

RESOLUTION NO. 6-2021

Introduced by Trey Hardy

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH AMP TRANSMISSION, LLC FOR THE PROVISION OF OPERATIONS AND MAINTENANCE SERVICES RELATING TO CERTAIN 69 KILOVOLT (“kV”) FACILITIES AND ASSOCIATED EQUIPMENT LOCATED AT 1100 RYE BEACH ROAD, HURON, OHIO

WHEREAS, City Council previously authorized the sale of Huron Public Power transmission assets through Ordinance 2020 – 17; and,

WHEREAS, The City of Huron will provide operations and maintenance services related to the transmission assets on behalf of AMP-Transmission during a short-term transitional period not to exceed twelve (12) months with AMP-Transmission reimbursing any and all expenditures related to the maintenance of the facilities incurred during the time of the agreement; and,

WHEREAS, upon completion of the term of this agreement, AMP-Transmission will assume full responsibility for operating and maintaining the assets.

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

SECTION 1. That the City Manager is authorized and directed to enter into an agreement with AMP Transmission, LLC for the provision of short-term operations and maintenance services for 69 kilovolt (“kV”) facilities and associated equipment at the Huron Public Power substation located at 1100 Rye Beach Road, Huron, Ohio 44839, which agreement shall be substantially in the form of Exhibit “A” attached hereto and made a part hereof, subject to the City’s legal counsel’s confirmation that insurance provisions contained in the O&M agreement are consistent with the City’s current insurance coverages.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

SECTION 3. That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST: 
Clerk of Council



Sam Artino, Mayor

ADOPTED: 26 JAN 2021

SHORT TERM OPERATIONS AND MAINTENANCE SERVICES AGREEMENT

This Short Term Operations and Maintenance Services Agreement ("O&M Services Agreement"), dated as of February 1, 2021, 2021, is entered into by and between AMP Transmission, LLC ("Owner"), an Ohio nonprofit corporation, with offices located at 1111 Schrock Road, Suite 100, Columbus, OH 43229, and the City of Huron, Ohio, an Ohio municipal corporation, with offices located at 417 Main Street, Huron, Ohio 44839 ("Municipality").

RECITALS

Owner purchased from Municipality the 69 kilovolt ("kV") facilities and associated equipment at its substation, including but not limited to three 69 kV breakers, a control house, and associated equipment, including steel arrangements, foundations, breakers, and major equipment including the inside of the control house, relay panels, and DC battery systems, arresters and switches and associated equipment (collectively, the "Equipment"). For clarity, the 69 kV Equipment does not include the two 69 kV transformers or any other facilities and equipment associated with voltages less than 69 kV within the substation footprint. The Equipment is located at 1100 Rye Beach Road, Huron, Ohio 44839 (collectively, the "Facility").

Owner desires to retain Municipality on a limited and short term basis for the provision of certain operations and maintenance services at the Facility through a continuation of Municipality's existing operations and maintenance practices, and Municipality is willing to perform such services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree as follows:

ARTICLE I - AGREEMENT

1.1. Relationship of the Parties. Owner is retaining Municipality as an independent contractor to provide the Services set forth in herein at the Facility in support of Owner's operation of the facility. Subject to any limitations expressly set forth in this Agreement as between the Owner and Municipality, Owner delegates to Municipality, and Municipality accepts from Owner, the responsibility of providing these Services at the Facility. Owner and Municipality agree that the scope of delegation is strictly limited to the matters set forth in the Agreement. Without limiting the generality of the foregoing, Owner retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and Municipality shall never cause the Facility to transmit power except as expressly directed to do so by Owner or any dispatching authority specified by Owner. Municipality has no obligation to upgrade or replace Facility systems except as expressly directed by Owner, nor shall it be obligated to spend funds outside the Project Account or otherwise employ its own credit to support the Facility.

1.2 Scope of Work. Municipality shall continue its relationship with Power Solutions Group, LTD. (Power Solutions), Engineered Process Systems, and Fresch Electric, Inc. to perform the Services listed herein in order to operate and maintain the Facility on behalf of Owner in accordance with this Agreement.

1.2.1 Services. Services shall mean the operation and performance of routine maintenance and scheduled preventive maintenance actions on Facility systems. Services shall be performed in accordance with accepted industry standards including those established by the organizations listed below. The Services shall include developed, detailed testing procedures, and reporting documentation as a reference and for recording the results of the tests executed. Services shall also include: (1) conducting visual equipment inspections and reporting significant parameters to Owner; (2) managing any Facility outages (planned, unscheduled, forced) to minimize outage duration and impact; and, (3) assisting Owner, as reasonably requested, with the execution of Owner's duties relative to operation of the Facility, including interfacing with local authorities.

- International Electrical Testing Association (NETA)
- Institute of Electrical and Electronics Engineers (IEEE)
- North American Electric Reliability Corporation (NERC)

Any operation and maintenance activities related to NERC compliance activities will be coordinated and conducted in time intervals required by AMPT's established NERC compliance program.

1.3 Procurement.

1.3.1 General. Should Municipality need to procure goods or services not described in Section 2.1, Municipality shall first provide Owner with a specific request that identifies at a minimum the goods or services, the counterparty and the price and shall obtain Owner's approval prior to entering into a purchase order for goods or services. Municipality acknowledges that such purchase orders are for the exclusive benefit of Owner and the Facility. Municipality shall (i) negotiate with vendors from Owner-approved standard terms and conditions, including reasonable warranties in favor of Owner, and (ii) endeavor to achieve with each purchase order the best value available to the Owner in terms of price, payment, delivery, warranty, and similar terms. Municipality may make non-approved purchases without first receiving Owner approval only if, in Municipality's reasonable judgment, such purchases are required to address an Emergency. Municipality must notify Owner of any non-budgeted Emergency purchase in writing as soon as reasonably possible, but not more than five days after making the purchase.

1.3.2 Extraordinary Items. Municipality shall obtain Owner's written approval prior to procurement of any Extraordinary Item. Owner may elect to directly procure Extraordinary Items. "Extraordinary Item" means any purchase order issued by Municipality on behalf of Owner in an amount greater than Fifty Thousand Dollars

(\$50,000) or, if an annual blanket purchase order, that Municipality reasonably anticipates will exceed Fifty Thousand Dollars (\$50,000.00) during a year.

1.4 Dispatch. Municipality shall comply with any applicable dispatch instructions of the Owner (or any other Person identified by Owner in writing to Municipality as being authorized to provide dispatch instructions, including PJM). In the event Municipality receives conflicting dispatch instructions, Municipality shall follow the dispatch instructions of Owner unless Municipality determines, in its reasonable judgment, that doing so would be reasonably likely to be in violation of Applicable Law, in which case it will inform Owner of the potential violation and await further instructions from Owner.

1.5 Standards for Performance of the Services. Municipality shall ensure that the Services are performed in accordance with (i) Applicable Laws, (ii) Prudent Operation and Maintenance Practices, (iii) insurer requirements delivered to Municipality by Owner in writing, and (iii) this Agreement. Subject to the other provisions of this Agreement, Municipality will perform the Services and other obligations under this Agreement in a manner consistent with Owner's directions. The Parties acknowledge and agree that actions taken (or not taken) by Municipality pursuant to Owner's direction shall be deemed to comply with the Standards of Performance, and Municipality shall have no liability for acting or refraining to act in accordance with Owner's directions. The Parties further acknowledge that reference to the Facility Agreements is not intended to and does not make Municipality a party to the Facility Agreements or to impose any obligations on Municipality under the Facility Agreements. "Prudent Operation and Maintenance Practices" means those practices, methods and acts generally employed in the power generation industry that at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, and the requirements of Applicable Law. With respect to Municipality, Prudent Operation and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the power generation and transmission industry, including taking reasonable actions to provide a sufficient number of Persons who are available and adequately trained to provide Services at the Facility, and timely perform preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the limitations on Municipality authority and duties as set forth in this Agreement.

1.6 No Liens or Encumbrances. Municipality shall keep and maintain the Facility free and clear of all liens and encumbrances resulting from the personal debts and obligations of Municipality or the failure by Municipality to perform the Services.

1.7 Emergency Action. In the event of (a) an emergency affecting the safety, health or protection of, or otherwise endangering, any persons, property, or the environment located at or about the Facility or (b) an unplanned complete loss of electric

transmission (collectively an "Emergency"), Municipality shall take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall notify Owner of such Emergency and Municipality's response as soon as practical under the circumstances. To the extent Municipality deems reasonable in response to an Emergency, Municipality may procure goods and services as necessary to respond to an Emergency, the costs of which shall be Site Costs.

1.8 Licenses and Permits. Municipality shall obtain and maintain all permits, licenses and other governmental consents, authorizations, or approvals required by Applicable Law to be maintained by Municipality or any of its employees, in its or their own name, to enable Municipality to properly perform the Services. The Owner will cooperate with Municipality in procuring those permits, licenses and other governmental consents, authorizations, or approvals. Municipality shall (1) review and keep current with the requirements of all Applicable Laws; (2) assist Owner in securing and complying with, and shall itself comply with, all of the foregoing requirements applicable to Municipality's performance of this Agreement, including without limitation, all necessary Facility permits (and renewals of those permits) attributable to the Facility or the Facility Site, storage, disposal and emissions testing and safety; and (3) shall initiate and maintain precautions and procedures necessary to comply with, and shall itself comply with, applicable provisions of all such Applicable Laws, including those related to prevention of injury to persons or damage to property.

ARTICLE II - LIMITATIONS ON AUTHORITY

2.1 General. Owner expressly reserves the exclusive authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility.

2.2 General Limitations. Municipality has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility as a commercial enterprise. Owner shall determine all such matters. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by Owner, in connection with Municipality's provision of Services hereunder, Municipality is prohibited from disposing of assets, making expenditures, or taking or agreeing to take any other action that materially varies from the applicable Budget and Plan; provided, however, that in the event of an Emergency, Municipality, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss.

ARTICLE III - COMPENSATION AND PAYMENT

3.1 General. Owner shall promptly remit payment to Municipality, or fund, as applicable, the costs incurred pursuant to Work completed in the Scope of Work.

3.2 Late Payment. To the extent Owner fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount shall accrue simple interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid in full.

"Due Date" means, (i) with respect to any Municipality invoice, the date that is thirty (30) days following the date on which Municipality submits the invoice to Owner and (ii) with respect to any Owner invoice, the date that is thirty (30) days following the date on which Owner submits the invoice to Municipality.

"Late Payment Rate" means a rate of interest per annum equal to the lesser of (i) two percent (2.0%) above the "prime" reference rate of interest quoted to substantial commercial borrowers on ninety (90) day loans by Wells Fargo Bank or (ii) the maximum rate of interest permitted by Applicable Law.

ARTICLE IV - TERM

4.1 Term. The initial Term of this Agreement is from and including the Effective Date of Closing referenced in the Asset Purchase Agreement to the earlier of twelve months from the Effective Date of Closing or termination. The Term may be extended by mutual agreement of the Parties.

4.2 Termination by Owner. Owner is permitted to terminate this Agreement if any of the following events occur: (i) the Federal Energy Regulatory Commission ("FERC") prohibits Owner from recovering the costs of the Facilities through the FERC-accepted AMPT rate unless and until the Facilities constitute integrated networked transmission upon completion of the second delivery point project, (ii) Bankruptcy of Municipality, (iii) default by Municipality in performance of its obligations under this Agreement that has a material effect on the functioning of the Facility and that Municipality has failed to cure or make substantial progress in the reasonable opinion of Owner towards curing within ninety (90) days of written notice of such failure; or (iv) Owner enters into a replacement Operations and Maintenance Agreement.

4.3 Termination by Municipality. Municipality is permitted to terminate this Agreement if any of the following events occur: (i) payment default by Owner (other than a disputed payment) that is not cured within ten (10) days after the Due Date for any invoice; (ii) Bankruptcy of Owner; or (iii) default by Owner of any other obligation under this Agreement that has a material effect on Municipality's ability to perform the Services and that Owner has failed to cure or make substantial progress in the reasonable opinion of Municipality towards curing within ninety (90) days of written notice of such failure.

In the event of actions or omissions by Owner that, in the reasonable opinion of Municipality, will prevent the Facility from meeting the requirements of the Facility Agreements and Permits: (i) Municipality must promptly give Owner written notice of the actions or omissions and Municipality's related opinion and (ii) Municipality may thereafter

terminate this Agreement if Owner has failed to cure or make substantial progress in the reasonable opinion of Municipality towards curing within ninety (90) days of the written notice, suspend the Services until cured, and take such other action as it deems reasonable to mitigate its risks pending cure by Owner.

ARTICLE V - INSURANCE

5.1 The insurance provisions in Appendix A shall apply throughout the Term.

ARTICLE VI - INDEMNIFICATION

6.1 Owner Indemnification. Subject to the limitations of liability in Section 8, Owner shall indemnify and hold harmless Municipality, and its officers, directors, employees, agents and representatives (collectively, the "Municipality Indemnitees"), from and against, and no Municipality Indemnitee shall have responsibility for, any and all Liabilities sustained or suffered by any Municipality Indemnitee in connection with (i) injury to or death of any person or loss of or damage to property of third parties or Owner employees, to the extent caused by Owner's or its Affiliates' negligence, willful misconduct or violation of any Applicable Law or breach of any representation, warranty or covenant in this Agreement, (ii) infringement of patent rights or copyrights by Owner or its Affiliates, or (iii) a violation of Applicable Law but only to the extent attributable to Owner or its Affiliates.

6.2.1 Owner's indemnification obligation exists regardless of whether or not the Liabilities are caused in part by a Municipality Indemnitee, but Owner is not obligated to indemnify any Person from and against the consequences of that Person's own negligence.

6.2.2 Owner's indemnification obligation will not be limited by any insurance policy provided or required in connection with the Facility.

ARTICLE VII - LIABILITIES OF THE PARTIES

7.1 Limitations of Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, neither the Parties nor any Municipality Indemnitees shall be liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, or any special or incidental damages. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the Municipality Indemnitees.

7.2 No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT

TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Exclusive Remedies. The remedies under this Agreement in respect of or in consequence of (i) any breach of contract, (ii) any negligent act or omission, (iii) death or personal injury, or (iv) loss of or damage to any property, are to the exclusion of any other remedy that either Party may have against the other under Applicable Law.

7.4 Exceptions to Limitations. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, the liability limitations expressed in and all other provisions of this Article VIII (i) are separate from, and are not to be construed as limiting, any insurance coverage, and (ii) will not apply to claims arising from gross negligence or willful misconduct.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

8.1 Assignment. This Agreement is not assignable by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that this Agreement may be assigned by Owner to an Affiliate. Assignment pursuant to this Section 8.1 shall not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

8.2 Subcontractors. Subcontracting of the Services shall not relieve Municipality of its duties, liabilities or obligations to Owner. Owner has the right, in its sole discretion, to approve the retention of any subcontractors and the terms and conditions of any subcontract.

8.3 Not for Benefit of Third Parties. Except where a contrary intention is expressly stated, this Agreement and each and every provision hereof are for the exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

8.4 Force Majeure.

8.4.1 Events Constituting Force Majeure. A "Force Majeure Event" is any event that (a) restricts or prevents performance under this Agreement, (b) is not reasonably within the control of the Party affected or caused by the default or negligence of the affected Party and (c) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, civil disturbances, sabotage, work stoppages (i.e., strikes, but not including strikes by employees of Municipality, or their respective subcontractors (if any)), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain Permits from any Governmental Authority for the Facility,

restraint by court order, and changes in Applicable Law that affect performance under this Agreement. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if performance cannot occur due to a Force Majeure Event. Neither Party shall be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

8.4.2 Notice. If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability shall (i) promptly notify the other Party of the Force Majeure Event and its cause and confirm the same in writing within five (5) Business Days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as reasonably may be requested by the other Party and (iii) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect.

8.4.3 Scope. The suspension of performance arising from a Force Majeure Event shall be of no greater scope and no longer duration than necessary. The excused Party shall use its reasonable efforts to remedy its inability to perform as quickly as reasonably possible.

8.5 Dispute Resolution.

8.5.1 Notice of Dispute. A Party asserting the existence of a dispute shall deliver a written dispute notice to the other Party, describing the nature and substance of the dispute and proposing a resolution of the dispute.

8.5.2 Negotiation. The Parties shall first attempt in good faith to resolve the dispute through negotiations between (i) the Municipality Project Supervisor and (ii) the General Manager during the ten (10) Business Days following delivery of the dispute notice, which period may be extended upon agreement of the Municipality Project Supervisor and the General Manager. If a Preliminary Settlement is not achieved at the conclusion of the initial negotiation period, the Parties shall then attempt in good faith to resolve the dispute through negotiations between Municipality's Executive and Owner's Executive.

8.5.3 Litigation. If a settlement is not achieved, either Party may bring an action in a court of competent jurisdiction as defined in the balance of this section. All litigation arising out of or related to this Agreement must be brought in the United States District Court for the Northern District of Ohio, Eastern Division ("Federal Court"). If that Federal Court does not have jurisdiction for any reason, the litigation must be brought only in the Court of Common Pleas of Lorain County, Ohio. THE OWNER AND MUNICIPALITY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER THE LITIGATION SOUNDS IN TORT, CONTRACT, OR OTHERWISE.

8.6 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties.

8.7 No Waiver. No delay, waiver or omission by Owner or Municipality to exercise any right or power arising from any breach or default by Owner or Municipality with respect to any of the terms, provisions or covenants of this Agreement shall be construed to be a waiver by Owner or Municipality of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or Municipality.

8.8 Notices. Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by facsimile, email, or first class registered or certified mail.

8.9 Governing Law. This Agreement is governed by and shall be construed in accordance with Ohio law, exclusive of the conflicts and choice of law provisions thereof.

8.10 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to Municipality's provision of Services at the Facility and supersedes all prior negotiations, undertakings, agreements and business term sheets. Neither Party will be bound by or deemed to have made any representations, warranties, commitments or undertakings, except as expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

CITY OF HURON, OHIO

By: 

Matt Lasko
City Manager

Approved as to form:



Todd A. Schrader
Law Director

AMP TRANSMISSION, LLC

By: 

Pamala M. Sullivan
President

Approved as to form:



Lisa G. McAlister
General Counsel

APPENDIX A – INSURANCE

1. Municipality Insurance. Municipality shall throughout the Term maintain the insurance set forth below:

1.1 Workers' Compensation. Workers' compensation insurance covering Municipality's employees as required by Applicable Law and employer's liability insurance with (i) an each-accident limit of not less than \$1,000,000, (ii) a disease each-employee limit of not less than \$1,000,000, and (iii) a disease policy limit of not less than \$1,000,000.

1.2 Automobile Liability. Automobile bodily injury, including coverage for automobiles owned, leased, rented, borrowed, or hired by Municipality with limits of not less than \$1,000,000 per accident.

1.3 Liability Coverage. Municipality shall provide and maintain an excess liability policy with a per-occurrence and annual limit of Two Million Dollars (\$2,000,000.00) and a self-insured retention or deductible no greater than Five Hundred Thousand Dollars (\$500,000.00). Such policy shall also provide coverage in excess of the insurance described in Sections 1.1 and 1.2. The insurance required under this section may be written on a claims-made basis but not a claims-made-and-reported basis.

2. Owner Insurance. Owner shall throughout the Term maintain the insurance set forth below:

2.1 Property. Property insurance in amounts determined in Owner's sole discretion. Such property insurance shall be primary with respect to any and all claims for loss or damage to the Facility.

2.2 Workers' Compensation. Workers' compensation insurance covering Owner's employees as required by law and employer's liability insurance with (i) an each-accident limit of not less than \$1,000,000, (ii) a disease each-employee limit of not less than \$1,000,000, and (iii) a disease policy limit of not less than \$1,000,000.

2.3 Commercial General Liability. Commercial general liability insurance with limits of \$1,000,000 per occurrence/annual aggregate.

2.4 Automobile Insurance. Automobile liability insurance covering automobiles owned, leased, rented, borrowed, or hired by Owner with limits of \$1,000,000 per accident.

2.5 Additional Coverage. Umbrella or excess liability insurance in excess of the insurance described in Sections 2.2 (employer's liability), 2.3 and 2.4 will be carried with limits of \$5,000,000 per occurrence/annual aggregate.

3. Additional Insured. Owner shall make the Municipality Indemnitees additional insureds under the insurance required in Sections 2.3 and 2.5 but (i) only for claims arising in whole or in part from the negligence of the Owner and then only to the extent of that negligence, and (ii) only to the extent of the limits required in Sections 2.3 and 2.5.

Municipality shall make the Owner an additional insured with respect to the insurance required in Section 1.3, including any self-insured retention, but (i) only for claims arising in whole or in part from the negligence of the Municipality Indemnitees and then only to the extent of that negligence, and (ii) only to the extent of the limits required in Section 1.3.

4. Waiver of Subrogation. Owner shall cause the insurers providing the insurance required in Sections 2.1 and 2.3 through 2.5 to waive any rights of subrogation against the Municipality Indemnitees. To the extent permitted by Applicable Law, Owner shall cause the insurer providing the insurance required in Section 2.2 to waive any rights of subrogation against the Municipality Indemnitees.

Municipality shall cause the insurers providing the insurance required in Sections 1.2 and 1.3 to waive any rights of subrogation against the Owner. To the extent permitted by law, Municipality shall cause the insurer providing insurance required in Section 1.1 to waive any rights of subrogation against the Owner.

5. Form and Content. All insurance policies with respect to insurance maintained by either Owner or Municipality pursuant to Article VII shall:

5.1 Insurer Rating. Be placed with insurance companies that have a Best's rating of at least A-VII or with companies that are otherwise reasonably acceptable to Owner and Municipality;

5.2 Claims-Made Form. If written on a claims-made policy form, be maintained with a retroactive date that is prior to the Effective Date and for a period of at least five years following the expiration or termination of this Agreement;

5.3 Severability of Interest. State that all provisions, except the policy limits, shall operate in the same manner as if there were a separate policy covering each insured;

5.4 Non-Recourse Premiums. Grant no recourse for payment of any premium against Municipality or any additional insured for insurance required to be furnished by Owner pursuant to Section 8.1; and

5.5 Cancellation Notice. Provide that the insurer give thirty (30) days prior written notice of cancellation of such policies unless cancellation is for non-payment of premiums, in which case a minimum of (10) days notice must be provided.

6. Certificates. Each Party shall furnish the other Party with certificates evidencing that the required insurance is in effect.

7. Deductibles. Notwithstanding any limitation of liability or other provision of this Agreement that may be susceptible to contrary interpretation, each Party shall be solely responsible for the payment of all deductibles or self-insured retentions on insurance policies obtained by such Party as required under this Agreement.