

October \_\_\_\_, 2024

Randal E. Vosburg  
Town Manager  
Town of Apex  
P.O. Box 250  
Apex, NC 27502

The Town of Apex ("Town") has indicated to North Carolina Eastern Municipal Power Agency ("Power Agency") its interest in participating in an updated load management project. The proposed project involves the installation and operation of system to control residential appliances, water heaters, and air conditioners, as well as other selected electrical loads, to achieve power cost reductions and related benefits for these municipalities (the "Project").

The load management system (the "System") would consist of software, associated materials, the use of cellular technology, hosted energy management system controls, and load control switches (the "Switches").

Under the Project, Power Agency will provide the Town with Load Management Services (defined in Section 2 hereof) on the following terms and conditions:

1. Term of Agreement

- a. The term of this Agreement shall begin on the date it is executed and delivered to Power Agency and shall automatically continue for successive one (1) year periods until terminated as hereinafter provided. The Town may terminate this Agreement at any time upon six (6) months prior written notice to Power Agency that it no longer desires to receive the Load Management Services. Power Agency may terminate this Agreement at any time (i) upon thirty (30) days prior written notice to the Town if the Board of Commissioners of Power Agency decides to cease providing the Load Management Services to all municipalities under the Project or (ii) upon thirty (30) days prior written notice to the Town if the services provided by Power Agency's Hosted Services provider are terminated for any reason. Notwithstanding anything herein contained to the contrary, the Town will remain obligated to Power Agency for all liabilities or obligations incurred by the Power Agency pursuant to this Agreement.

2. Load Management Services

- a. Power Agency shall (i) acquire, lease, maintain, and replace such software, and equipment as is necessary to provide

control signals to end-use load control switches, (ii) provide, if commercially available, user accounts to approved town staff for integration of load control switches into the hosted energy management system, and (iii) operate the hosted energy management system in a fashion Power Agency deems appropriate and potentially beneficial to the Town (collectively, the "Load Management Services").

- b. Power Agency shall develop and provide the Load Management Services with the objective of reducing Power Agency's and the Town's cost of power. Power Agency shall use its reasonable good faith efforts to achieve that objective but makes no representations or warranties that the Town will achieve any specifically desired result(s). The Town shall cooperate with Power Agency to develop strategies for the operation of the System and provide Power Agency with all information as may be reasonably necessary to develop such strategies. Power Agency shall use its reasonable good faith efforts to incorporate into the System such strategies as are developed with the Town.

### 3. Switches

- a. The Town shall acquire, install, maintain, and replace the Switches or other required equipment to the extent necessary to participate in the Project, and shall be solely responsible for all dealings with its customers related thereto. Additionally, Town is solely responsible for acquiring cellular services needed for operation of load control switches. Power Agency shall furnish to the Town the energy management system vendor specifications for the Switches, and cellular service requirements to be used initially in conjunction with the operation of the Project. The Town shall have no authority to make any representations or warranties on behalf of Power Agency or otherwise represent or hold itself out as being an agent of Power Agency, in either case in conjunction with the Load Management System.

### 4. Costs and Charges

- a. The Town shall be responsible for all costs and charges Power Agency incurs or obligates itself to incur to provide the Load Management Services including, but not limited to, costs and charges of acquisition and installation, operation, and maintenance of the System as follows:
  - 1. Acquisition and Installation
    - i. Subscriptions, Licenses, and Setup Fees

- 2. Operation
    - i. Vendor Hosting, and Communication charges
  - 3. Maintenance
    - i. Upgrades and Replacement of the Energy Management System.
- b. Power Agency shall bill the Town for the costs and charges (including deferred payments costs, if any), the Town is obligated to pay hereunder. The total of those costs and charges shall be set out as a separate line item (other than Monthly Project Power Costs and Supplemental Power Costs) on the monthly bill rendered by Power Agency pursuant to the provisions of SECTION 5(b) of the Amended and Restated Full Requirements Power Sales Agreement dated September 22, 2023 between Power Agency and the Town as the same may be amended or succeeded ("FRPSA") and the rights and obligations of Power Agency and the Town for the payment of those costs and charges (including the payment of late penalty charges) and any dispute related thereto, shall be as provided in SECTIONS 6(c), (d), (e), and (f) of the FRPSA, the provisions of which are hereby incorporated herein by reference.
- c. An estimate of the costs and charges to provide the Load Management Services is provided on Exhibit A, attached hereto.

5. Default

- a. Subject to the provisions of Section 16 hereof regarding force majeure, any one or more of the following events shall constitute events of default hereunder ("Event of Default"):
- 1. The Town's failure to make any payment in full when due under this Agreement and the continuance of such failure for a period of fifteen (15) days after the due date for that payment; or
  - 2. The failure of Power Agency or the Town to perform any other covenants or obligations under this Agreement and the continuance of such failure without cure within thirty (30) days (or such other time as is reasonably necessary to cure such failure) of being given notice thereof by the complaining party.
- b. In addition to the remedies provided Power Agency as a non-defaulting party under Subsection (b) above, if the Town

commits an Event of Default hereunder, Power Agency may withhold the provision of the Load Management Services until such time as the Town cures its default hereunder and such withholding of the Load Management Services shall not be deemed an Event of Default under this Agreement.

- c. No remedy conferred upon or reserved to the parties hereto is intended to be exclusive of any other remedy or remedies available hereunder now or hereafter existing, but each and every such remedy shall be cumulative and shall be in addition to every other such remedy.
- d. Any waiver at any time by either party to this Agreement of its rights with respect to any default of the other party hereto, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent default, right or matter.

#### 6. Liability and Indemnification

- a. Power Agency shall not be responsible for any loss, liability or damage whatsoever (including, without limitation, direct, indirect, special, incidental or consequential damages) sustained by or to any person (including, without limitation, any injury or death), property or otherwise (including, without limitation, the Town, its officers, agents, employees or customers, or its/their property), arising, accruing, or resulting from, in any manner, the development, transmission, distribution, receipt, control, use, application or availability, at any time, of the Load Management Services provided under this Agreement (including, without limitation, any loss, liability or damage resulting (in whole or in part) from the acts or omissions (excluding negligent acts or omissions) of Power Agency), and the Town, to the fullest extent permitted by law, hereby RELEASES Power Agency from and shall INDEMNIFY, DEFEND AND HOLD HARMLESS Power Agency from and against any and all such loss, liability or damage, whether arising from contract, tort or otherwise. The loss, liability or damage for which Power Agency is released and to be held harmless and indemnified hereunder includes, without limitation, any and all liability, damage, losses, injuries, fines, penalties, costs and expenses, including, without limitation, expenses incurred by it, in connection with defending any claim or action and including reasonable attorney's fees incurred or suffered by them by reason of any assertion of any claim. All reference in this Section to the Power Agency shall include the Power Agency and its officers, employees, and agents (including, without limitation, Electricities of North

Carolina, Inc. and its officers, agents and employees).

- b. This Agreement shall not affect the allocation of risk and indemnification from liability related to the receipt, transmission, control, use, application or distribution of electric power as provided in the Supplemental Power Sales Agreement between the Town and Power Agency.
- c. The provisions of this Section shall survive the expiration or other termination of this Agreement.

7. Proprietary Information

- a. The Town hereby acknowledges that signals, information, or other data provided to, or obtained by, Power Agency may be proprietary in nature and subject to agreements restricting its disclosure and/or use. The Town agrees that this Agreement will be subject to any such agreement(s) and that signals, information or data subject thereto will not be disclosed by Power Agency to the Town except when done in compliance therewith. The Town agrees to take such action and execute such documents as are necessary to permit Power Agency to comply with such agreement(s).

8. Assignment of Agreement

- a. Neither this Agreement, nor any interest herein, may be assigned, transferred, or sold by the Town without the prior written consent of Power Agency, which consent may not be unreasonably withheld.

9. Amendments

- a. This Agreement may not be modified, supplemented or amended except by agreement in writing signed by the Parties hereto; provided, however, that no modification, supplement or amendment shall be made to this Agreement unless the same modification, supplement or amendment shall be made to all similar agreements of municipalities then participating in the Project.

10. Notices

- a. All notices, requests, demands or other documents to be made or given hereunder, shall be sent to and addressed as follows:

Power Agency: North Carolina Eastern Municipal Power Agency  
Attn: Jason Thigpen  
Post Office Box 29513  
Raleigh, NC 27626-0513

The Town: The Town of Apex  
Attn: Eric Neumann  
Post Office Box 250  
Apex, NC 27502

All notices, requests, demands or other documents to be made or given hereunder shall be in writing and deemed given when personally delivered or, if mailed, when placed in a depository of the United States Mail, postage prepaid, addressed as hereinabove provided. Any party may change the address to which notices, requests, demands or other documents are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving of notice.

11. Severability

- a. If any provision of this Agreement or portion thereof is determined to be void or unenforceable by a court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement or portions hereof, all of which other provisions and portions hereof shall remain in full force and effect.

## 12. Relationship to Other Instruments

- a. It is recognized by the parties hereto that Power Agency in the ownership, construction, acquisition and operation of the Initial Project and any other Project financed pursuant to the Bond Resolution must comply with the requirements of the applicable Project Agreements, the Bond Resolution, and all licenses, permits and regulatory approvals necessary for such ownership, construction, acquisition and operation of such Projects, and it is therefore agreed that if any provision of this Agreement is inconsistent with the terms and provisions of the Project Agreements, the Bond Resolution, or any such licenses, permits or regulatory approvals that such inconsistency shall be resolved in favor of the terms and provisions of the Project Agreements, the Bond Resolution, and such licenses, permits or regulatory approvals, as the case may be. As used in this Section 15, the term "Bond Resolution" shall mean Resolution (R-2-82) adopted April 1, 1982 by the Board of Commissioners of Power Agency and as used in this Section 15, the terms "Initial Project," "Project Agreements" and "Project" shall be as defined in the Bond Resolution.

## 13. Force Majeure

- a. Except for the payment of any amounts due hereunder, failure to fulfill any covenant or obligation hereunder as a result of a force majeure shall not constitute an Event of Default hereunder. Either party rendered unable to fulfill any covenant or obligation under this Agreement by reason of a force majeure shall make reasonable efforts to remove such inability within a reasonable time. The term "force majeure" as used in this Agreement shall mean any cause beyond the control of the party affected, including, without limitation, natural hazards outside of human control for which no person or persons may be held responsible, fire, storm, casualty or equipment breakdown.

## 14. Entire Agreement

- a. This Agreement shall constitute the entire understanding between the Town and Power Agency regarding the subject matter hereof, superseding any and all previous understandings.

If you desire to receive the Load Management Services under the foregoing terms and provisions, please have the appropriate officials of the Town sign, seal, and date the enclosed copy of this Agreement provided for your convenience and return it to Power Agency.

Sincerely,

AGREED AND ACCEPTED

\_\_\_\_\_  
Randal E. Vosburg, AICP, CPM  
Town Manager

ATTEST:

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

[SEAL]

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Allen Coleman personally came before me this day and acknowledged he is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Town Manager sealed with its corporate seal and attested by him as its Town Clerk.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
[Notary Signature]

\_\_\_\_\_,  
Notary Public [Print or Type Notary Name]

My Commission Expires: \_\_\_\_\_



This instrument has been preaudited in the manner  
Required by the Local Government Fiscal Control Act.

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Antwan Morrison, Finance Director

**EXHIBIT A**

Line Item	Description	Occurrence	Quantity	Unit Price
Yukon Demand Response Software & Project Management				
License				
Yukon - Cellular Cat-M1 Module License	Yukon Two-way and Assets Software Modules	One Time	1	\$10,000
	Software platform modules for managing cellular Cat-M1 load control switches.			
Setup and Configuration Services				
Yukon Upgrade - Onsite Assessment	Yukon - Onsite Assessment Eaton Professional Service staff member to come onsite.	One Time	1	\$2,500 + travel expenses
	Assessment to understand and document configuration and connections			
Yukon - Hosting System Design and Configuration	Yukon Hosting Setup, Design & Configuration	One Time	1	\$20,000
	Eaton service provided to install, design and configure system at Tier III hosting facility.			
	Existing Server Migration and Configuration			
	Configure system for Cellular Cat-M1 Module.			
	Administrator & Operator training.			
Annual Support and Maintenance Services				
Yukon - Hosting - Base	Yukon Hosted Software as a Service - Base	Annual	1	\$25,000
	Software platform managed by Eaton at the Tier III hosting facility			
	Eaton to provide system maintenance and security			
	Support up to 5,000 two-way communicating devices.			
Yukon - Cellular Cat-M1 Connection Fee	Connectivity Management Fees - Per Device	Annual - Per Connected Device	N/A	\$1.00/unit
	Secure Cloud Connection			
	Device Data Storage			