Price, as adjusted to take into account Seller’s best estimate of all Prorations and sums due for Interim Operational Adjustments pursuant to Section 2.6, including a reasonably detailed calculation of each estimated adjustment (the “Estimated Adjustments”) and the revised, estimated Purchase Price (“Estimated Purchase Price”). Within ten (10) Business Days after the delivery of the Estimated Closing Statement by Seller to Buyer, Buyer may object in good faith to the Estimated Adjustments in writing. If Buyer objects to the Estimated Adjustments within the ten (10) day period, the Parties shall attempt to resolve their differences by negotiation. If the Parties are unable to do so prior the Closing Date (or if Buyer does not object to the Estimated Adjustments), the Initial Purchase Price shall be adjusted at Closing by the amount of the Estimated Adjustment.~~

~~**Post-Closing Statement.** Within sixty (60) days following the Closing Date, Buyer, in consultation with Seller, shall prepare and deliver to Seller a written post-closing statement (“Post-Closing Statement”) that shall set forth its proposed final actual Prorations and sums due for Interim Operational Adjustments pursuant to this Section 2.8, including the amount, if any, by which the final Purchase Price (as proposed by Seller) differs from the Estimated Purchase Price.~~

~~(-) **Post-Closing Dispute Notice.** Seller shall have thirty (30) days after its receipt of the Post-Closing Statement to review and make inquiry concerning the Post-Closing Statement. Upon Seller’s written request within twenty (20) days after Seller’s receipt of the Post-Closing Statement, Buyer shall disclose all factual information reasonably requested by Seller relating to the Post-Closing Statement and the accounting methodology used in the preparation thereof. Seller shall be deemed to have approved the Post-Closing Statement (and the statement shall be final, binding and conclusive for all purposes hereunder) unless it objects thereto in writing (a “Post-Closing Dispute Notice”) prior to the end of the thirty (30) day period or ten (10) days after Buyer has provided the reasonably requested information noted above, whichever is later.~~

~~If Seller timely delivers a Post-Closing Dispute Notice, the Parties shall attempt to resolve the dispute by negotiation. If the Parties are unable to resolve the dispute within thirty (30) days after any objection, the dispute shall be resolved pursuant to Section 2.9. All items not disputed hereunder shall be deemed final and binding.~~

~~(-) The Post-Closing Statement shall become final, binding and conclusive for all purposes hereunder by (i) mutual agreement of the Parties, (ii) failure of the receiving Party to timely deliver a Post-Closing Dispute Notice, or (iii) decision of the Independent Accountant. If, as reflected in the Post-Closing Statement, as finally determined pursuant to Sections 2.8 and 2.9, the final Purchase Price is greater than the Estimated Purchase Price, then Buyer shall promptly (within ten (10) days after the final determination of the Post-Closing Statement) pay to Seller an amount in cash equal to the difference between the final Purchase Price and the Estimated Purchase Price. In the event that, as reflected in the finally determined Post-Closing Statement, the final Purchase Price is less than the Estimated Purchase Price, then Seller shall promptly (within ten (10) days after the final determination of the Post-Closing Statement) pay to Buyer an amount in cash equal to the difference between the final Purchase Price and the Estimated Purchase Price. Payment shall be made by the applicable Party by wire transfer of immediately available funds to an account designated in writing by the receiving Party.~~

~~**Independent Accountant.** In the event of a timely delivered Post-Closing Dispute Notice pursuant to Section 2.8, the Parties shall attempt in good faith to resolve any differences and issues described in the Post-Closing Dispute Notice as promptly as practicable. If the differences and issues are resolved, then the Post-Closing Statement, as adjusted for any changes agreed upon by the Parties, shall be final, binding and conclusive for all purposes hereunder, absent manifest error. If the Parties have not agreed upon the final Prorations and Closing Adjustments (if any) to the Purchase Price within thirty (30) days following timely delivery of the Post-Closing Dispute Notice pursuant to Section 2.9, then any Party may submit the dispute to the Independent Accountant.~~

~~(-) If the named Independent Accountant declines to serve, and the Parties are unable to agree upon a replacement firm within ten (10) Business Days of the date upon which the Independent Accountant declines to serve, Buyer shall provide Seller a list of at least two (2) nationally recognized independent certified public accounting firms, each independent as to Buyer and its Affiliates, which Buyer nominates to serve as the Independent Accountant hereunder. Within five (5) Business Days following receipt of the list, Seller shall select one of the nominees, which shall act as the Independent Accountant hereunder; provided that Seller may not select any nominee unless the nominee is independent as to Seller and its Affiliates. If either Party fails to act within the period specified, the other Party may select an Independent Accountant; provided that the selecting Party must choose an Independent Accountant that is a nationally recognized independent certified public accounting firm, independent as to the Party and its Affiliates; provided, further, that the non-selecting Party must advise the selecting Party if the selected Independent Accountant is not independent as to any Party and its Affiliates.~~

~~(-) Buyer and Seller will enter into reasonable and customary arrangements for the services to be rendered by the Independent Accountant under this Section 2.9. The Parties shall instruct the Independent Accountant to resolve solely the items in dispute; provided, that the Independent~~

~~Accountant may not resolve any dispute in a way as to render the final Purchase Price greater than that which is proposed by Seller or less than that which is proposed by Buyer.~~

~~(-) All fees and costs of the Independent Accountant shall be divided equally between Seller and Buyer. The Independent Accountant may hold proceedings and consult experts as it deems necessary or appropriate to resolve the dispute, and shall endeavor to do so within thirty (30) days after being appointed, provided that the Independent Accountant may not change any term of this Agreement or adopt a value greater or lesser than the values proposed by Seller and Buyer. The Parties agree to cooperate with the Independent Accountant and to provide promptly all information reasonably requested by the Independent Accountant, subject to obtaining standard assurances, consistent with Section 5.6, that the information will be kept confidential and used solely for purposes of the dispute resolution performed hereunder and for purposes of enforcing in a court of competent jurisdiction any determination rendered by the Independent Accountant.~~

~~(-) The Independent Accountant shall promptly notify all Parties in writing of its findings and determinations, which shall be final, binding and conclusive for all purposes hereunder. Judgment on any findings and determinations by the Independent Accountant under this Section 2.9 may be entered in any court having jurisdiction thereof.~~

Purchase Price Allocation.

~~(-) Within sixty (60) days after the date the Post-Closing Statement becomes final, binding and conclusive pursuant to Section 2.9(b), Buyer shall prepare and deliver to Seller for its review an allocation of an amount equal to the sum of the Purchase Price and Assumed Liabilities properly taken into account for purposes of determining the purchase price for U.S. federal income tax purposes and/or FERC or other applicable accounting practices, among the Transferred Assets in accordance with applicable Law. Within sixty (60) days of its receipt of the allocation, Seller shall (i) notify Buyer that it concurs with the allocations and/or determinations of fair market value, or (ii) provide written comments to the allocations and/or determinations of fair market value. If Buyer and Seller disagree on any aspect of the allocation and/or determination of fair market value, Buyer and Seller agree to use reasonable efforts to resolve any disagreement within sixty (60) days after the date the written comments to the allocation was delivered by Seller. Any allocation of the Purchase Price and the Assumed Liabilities agreed or determined pursuant to this Section 2.10 shall be binding on Buyer and Seller for all Tax reporting purposes, and Buyer and Seller shall not (except with the consent of the other Party or as required by applicable Law or following, and consistent with, the resolution of an IRS audit or a court decision or as needed to give effect to an adjustment to the Purchase Price pursuant to Section 11.6) take inconsistent positions with respect to, and shall each use reasonable efforts to sustain, that allocation in any subsequent Tax audit or similar Proceeding, and each of Buyer and Seller agrees to cooperate with the other in preparing IRS Form 8594, and to furnish the other with a draft copy of the form within a reasonable period before its filing due date. If Buyer and Seller are unable to resolve any disagreement with respect to the allocation within the sixty (60) day period, the dispute shall be resolved by the Independent Accountant in a manner substantially similar to Section 2.9.~~

~~ARTICLE 26~~ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer, except as qualified by or disclosed in the Schedules, as follows (for purposes of this Agreement and the Schedules, a matter disclosed in one section of the Schedules shall be deemed disclosed with respect to other representations and warranties of Seller in this Agreement if it is reasonably apparent on the face of the disclosure of the matter):

26.13.1 Formation and Power. Seller is a municipal corporation duly formed and existing under the laws of the State of Ohio, ~~is in good standing and qualified to do business in the State of Ohio~~ and has full right, power and authority to ~~conduct its business as it is currently being conducted,~~ to own the Transferred Assets, and to enter into this Agreement and perform all of its obligations with respect to the Transactions, except where the failure ~~to be so qualified or~~ to have such right, power and authority would not have a material effect adverse to Seller's right to consummate the Transactions.

26.23.2 Binding Obligations of Seller.

(a) The execution, delivery and performance of this Agreement and the Closing Agreements by Seller and the consummation of the Transactions by Seller have been duly and effectively authorized by all necessary actions of Seller. This Agreement has been, and upon their execution, each Closing Agreement will have been, duly executed and delivered by Seller.

(b) This Agreement constitutes the legal, valid and binding obligation of Seller and is enforceable against Seller, and the Closing Agreements will, upon delivery at Closing, constitute the legal, valid and binding obligations of Seller and will be enforceable against Seller, in each case in accordance with the respective terms contained therein, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity, regardless of whether enforcement is sought in a Proceeding at law or in equity (collectively, the "Enforceability Exceptions").

26.33.3 No Breach or Conflict. The execution, delivery and performance by Seller of this Agreement and by Seller of the Closing Agreements to which it is or will be a party, and the consummation of the Transactions by Seller do not: (a) conflict with or result in a breach of any provision of the organizational documents of Seller; (b) subject to obtaining the Licenses identified in Section 3.4(b) or 4.4(b), if any, violate in any material respect any Law applicable to Seller or the Transferred Assets [or result in the suspension or revocation of any Transferred License]; or (c) subject to obtaining the Approvals identified in Section 3.4(a) or 4.4(a), cause a material violation of or result in a material default or give rise to any right of termination, consent, cancellation or acceleration under any of the terms, conditions or provisions of, any note, bond, mortgage or indenture or other material contract by which the Transferred Assets are bound, or result in the creation of any material Encumbrance thereon (other than Permitted Encumbrances).

26.43.4 Approvals.

(a) Except as set forth on Schedule 3.4(a) or 4.4(a), the execution, delivery and performance of this Agreement and the Closing Agreements to which Seller is or will be a party and the consummation of the Transactions by Seller do not require any Approvals to be obtained by Seller that have not been obtained.

(b) Except as set forth on Schedule 3.4(b) or 4.4(b), the execution, delivery and performance of this Agreement and the Closing Agreements to which Seller is or will be a party and the consummation of the Transactions by Seller do not require any License or any filing with any Governmental Authority to be obtained or made by Seller.

26.53.5 Licenses. Except as set forth on Schedule 3.5, all Licenses that are held by Seller as a named permittee in connection with the ownership and operation of the Transferred Assets in the manner in which they are currently owned and operated are in full force and effect, and are listed on Schedule 3.5. Seller has delivered to Buyer a true and correct copy of each of the Licenses. Seller has not previously transferred or assigned any right, title or interest under any of the Licenses. To the Knowledge of Seller, there are no proceedings pending or threatened to revoke or modify any License in any material respect.

26.63.6 Compliance with Law. Except as set forth on Schedule 3.6, (a) the Transferred Assets have been and are currently operated in compliance with all Licenses and all applicable Laws, (b) Seller is not, and has not been, in violation of or in default under any Law applicable to it or the Transferred Assets, and (c) Seller has filed or caused to be filed timely all material forms, reports, statements, and other documents required to be filed by it with all Governmental Authorities with respect to the Transferred Assets, and those filings were prepared in compliance with applicable Law.

26.73.7 Environmental Matters.

(a) Other than as disclosed in any environmental site report listed on Schedule 3.7(a) (collectively, “Seller’s Environmental Reports”) or described on Schedule 3.7(c), Seller has not conducted or permitted the conduct of operations or activities at the real property underlying the Transferred Real Property Assets (the “Subject Property”) in violation of any Environmental Law. Seller has not received any written notice by a Governmental Authority to Seller or its Affiliates of a material violation of any Environmental Law by Seller or relating to the Subject Property. There are no environmental reports, studies, analyses, tests or monitoring results possessed by Seller or of which Seller is aware pertaining to Hazardous Materials in any regulated amount at, in, on, under or over the Subject Property or the Transferred Assets that would disclose any violation of any Environmental Law.

(b) With respect to the Transferred Assets, Seller has not handled or disposed of any material amount of Hazardous Materials at the Subject Property or otherwise involving any of the Transferred Assets in violation of Environmental Law, or arranged for the disposal of any regulated amount of Hazardous Materials at or from the Subject Property or related to the Transferred Assets in violation of Environmental Law.

(c) Other than as disclosed in Schedule 3.7(c), (i) no written notice or written claim has been filed or threatened against Seller with respect to the Transferred Assets alleging any failure to

comply with, or any violation of or liability under, any Environmental Law, (ii) no circumstances ~~that~~ exist with respect to the Subject Property or Transferred Assets that constitute a violation of any Environmental Law or would reasonably be expected to result in a revocation of any License under or in connection with any Environmental Law or to prevent the issuance of any License or permit to Buyer, and (iii) there are no violations of Environmental Law of which Seller has knowledge or that require notification to a Governmental Authority.

(d) Seller is not aware of any change, event, circumstance, condition or effect that has occurred, individually or in the aggregate with other events, relating to Environmental Matters that is or would reasonably be expected to be adverse to the ownership or operation of the Transferred Assets.

26.83.8 Transferred Assets.

(a) Schedule 3.8(a) contains the separate legal description [RG4] of the Subject Property. Except in conjunction with the Transactions, none of Seller or any of its Affiliates has entered into any material leases, subleases, licenses, concessions or other agreements granting to any party or parties the right ~~of to~~ use or ~~to~~ occupy all or any portion of the Subject Property, other than access easements for third party maintenance or service personnel in the ordinary course of business; the Subject Property is not subject to any commitment, right of first offer, or other arrangement for the sale, transfer or lease thereof to any third party (other than pursuant to this Agreement).

~~(b)~~ Schedule 3.8(b) contains a complete listing of the Transferred Personal Property Assets, ~~as of the date of this Agreement to be updates as of the business day preceding the Closing Date~~

~~(d)~~(c) Schedule 3.8(c) contains a listing of the Ancillary Equipment to which Buyer shall have access pursuant to the Easement and the Lease for so long as those agreements or grants are in effect.

~~(e)~~(d) ~~Except as set forth on Schedule 3.8(d),~~ Seller holds good and marketable title to, and is the record owner of fee simple title to, the Subject Property, the Transferred Assets, the Ancillary Equipment and related rights, free and clear of all Encumbrances, other than Permitted Encumbrances.

26.93.9 Assigned Contracts. All the Assigned Contracts are listed on Schedule 3.9(a), except to the extent that the Parties agree to add or delete Contracts to or from that schedule before the Closing Date. Seller has provided to Buyer a true and complete copy of each Assigned Contract, including any amendments and modifications thereto. Seller has paid or performed all of its obligations which are currently due under any Assigned Contract. Seller is not, or with notice or lapse of time or both, would not be, in breach of or in default under any provision of any Assigned Contract. Each Assigned Contract is, to Seller's Knowledge, in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms (except for the Enforceability Exceptions). Seller has not given or to its Knowledge received any written notice that any Person intends to cancel or terminate any Assigned Contract. To Seller's Knowledge, there is no breach or default under any Assigned Contract by any other party thereto, without regard to any provisions relating to notice or lapse

of time. Seller has not previously assigned any of its right, title or interest under any Assigned Contract.

26.103.10 Litigation and Condemnation Proceedings. ~~Other than as listed on Schedule 3.10 hereof, t~~There are no material Proceedings pending or, to Seller's Knowledge, threatened at law or in equity against or relating to any or all of the Transferred Assets or Seller's ownership or operation thereof. There is no condemnation proceeding pending or, to Seller's Knowledge, threatened against any part of the Transferred Assets. There are no Proceedings at law or in equity pending or, to Seller's Knowledge, threatened against Seller or its Affiliates with respect to the Transactions or the Transferred Assets, (i) relating to the execution or delivery of this Agreement, or (ii) which could materially delay, prevent, result in rescission or material modification of or otherwise unwind the Transactions or any material portion thereof.

26.113.11 Condition of the Transferred Assets. The Transferred Assets are in good operating condition, reasonable wear and tear excepted. Seller has furnished Buyer with copies of all maintenance, operating, performance, financial, warranty and other reports in its possession related to the Transferred Assets as Buyer reasonably requests. ~~Other than as listed on Schedule 3.11,~~Seller does not have Knowledge of any material defect in any of the Transferred Assets.

26.123.12 Tax Matters. Excluding any Taxes on gross or net income or gain, Seller has filed or caused to be filed all Tax Returns required to have been filed by or for it (other than those for which extensions were requested and obtained in a timely manner) with respect to any Tax relating to the Transferred Assets (collectively, "Seller's Tax Returns"), and Seller has paid all Taxes that have become due as indicated thereon and that were required to be paid by or for Seller. All of Seller's Tax Returns relating to the Transferred Assets are true, correct and complete in all material respects. ~~Except as set forth on Schedule 3.12, no~~No written notice of deficiency or assessment has been received by Seller from any taxing authority with respect to liabilities for Taxes of Seller in respect of the Transferred Assets, which have not been fully paid or finally settled, or if not fully paid or finally settled, any deficiency and assessment is being contested in good faith through appropriate proceedings. ~~Except as set forth on Schedule 3.12,~~There are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes of Seller associated with the Transferred Assets. All Taxes required to be withheld, collected or deposited by Seller have been timely withheld, collected or deposited and, to the extent required, have been paid to the relevant Tax authority.

~~**Financial Statements.** [Do you want any reps and warranties regarding the Seller's financial condition? (Seems unnecessary for a transaction of this scope with respect to a municipal counterparty, but can be requested if desired.)]~~

~~**26.15 Intellectual Property Rights.** Schedule 3.14 sets forth all licenses or agreements to which Seller is a party primarily relating to Seller's use of any Intellectual Property in connection with the Transferred Assets, including operating software (collectively, the "Transferred Intellectual Property"). Seller is not infringing in any material respect the Intellectual Property rights of any third party in connection with the operation of the Transferred Assets. Seller has no patents, copyrights, trademarks, service marks or other Intellectual Property rights necessary to own or operate any of the Transferred Assets other than the~~

~~Transferred Intellectual Property, and there are no pending applications to obtain any of the same.~~

26.173.13 Brokers. No broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the Transactions based upon any agreements or arrangements or commitments, written or oral, made by or on behalf of Seller or any Affiliate of Seller by which the Transferred Assets or Buyer could be bound, before, from or after Closing.

26.183.14 Insurance. The Transferred Assets are covered by Seller's insurance policies (the "Seller Insurance Policies"). [A5] [A6] To Seller's Knowledge, there is no threatened suspension or termination of any Seller Insurance Policy and to its Knowledge no events or circumstances have occurred that could, after expiration of notice and cure periods without remedy, provide the insurer a right to deny coverage. Excluding insurance policies that have expired and been replaced in the ordinary course of business as currently conducted by Seller, no Seller Insurance Policy that is applicable to the Transferred Assets has been canceled (except as requested by the holder thereof) and not replaced. Except as set forth on Schedule 3.146, there are, to Seller's Knowledge, no material pending claims under any of the Seller Insurance Policies. Except as set forth on Schedule 3.146, to Seller's Knowledge, Seller and its Affiliates have since the Seller Date[RG7] reported all known material claims and incidences to the insurers that have issued current and prior Seller Insurance Policies insuring the Transferred Assets (either specifically or as part of a master insurance policy and whether relating to property or liability) to the extent that any claims or incidences would reasonably be expected to create a covered event under the terms and conditions of the Seller Insurance Policies.

26.193.15 Absence of Certain Changes. Except as set forth on Schedule 3.157, since January 1, 2017 through the Effective Date, to Seller's Knowledge, no change, event, circumstance, condition or effect has occurred that, individually or in the aggregate with any other changes, events, circumstances, conditions or effects, is or would reasonably be expected to be materially adverse to the ownership or operation of the Transferred Assets.

26.203.16 Undisclosed Liabilities. Except for liabilities and obligations specifically referred to in Section 2.2 and Section 2.4 and those that are disclosed on Schedule 3.168, Seller has no liability or obligation with respect to the Transferred Assets (whether accrued or unaccrued, known or unknown, absolute or contingent), except for (i) Permitted Encumbrances, (ii) matters that have been recorded pursuant to GAAP on Seller's financial statements, and those obligations that have arisen thereafter in the ordinary course of business, and (iii) those obligations which individually or in the aggregate are not material with respect to the ownership or operation of the Transferred Assets.

~~26.213.17~~ **No Other Representations or Warranties.** Seller makes, no other representations or warranties except for those expressly made in this Agreement and Seller expressly disclaims all other warranties of any kind, express or implied.

~~ARTICLE 27~~**ARTICLE 4**
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article 4, except as qualified by or disclosed in the Schedules as follows (for purposes of this Agreement and the Schedules, a matter disclosed in one section of the Schedules shall be deemed disclosed with respect to other representations and warranties of Buyer in this Agreement if it is reasonably apparent on the face of the disclosure of the matter):

27.14.1 Organization and Power. Buyer is a non-profit ~~corporation~~ limited liability company organized and existing under the laws of the State of Ohio and has full right, power and authority to enter into this Agreement, to own its assets and to perform all of its obligations with respect to the Transactions.

27.24.2 Binding Obligations of Buyer.

(a) The execution, delivery and performance of this Agreement and the Closing Agreements by Buyer and the consummation of the Transactions by Buyer have been duly and effectively authorized by all necessary internal actions of Buyer.

(b) This Agreement has been, and upon its execution of each Closing Agreement to which Buyer is a party, each Closing Agreement will have been, duly executed and delivered by Buyer.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer and is enforceable against Buyer, and the Closing Agreements will, upon delivery at Closing, constitute the legal, valid and binding obligations of Buyer and will be enforceable against Buyer, in each case in accordance with the respective terms contained therein, subject to the Enforceability Exceptions.

27.34.3 No Breach or Conflict. The execution, delivery and performance by Buyer of this Agreement and of the Closing Agreements to which it is or will be a party, and the consummation of the Transactions by Buyer: (a) do not conflict with or result in a breach of any provision of the organizational documents of Buyer; (b) subject to obtaining the Licenses identified in Section 3.4(b) or 4.4(b), do not violate in any material respect any Law applicable to Buyer or result in the suspension or revocation of any License applicable to Buyer or its performance hereunder; (c) subject to obtaining the Approvals identified in Section 3.4(a) or 4.4(a), do not cause a material violation of or result in a material default or give rise to any right of termination, consent, cancellation or acceleration under any of the terms, conditions or provisions of, any note, bond, mortgage or indenture or other material contract by which Buyer is a party or by which its assets are or may be bound.

27.44.4 Approvals and Buyer's Required Regulatory Approvals.

(a) ~~Except as set forth on Schedule 3.4(a) or 4.4(a),~~ The execution, delivery and performance of this Agreement and the Closing Agreements and the consummation of the Transactions by Buyer do not require any Approvals to be obtained by Buyer that have not been obtained.

(b) ~~Except as set forth on Schedule 3.4(b) or 4.4(b),~~ The execution, delivery and performance of this Agreement and the Closing Agreements and the consummation of the

Transactions by Buyer do not require any material License or any material filing with any Governmental Authority to be obtained or made by Buyer.

27.54.5 Litigation. There are no Proceedings pending or, to Buyer's Knowledge, threatened against Buyer or its Affiliates with respect to the Transactions at law or in equity, (i) relating to the execution or delivery of this Agreement, or (ii) which would reasonably be expected to delay, prevent, result in rescission or modification of or otherwise unwind the Transactions or any portion thereof.

~~**27.6 Brokers.** No broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the Transactions based upon any agreements or arrangements or commitments, written or oral, made by or on behalf of Buyer or any Affiliate of Buyer.~~

27.84.6 No Other Representations or Warranties. Buyer makes, no other representations or warranties except for those expressly made in this Agreement and Buyer expressly disclaims all other warranties of any kind, express or implied.

~~ARTICLE 28~~**ARTICLE 5** COVENANTS OF SELLER AND BUYER

28.15.1 Efforts to Close.

(a) **Commercially Reasonable Efforts.** Subject to the terms and conditions provided herein, each of the Parties agrees to use its Commercially Reasonable Efforts to close, consummate and make effective the Transactions, and for the satisfaction of all other conditions to Closing set forth herein that it is required to satisfy (or to cause to be satisfied) to proceed with Closing. Those actions shall include:

- (i) exerting Commercially Reasonable Efforts to obtain or transfer, as applicable, all Licenses, Transferred Licenses and Approvals set forth on Schedules 3.4(a) and (b) and Schedule 3.5 (in the case of Seller) (including reasonable expenditure of funds or other consideration, in all cases to the extent reasonably related to obtaining or transferring by the Party the Licenses, Transferred Licenses and Approvals required of it);
- (ii) diligently pursuing and exerting Commercially Reasonable Efforts to obtain all Approvals as set forth on Schedule 4.4(a) and Buyer's Required Regulatory Approvals set forth on Schedule 4.4(b) (in the case of Buyer) (including expenditure of reasonable funds or other consideration, in all cases to the extent reasonably related to obtaining by the Party the Licenses and Approvals required of it), as applicable, and all other necessary registrations and filings; and
- (iii) exerting Commercially Reasonable Efforts to, by the Closing Date, obtain approval of any necessary third parties for which the Party is responsible to obtain.

(b) **Coordination with Other Party.** Without limiting the foregoing, each Party, as

promptly as practicable, shall use its Commercially Reasonable Efforts to (A) take or cause to be taken all other commercially reasonable actions necessary and proper to fulfill its obligations hereunder; and (B) coordinate and cooperate with the other Party in providing information and supplying assistance as may be reasonably requested by the other Party in connection with the foregoing.

(c) **No New Submission to Regulation.** Notwithstanding the foregoing, no Party's obligation to use Commercially Reasonable Efforts shall be construed as requiring the Party, at any time, to (i) acknowledge the applicability of any Law to the Party or the jurisdiction of any Governmental Authority over the Party that does not currently apply to or have jurisdiction over the Party, respectively, or (ii) accept any new material condition, requirement or restriction purported to be imposed on the Party by any Governmental Authority in connection with these Transactions, in each case unless the Party expressly agrees in writing (or it has been determined by a court of competent jurisdiction) that the Party is subject to that Law, jurisdiction, approval or condition.

(d) **Control over Proceedings; Communications.** Except as otherwise indicated herein, all analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of a Party before any Governmental Authority in connection with the approval of the Transactions shall be subject to the control of the Party. The Parties will use Commercially Reasonable Efforts to consult and cooperate with one another, and will consider in good faith the views of one another, in connection with that analysis, appearance, presentation, memorandum, brief, argument, opinion and proposal. Each Party shall provide prompt notification to the other Party when any License or Approval required to be obtained by the notifying Party is obtained, taken, modified or given, as applicable. Each Party will advise the other Party of any material communications with and, unless precluded by Law, provide copies of all written communications (including each report, schedule or other document filed by Seller or Buyer) to or from Governmental Authorities relating to the Transactions.

28.25.2 Expenses. Whether or not the Transactions are consummated, except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring those expenses, and Buyer shall pay the filing fees and expenses in connection with any filing it makes with FERC in connection with the Transactions. Notwithstanding the foregoing, documentary transfer fees, if any, and recording costs and charges respecting real property shall be shared by the Parties equally unless otherwise provided herein.

28.35.3 Tax Matters.

(a) Subject to Section 5.2, all transfer, documentary, sales, use, stamp, registration, value added and other Taxes and fees (including any penalties and interest) incurred in connection with this Agreement, the Lease, the Easement and other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne by Seller. Seller shall, at its own expense, timely file any Tax Return or other document with respect to those Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

~~(b) — With respect to Taxes prorated in accordance with Section 2.6(a) of this Agreement, Seller shall prepare and timely file all Tax Returns which it is required to file with respect to periods ending on or prior to Closing and shall duly and timely pay all Taxes shown to be due on the Tax Returns, and shall provide copies of those Tax Returns and evidence of payment to Buyer. Buyer shall promptly reimburse Seller for any Taxes reflected on any Tax Return that are the responsibility of Buyer under Section 2.6(a) to the extent Seller has not received a credit in that amount against the Purchase Price. Seller shall promptly notify Buyer of any notice of any claim or Proceeding pending in respect of the Tax Returns (or any significant developments with respect to ongoing claims or Proceedings in respect of those Tax Returns). Seller shall consult with Buyer regarding the conduct and resolution of all those claims or Proceedings.~~

~~(e)(b) Each Party shall use Commercially Reasonable Efforts to cooperate fully with the other Party, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this Agreement and any Proceeding with respect to Taxes associated with the Transactions. Cooperation shall include the retention and (upon the other Party's written request and subject to confidentiality agreements reasonably satisfactory to the disclosing party) the provision of records and information which are reasonably relevant to any Proceeding and making employees (to the extent the employees were responsible for the preparation, maintenance or interpretation of information and documents relevant to Tax matters or to the extent required as witnesses in any Tax Proceedings), available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Consistent with their respective document retention policies, e~~ Each Party agrees to retain all of its books and records with respect to Tax matters pertinent to the Transferred Assets relating to any taxable period beginning before the Closing Date until the expiration of the applicable statute of limitations and to abide by all record retention agreements entered into with any taxing authority.

~~(d) — Any dispute that arises between Seller and Buyer as to the amount of Taxes or their respective shares thereof shall be resolved by the Independent Accountant in a manner substantially similar to that provided in Section 2.9.~~

~~(e)(c) Seller shall provide Buyer with cost information available to it for the Transferred Assets to enable Buyer to comply with FERC accounting requirements, if applicable, or other legal or accounting requirements.~~

28.45.4 Post-Closing Delivery and Retention of Records. Within ten (10) days following Closing, Seller shall deliver to Buyer all books, records and data pertaining exclusively to the Transferred Assets (other than those relating to the financial performance of Seller) in Seller's possession or control or reasonably available to Seller, in each case other than Excluded Assets; provided, that, any electronic correspondence and files stored on equipment and media that are not material need not be delivered, but shall be provided as reasonably requested by Buyer. Seller shall be entitled to make at its own expense and retain copies of the records pertaining to the Transferred Assets as needed in connection with Tax Returns or other filings with or notices to Governmental Authorities. Each Party shall (a) hold all records pertaining to the Transferred Assets and not destroy or dispose of any records for a period of seven (7) years following the Closing Date, or if any records pertain to any Proceeding pending at the conclusion of the seven-year period, until the Proceeding is finally resolved and the time for all appeals have been exhausted, and (b) for seven (7) years following Closing, allow the

other Party and its accountants and counsel upon reasonable request, during normal business hours, reasonable access to the records pertaining to the Transferred Assets which it holds (other than those constituting Excluded Assets) at no cost, other than costs of copying and other reasonable out-of-pocket expenses; provided, however, that these obligations will not apply to any records subject to any attorney-client privilege; and provided, further, that in the event of any Proceeding relating to the Transferred Assets, nothing herein shall limit either Party's rights of discovery under applicable Law.

28.55.5 Post-Closing Cooperation. After Closing, upon prior reasonable written request, each Party shall use Commercially Reasonable Efforts to cooperate with the other Party in further evidencing and consummating the Transactions. The requesting Party shall reimburse the cooperating Party for any reasonable out-of-pocket expenses paid or incurred by the cooperating Party as a result of any requested cooperation.

28.65.6 Confidentiality. [RG8]

(a) **Pre-Closing Period.**

- (i) Unless and until the Closing occurs, (x) consistent with the Napoleon Charter, Section 8.02, Seller shall keep confidential, except as may be approved in writing by Buyer, or as may be required under applicable Law (subject to Section 5.6(a)(ii) below), (1) any and all information received~~—, created, or maintained by Seller related to any Seller owned or operated utility the release of which would more likely than not provide or create a competitive disadvantage to any of Seller's owned or operated utilities or be of economic value to a competitor or a person other than Seller~~~~by or in the possession of Seller from Buyer in connection with the Transactions on or after the Effective Date relating to Buyer's business, including information related to Seller's~~ assets, operations or prospects, which is either non-public, confidential or proprietary, or (2) any and all analyses, compilations, data, studies or other documents prepared by or for Buyer relating to the Transferred Assets or the Power Station that contains information described in clause (1) above (the "Buyer Confidential Information") and (y) Buyer shall keep confidential, except as may be approved in writing by Seller, or as may be required under applicable Law (subject to Section 5.6(a)(ii) below) (1) any and all information received~~—~~by or in the possession of Buyer relating to Seller's business, assets, operations or prospects and/or relating to the Transferred Assets which is either non-public, confidential or proprietary, or (2) any and all analyses, compilations, data, studies or other documents prepared by or for Buyer or Seller relating to the Transferred Assets or Seller and its Affiliates (collectively, the "Seller Confidential Information," and together with the Buyer Confidential Information, the "Confidential Information"). Without limiting the foregoing, "Confidential Information" shall also include the terms of the proposed Transactions between Seller and Buyer, including the Purchase Price.
- (ii) Notwithstanding Section 5.6(a)(i), (x) Seller and Buyer shall be entitled to the extent necessary for the performance of their respective duties hereunder to disclose Confidential Information of the other Party exclusively to those of its

affiliates' respective officers, directors, employees, consultants, attorneys, agents, advisors, actual and prospective financing sources and other representatives who are directly concerned with or affected by the carrying out of the Parties' duties under this Agreement, who have a need to know that Confidential Information in order to carry out their duties, and who are directed to comply with the terms of this Agreement (the "Representatives"); provided, however, that each Party shall inform each of those Persons of the confidential nature of the information and of that Party's obligations of confidentiality in respect thereof and the Party shall be responsible for any breach of these obligations by any recipients of the Confidential Information; and (y) the Parties shall have no obligation with respect to any Confidential Information, as applicable, which (A) at the time of receipt from the other Party was already in the public domain; (B) after receipt from the other Party becomes part of the public domain through no breach of the Party or its Representatives or others acting on behalf of the Party of the Party's obligations hereunder; (C) was in the Party's or its Representatives' possession prior to receipt from the other Party without being subject to an obligation of confidentiality to the other Party; (D) has been disclosed to the Party or its Representatives by a third party, provided that the Party or its Representatives has no actual knowledge that the Party or its Representative had Knowledge that the third party is breaching an obligation of confidentiality to the other Party in providing the information to the Party or its Representatives; or (E) was independently developed by or for the Party or its Representatives by persons who have not had access to Confidential Information disclosed by the other Party.

- (iii) Notwithstanding anything in this Agreement to the contrary, each party hereto agrees that each Party (and any person or entity to which Confidential Information is disclosed by the Party as permitted hereby) may disclose Confidential Information to the extent reasonably necessary to: (i) its regulators; (ii) its auditors; (iii) persons who need to know the tax treatment and tax structure of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) related to the tax treatment and tax structure; and (iv) the extent otherwise requested by any governmental agency, regulatory authority (including any self-regulatory organization claiming to have jurisdiction) or any bank examiner.
- (iv) If a Party is required by Law or judicial process to disclose the Confidential Information, the receiving Party shall, unless prohibited by Law and to the extent permitted by Law, notify the disclosing Party of the required disclosure of the information, and prior to furnishing the information, the receiving Party shall give the disclosing Party the opportunity to object to the disclosure and/or to seek a protective order or other appropriate remedy to limit that disclosure, and, in the event no protective order or other appropriate remedy is obtained prior to the time disclosure is required, or in the event that the disclosing Party waives compliance with the terms of this Section 5.6, the disclosing Party may disclose only that part of the Confidential Information as it is advised by counsel that is required to be disclosed, and shall use its Commercially Reasonable Efforts to assure that all Confidential Information and other information that is so disclosed will be

accorded confidential treatment as close as practicable to that provided hereunder. However, no notice shall be required if the disclosure is or was made to an examiner, or auditor in the course of the examiner's examination or auditor' audit.

- (v) Nothing in this Agreement shall bar the right of either Party to seek and obtain from any court injunctive relief against conduct or threatened conduct which violates this Section 5.6.

(b) **Post-Closing Period**. If the Closing occurs, from and after the Closing Date, (i) Buyer's confidentiality obligations set forth in Section 5.6(a) with respect to solely Seller's Confidential Information constituting Transferred Assets shall cease, and (ii) ~~and~~-Seller and Buyer shall hold and protect the Confidential Information as each protects other documents of similar nature in the course of its regular operations.

(c) Neither Party shall issue any external press releases, communications or disclosures concerning the Confidential Information or the Closing, without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except those releases, communications or disclosures which are otherwise required by Law. If any Party determines that it is required by applicable Law to make any press release or other public disclosure or announcement, it shall send notice to that effect, accompanied by the text of the proposed disclosure, press release or public announcement, to the other Party as far in advance as practicable, and shall reasonably consider any comments made by the other Party relating to the proposed press release or public announcement.

(d) Notwithstanding anything in this Agreement to the contrary, the Parties' obligation to maintain the confidentiality of the Confidential Information as required hereunder shall continue for a period of {two (2) years} following the earlier of (i) the termination or expiration of this Agreement and (ii) the date of Closing.

~~(-) [The parties acknowledge that Buyer and Seller are bound by a non-disclosure agreement dated _____, 201_ (the "Confidentiality Agreement"), which shall continue to govern the relationship between Buyer and Seller to the extent not inconsistent with the provisions of this Section 5.6.]~~

~~**28.8 Failure to Obtain Consent**. To the extent that the transfer to Buyer of any Assigned Contract, Transferred Intellectual Property or Transferred License requires the authorization, approval, consent or waiver of, any Governmental Authority or any other Person that has not been obtained by Seller on or prior to Closing, and Buyer has decided not to waive the requirement, set forth hereby, that the Assigned Contract, Transferred Intellectual Property or Transferred License be conveyed at Closing, and the Closing occurs without that authorization, approval, consent or waiver having been obtained, then neither this Agreement nor the transactions contemplated by any Closing Agreement shall constitute a transfer of the Assigned Contract, Transferred Intellectual Property or Transferred License, or an attempt thereof. In the event that Closing occurs without the transfer of the Assigned Contract, Transferred Intellectual Property or Transferred License, then, following Closing, each Party shall use its Commercially Reasonable Efforts, and shall cooperate with the other Party, to obtain promptly those authorizations, approvals, consents or waivers; provided, that neither Seller nor Buyer shall be~~

~~required to pay any consideration for any authorization, approval, consent or waiver (other than any applicable filing fees or amounts that would have been required of Seller prior to Closing to obtain that approval) or to agree to any conditions or requirements which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on it.~~

~~(-) Pending that authorization, approval, consent or waiver, the Parties shall use Commercially Reasonable Efforts to cooperate with each other in any mutually agreeable, reasonable and lawful arrangements (to the extent any arrangements are feasible) designed to provide to Buyer the benefits of the Assigned Contract, Transferred Intellectual Property or Transferred License that Buyer would have obtained had the Assigned Contract, Transferred Intellectual Property or Transferred License been transferred to Buyer at Closing. To the extent Buyer is provided the benefits pursuant to this Section 5.8 of any Assigned Contract, Transferred Intellectual Property or Transferred License, Buyer shall perform, for the benefit of Seller, the obligations of Seller thereunder and any related liability that, but for the lack of an authorization, approval, consent or waiver in connection with the assignment of the Assigned Contract, Transferred Intellectual Property or Transferred License to Buyer, would have constituted an Assumed Liability, and Seller shall assign to Buyer the right to receive all payments, proceeds and other monies due or payable thereunder and direct any payor to pay the payments, proceeds and other monies directly to Buyer. Once authorization, approval, consent or waiver for the transfer of the Assigned Contract, Transferred Intellectual Property or Transferred License not transferred at Closing is obtained, Seller shall transfer the Assigned Contract, Transferred Intellectual Property or Transferred License to Buyer and, subject to the terms of Sections 2.3 and 2.4, the obligations of Seller associated therewith shall thereupon be deemed Assumed Liabilities.~~

~~(-) To the extent any Assigned Contract, Transferred Intellectual Property or Transferred License cannot be transferred following Closing pursuant to this Section 5.8, Buyer and Seller shall use Commercially Reasonable Efforts to cooperate reasonably in an effort to find and enter into mutually agreeable arrangements (including subleasing, (sub)licensing or subcontracting), if feasible, to provide the Parties the economic (taking into account Tax costs and benefits) and operational equivalent, to the extent permitted, of obtaining that authorization, approval, consent or waiver and the performance by Buyer of the obligations and the assumption by Buyer of liabilities thereunder. If Seller receives any payments, proceeds or other monies in respect of the Assigned Contract, Transferred Intellectual Property or Transferred License in connection with the arrangements under this Section 5.8, Seller shall hold the same in trust for Buyer, and pay the same over to Buyer promptly upon receipt thereof without deduction. This Section 5.6 shall in all cases be limited to the extent necessary not to result in a violation of applicable Law.~~

28.125.7 Bulk Sales Laws. [A9] 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 Transferred Assets to Buyer, it being understood that any liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction shall be treated as Excluded Liabilities.

28.135.8 Risk of Loss/Casualty/Takings. During the Interim Operational Period, all risk of loss or damage to the Transferred Assets shall, as between Seller and Buyer, be borne by

~~Seller. If the Transferred Assets are damaged or destroyed by fire, theft, vandalism, or other insurable casualty event (each, an “Event of Loss”), or are taken by a Governmental Authority by exercise of the power of condemnation or eminent domain (each, a “Taking”), then the following provisions of this Section 5.9 shall apply:~~

~~If any time before the Closing Date all or any portion of the Transferred Assets are damaged or destroyed by one or more Events of Loss or are subject to a Taking, then Seller shall prepare an estimate (or in the event Buyer objects to Seller’s estimate within thirty (30) days of receipt of the estimate and within the thirty (30) day period Buyer specifies its objection and the basis for the objection in reasonable detail, Seller shall request a qualified independent firm reasonably acceptable to Seller and Buyer to prepare an estimate) within thirty (30) days following the event (i) in the case of an Event of Loss, the cost of restoring the Transferred Assets damaged or destroyed by the event to a condition reasonably comparable to their condition immediately prior to the Event of Loss, or (ii) in the case of Taking, the condemnation value therefor (as applicable, the estimate being a “Casualty Estimate.” Any Casualty Estimate shall be prepared based on the best reasonably available information as of the date of the Casualty Estimate. If a Casualty Estimate with respect to an Event of Loss or a Taking occurs, then at Buyer’s option, elect: (i) with respect to an Event of Loss, Seller will restore the Transferred Assets damaged or destroyed by the Event of Loss to a condition reasonably comparable to their condition immediately prior to the Event of Loss, (ii) with respect to either an Event of Loss or a Taking, the Initial Purchase Price shall be reduced by an amount equal to the actual costs incurred by Buyer with respect to the Event of Loss to restore property to its appropriate condition, or (iii) Buyer may terminate this Agreement. Seller shall have the right in connection with an election by Buyer under either subparagraph (i) or (ii) to either accept Buyer’s election in this regard or to terminate this Agreement. Absent agreement to the contrary, the Parties shall adjust the Initial Purchase Price by the Casualty Estimate, but shall thereafter pay or reimburse the other Party, as appropriate for any and all actual costs incurred by that Party with respect to that Event of Loss or Taking, as noted above.~~

~~[Notwithstanding anything in this Agreement to the contrary, this Section 5.10 and rights of a party to seek specific performance of this Agreement shall be the sole and exclusive remedies of Seller and Buyer with respect to any Event of Loss or Taking that damages, impairs or destroys during the Interim Operational Period any of the Transferred Assets, except the other party shall not be so restricted to the extent the Event of Loss was caused by a party’s willful misconduct, recklessness or gross negligence.]~~

~~ARTICLE 32~~ARTICLE 6

~~ADDITIONAL COVENANTS OF SELLER AND BUYER~~

Seller and Buyer, as applicable, hereby additionally covenants, promises and agrees as follows:

32.16.1 Access and Information.

(a) Access to Information. Throughout the Interim Operational Period, Seller shall, upon reasonable notice from Buyer: (1) provide Buyer and its Representatives reasonable access to the books and records and other documents and data related to the Transferred Assets, Assumed Liabilities and the Power Station; (2) furnish Buyer and its Representatives with financial, operating and other data and information related to the Transferred Assets as Buyer or any of its Representatives may reasonably request; (3) reasonably cooperate with Buyer in its

investigation of the Transferred Assets; (4) provide Buyer with copies of any proposed amendment to any Assigned Contract and any proposed new Contract relating to the Transferred Assets of which Seller is aware, regardless of whether prior written consent of Buyer relating thereto is required by Section 6.2; (5) provide Buyer with copies of any correspondence or notice asserting or threatening the assertion of a default under or termination of any Assigned Contract relating to the Transferred Assets; and (6) to the extent practicable under the circumstances, notify Buyer in advance of the commencement of any maintenance or capital project on the Transferred Assets that is expected to involve the expenditure of at least [\$25,000] and use Commercially Reasonable Efforts to provide Buyer with the opportunity to observe all or any portion or portions of the work being performed. No investigation by Buyer or information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

~~(c) — [Buyer's right to conduct those activities shall be subject to the following:~~

- ~~(1) — All activities of Buyer or its representatives undertaken in connection with its access rights shall comply with applicable Law in all material respects, including Laws relating to worker safety;~~
- ~~(2) — Seller shall be permitted to have one or more of its representatives present (at Seller's expense) during the exercise of any access rights by Buyer;~~
- ~~(3) — Buyer shall, at its own cost, repair any damage to any portion of the Power Station or any Transferred Assets or any other property of Seller caused by the access rights of Buyer or its representatives;~~
- ~~(4) — Buyer shall be responsible for, and shall indemnify Seller and its Affiliates and Representatives against, any property damage or personal injury incurred by Seller or any other Person to the extent caused by Buyer's activities under this Section 6.1; and~~
- ~~(5) — All activities of Buyer shall be conducted in a manner so as not to disturb or unreasonably interfere with the normal operations of the Transferred Assets, the Power Station or Seller's and its Affiliates' conduct of their respective businesses.]~~

32.86.2 Operations During Interim Operational Period.

~~(a) — Except as authorized by Buyer in writing, from the Effective Date until Closing or termination of this Agreement, Seller shall maintain, or cause to be maintained, the Transferred Assets in the ordinary course of business consistent with past practices and in accordance with Prudent Operating Practices and in compliance with applicable Law; provided, that, this obligation shall not be deemed to require Seller to make any capital or maintenance expenditures other than those set forth in Schedule 1.1(a) and Schedule 1.1(d).that would be part of the normal course of business. Without limiting the foregoing, prior to Closing or termination of this Agreement, and except as otherwise expressly perm^[RG10]itted under the terms of this Agreement, Seller shall not, without the prior written consent of Buyer, not to be unreasonably withheld, delayed or conditioned:~~

~~(b) — Amend, modify, terminate, or renew any existing Assigned Contract or (ii) enter into any new Contract relating to the Transferred Assets, resulting in an Assumed Liability and obligating Seller to pay or entitling Seller to receive more than [Ten Thousand Dollars (\$10,000)] under any individual Contract, or in the aggregate an amount in excess of [Twenty Five Thousand Dollars (\$25,000)];~~

~~(c) — Sell, lease, transfer or dispose of or acquire, or make any Contract for the sale, lease, transfer or disposition or acquisition of, any assets or properties included in the Transferred Assets, other than Transferred Assets used, consumed or sold in the ordinary course of business consistent with past practice (including through the ordinary use or consumption of Inventory and Major Maintenance Spare Parts), so long as, other than with respect to Transferred Assets that are consumables, to the extent consistent with past practice the same are replaced with items of value, utility and useful life that are substantially similar to or better than that of the item removed as of the Effective Date;~~

~~(d) — Incur, assume, or guaranty any obligation or liability for Indebtedness pertaining to the Transferred Assets resulting in Assumed Liabilities except in the ordinary course of business consistent with past practice, but in no instance resulting in any Assumed Liability or any Encumbrance for Indebtedness other than a Permitted Encumbrance or that will be paid off or discharged at Closing;~~

~~(e) — Fail to use Commercially Reasonable Efforts to renew any Transferred License;~~

~~(f) — Settle any Proceeding relating to the Transferred Assets except for those matters set forth on Schedule 2.2(g)(vii), all of which shall be at no cost or other expense to Buyer and so long as that settlement will not impose any obligation on Buyer after the Closing or otherwise restrict its ownership or use of any of the Transferred Assets;~~

~~(g) — Delay the payment and discharge of any portion of any obligation or liability that will be an Assumed Liability at Closing beyond its currently scheduled payment or performance date;~~

~~(h) — Subject any Transferred Asset to any new Encumbrance, except for Permitted Encumbrances or those that will be discharged by the Closing or for those contemplated by the Transactions;~~

~~(i) — Make any material alteration to the Transferred Assets, unless the alteration is required by Law or is necessary for proper repair and replacement of the Transferred Assets or as otherwise approved in advance in writing by Buyer;~~

~~(j) — Relocate any Transferred Asset to any other location, except in the ordinary course of operation and maintenance (including repairs) of the Transferred Assets or substitute assets of lesser quality or greater age for Transferred Assets without Buyer's written consent after disclosure of that proposed exchange;~~

~~(k) — Except for the Transactions, enter into any agreement regarding the sale or lease of all or any portion of the Transferred Assets other than in the ordinary course of business, or enter into any agreement regarding the development of any portion of the Site that, in each case, that would affect the ownership or operation of the Transferred Assets; or~~

~~(a)~~ ~~Agree or commit to take any action prohibited by the foregoing clauses (i) through (x).~~

32.96.3 Insurance. From the Effective Date until Closing or termination of this Agreement, Seller shall maintain all of its ~~insurance~~ [A11] coverages [A12] in respect of the Transferred Assets, to the extent available on commercially reasonable terms. Until Closing or termination of this Agreement, Seller will not take any action that will materially decrease the limits of the Seller Insurance Policies with respect to the Transferred Assets.

32.106.4 Notice of Certain Events.

(a) During the Interim Operational Period after obtaining Knowledge of any event below, Seller shall promptly notify Buyer in writing of:

~~(i)~~ ~~the occurrence of any of items set forth in Section 6.2;~~ [RG13]

~~(ii)~~(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, an adverse material, without regard to the giving of notice or any opportunity to cure, (B) has resulted in any representation or warranty made by Seller in Article 3 not being true and correct in any material respect or (C) has resulted in the failure of any of the conditions set forth in Section 8.2, Section 8.3, Section 8.5 or Section 8.7 to be satisfied;

~~(iii)~~(ii) any material written notice or other material written communication from any Person received by it alleging that the consent of the Person is or may be required in connection with the Transactions;

~~(iv)~~(iii) any material written notice or other material written communication from any Governmental Authority received by it in connection with the Transactions, the Transferred Assets or the Assumed Liabilities;

~~(v)~~(iv) any Proceedings commenced or, to Seller's Actual Knowledge, threatened against, relating to or involving or otherwise adversely affecting the Transactions, the Transferred Assets or the Assumed Liabilities that, if pending on the Effective Date, would have been required to have been disclosed pursuant to Section 3.10 or that relate to the consummation of the Transactions; and

~~(vi)~~(v) any communication from any other Person seeking to enter into an Acquisition Proposal or to otherwise acquire, possess or lease a material amount of the Transferred Assets other than in the ordinary course of business.

(b) Subject to Section 6.6 [RG14], Buyer's receipt of information pursuant to this Section 6.4 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement and shall not be deemed to amend or supplement any schedule to this Agreement, except as otherwise provided in this Agreement.

32.116.5 Non-Solicitation.

(a) Prior to the Closing, Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal.

(b) Seller agrees that the rights and remedies for noncompliance with this Section 6.5 shall include having the provision specifically enforced, without the posting of any bond or surety therefore, by any court having equity jurisdiction, it being acknowledged and agreed that any breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

~~Closing Schedule U~~^[A15] ~~update.~~ Prior to the Closing, Seller shall promptly update Buyer supplement or amend the Schedules to this Agreement to the extent that Seller becomes aware of any matter heretofore existing or hereafter arising which, if existing, occurring or known at the date of this Agreement, would have been required to be made known set forth or described by that Party in the Schedules or that is otherwise necessary to correct any information in the Schedules that has been rendered materially inaccurate thereby. For purposes of determining the accuracy of the representations and warranties of Seller contained in this Agreement and for purposes of determining satisfaction of the conditions set forth in Section 8.2, any subsequent updates supplements or amendments thereto (collectively, the “Schedule Updates”) shall not cure any breach of that representation or warranty unless Buyer expressly waives that breach. If any occurrence, event or change contained in the Schedule Update, individually or in the aggregate, materially and adversely affects the Transferred Assets which cannot be cured by Closing, Buyer shall have the right to terminate this Agreement. In addition, Buyer may consummate the Transactions and preserve its rights with respect to that breach of representation or warranty thereafter, unless Buyer expressly states to the contrary in a written instrument.

~~ARTICLE 33~~ ARTICLE 7 ADDITIONAL COVENANTS OF BUYER

33.17.1 Right of First Offer^[A16]. Except as provided below, if Buyer hereafter seeks to sell^[RG17] or dispose of all or substantially all of the Transferred Assets or any entity in which those assets comprise all or substantially all of its assets, whether by way of a sale of securities, merger, consolidation or similar proceeding, to any unaffiliated third party (a “Triggering Event”), Buyer hereby grants to Seller a right of first offer to acquire those assets. If Buyer seeks to enter into a Triggering Event, it shall provide written notice of the proposed Triggering Event prior to the date Buyer seeks to enter into the Triggering Event, or to commence offering that opportunity to another Person. Seller shall have twenty (20) days after the date of Buyer’s notice to notify Buyer in writing ~~with the proposed terms~~ of its offer to acquire the assets or equity subject to that transaction. If Seller submits an offer for any of the assets or equity, it must submit an offer to acquire all of those assets or equity and the related liabilities, unless the Parties

otherwise agree. If Seller submits an offer for those assets or equities, the parties shall have thirty (30) days to negotiate the principal business terms of that transaction which shall consist of the original purchase price, less depreciation, plus 3% annual inflationary cost, plus any major capital improvements (less depreciation, plus 3% inflationary cost on capital improvements). If they agree on those terms, then they shall continue to prepare definitive documents to effect that transfer on mutually acceptable terms during the next thirty (30) days (but no later than ninety (90) days following the date of Seller's initial proposed offer to purchase those assets or equity). If at the end of that time, the parties are unable to consummate that transaction, then Buyer shall be free to sell those assets or equities to any other potential purchaser for a price not materially less than the price at which Seller offered, in Buyer's reasonable determination, provided that the revenue from any sale to any unaffiliated third party in excess of the original purchase price, less depreciation, plus 3% annual inflationary cost, plus any major capital improvements (less depreciation, plus 3% inflationary cost on capital improvements) shall be divided evenly between Buyer and Seller.

—This right of first offer shall not apply to: (a) ordinary course retirements, replacements or additions to the Transferred Assets, (b) any transaction not involving all or substantially all of the Transferred Assets or their replacements, or (c) any sale, merger or reorganization of Buyer or involving all or substantially all of its assets or securities.

7.2 Right of Return. If Buyer is not permitted to recover all or substantially all of its costs plus a return on equity through a FERC-approved tariff, then Buyer shall provide notice in writing of its offer to return [RG18]the assets or equity and the related liabilities for repayment of the original purchase price, less depreciation, plus 3% annual inflationary cost, plus any major capital improvements (less depreciation, plus 3% inflationary cost on capital improvements). This right shall not extend beyond the final adjudication of Buyer's request for such cost recovery before the FERC.

7.3 Conduct Pending Closing. Prior to Closing or termination of this Agreement, unless Seller shall otherwise consent in writing, Buyer shall not take any action which would cause any of Buyer's representations and warranties set forth in Article 4 to be materially inaccurate as of Closing.

33.27.3 Notice Certain Events. During the Interim Operational Period, after obtaining Knowledge of any event below, Buyer shall promptly notify Seller in writing of (but only to the extent affecting the Transferred Assets, Assumed Liabilities or ability of the Parties to consummate the Transactions):

(a) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on Buyer's ability to consummate the Transactions, without regard to the giving of notice or any opportunity to cure, (B) has resulted in any representation or warranty made by Buyer in Article 4 not being true and correct or (C) has resulted in the failure of any of the conditions set forth in Section 8.2, Section 8.3, Section 8.5 or Section 8.7 to be satisfied;

(b) any material written notice or other written material communication from any Person received by it alleging that the consent of the Person is or may be required in connection with the transactions contemplated by this Agreement; and

(c) any material written notice or other material written communication from any Governmental Authority received by it in connection with the Transactions, the Transferred Assets or the Assumed Liabilities.

For purposes of determining the accuracy of the representations and warranties of Seller contained in this Agreement and for purposes of determining satisfaction of the conditions set forth in Section 8.2, any subsequent updates shall not cure any breach of that representation or warranty unless Buyer expressly waives that breach. If any occurrence, event or change individually or in the aggregate, materially and adversely affects the Transferred Assets which cannot be cured by Closing, Buyer shall have the right to terminate this Agreement. In addition, Buyer may consummate the Transactions and preserve its rights with respect to that breach of representation or warranty thereafter, unless Buyer expressly states to the contrary in a written instrument.

~~ARTICLE 34~~ARTICLE 8 CONDITIONS TO CLOSING

The obligations of Buyer and Seller to consummate the Transactions at Closing shall be subject to fulfillment at or prior to Closing of the following conditions, unless Buyer or Seller, as applicable, waives the condition in writing:

34.18.1 Termination of Agreement. This Agreement shall not have been duly terminated.

34.28.2 Representations and Warranties. As a condition to a Party's obligation to consummate the Transactions, the representations and warranties of the other Party set forth in this Agreement shall be true and correct as of the Closing Date as though made on the Closing Date.

34.38.3 Performance by Buyer and Seller. Buyer and Seller shall have each performed and complied in all material respects with all of its respective agreements, obligations and covenants (including but not limited to those set forth in Articles 5, 6 and 7) hereunder during the Interim Operational Period.

34.48.4 Licenses, Approvals, Buyer's Required Regulatory Approvals. All of the following shall have been obtained (except as expressly indicated otherwise on the relevant Schedules): Seller Approvals set forth on Schedule 3.4(a), Seller's Licenses set forth on Schedule 3.4(b), Buyer's Approvals set forth on Schedule 4.4(a), and Buyer's Required Regulatory Approvals set forth on Schedule 4.4(b). All Transferred Licenses that lawfully may be transferred on or prior to Closing and not constituting, or in respect of, Excluded Assets shall have been transferred to Buyer at Closing.

34.58.5 No Restraint. There shall be no:

(a) Injunction, restraining order or order of any nature issued by any court of competent jurisdiction or Governmental Authority of competent jurisdiction which directs that the

Transactions shall not be consummated as herein provided and no Proceeding has been commenced by a Governmental Authority seeking to do any of the foregoing; or

(b) Law enacted which would render the consummation of the Transactions illegal or Law enacted that would prohibit or materially increase the cost of the owning or operating the Transferred Assets.

34.68.6 Closing Agreements. Buyer and Seller and any of their respective Affiliates which are parties to any Closing Agreements shall have executed and delivered the respective Closing Agreements to be executed by that Party or others, as appropriate.

34.78.7 Material Adverse Effect. No change, event, circumstance, condition, or effect shall have occurred from and after the Effective Date and is continuing that, individually or in the aggregate with any other changes, events, circumstances, conditions or effects, is or would reasonably be expected to be adversely material on the ability of the Buyer to own or operate the Transferred Assets.

34.88.8 Closing Certificates. Each Party shall have received from the other Party an officer's certificate (each a "Closing Certificate") in mutually acceptable form dated as of the Closing Date and executed on the Party's behalf by a duly authorized executive officer of the Party, in each case in his or her capacity as such, stating that the conditions with respect to the Party provided in Sections 8.2 and 8.3 have been satisfied.

34.98.9 Ongoing Repairs, Maintenance and Improvements. Seller shall have completed all repairs, maintenance and improvements for the Transferred Assets scheduled to have been completed through the Closing Date, based on the Seller's 2018 operating plan.

~~**34.10 System Modifications.** [Will there be a need for any modifications or changes to the system that should be put in place prior to the closing, like additional meters, security and access features, communications systems, etc.?]~~

34.118.10 FERC Approvals. The Parties shall have received FERC acceptance of all agreements related to transfer of the Transmission Rights that are required to be filed with FERC and FERC acceptance of all agreements related to the assignment and amendment of the Interconnection and Operating Agreement that are required to be filed with FERC.

~~ARTICLE 35~~ARTICLE 9 CLOSING

35.19.1 Closing. The Closing provided for in this Agreement will take place on the Closing Date at ~~[TO BE DETERMINED] the corporate offices of Jennings, Strauss & Salmon, PLC, One E. Washington St., Suite 1900, Phoenix, Arizona 85004-2554 at 10:00 a.m. (local time) on the tenth (10th) Business Day following the date on which the last of the conditions set forth in Article 8 have been satisfied or waived by the Party entitled to waive the same (other than conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions),~~ or another date and place as Buyer and Seller may

mutually agree in writing. At Closing, subject to the terms and conditions hereof, Buyer and Seller shall deliver or cause to be delivered to each other all the documents, instruments and other agreements required pursuant to Articles 8 and 9 to be executed and delivered for Closing, in each case duly executed by an authorized signatory of Buyer and Seller or other applicable Person and, if applicable, acknowledged and in due form for recording (collectively the “Closing Agreements”).

35.29.2 Closing Agreements. Subject to the terms and conditions hereof, at the Closing, Buyer and Seller, as applicable, shall deliver, or cause to be delivered, the following to the other Party (and third parties, as applicable), in mutually acceptable form, that approval not to be unreasonably withheld:

- (a) An amount in immediately available funds, by way of wire transfer from Buyer to an account or accounts designated at the order of Seller, equal to the Estimated Purchase Price;
- (b) a Bill of Sale and Assignment executed by Seller transferring all of the Transferred Personal Property;
- (c) an Assignment and Assumption of Rights Agreement executed by Buyer;
- (d) the Lease Agreement;
- (e) the Easement;
- (f) the instrument(s) executed by PJM, Seller, and Buyer assigning the interests of Seller in the [Interconnection and Operating Agreement] to Buyer, and amending that agreement as necessary to reflect the assignment, in each case as reasonably agreed by Seller and Buyer;
- (g) the instrument executed by Seller and Buyer assigning the Transmission Rights to Buyer, as reasonably agreed by Seller and Buyer;
- (h) Certified copies of the resolutions of the Party’s governing board or bodies, as needed, authorizing the execution, delivery and performance of this Agreement and the Transactions;
- (i) A certificate of the Secretary or Associate Secretary of the Party identifying the name and title and bearing the signatures of the officers of that Party, authorized to execute and deliver this Agreement, each Closing Agreement to which it is a party and the other agreements contemplated hereby;
- (j) Evidence, in form and substance reasonably satisfactory to Seller, of the receipt by the applicable party of its Required Regulatory Approvals;
- (k) To the extent available, originals of all of the Assigned Contracts constituting Transferred Assets, and, if the originals are not available, true and correct copies thereof, and required assignments to transfer the Assigned Contracts, duly executed by Seller and the counterparty (subject to Section 5.9);

(l) Documents, if any, necessary to transfer any of the Transferred Assets not covered by the foregoing or as reasonably requested by Buyer;

(m) Certificates of non-foreign status in the form required by Section 1445 of the Code duly executed by Seller; and

(n) All the other agreements, documents, instruments and writings required to be delivered by the other Party at or prior to the Closing Date pursuant to this Agreement or reasonably requested by the other Party in connection with the Transactions.

~~ARTICLE 36~~ARTICLE 10 TERMINATION

36.110.1 **Termination.** This Agreement may be terminated prior to Closing only:

(a) At any time, by mutual written consent of Seller and Buyer;

(b) By either Party upon written notice to the other Party if any Governmental Authority having competent jurisdiction has issued a final, non-appealable order, decree, ruling or injunction (other than a temporary restraining order) or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transactions;

(c) By either Party upon written notice to the other Party on or after [date] (the “Initial Termination Date”); provided, that, in the event that (a) Seller has timely filed for FERC approvals as set forth in this Agreement and (b) the FERC approval is not obtained prior to the Initial Termination Date, the Initial Termination Date may be extended by Seller upon written notice to Buyer prior to the Initial Termination Date by an additional ninety (90) days (as extended, the “Termination Date”); provided, further that a Party cannot terminate under this provision if the failure of the Closing to occur is the result of the failure on the part of the Party to perform any of its obligations hereunder;

(d) By Buyer or Seller, as applicable, pursuant to other provisions of this Agreement.

(e) By a Party if there has been a misrepresentation with respect to the other Party’s representations and warranties in this Agreement, or a default or breach by that other Party with respect to its covenants or agreements contained in this Agreement, any of which individually or in the aggregate would result in the material failure to satisfy one or more of the conditions to the Closing set forth in Section 8.2 or Section 8.3, as applicable, but not including any of those covenants that are not fulfilled due to the actions or inactions of the Party seeking termination, and the misrepresentation, default or breach is not cured within sixty (60) days (a “Cure Period”);

(f) By either Party upon written notice to the other, if all conditions set forth in Article 8, other than those that are within the control of the other Party, have been satisfied (other than conditions which by their nature are to be satisfied at the Closing) and that party refuses to close the transaction within thirty (30) days of written notice by the Party seeking to terminate that it is ready, willing and able to close and that the conditions noted in this subsection have been satisfied.

36.210.2 Effect of Termination. If this Agreement is validly terminated pursuant to Section 10.1, the Parties shall have no further obligations or liabilities hereunder, except as expressly provided in this Agreement, including Section 5.7; provided that nothing in this Section 10.2 shall relieve any Party from liability for any fraudulent, reckless or willful breach of this Agreement by the Party prior to termination of this Agreement.

~~ARTICLE 37~~**ARTICLE 11**
SURVIVAL AND INDEMNIFICATION^[RG19]

37.111.1 Survival.

(a) Except for the representations and warranties set forth in Sections 3.1 (Formation and Power), 3.2 (Binding Obligations of Seller), 3.6 (Compliance with Law); 3.7 (Environmental), 3.8(b) and (c) (Title), 3.12 (Taxes), 3.15 (Brokers), 4.1 (Organization and Power), 4.2 (Binding Obligations of Buyer) and 4.6 (Brokers) or in the event of fraud, recklessness or willful misconduct by that Party or its Representatives (collectively, the “Fundamental Representations”), the representations and warranties of Buyer and Seller set forth in this Agreement, in any Closing Agreement and in any certificate delivered pursuant hereto shall survive Closing until the date that is [twenty-four (24) months] following the Closing Date. The Fundamental Representations and Warranties of a Party shall survive indefinitely. Each of those dates, as applicable, the “Expiration Date”). After the applicable Expiration Date with respect to a particular representation and warranty, no Person may make or bring a claim or Proceeding for liability hereunder with respect thereto.

(b) The covenants and obligations of the Parties set forth in this Agreement or in any Closing Agreement that are to be performed (i) on or prior to the Closing shall survive until the Closing, after which time no Person may make or bring a claim or Proceeding for liability hereunder and (ii) after the Closing shall survive until the date on which they have been fully performed, after which time no Person may make or bring a claim or Proceeding for liability hereunder; provided, that, any indemnity obligations of Seller with respect to the Excluded Liabilities shall survive without limit.

(c) In the event written notice of any claim for indemnification under Section 11.2(a) or (b) or Section 11.3(a) or (b) shall have been given in accordance herewith on or before the expiration date of the applicable survival period specified in paragraph (a) or (b) above setting forth the claim in reasonable detail (including the legal and factual basis for the claim and the Losses (defined below) incurred), the representations, warranties, covenants and agreements that are the subject of the indemnification claim shall survive with respect to that claim until sixty (60) days after the date as the claim is fully and finally resolved and the respective Indemnified Party (as defined below) has been notified in writing of that resolution.

37.211.2 Indemnity by Seller. From and after Closing, and subject to the terms and conditions set forth in Section 11.4 and Section 11.5 and the limitations set forth in Section 11.1 and this Section 11.2, Seller shall indemnify, defend and hold Buyer and its respective Affiliates and their respective officers, directors, representatives, owners, and advisors (each, a “Buyer Indemnified Party”) harmless for, from and against any and all claims, including Third Party

Claims, demands, suits, loss, liability, damage, fines, penalties, interest, and expense, including reasonable and documented attorneys' fees and costs of investigation, litigation, settlement and judgment, as well as the Indemnitee's obligations to indemnify its directors, officers, attorneys, employees, subcontractors, agents and assigns (collectively "Losses"), which any of them may sustain or suffer arising out of, in connection with, relating to or resulting from:

- (a) The material breach of any representation or the breach of any warranty made by Seller in this Agreement or any other Closing Agreement or Seller's Closing Certificate;
- (b) the material breach of any covenant or agreement made or undertaken by Seller in this Agreement or any other Closing Agreement; or
- (c) the Excluded Assets or the Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement, Seller shall not be liable for any Losses with respect to the matters set forth in Section 11.2(a), whether based in contract, tort, strict liability, other Laws or otherwise, excluding Losses arising from or relating to the breach by Seller of any Fundamental Representation in Article 3 or arising pursuant to fraud or willful misconduct of Seller, unless and until the aggregate of all Losses under Section 11.2(a) exceeds, on a cumulative basis, [Twenty-five Thousand Dollars (\$25,000)] (the "Indemnity Basket"), in which event Seller shall be liable for Losses including the amounts included in the Indemnity Basket. Notwithstanding anything to the contrary in this Agreement, the aggregate liability of Seller, whether based in contract, tort, strict liability, other Laws or otherwise, (i) arising under or relating to Section 11.2(a) ~~(excluding any liability arising from a material breach of the any Fundamental Representations in Article 3 or arising pursuant from or related to fraud, recklessness or willful misconduct of Seller), whether based in contract, tort, strict liability, other Laws or otherwise, (excluding any liability arising from a breach of the Fundamental Representations or arising pursuant to fraud, recklessness or willful misconduct of Seller), whether based in contract, tort, strict liability, other Laws or otherwise,~~ shall not exceed, on any measurement date, _____ Dollars (\$____,000) ~~of the~~ (the "Indemnity Cap"); and (ii) arising under or relating to Sections 11.2(b) or (c), or arising from or relating to a material breach of the any Fundamental Representations, fraud, recklessness or willful misconduct, whether based in contract, tort, strict liability, other Laws or otherwise, a breach of the Fundamental Representations, fraud, recklessness or willful misconduct, whether based in contract, tort, strict liability, other Laws or otherwise, shall not exceed the Purchase Price.

37.311.3 Indemnity by Buyer. From and after Closing, and subject to the terms and conditions set forth in Section 11.4 and Section 11.5 and the limitations set forth in Section 11.1 and this Section 11.3, Buyer shall indemnify, defend and hold harmless Seller and its Affiliates and their respective officers, directors, representatives, owners, and advisors (each, a "Seller Indemnified Party") for, from and against any and all Losses which any of them may sustain or suffer arising out, in connection with, relating to or resulting from:

- (a) The material breach of any representation or the breach of any warranty made by Buyer in this Agreement or any other Closing Agreement or Buyer's Closing Certificate;

(b) The material breach of any covenant or agreement made or undertaken by Buyer in this Agreement or any other Closing Agreement; or

(c) the Assumed Liabilities.

Notwithstanding anything to the contrary in this Agreement, Buyer shall not be liable for any Losses with respect to the matters set forth in Section 11.3(a), whether based in contract, tort, strict liability, other Laws or otherwise, excluding Losses arising from or relating to the breach by Buyer of any Fundamental Representation in Article 4, or arising pursuant to fraud or willful misconduct of Buyer, unless and until the aggregate of all Losses under Section 11.3(a) exceeds, on a cumulative basis, the Indemnity Basket, in which event Buyer shall be liable for Losses including the amounts included in the Indemnity Basket.

Notwithstanding anything to the contrary in this Agreement, the aggregate liability of Buyer, whether based in contract, tort, strict liability, other Laws or otherwise, ~~collectively~~ (i) arising under or relating to Section 11.3(a) (excluding any liability arising from or relating to a material breach of Buyer's Fundamental Representations or pursuant to fraud, ~~recklessness~~ or willful misconduct), ~~whether based in contract, tort, strict liability, other Laws or otherwise~~, shall not exceed, on any measurement date, the Indemnity Cap; and (ii) arising under or relating to Section 11.3(b) or (c) or arising from or relating to and any liability arising from a material breach of the Fundamental Representations or pursuant to fraud, recklessness or willful misconduct, ~~whether based in contract, tort, strict liability, other Laws or otherwise~~, shall not exceed the Purchase Price.

37.411.4 Further CovenantsQualifications Respecting Indemnification. The right of any Buyer Indemnified Party or Seller Indemnified Party (each, an "Indemnitee") to be indemnified hereunder shall, except with respect to any claim based upon intentional fraud, be subject to the following qualifications:

(a) Upon discovery of facts or circumstances giving rise to a claim for indemnification, including receipt of notice of any claim or Proceeding from any third party against a Party and from which Losses may reasonably be recoverable by the Party pursuant to Section 11.2 (in the case of a claim or Proceeding against Buyer) or Section 11.3 (in the case of a claim or Proceeding against Seller) (the third-party actions being collectively referred to herein as "Third Party Claims"), the Indemnitee shall give written notice thereof (each, a "Claim Notice") to the indemnifying Party (the "Indemnitor") as promptly as practicable but, in any event, within thirty (30) days after the date the Indemnitee obtains actual knowledge of the basis or alleged basis for the right of indemnity. The failure of the Indemnitee to provide a Claim Notice within any time period shall not relieve the Indemnitor of liability hereunder except and only to the extent the defense of the Third Party Claim is materially prejudiced by the failure to give the Claim Notice;

(b) In computing Losses for which an Indemnitee seeks indemnification pursuant to Section 11.2(a) or Section 11.3(a) (but not for purposes of determining inaccuracy or breach), references to materiality qualifications (but not with respect to material compliance with the terms, representations and warranties of this Agreement) shall be disregarded and the representations and warranties that are the subject thereof shall be interpreted as if those disregarded words were not included;

(c) In computing Losses, a Party's liability for indemnification shall be reduced by the amounts shall be computed net the amounts shall be computed net of any related recoveries that the Indemnitee actually receives under insurance policies, or other related payments it is entitled to from third parties, and net of any Tax benefits actually received to the Indemnitee, if any;

(d) The Indemnitee shall use Commercially Reasonable Efforts, acting in accordance with Prudent Operating Practices, to mitigate all Losses for which indemnification may be available hereunder, including availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at law or equity.

37.511.5 Procedures Respecting Third Party Claims.

(a) The Indemnitee shall provide with each Claim Notice a copy of a Third Party Claim and any related documents received (if applicable) and shall otherwise make available to the Indemnitor all relevant information to the defense of the claim and within the Indemnitee's possession. The failure of an Indemnitee to so notify the Indemnitor shall not relieve the Indemnitor of liability hereunder except to the extent that the defense of the Third Party Claim is prejudiced by the failure to give that notice. The notice shall advise whether the Indemnified Party seeks to assume the defense of the matter. If it does not, then the Indemnifying Party shall defend that matter, except as provided below.

(b) The Indemnitor shall assume the defense of the legal proceeding, then the Indemnitee shall (upon notice to the Indemnitor) have the right to undertake the defense or compromise of the Third Party Claim; provided, that (i) the Indemnitor cannot settle any Third Party Claim without the prior written consent of the Indemnitee, not to be unreasonably withheld, conditioned or delayed, and (ii) the Indemnitor shall reimburse the Indemnitee for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) unless it is determined in a final binding decision that the Indemnitor is not liable under this Agreement.

(c) The Party not defending the matter may elect to participate in the legal proceedings, negotiations or defense at any time at its own expense. The Indemnitor shall employ counsel and shall pay all expenses in connection with the conduct of the defense. The Indemnitor shall diligently work to defend any Third Party Claim that it has agreed to defend and shall consult with the Indemnitee regarding the defense and shall not enter into any settlement without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) The Indemnitor shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of), and the Indemnitee shall be entitled to have sole control over the defense or settlement, compromise, admission, or acknowledgment of any Third Party Claim (i) if the Indemnitor shall have failed to assume the defense of the Third Party Claim or it does not have the financial capability to defend the claim, (ii) to the extent the Third Party Claim seeks an injunction or other equitable relief against the Indemnitee which, if successful, would materially adversely affect the business, operations, assets, or financial condition of the Transferred Assets or Indemnitee, or (iii) if the Third Party Claim seeks damages in excess of the Indemnity Cap; provided, that, in each case of subparagraphs (i) through (iii) the Indemnitee shall make no settlement, compromise, admission or acknowledgment that would give rise to liability on the

part of the Indemnitor without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld, conditioned or delayed. If the Indemnitor defends the Third Party Claim and related Proceedings, the Indemnitor shall pay the reasonable costs, fees and expenses of the Indemnitee's separate counsel (i) if the Indemnitee shall have reasonably concluded, through advice and analysis of its counsel, that there may be defenses available to the Indemnitee that are different from or additional to those available to the Indemnitor which would make joint representation inappropriate, and (ii) if the Indemnitee's counsel shall have advised the Indemnitee that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel.

37.611.6 Purchase Price Adjustment. Solely for Tax account and reporting purposes, ~~the Parties agree to treat all payments made pursuant to this Article 11 as adjustments to the Purchase Price for Tax purposes,~~ unless otherwise required by applicable Law or taxing authority interpretations thereof.

37.711.7 Exclusive Remedies. ~~Except as expressly provided in this Agreement, or with respect to claims for fraud, willful misconduct or criminal conduct, the Parties hereto each Party agrees that the remedies-indemnification obligations expressly set forth in Article 11 of provided in this Agreement are the its exclusive remedies of the Parties, and no Party shall make any claim, for any loss, liability, damages or other matter under, relating to or arising out of this Agreement whether based on contract, tort, strict liability, other Laws or any other legal theory including reliance, restitution, unjust enrichment or similar equitable claim theory. Each party may seek specific performance hereunder of the terms of this Agreement.~~ ~~Except as expressly provided in this Agreement, or with respect to claims for fraud, willful misconduct or criminal conduct, the Parties hereto agree that the remedies provided in this Agreement are the exclusive remedies of the Parties, and no Party shall make any claim, for any loss or other matter under, relating to or arising out of this Agreement whether based on tort, strict liability, or any other legal theory. Each party may seek specific performance hereunder.]~~

ARTICLE 12

GENERAL PROVISIONS

38.112.1 Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier or by mail, and shall be deemed to have been duly given and to have become effective (a) upon receipt, if delivered in person, (b) one (1) Business Day after having been delivered to an air courier for overnight delivery, (c) upon transmission by e-mail or facsimile if sent before 5:00 p.m. local time of the recipient on a Business Day, or on the next Business Day if sent thereafter, or (d) five (5) Business Days after having been deposited in the U.S. mail as certified or registered mail, return receipt requested, all fees prepaid, directed to the Parties or their permitted assignees at the following addresses (or at another address as shall be given in writing by a Party):

If to Seller, addressed to:

Attn:

Phone:

Fax:
E-Mail:

with a copy to counsel for Seller-Buyer (which shall not constitute notice):

Attn:
Phone:
E-Mail:

If to Buyer, addressed to:

Attn:
Phone:
Fax:
E-Mail:

with a copy to counsel for Buyer (which shall not constitute notice):

Jennings, Strouss & Salmon, PLC
1350 I Street, NW, Suite 810
Washington, DC 20005-3305
Attn: Gary Newell
Phone: (202) 371-4129
Fax: (202) ___ - _____
E-Mail: gnewell@jssl.com [RG20]

38.212.2 Successors and Assigns. The rights of the Parties under this Agreement shall not be assigned or transferred nor shall the duties of either Party be delegated without the prior written consent of the other Party in its sole discretion; provided, that Buyer may, without Seller's consent, assign some or all of its rights, interests or obligations hereunder, in whole or in part to an Affiliate. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assignees. Nothing contained in this Agreement, express or implied, is intended to confer upon any Person (other than the Parties hereto and their permitted assignees) any benefits, rights or remedies under or by reason of this Agreement.

38.312.3 Counterparts. This Agreement may be executed in two or more original counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered by facsimile or other electronic methods and shall be effective upon that delivery as if a signed original had been delivered at that time to the other party.

38.412.4 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

38.512.5 Entirety of Agreement; Amendments. This Agreement (including the

Schedules, Appendices and Exhibits hereto), ~~the Confidentiality Agreement and~~ the Closing Agreements contain the entire understanding between the Parties concerning the Transactions and, except as expressly provided for herein, supersede all prior understandings and agreements, whether oral or written, between them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement, ~~the Confidentiality Agreement~~ and the Closing Agreements which are not fully expressed herein or therein. This Agreement may be amended or modified only by an agreement in writing signed by each of the Parties. All Appendices, Exhibits and Schedules attached to or delivered in connection with this Agreement are integral parts of this Agreement as if fully set forth herein.

38.6—Construction—Waiver. The failure of a Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of that term, covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect. No waiver of any provision or condition of this Agreement by a Party shall be valid unless in writing signed by the Party. A waiver by one Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall any waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

38.712.6 Waiver of Jury Trial. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS WHICH IT MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY SUIT, LEGAL ACTION OR PROCEEDING BROUGHT BY OR AGAINST IT OR ANY OF ITS AFFILIATES RELATING TO THIS AGREEMENT OR THE TRANSACTIONS.

~~12.9 Waiver of Sovereign Immunity. With respect to this Agreement, any other Closing or Transaction Agreement and the contemplated Transactions, including with respect to the continued ownership, operation, maintenance, improvement and replacements of the Transferred Assets for so long as Buyer or its successors or assigns have an interest in any of the Transferred Assets, Seller hereby irrevocably waives, to the fullest extent permitted by law, with respect to itself and its revenues and assets (irrespective of their actual or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction or any court or tribunal, including mediation, arbitration or similar forum (each, a “Forum”), (iii) relief by way of injunction, specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment or an award), and (v) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be subject in any Proceedings before any Forum in any jurisdiction. Seller irrevocably agrees, to the extent permitted by Law, that it will not claim that immunity in any of those Proceedings.~~ [A2H]

38.912.7 Governing Law/Dispute Resolution.

(a) This Agreement shall be governed in all respects, including validity, interpretation and effect, by the internal Laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the

application of the Laws of any jurisdiction other than the State of Ohio, except to the extent that portions hereof regulated by Federal law shall be governed by that Law.

(b) Subject to the provisions of subsection (c), each Party hereby unconditionally and irrevocably, to the fullest extent permitted by law, (i) consents to jurisdiction in any Proceeding arising out of or relating to this Agreement, or any of the Closing Agreements or the Transactions contemplated hereby, and agrees that any Proceeding arising out of this Agreement or any Closing Agreement shall be brought and prosecuted exclusively in a state court of competent jurisdiction located in the state or federal courts located in Franklin County, Ohio, and any judgment obtained as a result thereof may be filed in any court of competent jurisdiction, (ii) submits to the *in personam* jurisdiction of those courts and waives and agrees not to assert in any Proceeding before any of those courts, by way of motion, as a defense or otherwise, any claim that it is not subject to the *in personam* jurisdiction of any of those courts, and (iii) waives any objection that it may now or hereafter have to the laying of venue in any Proceeding arising out of or relating to this Agreement, any Closing Agreement or the Transactions contemplated hereby brought in any of those courts and any claim that any Proceeding brought in any of those courts has been brought in an inconvenient forum.

~~(c) Unless otherwise provided pursuant to this Agreement, all disputes between the Parties shall be resolved, if possible, in accordance with the following dispute resolution procedures. As used in this Section 12.9, "Parties" shall refer to the disputing Parties, and "Party" shall refer to one or the other of the disputing Parties, as applicable.~~

~~(c) Negotiations by Senior Management.~~

~~. The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by providing written notice to the other Party, request a meeting to initiate negotiations ("Negotiation Request") to be held within seven (7) days of the other Party's receipt of the Negotiation Request, at a mutually agreed time and place (either in person or telephonically). If the Dispute is not resolved within thirty (30) days of the other Party's receipt of the Negotiation Request ("Initial Negotiation End Date"), the Managers shall refer the Dispute to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). No later than seven (7) days after the Initial Negotiation End Date (as applicable, the "Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.~~

~~. No later than seven (7) days after the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than fifteen (15) days after the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.~~

~~All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.~~

~~(c) In the event the controversy is not resolved by informal negotiation within sixty (60) days of the Negotiation Request, the parties agree to discuss, without binding obligation, whether to use mediation, arbitration or other alternative dispute resolution procedures, but neither party shall be obligated to do so and may, thereafter, institute any legal action in a court if permitted by and in accordance with this Agreement.~~^[RG22]

38.1612.8 No Partnership; Relationship between Buyer and Seller. Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship between Buyer and Seller; and in no event shall either Party take a position in any regulatory filing or Tax Return or other writing of any kind that a partnership, joint venture or other similar relationship exists. The Parties do not intend to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share profits or losses, or to share any joint control over financial decisions or discretionary actions. Notwithstanding anything herein to the contrary, neither Seller nor Buyer shall be prevented from exercising their respective rights or pursuing their remedies as owners of the Power Station and Transferred Assets, as applicable.

38.1712.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be valid, binding and enforceable under applicable Law, but if any provision of this Agreement is held to be unenforceable under applicable Law, the provision shall be unenforceable only to the extent expressly so held, without affecting the remainder of the provision or the remaining provisions of this Agreement. The Parties shall negotiate in good faith to agree upon legal, valid and enforceable substitute provisions to carry out the purposes and intent of any unenforceable provision.

38.1812.10 Time of the Essence. Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement. The Parties acknowledge that each will be relying upon the timely performance by the other of its obligations hereunder as a material inducement to each Party's execution of this Agreement.

38.1912.11 Limitations on Damages. EXCEPT IN THE CASE OF A PARTY'S FRAUD, RECKLESSNESS OR WILLFUL MISCONDUCT, OR THE EVENT OF THIRD PARTY LIABILITY, NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY OR ANY OF ITS AND ITS AFFILIATES RESPECTIVE, OFFICERS, TRUSTEES, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, ATTORNEYS, AGENTS, REPRESENTATIVES OR AFFILIATES, FOR ANY DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, ARISING FROM THIS AGREEMENT OR ANY OF THE ACTIONS OR TRANSACTIONS PROVIDED FOR HEREIN, OTHER THAN ACTUAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR IN ANY CLOSING AGREEMENT, IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER THIS

AGREEMENT OR ANY CLOSING AGREEMENT, OR OTHERWISE AT LAW OR IN EQUITY, FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE DAMAGES, EXEMPLARY DAMAGES, LOST PROFITS OR DAMAGES THAT ARE REMOTE, SPECULATIVE, INDIRECT, UNFORESEEN OR IMPROBABLE, OR ANY OTHER DAMAGES OTHER THAN ACTUAL DAMAGES. EACH PARTY HEREBY RELEASES THE OTHER PARTIES AND THEIR CONTRACTORS, SUBCONTRACTORS, AGENTS, AND AFFILIATES FROM ANY OF THOSE DAMAGES (EXCEPT TO THE EXTENT PAID TO A THIRD PARTY IN A THIRD PARTY CLAIM).

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

SELLER:

THE CITY OF NAPOLEON, OHIO, [an Ohio
municipal corporation]

By: _____
Name: _____
Title: _____

BUYER:

AMERICAN MUNICIPAL TRANSMISSION
POWER, INC., LLC
an Ohio nonprofit ~~corporation~~ limited liability
company

By: _____
Name: _____
Title: _____

4841-5156-3103, v. 2-5156-3103, v. 1

Strategic Assessment Validation for the Northside Substation

Prepared by:
Energy Strategies, Inc.
March 26, 2018



The Scenario: Our Understanding

2

- Napoleon owns the Northside Substation which interconnects its distribution network at the 69kV level to the First Energy 138kV transmission network (see next chart for One Line Diagram)
- Because there are five power plants, the connection at 138kV (which above the FERC defined “Bight-line” designation for transmission), defines Napoleon as a Transmission Owner and subject to PJM and NERC compliance responsibilities.
- Further, in FERC Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure Docket Nos. RM12-6-001 RM12-7-001 ORDER NO. 773-A ORDER ON REHEARING AND CLARIFICATION – In Section 1, Paragraph 28, *Looped Configurations Connected below 100 kV and Removing the 100 kV Minimum in Exclusion E3*, specifically denies the NYPSC’s objection to looped configurations as a TO Exemption.
- AMP, for which Napoleon is a member system, has offered to acquire the 138kV facility for ~\$960k and manage all transmission owner responsibilities. Napoleon will continue to maintain the facility on a time and material basis.

Objective

4

- NPL seeks an independent assessment of its Northside Transmission Substation Compliance Options
- NPL has internally performed a S.W.O.T analysis and has identified four possible “Compliance Options”.
- NPL seeks, in this engagement, an expert opinion as to:
 - ▣ NPL’s assessment of Northside economic evaluation,
 - ▣ potential PJM transmission revenues and
 - ▣ an independent check on methodology, findings and conclusions.

Findings

5

- Napoleon staff performed its own analysis of the 138kV equipment to determine the “fair” value of this asset either to sell to a third party (e.g., AMP) or to compute its associated transmission revenues using the FERC Revenue Requirement formula. Staff’s computed value was \$1,532,982.
- ESI independently computed the “fair” value. First, when applying FERC’s OCLD methodology, we adjusted the original cost in order to reflect accrued depreciation between 1999 and 2017. This factor reduced the value to \$705,000. However, Staff also allocated the two 138kV/69kV transformers to only the distribution plant; although, generation owned by AMP routinely supplies energy and capacity into the First Energy transmission network. Assuming 30% of the value was assigned to transmission, the resulting value was \$983,000.

Findings continued

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- Allocating the cost of an asset is based upon the concept of “cost causality.” For example, a 69kV breaker is assigned 100% to distribution, while a 138kV/69kV transformer can be allocated in a number of ways based upon the functionality of the asset. If it is used exclusively as a step-down transformer, it should be fully allocated to the distribution account; however, if it is also used to inject energy into the transmission network, its cost should be shared between Distribution and Transmission accounts. The degree of allocation between the T&D accounts is subjective and therefore uncertain. For this reason, ESI performed a sensitivity analysis based upon a reasonable range of allocation ratios. We found that the asset value ranged between \$900,000 - \$1.1M.
- Finally, ESI performed a 20 year pro forma risk analysis using a Monte Carlo model to compare the likely revenue streams from the self-ownership scenario versus the asset sale to AMP. We found that the net present value of cash generated from each scenario was virtually identical; however, the range of uncertainty was significantly greater with self ownership. In short, while the expected value of each alternative as measured by NPV was nearly identical, the degree of uncertainty for the own scenario was four times greater: within 90% confidence:
 - The Own Case had an NPV of \$414,000 +/- \$136,00
 - The Sell Case had an NPV of \$421,00 +/- \$34,000

Disclaimer

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- We include this statement to assure our client that every effort was made to independently and accurately measure the economic impact of each scenario evaluated.
- However, any such forecast, especially for a period of 20 years or more, is subject to significant uncertainty, even though we utilized advanced analytics to help assess future unknowns.
- As a result, we suggest that the reader focus more on the comparable trends and not on the absolute values derived.
- Finally, this study was performed to independently consider the factors that might affect Napoleon's assessment of the two scenarios and to either confirm or raise questions as to its own deliberations.

Valuation of a Utility Asset

8

- There are at least four ways to estimate the value of a given asset:
 1. Comparisons with other similar assets sold in a competitive marketplace.
 2. The cost to replace the asset new adjusted for wear and tear.
 3. Obtaining bids for the sale of the asset to interested parties.
 4. *Computing the original cost less accrued depreciation or OCLD.*
- If Napoleon's goal was to simply dispose of this asset, the first three methodologies, in a competitive market, would likely produce the most accurate valuation and possibly the highest price.
- However, because transmission pricing is regulated, traditionally the value of the asset by which the new owner can recover its costs and earn a fair return on investment is limited to the OCLD methodology.

Comments on FERC's Original Cost less Depreciation (OCLD) Methodology

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- Any buyer of a transmission asset is limited to the amount of return it can recover including its original acquisition cost to the OCLD value.
- This does not mean the buyer is *guaranteed* a fair return nor does it preclude the buyer from under or over recovery due to regulatory lag – the time period when rates are fixed between rate applications.
- Our analysis also considered this factor in assessing the “ownership” scenario.

Evaluation Uncertainties

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- The valuation of the 138kV transmission asset is broader than just the initial payment and includes all future returns derived from that investment. We chose a twenty year forecast period to test future uncertainty.
- For the ownership scenario, asset value is based upon the costs to own and maintain the facility, as well as the cost recovery and return on investment set by the FERC. As noted, actual cost recovery is not guaranteed and is subject to regulatory lag as well as prudence review.
- For the sell scenario, the asset value will most likely be based upon OCLD as the buyer confronts the same regulatory paradigm. However, the full value to Napoleon will include an assessment of how the proceeds will be invested and how the transfer of the asset will affect its cost of transmission services.
- For this analysis, we applied a Monte Carlo modeling technique to capture some of the uncertainty associated with both the buy and sell scenarios

Own versus Sell Scenario

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- For the Ownership scenario we forecasted the following cost components:
 - ▣ Administrative and General Expenses (A&G)
 - ▣ Operation & Maintenance Expenses (O&M)
 - ▣ Taxes, Depreciation and Amortization (TDA)
- FERC approved transmission revenues were calculated using the above expenses plus a fair return on the approved OLDC also referred to as the Rate Base.
- Free cash flow was derived from the expected return plus the expected gain/loss associated with regulatory lag.
- All forecasted values were discounted to current 2018 dollars.

Own versus Sell Scenario - Continued

12

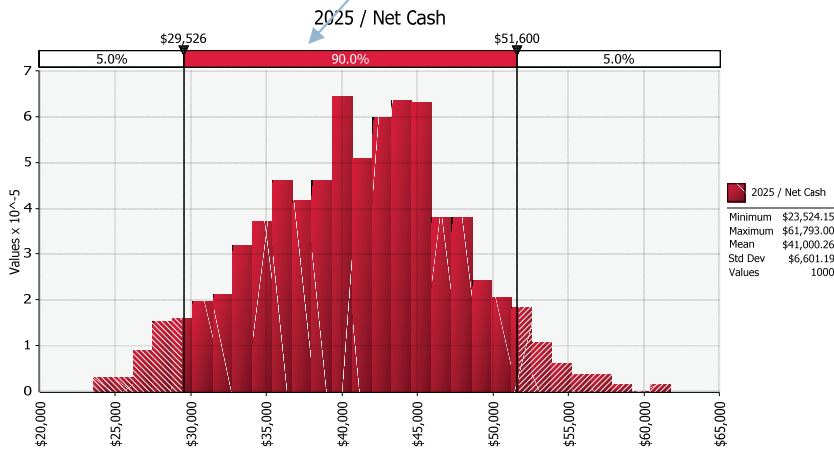
- For the sell scenario, the expected return on investment was accrued assuming the proceeds were invested in high quality bonds.
- Clearly, this is a very conservative assumption as the actual use of funds will likely be used to achieve the highest return on investment be it to enhance productivity, cost reduction or quality of service.
- A range of interest rates were evaluated to reflect future changes in the bond market.

Pro Form Risk Analysis

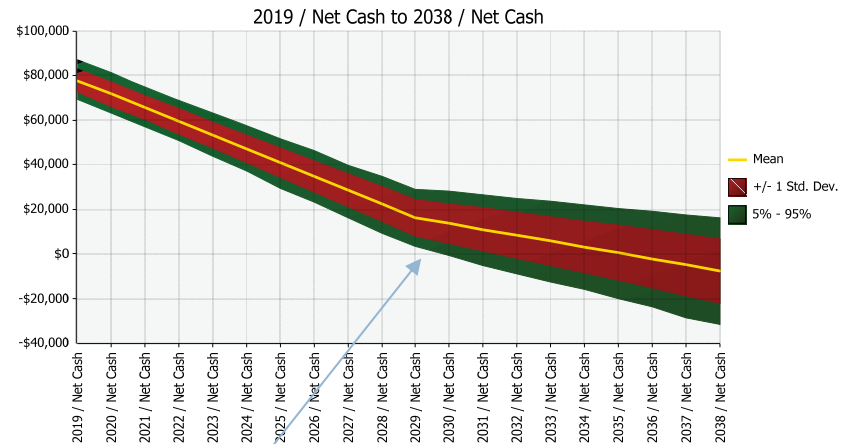
13

Own Scenario: Napoleon will achieve positive cash flow starting at ~\$80k, but steadily declining to zero by 2035.

Below is the 2025 distribution of Free Cash to illustrate the range of outcomes. Within 90% Confidence, Napoleon will “earn” between \$29,526 & \$51,600. Note: Similar distributions exist for each year and 2025 was chosen only as an example.



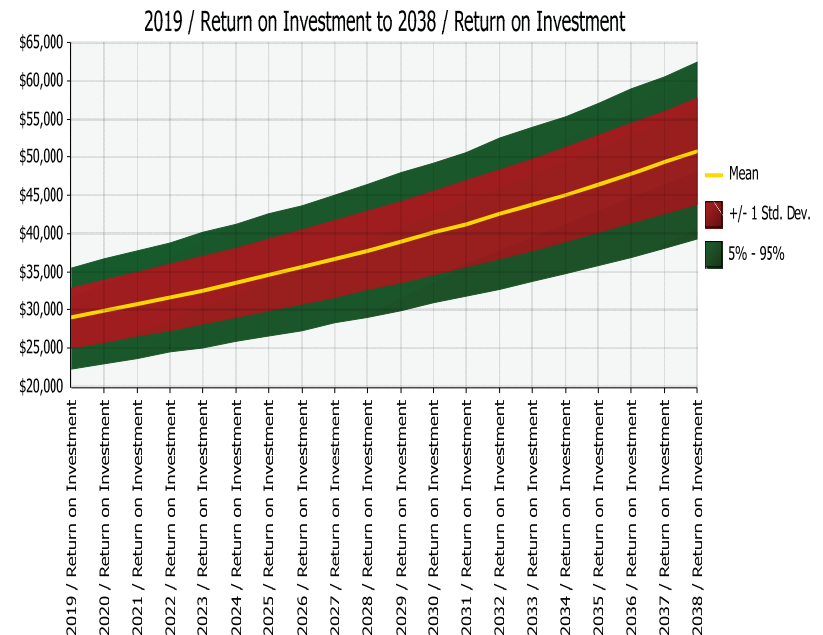
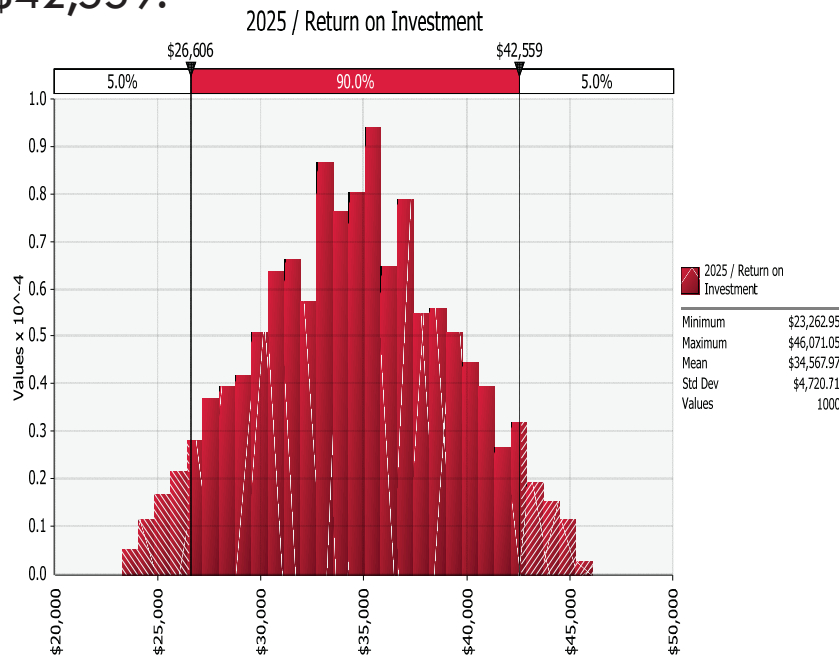
The chart below illustrates the range of Free Cash over the 2019 – 2038 period. Note how the ranges decline over time due to the annual reduction in Rate Base as depreciation is applied. By 2030 Free Cash could become negative as Rate Base Returns are overcome by potential regulatory lag associated losses.



Sell Scenario: Napoleon will only begin to earn ~\$30k beginning in 2019; however, will steadily rise to ~\$50k by 2038.

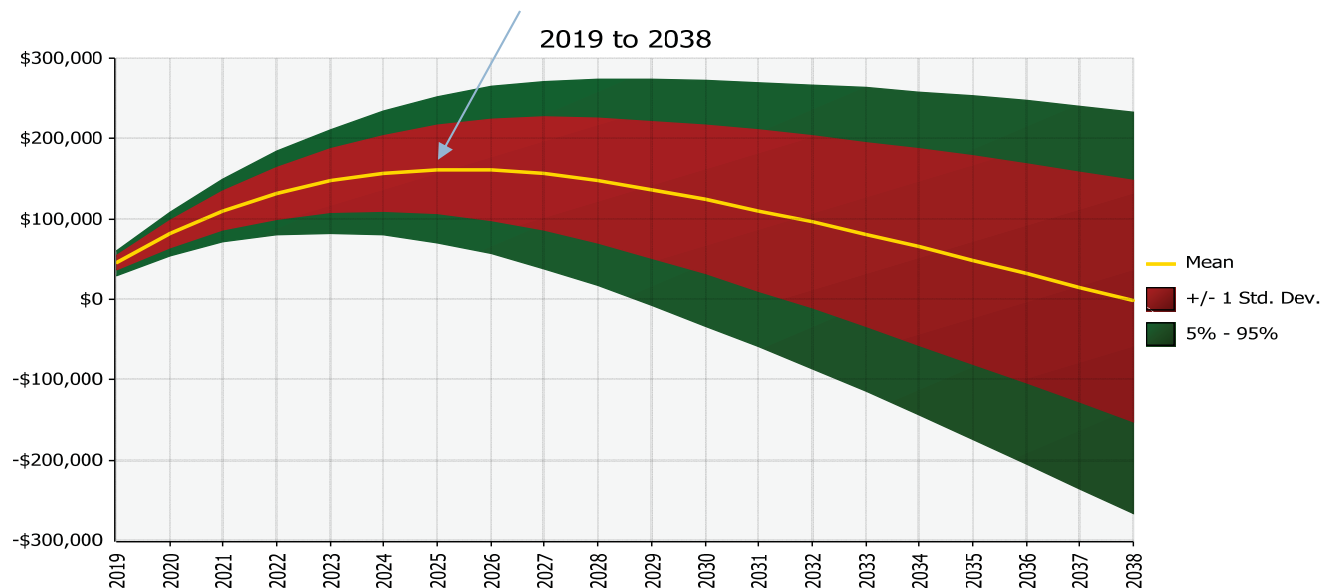
For the Sell Scenario, ROI for 2025 is similarly presented below. At the 90% Confidence level the potent range if return ranges between \$26,606 & \$42,559.

For the Sell Scenario, here annual returns continuously grow as accrued interest is compounded



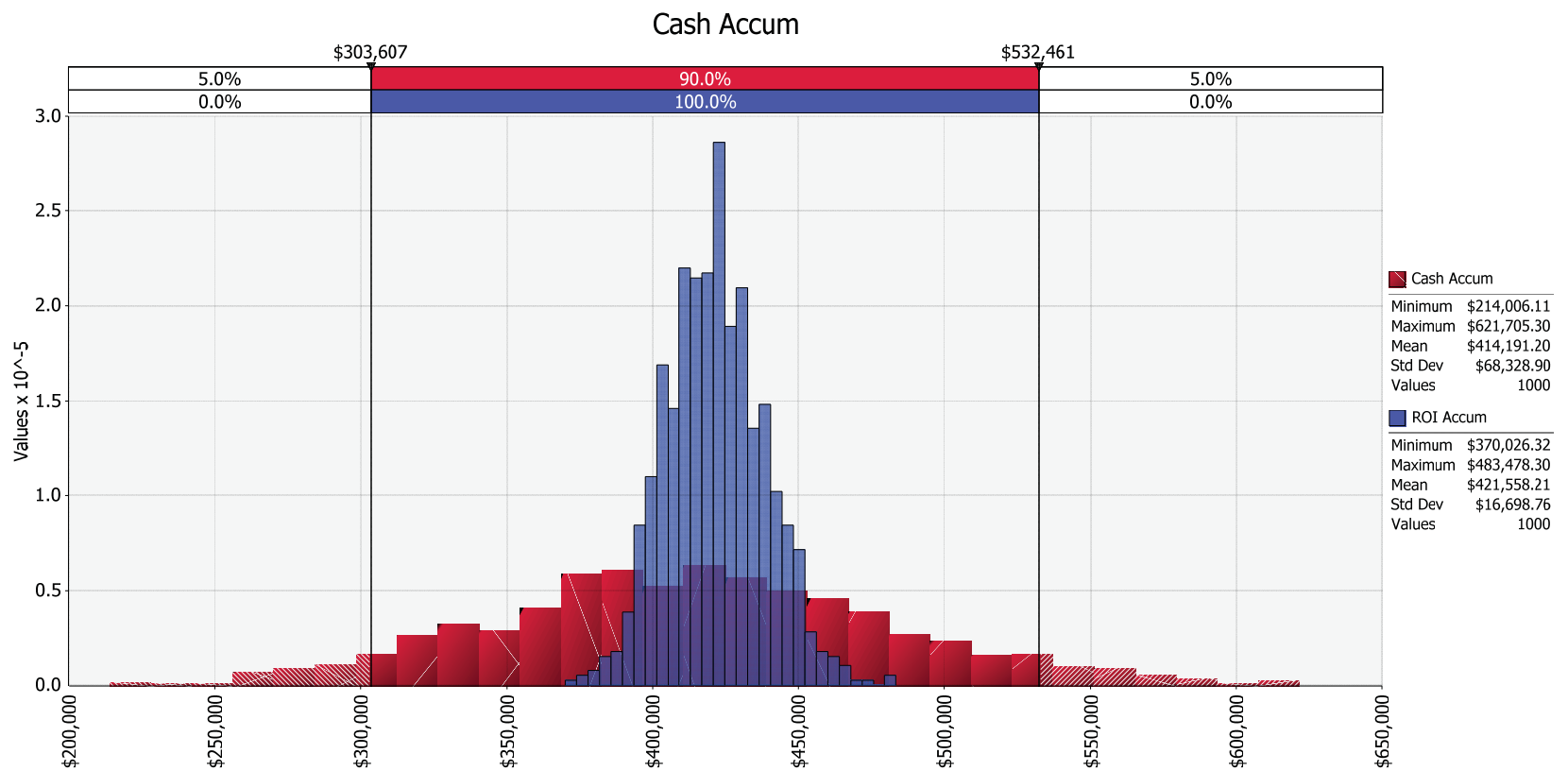
As the “Own” cash flow declines and the “Sell” cash flow rises over time, the net present value (NPV) favors the Sell scenario by a modest \$7,000.

Below is the Probability Distribution of the cumulative net difference between the two scenarios in constant 2018 dollars. Note, thru 2025 the Own Scenario (a positive value) continuously rises; however, thereafter it declines back to and slightly below zero, which means that the Sell Scenario then begins to generate greater returns. We did not include the cost to replace equipment at their end-of-lives. Inclusion of those costs would shift the curve downward thereby further reducing the benefit of the Own scenario.



While the cumulative difference between the two scenarios over 20 years is ~\$7,000 in favor of the Sell Scenario, more meaningfully, at 90% confidence level (2 standard deviations) the own scenario can range by as much as +/- \$130,000, while the sell scenario ranges by +/- \$34,000.

Probability Distribution of Accumulated Free Cash



Conclusions

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- The Own Scenario:
 - Free cash flow is more attractive during the first 6 to 7 years, but is less favorable thereafter.
 - However, the degree of uncertainty is 4 times greater than the Sell scenario which adds a higher level of risk exposure. Such uncertainties include:
 - The long term cost of control center and compliance services
 - Regulatory approval of future costs
 - Regulatory lag
 - Future capital expenditures
- The Sell Scenario:
 - Sale provides Napoleon with nearly \$1 million for its reserve fund or other productive uses
 - Earnings derived from the fund provides basically the same returns as the Own Scenario (2019 – 2038)
 - However, upside benefits are less than the potential gains from ownership albeit at a greater risk.
 - AMP's offer of \$960,000 falls within the range of reasonable based on our OCLD analysis.
- Given that transmission is not a core business function and the added regulatory responsibilities for just this single asset, the "sell" strategy appears to be a preferred choice.

Contact Information

19

Howard Axelrod, PhD, MBA, MSEE, BSEE

President

Energy Strategies, Inc.

1759 Stephanie Trail NE

Atlanta, Georgia 30329

(519)369-9969

Email: hja@energystrategiesinc.com

Web: www.energystrategiesinc.com

RESOLUTION NO. 006-18

**A RESOLUTION TO AMEND THE CITY OF NAPOLEON, OHIO
MUNICIPAL TAX CODE SECTION 194.134(C) TO CORRECT A
SCRIVENER'S ERROR, AMENDING THE REFERENCED
LANGUAGE**

WHEREAS, after the passage of Resolution No. 003-14 it was found to contain a scrivener's error in that it referenced Municipal Tax Code 194.134 Section B, when the intent was to reference 194.134 Section C, thus this language shall now be amended to reference the appropriate Section; **Now therefore**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, City of Napoleon, Ohio Municipal Tax Code 194.134(C), as passed by Resolution No. 003-14, are hereby amended and enacted as follows:

“194.134 AUTHORITY OF TAX ADMINISTRATOR; REQUIRING IDENTIFYING INFORMATION

(A) The Tax Administrator may require any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information. A taxpayer registration update form is required of all residents eighteen years and older, and all businesses.

(B) (1) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to section 194.10 of this Chapter, in addition to any applicable penalty described in section 194.99 of this Chapter.

(2) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (A) of this section within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to section 194.10 of this Chapter.

(3) The penalties provided for under divisions (B)(1) and (2) of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in section 194.99 of this Chapter, and any other penalties that may be imposed by the Tax Administrator by law. *(Source: ORC 718.26)*

(C) Information Submission by Landlords. On or before May 1 of each year, all property owners who rent to tenants of residential, commercial, or industrial premises, shall file with the Tax Administrator, a report showing the name, address, and phone

number, of each tenant who occupies residential, commercial, or industrial premises within the City of Napoleon. The list shall also include all name(s), address(es), and phone number(s), of any tenant who has vacated the property in the preceding twelve (12) month period. The list should also include, when the information is available to the landlord, the date in which the tenant vacated the property, along with the tenant's forwarding address. If a landlord is not in possession of a former tenant's forwarding address or other current contact information, the landlord will not be penalized pursuant to any provision in this Section 194.20. Any information referred to in this Section may be requested at any time under audit by the Tax Administrator. Such report shall be in writing, and shall be delivered to the Tax Administrator by one of the following methods:

- (1) Regular U.S. mail delivery to the City Income Tax Department
- (2) Delivered by electronic mail (E-mail) directly to the City Income Tax Department
- (3) Facsimile transmission directly to the City Income Tax Department
- (4) Hand delivery to the City Income Tax Department.

Forms and instruction for reporting shall be made available on the City's website. For purposes of this Section ~~(B)~~ C, "tenant" means:

- (1) If there is a written lease or rental agreement, the person(s) who signed the written lease or rental agreement with the owner or their agent.
- (2) If there is an oral lease or rental agreement, the person(s) who entered into the oral lease or rental agreement with the owner or their agent.

Failure to comply with this Section ~~(B)~~ C will result in:

- (1) Notification (sent by regular U.S. mail delivery) to landlord and requiring compliance within 30 days.
- (2) Subpoena (sent by certified mail) for the property owner or agent to appear before the Tax Administrator with required documentation (with hearing scheduled within 14 days of date mailed).
- (3) Prohibition. No person shall knowingly fail, refuse, or neglect to file any return or report required under this Chapter or under rules and regulations made under authority thereof; or file or knowingly cause to be filed any incomplete, false or fraudulent return, report or statement; or knowingly fail, refuse, or neglect to withhold or remit any City tax; or knowingly fail, refuse, or neglect to pay any City tax, penalty or interest; or aid or abet another in the filing of any incomplete, false or fraudulent return, report or statement.
- (4) Penalty. Any person who violates this Section (B) is guilty of a misdemeanor of the 1st degree, and in addition to other penalties provided by law, shall be fined not more than \$1,000.00 or imprisoned not more than six (6) months, or both."

Section 2. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 3. If any section, subsection, paragraph, clause or provision or any part thereof of this ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such adjudication and all the remaining provisions of this ordinance shall remain in full force

and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 5. That, this Resolution shall be in full force and effect at the earliest time permitted by law.

Passed: _____
Joseph D. Bialorucki, Council President

Approved: _____
Jason P. Maassel, Mayor

VOTE ON PASSAGE ____ Yea ____ Nay ____ Abstain

Attest:

Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Resolution No. 006 -18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the _____ day of _____, _____; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath, Clerk/Finance Director



City of NAPOLEON, Ohio

Wastewater Treatment Plant

735 E. Washington St. P.O. Box 151, Napoleon, OH 43545

Phone: 419/592-3936

Wastewater Superintendent
David Pike

Memorandum

To: Joel Mazur City Manager
From: David Pike WWTP Superintendent
Date: 3/20/18
Subject: New SCADA Software Program

Joel,

I would like to proceed with the upgrade for the Wastewater Treatment Plants SCADA software and hardware which would include the lift stations. This is an item in the 2018 approved budget in our 520.6300.57200 account for \$40,000.

I am requesting to sole source this project to Koester Corporation. As this is over the \$25,000 we will need legislation and council's approval. The sole source to Koester's is based on this being the same software program as installed at the new water plant, and their continued support for the Wastewater Treatment Plant for our existing program.

It has also come to my attention that the Wastewater Treatment Plant has a master antenna on the water tower for the communications for all of the city's lift stations. Due to the timing of the Water Plant's painting project of the tower, I feel we need to get Koester Corporation on board now, should we have issues when the painting project begins. I am also requesting emergency and suspension of the rules to allow Koester Corporation to begin before the water tower painting project starts.

Sincerely,

David Pike



TEL. (419) 599-0291
FAX (419) 599-1150
EMAIL cdempsey@koester-corp.com

813 N. PERRY STREET
NAPOLEON, OHIO 43545

professional engineering • industrial systems

February 22, 2017

David Pike
Napoleon Waste Water Treatment Plant
P.O. Box 151
735 East Washington Street
Napoleon, Ohio 43545

Subject: SCADATA Replacement
Quote #: 17-018-CD Revision 1

Dear David:

Koester Corporation is pleased to quote your SCADATA system replacement. Each SCADATA remote station will be replaced with AB Micro820 PLC and new UPS. The SCADATA HMI software will be replaced with InduSoft. The replacements will move all communications over ethernet using ModBus/TCP protocol. We quote the following:

Plant

- o One (1) Lot of Engineering to develop software for InduSoft on a City supplied computer for all replaced SCADATA stations as well as the Quantum PLC at the EQ Basin station, the MicroLogix 1500 PLC's at the West and South stations and the Acromag I/O at the DJE Flow station. The Plant portion must be done prior to replacing any SCADATA systems.

Plant Price: \$20,201.00

Alarming Software Option:

- o One (1) Alarm Software for Telephony, Email, Paging, 2-way text, and Mobile-911 for up to ten (10) devices, WIN-911/PRO MOBILE/10
- o One (1) Multitech External USB TAPI voice modem, WIN-911/TAPI/USB

Alarming Option Price: \$5,496.00

DJE Flow Station

- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) Lot of Labor to install above equipment in existing enclosure
- o One (1) Lot of Engineering to develop drawings and software for the new PLC

DJE Flow Station Price: \$1,941.00

Total Est. \$38,942

EQ Basin Station

- o One (1) Lot of Engineering to interface with the existing Modicon Quantum PLC

EQ Basin Station Price: \$760.00

West Station

- o One (1) NEMA 4X Fiberglass Enclosure
- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) 2-channel Analog Input Add-on Module, AB 2080IF2
- o One (1) Lot of Labor to install above equipment in new enclosure
- o One (1) Lot of Engineering to develop drawings and software for new PLC and interfacing with existing MicroLogix 1500

West Station Price: \$2,560.00

South Station

- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) 4-point 24VDC digital input Add-on Module, AB 2080IQ4
- o One (1) 2-channel Analog Input Add-on Module, AB 2080IF2
- o One (1) Lot of Labor to install above equipment in existing enclosure
- o One (1) Lot of Engineering to develop drawings and software for new PLC and interfacing with existing MicroLogix 1500

South Station Price: \$2,369.00

Palmer Ditch Station

- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) 4-point 24VDC digital input Add-on Module, AB 2080IQ4
- o One (1) 2-channel Analog Input Add-on Module, AB 2080IF2
- o One (1) Lot of Labor to install above equipment in existing enclosure
- o One (1) Lot of Engineering to develop drawings and software for the new PLC

Palmer Ditch Station Price: \$2,109.00

Van Hying Station

- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) 2-channel Analog Input Add-on Module, AB 2080IF2
- o One (1) Lot of Labor to install above equipment in existing enclosure

- o One (1) Lot of Engineering to develop drawings and software for the new PLC

Van Hying Station Price:\$2,049.00

North Point Station

- o One (1) NEMA 4X Fiberglass Enclosure
- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) 2-channel Analog Input Add-on Module, AB 2080IF2
- o One (1) Lot of Labor to install above equipment in new enclosure
- o One (1) Lot of Engineering to develop drawings and software for the new PLC

North Point Station Price:\$2,560.00

Hospital Station

- o One (1) NEMA 4X Fiberglass Enclosure
- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) Lot of Labor to install above equipment in new enclosure
- o One (1) Lot of Engineering to develop drawings and software for the new PLC

Hospital Station Price:\$2,452.00

Williams Station

- o One (1) 5A Circuit Breaker, AB 1489M1C050
- o One (1) 24VDC, 5A Power Supply, Siemens 6EP13332BA20
- o One (1) 24VDC UPS, Siemens 6EP41343AB000AY0 and 6EP41310GB000AY0
- o One (1) Micro820, AB 2080LC2020QWBR
 - With 12-point 24VDC digital inputs and 7-point relay outputs
- o One (1) Lot of Labor to install above equipment in existing enclosure
- o One (1) Lot of Engineering to develop drawings and software for the new PLC

Williams Station Price:\$1,941.00

Total Price:\$38,942.00

Note: City is responsible for providing NAT routing and EtherNet communications to remote PLC's.

Thank you for the opportunity to quote. If you have any questions, please feel free to call or e-mail.

Quote Exp.: 60 Days
 Delivery: 10 - 12 weeks, ARO Prox.
 F.O.B.: Napoleon, OH, Prepaid & Add
 Terms: Net 30 Days

Handwritten:
 38,942
 - 28,342

 10,600

Handwritten:
 18,200
 - 7,600

 10,600

Limited Warranty

Koester Corporation will guarantee its workmanship to be free of defect, said warranty being in effect for fifteen (15) months from the date of shipment or twelve (12) months from "acceptance" of Koester product, whichever occurs first. "Acceptance" shall mean a written acknowledgment by a representative of the buyer or acceptance as defined by UCC 2-606 as adopted by the State of Ohio, that he has inspected the product after installation and "debug" and has found the product to be in satisfactory working condition. Koester will assign all warranties from its parts suppliers on the same terms and conditions.

If a defect in workmanship is noted during the warranty period, Koester will, at the option of Koester Corporation, repair the defect at the buyer's facility, or at Koester direction, the product will be returned to Koester for repair. All warranty covered repairs must be performed by Koester personnel, and will be performed at Koester cost.

KOESTER MAKES NO OTHER WARRANTY, EXPRESS, OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT EXTEND AND KOESTER SHALL NOT BE CHARGEABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES WITHIN THE MEANING OF UCC SECTION 2-715 AS ADOPTED BY THE STATE OF OHIO.

Regards,

Koester Corporation

Charles P. Dempsey
Engineering Manager

CD/mw



City of Napoleon, Ohio

Department of Public Works

255 West Riverview Avenue, P.O. Box 151

Napoleon, OH 43545

Chad E. Lulfs, P.E., P.S., Director of Public Works

Telephone: (419) 592-4010 Fax: (419) 599-8393

www.napoleonohio.com

Memorandum

To: Joel L. Mazur, City Manager
From: Chad E. Lulfs, P.E., P.S., Director of Public Works
cc: Mayor & City Council
Greg Heath, City Finance Director
Scott Hoover, WTP Superintendent
Date: March 21, 2018
Subject: WTP Rehabilitation Project – Change Order No. 12

During construction it was discovered that certain chemicals used in the treatment process are extremely corrosive. Due to this issue, it was determined that these chemicals need to be stored in smaller, separate rooms. We are proposing the construction of masonry walls around the tanks with FRP doors, frames, and platforms.

The cost for this additional work is \$41,297.00. I am requesting that Council approve Change Order No 12.

CEL



City of Napoleon, Ohio

255 West Riverview Avenue, P.O. Box 151
Napoleon, OH 43545
Telephone: (419) 592-4010 Fax: (419) 599-8393
www.napoleonohio.com

Memorandum

To: City Council, Mayor, City Law Director, City
Manager, Department Supervisors, Newsmedia
From: Gregory J. Heath, Finance Director/Clerk of *GJH,*
Council
Date: March 29, 2018
Subject: Technology and Communications Committee –
Cancellation

The regularly scheduled meeting of the Technology and Communications Committee for Monday, April 02, 2018 at 6:15 pm has been CANCELED due to lack of agenda items.



City of NAPOLEON, Ohio

Operations Department

1775 Industrial Dr., P.O. Box 151, Napoleon, OH 43545

Phone: 419/599-1891 Fax: 419/592-4379

Web Page: www.napoleonohio.com

PRESS RELEASE

SPRING FIRE HYDRANT FLUSHING PROGRAM

The City of Napoleon will be conducting its **SPRING FIRE HYDRANT FLUSHING PROGRAM** on the following dates:

- ✎ **The weeks of April 2nd through April 20th, 2018**
- ✎ Flushing in the Downtown area, along with the areas of North Scott Street, Becklee Drive and Bonaparte Drive will be conducted on April 20, 2018 between the hours of 12:00 a.m. and 8:00 a.m.

The City Crews will start flushing hydrants on the north side of the river near the Water Treatment Plant and work their way to the outer edges of the system.

The flushing of the system is a very important function of the overall maintenance of the water distribution system for the following reasons:

- ✎ To insure that the hydrants are in proper working order in case they are needed for fire fighting.
- ✎ To verify the flow and location of the hydrants for fire fighting.
- ✎ To pull fresh water to low flow and dead end sections of the water mains.

The Water Distribution Department would like to advise that the water sometimes becomes rusty or off-color when we flush hydrants and encourages residents to check the water before doing any laundry, cooking, or showering. In case this does occur, the water lines may be cleared by running the washing machine on the full cold water cycle with no clothes in the washer. Also, check all other fixtures and let the water run until it is clear again.

Except for the Downtown area schedule listed above, the crews will be starting at 7:30 a.m. and continue flushing until approximately 3:00 p.m. on weekdays during this period.

If there is any other questions or concerns on this matter please contact the Operations Department at 599-1891 between the hours of 7:00 a.m. and 3:30 p.m. The City of Napoleon apologizes for any inconvenience during this period.



AMP files for rehearing of order on supplemental transmission projects; Ky. regulators reject supplemental transmission project

By Lisa McAlister - senior vice president and general counsel of regulatory affairs

On March 19, AMP, along with Old Dominion Electric Cooperative, the PJM Industrial Customer Coalition, the Public Power Association of New Jersey and customer advocates from Delaware, Illinois and the District of Columbia, requested rehearing of the Federal Energy Regulatory Commission's (FERC) order on the process for planning supplemental transmission projects in PJM.

The FERC order issued last month found that the PJM Transmission Owners (TO) process for supplemental projects was unjust and unreasonable, and lacked transparency and opportunity for stakeholder involvement. However, the direction provided to the PJM TOs and PJM to improve the process did not go far enough on a number of issues. Specifically, FERC directed that changes to the process to be included as an attachment to the PJM Tariff instead of the Operating Agreement, which gives the PJM TOs the opportunity to circumvent the PJM stakeholders and implement future changes without stakeholder approval.

The FERC order also required that, in order to allow stakeholders to have an opportunity for meaningful input, a minimum of three meetings must occur to discuss TOs' models, criteria and assumptions; the need for proposed projects; and to discuss proposed solutions. On rehearing, AMP argued for more information to be provided by the PJM TOs, additional time between meetings and for an additional solutions meeting to give stakeholders a meaningful opportunity to consider the proposed supplemental projects. AMP's rehearing request also pointed out FERC's error in not requiring the PJM TOs to respond to comments submitted by stakeholders, effectively allowing the PJM TOs to ignore stakeholder concerns.

Although the FERC order is progress towards an improved transmission planning process, more needs to be required of the PJM TOs for a robust and transparent process. It is worth noting that, in addition to FERC's recognition of the needs of customers in the planning process, other regulators are also beginning to recognize the deficiencies of the supplemental transmission planning process. On March 16, the Kentucky Public Service Commission denied Kentucky Power's (an AEP affiliate) supplemental project request. The Kentucky decision found that Kentucky Power had failed to demonstrate that the \$24 million project was necessary and cited the FERC order that found the PJM supplemental project planning process was unjust and unreasonable. The Kentucky decision is a promising step in requiring more scrutiny before approving the growing amount of supplemental projects.

AMP will provide updates regarding the PJM supplemental project transmission planning process as it evolves. In the meantime, if you have questions regarding this matter, please contact me at lmcalister@amppartners.org or Kristin Rothey at krothey@amppartners.org.

AMP, APPA and NRECA file for rehearing of FERC electric storage rule

By Kristin Rothey - assistant deputy general counsel

This week, AMP, along with APPA and National Rural Electric Cooperative Association (NRECA), requested rehearing of the Federal Energy Regulatory Commission's (FERC) Order 841, which establishes rules for electric storage resources (ESR) to participate and integrate into wholesale electric markets. In spite of being supportive of storage technology, AMP and others sought rehearing of Order 841 because it makes a troubling departure from the jurisdictional lines formed in previous FERC decisions, in respect to the authority of state and local regulators. Past FERC Order 719 created rules for the participation of demand response resources by allowing the relevant electric retail regulatory authorities (RERRA), such as municipal utilities, to manage demand response participation in the wholesale markets within their service areas through an opt-in/opt-out process. The U.S. Supreme Court characterized this as a program of cooperative federalism giving states and local authorities the last word on the ability of retail customers to participate in wholesale markets.



Order 841 fails to adhere to the same jurisdictional lines that had been previously established, and instead allows ESRs, even if they are behind the retail meter or a RERRA's distribution system, to participate in the wholesale markets without RERRA input.

AMP, APPA and NRECA argued that the FERC's order is an intrusion into the regulation of retail service, an area that is squarely within the authority of state and local regulators under the Federal Power Act. For those ESRs that are behind the retail meter or use local distribution facilities and service, AMP, APPA and NRECA requested that the FERC clarify that it did not intend to intrude on state and local authority. AMP, APPA and NRECA recommend that the FERC utilize an opt-in or opt-out demand response model for ESR wholesale market participation.

AMP will continue to advocate for the authority of local regulators to effectively and safely manage their systems, particularly those resources that are behind the meter. If you have questions, please contact me at krothey@amppartners.org or Lisa McAlister at lmcalister@amppartners.org.

Update on Ohio small cell wireless legislation and right-of-way ordinance sent to members

By Kristin Rothey

On March 20, AMP sent members an update on small cell wireless legislation currently pending in Ohio, as well as a right-of-way (ROW) ordinance template. The update is regarding the renewed legislative effort in Ohio by wireless providers to enact an expedited review and approval process for requests-for-consent to construct and attach wireless and small cell facilities in municipal ROWs. While the information is specific to Ohio, we understand similar efforts are underway in statehouses across the country, as major wireless service providers compete for early adoption by customers and businesses looking for more reliable, faster networking capabilities.

In Ohio, the wireless industry undertook efforts to develop legislation that would not be susceptible to some of the same legal challenges as Ohio Senate Bill 331 (SB 331), which was passed in December 2016. Over the course of the last several months, several municipalities and the wireless industry have been discussing and crafting changes to current law. The municipalities and industry group negotiations concluded and compromise legislation was introduced as Ohio House Bill 478 (HB 478). The bill has since passed the Ohio House on a bipartisan vote and is currently pending in the Senate Public Utilities Committee.

The OMEA has focused on protecting the exemption for municipal electric systems, and, in coordination with the coalition of municipal groups, has been active in ongoing discussions and negotiations with wireless providers. The AMP and OMEA Boards have been kept up-to-date and provided staff with direction.

One of the major changes from the earlier version of similar legislation, SB 331, is that municipalities have more control over the designs, aesthetics and placement of small cell facilities. However, the onus is on the municipalities to proactively include such design or location requirements for new wireless support structures in an ordinance, local rule or design guidelines.

HB 478 provides municipalities the discretion to adopt their own design guidelines via the implementation of legislation at the local level. The passage of a local ordinance allows for the proactive statement of certain protections of the public ROW as it pertains to small cell wireless facilities. Under the bill, local governments must adopt their own design guidelines that specify how they will designate and regulate undergrounding of utilities, historical districts and other means of preserving city planning and safety. Should municipalities fail to adopt some form of local small cell wireless ordinance, they may lose the opportunity for protections afforded in the compromise legislation.

To help members develop their own specific regulations and guidelines, AMP has drafted a ROW occupancy ordinance template to serve as a starting point. However, each individual municipality should review and tailor the guidelines to fit their own specific needs.

If you have any questions regarding the status of the legislation, please contact Michael Beirne at 614.540.0835 or Charles Willoughby at 614.540.1036. If you have questions regarding the content of the new language or any requests for consent that you have received, please contact me at 614.540.0852 or Lisa McAlister at 614.540.6400.

Hydro plants return to operation

By Phil Meier - vice president of hydroelectric development and operations

After being flooded out for the first half of March, the hydro fleet has returned to normal operations. Earlier this week, Belleville experienced what appeared to be a stress-related break in a cross arm on structure number 36, which resulted in a ground phase fault when the conductor fell to the ground. No other damage was found throughout the other 369 poles and 200 structures.

CW Wright Construction, the contractor that built the line, was called in to make the repair, which was completed on Thursday. All units were returned to service by Thursday evening.

Following the completion of deck cleaning at Cannelton and Smithland, the units were immediately returned to service and are now generating 65 and 42 MW respectively as of the time of this writing. Willow Island is following closely, generating near its max capacity of 40 MW.

Belleville, Cannelton, Smithland, Meldahl and Greenup required time for clean-up. This included removing mud and debris from the deck. The plants buttoned up well during flooding and experienced no significant leaking. AMP is reviewing all current flood procedures and the lessons learned from this event to determine if revisions should be incorporated.

If you have any questions about the status of the hydro fleet, please contact me at pmeier@amppartners.org or 614.540.0913.



The stress related cross arm break on structure number 36 at Belleville

Reminder: AMP Public Power Certification Training begins March 27

By Karen Ritchey - director of member events and programs

The first session of AMP's Public Power Certification Training begins on March 27. A registration form and schedule was sent to member communities and is available on the member extranet section of the AMP website (login required).

The program is designed to provide an overall understanding of the industry to governing board members and other officials in AMP member communities. It consists of seven sessions, generally held every two weeks, between March 27 and June 19.

Program session topics include:

- AMP/Electric Utility 101 Overview
- Electric Utility Governance
- Power Supply Overview
- Generation Project Overview
- Legislative/Environmental Overview
- Finance Overview
- Transmission Overview

Each session lasts approximately one hour and may be viewed through live webinars or recorded sessions.

A registration form and schedule was sent to member communities and is available on the [member extranet](#) section of the [AMP website](#) (login required). If you would like to take part in Public Power Certification Training, please return a completed registration form to me at kritchey@amppartners.org.

SB10 passes W.Va. House and Senate in unanimous votes

By Charles Willoughby - director of government affairs

Senate Bill 10 (SB 10), which removes W.Va. Public Service Commission (PSC) jurisdiction over municipal electric utility rates and operations, was passed by the legislature and awaits Governor Jim Justice's signature.

With some slight detours along the way and distractions brought about by a teacher strike in W.Va., SB 10 saw unanimous passage by the House and Senate. Before passing the House, amendments were rolled into SB 10 that permit municipal water and sewer systems and public service districts to take credit card payments, and one additional amendment was added to make the whole piece of legislation effective immediately upon enactment.

AMP's legislative counsel in W.Va. worked closely with legislative leaders for months before the legislative session began and were instrumental in seeing this important change in law enacted. The bill provides AMP member communities Phillippi and New Martinsville with stronger local control of their utility rates, fees and operations. The bill awaits final approval by Governor Justice and will become effective immediately upon his signature.

If you have questions about SB 10, please contact me at cwilloughby@amppartners.org or 614.540.1036



Congratulations to the following communities for achieving APPA Excellence in Reliability

- Coldwater Board of Public Utilities
- Cuyahoga Falls Electric System
- City of Dover Light & Power
- Borough of Ephrata
- Town of Front Royal
- Hillsdale Board of Public Utilities
- Village of Minster
- Napoleon Light & Power
- Orrville Municipal Utilities
- Painesville Electric Power Department
- City of Piqua Power
- Princeton Electric Plant Board
- Village of Versailles Utilities
- Wadsworth Electric and Communications
- Wyandotte Municipal Services



Correction: An article listing member communities who were awarded the Certificate of Excellence in Reliability in the March 16 edition of Update failed to list Napoleon Light and Power as one of the recipients.

Please join us in congratulating all of the AMP members who have received this national recognition.

Energy markets update

By Jerry Willman - assistant vice president of energy marketing

The April 2018 natural gas contract decreased \$0.021/MMBtu to close at \$2.617 yesterday. The EIA reported a withdrawal of 86 Bcf for the week ending March 16. Market consensus for this week was a withdrawal of 88 Bcf. Gas in storage now stands at 1,446 Bcf. This is 19 percent below the five-year average of 1,775 Bcf. Gas in storage for this week one year ago was 2,113 Bcf.

On-peak power prices for 2019 at AD Hub closed yesterday at \$34.71/MWh, which was unchanged for the week.

On Peak (16 hour) prices into AEP/Dayton hub

Week ending March 23

MON	TUE	WED	THU	FRI
\$34.70	\$45.44	\$49.78	\$42.73	\$35.32

Week ending March 16

MON	TUE	WED	THU	FRI
\$39.76	\$43.42	\$38.27	\$34.69	\$36.25

AEP/Dayton 2019 5x16 price as of March 22 — \$34.71

AEP/Dayton 2019 5x16 price as of March 15 — \$34.71

AFEC weekly update

By Jerry Willman

The AMP Fremont Energy Center was offline for the week due to its planned maintenance outage.

AMP surveys members on distributed energy resources

By Erin Miller - director of energy policy and sustainability

To support AMP's Strategic Plan - Member Distribution Systems, and help bolster resources to members on how to manage DER and related benefits and risks, AMP is requesting distributed energy resources (DER) data from members, via a short seven question survey.

The goal of this survey is to gain an understanding of the current penetration of DER within AMP member communities (utility scale, commercial and residential); current policies and rate structures to facilitate DER; and future projections. In addition, AMP is coordinating this survey with the Smart Electric Power Alliance (SEPA) annual utility survey.

The survey link has been emailed to AMP's principle contacts and survey responses are requested by March 30.

AMP is inquiring about the following types of DER:

- Solar,
- wind,
- energy storage,
- electric vehicles,
- and demand response.

If you have any questions or need additional information about the survey, please contact me at emiller@amppartners.org or 614.540.1019, or Cody Ward at cward@amppartners.org or 614.540.0938.

With the arrival of spring, AMP recommends preparing for severe weather

By Zachary Hoffman - communications and public relations specialist

With the arrival of spring, severe weather is surely on its way, and AMP is encouraging members to keep their constituents informed and prepared.

Though public power utilities provide some of the most reliable electric service in the country, the high winds and thunderstorms that come with spring can lead to temporary service interruptions. Customers should be prepared in the event of a major power outage by assembling an emergency storm kit, knowing what to do during an outage and understanding how to react to a downed power line.



AMP is providing members with this helpful [storm-related power outage preparation fact sheet](#) to share with their customers.

If you have questions about additional resources, please contact me at zhoffman@amppartners.org or 614.540.1011. If you have questions about safety issues, please contact Lee Doyle at rdoyle@amppartners.org or 614.540.0869.

Register now for Webinars

An internet connection and a computer are all you need to educate your staff. Individual webinars are \$99 or sign up for a series at a discounted rate. Register today at www.PublicPower.org under Education & Events. Non-members can enter coupon code **AMP** to receive the member rate.

- Public Power Governance Series:
Support Long-term Fiscal Fitness **April 4**
- Electric Utility 101 Series:
Operating a Local Public Power System **April 5**
- Electric Utility 101 Series:
Managing a Public Power Utility Enterprise **April 19**
- Public Power Governance Series:
Measure and Improve Performance **April 25**



Classifieds

Members interested in posting classifieds in Update may send a job description with start and end advertisement dates to zhoffman@amppartners.org.

City of Columbus seeks applicants for two positions

Substation maintenance technician

The City of Columbus Department of Public Utilities is seeking qualified candidates for the position of substation maintenance technician. To apply, you **must** first take the open competitive examination. Applications **must** be submitted to the Civil Service Commission by applying online at www.csc.columbus.gov by April 10. Applicant tracking is now managed by NEOGOV. If you do not

already have a profile in NEOGOV, you will have to set up a new one before you can submit an application.

This position is responsible for testing, maintaining and repairing transformers and installing and maintaining switches, regulators and related electrical power distribution equipment; performs related duties as required. Operates pump to drain, filter and fill transformers with oil. Inspects, repairs and installs controls, circuit breakers, DC batteries and meters in the power distribution system. To qualify for this position, you must have one year of experience as a power line/cable worker trainee or lamp servicer with the City of Columbus or comparable experience. Successful completion of a formal classroom or apprenticeship training program in power distribution may substitute for six months of the required experience. Possession of a valid Class A commercial motor vehicle operator's license is required, allowing operation of vehicles with air brakes. Salary \$46,737-\$80,849.

Contact the Civil Service Commission at 614.645.8300 with questions. EOE. Applicants may inspect and acquire a copy of the City of Columbus, Department of Public Utilities EEO Plan by visiting the DPU website at www.columbus.gov/utilities.

Contact the Civil Service Commission
77 N. Front St., Suite 330
Columbus, Ohio 43215

Power Line Worker II - exam

The City of Columbus Department of Public Utilities is seeking qualified candidates for the position of power line worker II. To apply, you **must** first take the open competitive examination. Applications **must** be submitted to the Civil Service Commission by applying online at www.csc.columbus.gov by April 10. Applicant tracking is now managed by NEOGOV. If you do not already have a profile in NEOGOV, you will have to set up a new one before you can submit an application.

This position is responsible for installing, repairing and replacing components of the overhead power line distribution system; performs related duties as required. Climbs poles or operates and works in bucket attached to truck-mounted boom to perform work. Secures new wires to cross arm insulators and splices wire to adjoining sections of line to complete circuit. Requisitions electrical components from storeroom; maintains records in computerized work order tracking system. To qualify for this classification, you must have two years of experience as a power line worker I with the City of Columbus or comparable experience. Successful completion of a formal training program in power distribution may substitute for six months of the required experience. Possession of a valid Class A commercial motor vehicle operator's license is required, allowing operation of vehicles with air brakes. Salary \$50,668-\$80,849.

Contact the Civil Service Commission at 614.645.8300 with questions. EOE. Applicants may inspect and acquire a copy of the City of Columbus, Department of Public Utilities EEO Plan by visiting the DPU website at www.columbus.gov/utilities.

Contact the Civil Service Commission
77 N. Front St., Suite 330
Columbus, Ohio 43215

City of Napoleon seeks applicants for three positions

Human resources director

The City of Napoleon is currently accepting applications for the position of human resources director. This position is responsible for developing policy and directing and coordinating human resources activities, such as employment, compensation, labor relations, benefits and training. This is a full-time position that reports to the city manager with a pay rate of \$2,110.61 up to \$3,202.93 bi-weekly. Bachelor's degree with course work in human resources and five years of related work experience preferred. A valid Ohio driver's license is required.

Applications may be obtained beginning Wednesday, March 14, 2018, between 7:30 a.m. and 4:00 p.m. from the City of Napoleon Administration Building at 255 W. Riverview Ave. P.O. Box 151, Napoleon, Ohio, 43545, and online at www.napoleonohio.com. To be considered, a properly completed, **notarized** application must be returned to the above address by 4:00 p.m. on Friday, March 30, 2018. The City of Napoleon is an Equal Opportunity Employer.

Staff engineer/licensed staff engineer

The City of Napoleon is currently accepting applications for the position of staff engineer/licensed staff engineer. This position is primarily responsible for engineering design and construction inspection. Graduation from an accredited engineering school of recognized standing with a Bachelor of Science in Civil Engineering or related field is required. Applicants must also possess or be able to obtain within one year a Fundamentals of Engineering or Engineer in Training certificate, or a Professional Engineer license. This is a full-time position with a pay rate of \$19.70 up to \$34.48 per hour, depending on licensing. A valid Ohio driver's license is required.

Applications may be obtained beginning Wednesday, March 19, 2018, between 7:30 a.m. and 4:00 p.m. from the City of Napoleon Administration Building at 255 W. Riverview Ave. P.O. Box 151, Napoleon, Ohio, 43545, and online at www.napoleonohio.com. To be considered, a properly completed, **notarized** application must be returned to the above address by 4:00 p.m. on Friday, March 30, 2018. The City of Napoleon is an Equal Opportunity Employer.

IT administrator

The City of Napoleon is currently accepting applications for the position of IT administrator. This position is responsible for performing complex skilled work involving IT services. This is a full-time position with a pay rate of \$1,851.20 up to \$2,750 bi-weekly. Applicant must possess a high school diploma or equivalent and a valid Ohio driver's license.

Applications may be obtained beginning Wednesday, March 19, 2018, between 7:30 a.m. and 4:00 p.m. from the City of Napoleon Administration Building at 255 W. Riverview Ave. P.O. Box 151, Napoleon, Ohio, 43545, and online at www.napoleonohio.com. To be considered, a properly completed, **notarized** application must be returned to the above address by 4:00 p.m. on Friday, March 30, 2018. The City of Napoleon is an Equal Opportunity Employer.

Village of Minster seeks applicants for three positions

Wastewater superintendent

The Village of Minster is seeking a qualified candidate for the position of wastewater superintendent. The potential candidate will be responsible for the continuous operation and maintenance of a Class III wastewater treatment facility. Successful candidate should have a minimum of a high school degree supplemented by specialized academic training in the areas of chemistry and biology and specialized training in the operation of a wastewater treatment facility. A degree in science or engineering preferred; experience in a superintendent position preferred; with a minimum of five years of experience operating a biological treatment process facility; a valid Ohio Class III Wastewater Treatment certificate; knowledge of the Ohio EPA's rules and regulations regarding wastewater treatment; a valid driver's license.

For information about the position and to download an application, visit, www.minsteroh.com. To apply, send resume, application with at least three references to: Village Administrator, Village of Minster, P.O. Box 1, Minster, Ohio 45865. Applications will be accepted until the position is filled.

Water superintendent

The Village of Minster is seeking a qualified candidate for the position of water treatment superintendent. The potential candidate is responsible for the continuous operation and maintenance of a Class I water supply works and the delivery of safe, clear and sufficient water to the community. Successful candidate should have a minimum of a high school degree supplemented by specialized academic training in the areas of chemistry and biology and specialized training in the operation of a water treatment facility. A degree in science or engineering preferred; experience in a superintendent position preferred; a valid Ohio Class I Water Supply certificate. A minimum of five years of experience in a Class I facility; a valid driver's license; knowledge of the Ohio EPA's rules and regulations regarding water treatment.

For information about the position and to download an application, visit, www.minsteroh.com. To apply, send resume, application with at least three references to: Village Administrator, Village of Minster, P.O. Box 1, Minster, Ohio 45865. Applications will be accepted until the position is filled.

Wastewater/water superintendent

The Village of Minster is seeking a qualified candidate for the position of wastewater superintendent/water superintendent. The potential candidate will be responsible for the continuous operation and maintenance of a Class III wastewater treatment facility and a Class I water treatment facility. Successful candidate should have a minimum of a high school degree supplemented by specialized academic training in the areas of chemistry, science and biology and specialized training in the operation of a water treatment facility and a wastewater treatment facility. A degree in science or engineering preferred; experience in a superintendent position preferred; with a minimum of five years' experience in a Class I water facility and

a Class III wastewater facility; valid Ohio Class I Water Supply certificate and a Ohio Class III Wastewater Treatment certificate; a valid driver's license; knowledge of the Ohio EPA's rules and regulations regarding water and wastewater treatment.

For information about the position and to download an application, visit, www.minsteroh.com. To apply, send resume, application with at least three references to: Village Administrator, Village of Minster, P.O. Box 1, Minster, Ohio 45865. Applications will be accepted until the position is filled.

City of Wadsworth seeks applicants for two positions

City engineer

The City of Wadsworth is seeking applicants for the position of city engineer. This full-time position is responsible for planning, coordinating and directing all engineering activities of the city, and is the administrative head of the Engineering Services Division in the Public Service Department.

Qualified applicants will possess a bachelor's degree in civil engineering or a related field, be a registered professional engineer (PE) in the state of Ohio, have seven years of progressively responsible administrative experience as a supervisor at the mid-management level or above in civil engineering services and/or other functions of public works, and five years of experience as a working PE involved in civil engineering. Interested applicants may send a resume to Jim Kovacs, human resources manager, at jkovacs@wadsworthcity.org. To learn more about this position and the City of Wadsworth, visit www.wadsworthcity.com.

CityLink business manager

The City of Wadsworth is seeking applicants for the position of CityLink business manager. This full-time position is responsible for planning, organizing and directing the business and operations of the CityLink enterprise for services including cable, internet, voice and home energy. It is a highly responsible, technical, administrative, managerial and operational position, exercising independent judgment. The incumbent will be responsible for strategic planning, developing capital and operating budgets, ensuring the efficiency of business operations, workforce planning, establishing business goals and plans with the goal of maintaining our current customer base and identifying and pursuing opportunities for future growth to ensure long-term success.

Qualified applicants will possess a bachelor's degree in public administration, management, business administration, accounting, communications or other related field. Applicants should have three years of progressive management, supervisory or administrative experience in the telecommunications industry. The selected candidate must be energetic, self-motivated, hungry to succeed and able to work independently within company guidelines. Candidate must have excellent interpersonal, leadership, presentation and collaborative skills to work effectively with teams throughout the organization. Interested applicants may send a resume to Jim Kovacs, human resources manager, at jkovacs@wadsworthcity.org. To learn more about this position, CityLink products and services, and the City of Wadsworth, visit www.wadsworthcity.com.

Village of Edgerton seeks applicants for village administrator

The Village of Edgerton, Ohio, population 2000, is seeking resumes for the position of village administrator. The person appointed will report to the mayor and will provide general administrative direction; supervise personnel; advise employees on proper procedures; direct the operation for all utility, street, park, zoning activities; and perform economic development and grant writing activities. A complete job description is available by contacting the Village of Edgerton, fiscal officer, at denisek@edgerton-ohio.com.

The candidate should have a high school diploma or GED, with college level course work in public or business administration. A bachelor's degree, management experience and some experience with municipal government and/or public utility operations is preferred. A valid driver's license required. Salary commensurate with qualifications and experience. Please submit resume, cover letter and salary requirements via email to denisek@edgerton-ohio.com or mail to Mayor, Village of Edgerton, P.O. Box 609, Edgerton, Ohio 43517. The Village of Edgerton is an Equal Opportunity Employer.

City of Hamilton seeks applicants for four positions

Director of utility operations

The City of Hamilton is seeking applicants for the position of director of utility operations. This position is responsible for professional and administrative work in the planning, organization, direction, supervision and coordination of the operations and activities of the City's Department of Utility Operations. The Department of Utility Operations consists of electric power transmission and distribution, hydroelectric plant operations, fossil power plant operations, water production and wastewater reclamation facilities. This position reports directly to the executive director of infrastructure, but extensive leeway is granted for the exercise of independent judgement in directing the Department of Utility Operations. Direct and indirect supervision is exercised over professional, managerial/supervisory, technical and clerical personnel.

Applicants must possess a bachelor's degree in business administration or engineering, with five years of professional experience in public electric utility management, including supervisory experience. A master's degree in business administration or engineering, as well as a valid registration as a professional engineer in the state of Ohio or other equivalent certification from another state is preferred.

Applications must be completed by May 18, 2018, at 11:59 p.m., EST. To view the job description or to apply, click [here](#).

Business Analyst

The City of Hamilton is seeking applicants for the position of business analyst. This position is responsible for professional, administrative work in the business division of the Infrastructure Department. The nature of the work performed requires that an employee in this class establish and maintain cooperative working relationships with directors and supervisory personnel in other city departments and divisions. This position is also responsible for assisting the utility business manager with various tasks with the business division (assisting in the preparation of infrastructure budgets, assisting with complex financial and utility rate analyses). This position is notified by the supervisor the objectives for and methodologies to use to enforce standards and orders, develop new policies or to propose improvements to existing policies and standards.

Applicants must possess a bachelor's degree in business administration, finance, accounting, math, engineering or other closely related fields, as well as one year of experience in one or more of the following fields: accounting, utility/code enforcement, finance, business administration, public administration, economics, mathematics or engineering. Three years of experience in one or more of these fields is preferred.

Applications must be completed by May 17, 2018, at 11:59 p.m., EST. To view the job description or to apply, click [here](#).

Energy management administrator

The City of Hamilton is seeking applicants for the position of energy management administrator in the Public Utilities Department. This position is responsible for difficult professional and administrative work in planning, organizing and coordinating energy procurement, financial and operational planning, and analysis and budgeting functions for the Infrastructure Department. Work is performed under the general direction and supervision of the utility business manager, but considerable leeway is granted for the exercise of independent judgement and initiative. This position also assists in procuring natural gas and power supplies for the city, assists with preparation of utility operating and capital budgets, participates in utility financings and will perform complex financial analyses for all infrastructure divisions, as well as support city economic development efforts.

Applicants must hold a bachelor's degree from a college or university of recognized standing in the field of business administration, finance, engineering, computer science or other related field, as well as five years of experience in public utility management and financial analysis.

Applications must be completed by March 26, 2018, at 11:59 p.m., EST. To view the job description or to apply, click [here](#).

Environmental health and safety manager

The City of Hamilton is seeking applicants for the position of environmental health and safety manager in the Public Utilities Department. This position is responsible for compliance with health, safety and environmental regulations at local, state and federal levels; partnering with managers, safety coordinators and associates to ensure the safety of employees, customers and the environment. Work is performed under the general direction and supervision of the executive director of infrastructure, but considerable leeway is granted for the exercise of independent judgement and initiative.

Applicants must hold a bachelor's degree from a college or university of recognized standing in the field of safety, industrial engineering, industrial hygiene or other related field, as well as five years of experience in developing, implementing and overseeing compliance of OSHA based safety programs, including some experience in regulatory agency reporting.

Applications must be completed by March 26, 2018, at 11:59 p.m., EST. To view the job description or to apply, click [here](#).

Village of Pemberville seeks applicants for electric distribution lineworker

The Village of Pemberville is seeking applicants for the position of electric distribution lineworker. The lineman will be responsible for delivering reliable electric service to customers by performing inspections, maintenance, operations and construction work on substations, transmission, distribution and streetlight systems with the village to the level that their training dictates. Having or obtaining a CDL is required, as is mechanical knowledge and experience in the operation of equipment, including but not limited to: bucket truck, digger derrick, backhoe, wood chipper, chainsaws and dump truck; with a willingness to follow all current and future safety practices and maintain equipment.

Wage is negotiable. [Applications](#) are available on the village [website](#). Please submit a resume and application to the Village of Pemberville, 155 Main St., P.O. Box 109, Pemberville, Ohio 43450, by March 31, 2018.

Opportunities available at AMP

AMP is seeking applicants for the following positions:

Operator - Willow Island Hydro Plant

Director of key accounts & economic development

Intern - generation operations

Help desk specialist

Operations & maintenance supervisor - Smithland Hydro Plant

Energy analyst

Advanced metering infrastructure (AMI) program manager

For complete job descriptions, please visit the "careers" section of the [AMP website](#).

American Municipal Power, Inc.

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