

**RESOLUTION NO. 2017-55**

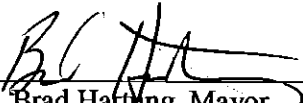
**A RESOLUTION AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF HURON, TO ENTER INTO A UTILITY SERVICE AGREEMENT WITH MIMI LAND COMPANY, LLC FOR THE PURPOSE OF THE SUPPLY OF GENERAL ELECTRICAL UTILITY SERVICES**


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

**SECTION 1.** That the City Manager be, and he hereby is, authorized and directed to enter into a Utility Services Agreement, by and between Huron Public Power by and through the City of Huron, with MIMI Land Company, LLC for the purpose of supply of general electrical utility services, which agreement shall be in substantially the form of Exhibit "A" attached hereto and made a part hereof.

**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 go into effect and be in full force and effect from and after the earliest date allowed by law.

  
\_\_\_\_\_  
Brad Hartung, Mayor

Attest:   
Clerk of Council

Adopted:       JUL 25 2017

## **AGREEMENT FOR SERVICES**

This Utility Services Agreement ("Agreement"), dated as of \_\_\_\_\_, 2017 (the "Effective Date"), is made and entered into by and between the Huron Public Power by and through the City of Huron, Ohio, an Ohio municipality located in Erie County, Ohio (hereinafter referred to as "Utility"), and MIMI Land Company, LLC, a Delaware limited liability company (hereinafter referred to as "Consumer"), having its principal place of business located at 1876 Seacliff Drive, Kingsville, Ontario, Canada N9Y2N1 for the purpose of supply of general electrical utility services to property as described herein.

### **BACKGROUND**

American Municipal Power, Inc. (hereinafter referred to as "AMP") provides service of electric power and energy to the Utility through the existing Power Services Agreement entered into between AMP and the Utility (hereinafter referred to as "AMP Agreement").

Consumer has secured right of entry in anticipation of purchase of certain real property located at 901 Rye Beach Road, Huron, Ohio, legally described on Exhibit "A" attached hereto and incorporated by reference ("Project Site"). Consumer requires the service of electric power and energy and desires the service of electric power and energy to be provided by Huron Public Power to the Project Site. Consumer is currently constructing a three phase greenhouse growing and distribution facility at the Project Site.

### **ARTICLE 1**

#### **TERM**

1.1 This Agreement shall be eighteen (18) month term commencing upon the Effective Date. Subject to the terms of this Agreement, the parties may enjoy automatic renewal periods of twelve months after the Term.

1.2. If termination notice is provided to the Utility, any power supply purchases that were entered into by Utility on the Consumer's behalf for purpose of serving the Consumer under this Agreement shall remain in effect and any and all costs shall remain the responsibility of Consumer.

1.3. Notwithstanding anything to the contrary herein, in the event the AMP Agreement is termination prior to the end of the Term of the then current term, this Agreement shall automatically terminate without any liability to either Party hereunder.

1.4. It is anticipated that Consumer's electrical utility consumption will increase upon completion of construction of the greenhouse facility. Prior to completion of the construction and operation of the greenhouse facility(ies), the parties will enter into good faith negotiations for the provision of service of electrical power and energy in excess of the terms of this Agreement. This Agreement shall terminate upon the effective date of future service agreements for electrical power and energy.

### **ARTICLE 2**

#### **SALES, TRANSMISSION, SERVICES**

2.1. Subject to the terms and conditions of this Agreement, Utility shall supply the electric power and energy received in accordance with and subject to the AMP Agreement and the Consumer shall compensate Utility for such electric power and energy in the amount required by the Consumer during the Term of this Agreement.

2.2. It is understood by the parties that the Utility's obtaining applicable energy consumption and load profile information from Consumer is often critical to the Utility's ability to satisfy reliably and economically the Consumer's electric energy and power requirements and plan for the same.

Accordingly, Consumer agrees to the extent practicable to provide such available consumption and load profile information to the Utility and the Utility may reasonably request.

2.3. It is understood by the parties that the total service load furnished pursuant to this Agreement shall at no time exceed 238.5 KW and that Utility shall at no time make available to Consumer a total service load in excess of 238.5 KW. In the event that the Project Site is annexed into the City of Huron, the total service load is subject to increase and the Parties agree that they will meet and discuss the service load to determine need.

2.4. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of purchased power and shall not sell electric power and energy purchased hereunder.

2.5. Consumer shall use its best effort to not cause objectionable voltage fluctuations or other electrical disturbances on the Utility's system. The Utility may require the Consumer, at the Consumer's expense, to install such corrective measures as will reasonably limit such fluctuations and disturbances.

2.6. The Utility shall not be liable for any loss, injury or damage resulting from any such conditions or other fluctuations or irregularities in the supply of energy that could have been prevented by use of protective devices on Consumer's system.

2.7. In the event of loss or injury to the property of the Utility through misuse by, or the negligence of, the Consumer or agents of the same, the Customer thereof shall pay the cost of the necessary repairs or replacement to the Utility. No one except the agents of the Utility shall be allowed to make any internal or external adjustments of any meter or other piece of apparatus, which shall be the property of the Utility. The Utility shall have the right at all reasonable hours to enter the premises of the Consumer for the purpose of installing, reading, removing, testing, replacing or otherwise disposing of its apparatus and property, and the right of entire removal of the Utility's property in the event of the termination of service for any cause.

2.8. Utility shall use reasonable diligence in assuring the provision of continuity of service in the delivery of electric power and energy under this Agreement, but Utility does not guarantee that the supply of electric service will be uninterrupted or at all times constant. If the supply of electric power and energy shall fail or be interrupted or be reduced or become defective through Force Majeure (as defined in Section 2.9), Utility shall not be liable therefor or for damages caused thereby and such events shall not constitute a breach of the Utility's obligations hereunder. The failure of the Consumer to receive electric power and energy because of any of the aforesaid conditions shall not relieve the Consumer of its obligations to make payments to the Utility for electric power made available by the Utility pursuant to this Agreement but only to the extent the Utility incurs charges or other costs therefore. However, in such circumstances the Utility shall cause AMP to make all reasonable efforts to reschedule, sell or otherwise attempt to make arrangements that will be passed through the Utility for the benefit of Consumer and which would avoid or mitigate Consumer's payments for power and energy which are not so made available.

2.9. The term "Force Majeure" shall mean any cause beyond the control of the Utility or the Consumer, including, but not limited to, failure of facilities, flood, earthquake, storm, lightening, fire, epidemic, pestilence, war, riot, civil disturbance, labor disturbance, sabotage, and restraint or action by court or public authority, which by due diligence and foresight Utility or the Consumer, as the case may be, could not reasonably have been expected to avoid; provided, however, that the Party suffering such disability

shall use due diligence to remove the same with all deliberate speed and provided further, however, that nothing contained herein shall be construed to require a Party to settle a labor dispute.

**ARTICLE 3  
PAYMENT AND BILLING**

3.1. For the compensation hereinafter set forth, subject to the terms and conditions of this Agreement, the Utility shall supply to Consumer the electric power and energy received in accordance with and subject to the AMP Agreement. The Consumer shall be invoiced and is responsible for paying, and Utility is entitled to receive as compensation for said service in the same manner and subject to the same policy in which the Utility serves its customers in the Huron Corporate Park.

3.2. Bills due hereunder shall be paid within ten (10) days of the date of the invoice at the office of the Utility for service furnished or made available during the preceding month. The amounts shall be considered paid when actually received by the Utility during normal business hours.

3.3. If a bill payment is not received by the Utility offices or by the Utility's authorized agent on or before the specified payment date, a one-time, additional amount of ten percent (10%) of the amount of the bill will become due and payable as part of Customer's total obligation.

**ARTICLE 4  
INFRASTRUCTURE**

4.1. Upon the Effective Date of this Agreement, the Utility shall cause the commencement of the process of installation of any necessary infrastructure to provide the services outlined herein. The provision of such services shall include the engineering, design, labor, materials and miscellaneous related costs and is estimated to be approximately \$200,000.00. The Utility shall work in cooperation with Consumer to establish a project timeline and completion date. Consumer shall be responsible for the full cost of the infrastructure installation. Upon execution of this Agreement, the Consumer shall provide payment of \$200,000.00 to the Utility. The Utility shall provide advance notice to Consumer of any cost anticipated in excess of the \$200,000.00.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their names to duplicates hereof on the day and year last aforesaid.

**CITY OF HURON, OHIO**

**MIMI FARMS, LLC**

\_\_\_\_\_  
Andrew D. White, City Manager

\_\_\_\_\_  
Owner/President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to form:**

\_\_\_\_\_  
Laura E. Alkire  
Law Director, City of Huron