



# 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:** Mayor and Members of City Council  
**From:** Roxanne Dietrich, Clerk of Council  
**cc:** Joel L. Mazur-City Manager/Acting Finance Director, Billy D. Harmon-City Law Director  
**Date:** September 7, 2021  
**Subject:** General Information

### CALENDAR

#### AGENDA

City Council Meeting @7:00 pm

#### APPROVAL OF MINUTES

August 16, 2021 Regular Council Meeting Minutes

#### REPORTS FROM COMMITTEES

The proposed 2022 Budget Calendar is included in your packet

#### INTRODUCTION OF NEW ORDINANCES AND RESOLUTIONS - *None*

#### SECOND READINGS OF ORDINANCES AND RESOLUTIONS

1. Ordinance No. 031-21, an Ordinance Authorizing an Economic Development Agreement between the City of Napoleon, Ohio, the Community Improvement Corporation of Henry County, Ohio, and Keller Logistics, Inc., regarding the Construction of an Industrial Building within the City of Napoleon, Ohio; and declaring an Emergency.
2. Resolution No. 032-21, a Resolution Authorizing the City Manager to Execute any and all documents necessary to Acquire 12.91 Acres of Land, located within the City of Napoleon, Ohio; and declaring an Emergency.
  - a. Attached is a Memorandum from Joel with an update on this property
3. Resolution No. 034-21, a Resolution Authorizing a Contribution to the Henry County Agricultural Improvement Association; and declaring an Emergency.
4. Ordinance No. 035-21, an Ordinance Appointing Kevin Garringer as the City Finance Director for the City of Napoleon, Ohio; and declaring an Emergency. (*Suspension Requested*)

#### THIRD READINGS OF ORDINANCES AND RESOLUTIONS

1. Ordinance No. 030-21, an Ordinance Authorizing the City Manager to Enter into a Contract or Contracts, for the Sale of City Owned Bulk Electric System (BES) 69kV Assets to American Municipal Transmission, LLC, a Subsidiary of American Municipal Power, Inc. (AMP); and declaring an Emergency
  - a. Enclosed is Joel's Memorandum with an update on the Industrial Substation and the agreement.

#### GOOD OF THE CITY (Discussion/Action)

1. Healthcare Committee recommendation for employees to stay with the current healthcare plans PPOs and PPO3
2. Healthcare Committee recommendation to keep the vision and dental plans that are offered on a voluntary basis
3. Healthcare Committee recommendation to extend the BORMA Wellness Program for three years (2022, 2023 and 2024); and also, that a \$50.00 surcharge be applied to the Employees' health insurance premium when the

employee and employee's spouse (if applicable) do not complete their wellness check by the date specified for each year *(direct Law Director to draft legislation)*

4. Keller Logistics CRA Agreement *(direct Law Director to draft legislation)*
5. to Enter into a Contract with Koester Corporation for Wash Water Basin Controls Upgrade *(direct Law Director to draft legislation)*  
The enclosed Memorandum from Jeff Weis explains the reason for this project.
6. Acceptance of a Confined Space Tri-Pol and Ventilation Fan from Campbell Soup to the Napoleon Fire Department.
7. Proposed Addition of Stop Signs at the Intersection of Bales and Westmoreland *(refer to Committee)*
8. Proposed Changes to Fees for Curb and Sidewalk Replacement Program *(refer to Committee)*
9. Finance Department Update

#### **INFORMATIONAL**

- 1) Cancellation – Technology and Communications Committee
- 2) Refuse and Recycling Labor Day Holiday Route Schedule
- 3) AMP Weekly Newsletter – August 27, 2021

## September 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>29</b> - August	<b>30</b> - August  <i>5<sup>th</sup> Monday</i> No Scheduled Meetings	<b>31</b> - August	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>5</b>	<b>6</b> Labor Day  City Offices Closed	<b>7</b>  7:00 pm - City Council	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>12</b>	<b>13</b>  6:15 pm - Electric Comm Board of Public Affairs 7:00 pm - Water/Sewer Comm. 7:30 pm - Muni Prop/ED Comm.	<b>14</b>  5:00 pm - Planning Commission	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>
<b>19</b>	<b>20</b>  6:00 pm - Tree Commission 7:00 pm - City Council	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
<b>26</b>	<b>27</b>  6:30 pm - Finance/Budget Comm. 7:30 pm - Safety & HR Comm.	<b>28</b>  4:30 pm - Civil Service Comm.	<b>29</b>  6:30 pm - Park Rec Board	<b>30</b>		

# CITY OF NAPOLEON CITY COUNCIL

## MEETING AGENDA

**Tuesday, September 07, 2021 at 7:00 pm**

City Council Chambers, 255 West Riverview Avenue, Napoleon, Ohio  
to view the meeting via WebEx: [www.napoleonohio.com/EVENTS](http://www.napoleonohio.com/EVENTS)

**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)  
August 16, 2021 Regular Council Meeting Minutes

**D. Citizen Communication**

**E. Reports from Council Committees**

1. Finance and Budget Committee met on August 23, 2021; and  
Reviewed the Draft 2022 Debt Schedule and also the Proposed 2022 Budget Calendar
2. Safety and Human Resources Committee did not meet on August 23, 2021 due to lack of agenda items
3. Technology and Communications Committee did not meet tonight due to lack of agenda items

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

1. Healthcare Cost Committee met on Friday, August 20, 2021; and,
  - a. recommended to stay with the current PPO2 and PPO3 plans
  - b. recommended to keep the vision and dental plans that are offered on a voluntary basis
  - c. recommended extending the BORMA Wellness Program for three years (2022, 2023 and 2024); and also, that a surcharge of \$50.00 be applied to the employee's health insurance premium when the employee and the employee's spouse (if applicable) do not complete their wellness check by the date specified for each year
2. Civil Service Commission did not meet on August 24, 2021 due to lack of agenda items.
3. Park and Rec Board Special meeting for Tuesday, August 24, 2021 was not held due to lack of a quorum.

**G. Introduction of New Ordinances and Resolutions** - *None*

**H. Second Readings of Ordinances and Resolutions**

1. **Ordinance No. 031-21**, an Ordinance Authorizing an Economic Development Agreement between the City of Napoleon, Ohio, the Community Improvement Corporation of Henry County, Ohio, and Keller Logistics Inc., regarding the Construction of an Industrial Building within the City of Napoleon, Ohio; and declaring an Emergency.
2. **Resolution No. 032-21**, a Resolution Authorizing the City Manager to Execute any and all documents Necessary to Acquire 12.91 acres of Land, Located within the City of Napoleon, Ohio; and declaring an Emergency
3. **Resolution No. 034-21**, a Resolution Authorizing a Contribution to the Henry County Agricultural Improvement Association; and Declaring an Emergency
4. **Ordinance No. 035-21**, an Ordinance Appointing Kevin Garringer as the City Finance Director for the City of Napoleon, Ohio; and, declaring an Emergency (*Suspension Requested*)

**I. Third Readings of Ordinances and Resolutions**

1. **Ordinance No. 030-21**, an Ordinance Authorizing the City Manager to Enter into a Contract or Contracts, for the Sale of City Owned Bulk Electric System (BES) 69kV Assets to American Municipal Transmission, LLC, a Subsidiary of American Municipal Power, Inc. (AMP); and declaring an Emergency

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

1. **Discussion/Action:** on Healthcare Committee recommendation for employees to stay with the current healthcare Plans PPO2 and PPO3

2. **Discussion/Action:** on Healthcare Committee recommendation to keep the vision and dental plans that are offered on a voluntary basis
3. **Discussion/Action:** on Healthcare Committee recommendation to extend the BORMA Wellness Program for three years (2022, 2023 and 2024); and also, that a \$50.00 surcharge be applied to the Employees' health insurance premium when the employee and employee's spouse (if applicable) do not complete their wellness check by the date specified for each year *(direct Law Director to draft legislation)*
4. **Discussion/Action:** Keller Logistics CRA Agreement *(direct Law Director to draft legislation)*
5. **Discussion/Action:** to Enter into a Contract with Koester Corporation for Wash Water Basin Controls Upgrade *(direct Law Director to draft legislation)*
6. **Discussion/Action:** on Acceptance of a Confined Space Tri-Pod and Ventilation Fan from Campbell Soup to the Napoleon Fire Department
7. **Discussion/Action:** Proposed Addition of Stop Signs at the Intersection of Bales and Westmoreland *(refer to Committee)*
8. **Discussion/Action:** Proposed Changes to Fees for Curb and Sidewalk Replacement Program *(refer to Committee)*
9. **Discussion/Action:** Finance Department Update

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

**L. Approve Payment of Bills** (in the absence of any objections or corrections, the Payment of Bills shall stand approved.)

**M. Adjournment**

*Roxanne Dietrich*

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Roxanne Dietrich - Clerk of Council

**A. ITEMS REFERRED OR PENDING IN COMMITTEES OF COUNCIL**

1. **Technology & Communication Committee (1<sup>st</sup> Monday)**  
*(Next Regular Meeting: Monday, October 4, 2021 @6:15 pm)*
2. **Electric Committee (2<sup>nd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 13, 2021 @6:15 pm)*
  - a. Review of Power Supply Cost Adjustment Factor for September 2021
  - b. Update on Substations
  - c. Electric Department Report
3. **Water, Sewer, Refuse, Recycling & Litter Committee (2<sup>nd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 13, 2021 @7:00 pm)*
  - a. Update on 2021 Wastewater Treatment Plant Improvements Project
  - b. Water Review Commission Committee
4. **Municipal Properties, Buildings, Land Use & Economic Development Committee (2<sup>nd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 13, 2021 @7:30 pm)*
  - a. Proposed Addition of Stop Signs at the Intersection of Bales and Westmoreland
  - b. Proposed Changes to Fees for Curb and Sidewalk Replacement Program
5. **Parks & Recreation Committee (3<sup>rd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 16, 2021 @6:00 pm)*
6. **Finance & Budget Committee (4<sup>th</sup> Monday)**  
*(Next Regular Meeting: Monday, September 27, 2021 @6:30 pm)*
7. **Safety & Human Resources Committee (4<sup>th</sup> Monday)**  
*(Next Regular Meeting: Monday, August 23, 2021 @7:30 pm)*
8. **Personnel Committee (as needed)**
9. **Ad-hoc Committee on Personnel (as needed)**
10. **Charter Review Commission (as needed in 2024)**

**B. Items Referred or Pending in Other City Committees, Commissions & Boards**

1. **Board of Public Affairs (2<sup>nd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 13, 2021 @6:15 pm)*
  - a. Review of Power Supply Cost Adjustment Factor for September, 2021
  - b. Update on Substations
  - c. Electric Department Report
  - e. Update on 2021 Wastewater Treatment Plant Improvements Project
  - f. Water Review Commission Committee
2. **Board of Zoning Appeals (2<sup>nd</sup> Tuesday)**  
*(Next Regular Meeting: Tuesday, September 14, 2021 @4:30 pm)*
3. **Planning Commission (2<sup>nd</sup> Tuesday)**  
*(Next Regular Meeting: Tuesday, September 14, 2021 @5:00 pm)*
  - a. PC 21-10 Final Plat Approval – Lynnefield Estates Subdivision Part of Lot B of the Subdivision of Lot 3, German Mutual Subdivision
4. **Tree Commission (3<sup>rd</sup> Monday)**  
*(Next Regular Meeting: Monday, September 20, 2021 at 6:00 pm)*
5. **Civil Service Commission (4<sup>th</sup> Tuesday)**  
*(Next Regular Meeting: Tuesday, September 28, 2021 @4:30 pm)*
6. **Parks & Recreation Board (Last Wednesday)**  
*(Next Regular Meeting: Wednesday, September 29, 2021 @6:30 pm)*
7. **Privacy Committee (2nd Tuesday in May & November)**  
*(Next Regular Meeting: Tuesday, November 9, 2021 @10:30 am)*
8. **Records Commission (2<sup>nd</sup> Tuesday in June & December)**  
*(Next Regular Meeting: Monday, December 6, 2021 @6:45 pm)*
9. **Housing Council - Meets First Monday in April (meeting to be scheduled after the TIRC meeting)**
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**
15. **Volunteer Peace Officers' Dependents Fund Board**
16. **Lodge Tax Advisory & Control Board (as needed)**
17. **Board of Building Appeals (as needed)**
18. **ADA Compliance Board (as needed)**















**Yea-7, Nay-0. Motion Passed.**

**Award of the Front Street and Palmer Ditch Force Main Relocation Project**

Mazur reported this project will be funded about 70% with the Issue II grant, we are estimating that to be about \$210,000 to \$215,000. Vernon Nagel was the lowest bid at \$307,053.25. The project estimate with the 10% contingency was \$360,000. The recommendation is to move forward with the award to Vernon Nagel for \$307,053.25. Comadoll asked do we have any idea why they came in so cheap? Mazur explained the 10% contingency was put in the estimate. The contractor plans on starting this work in January and we are getting good bids right now as contractors are trying to line up work for the winter.

Motion: Durham Second: Knepley  
to award the Front Street and Palmer Ditch Force Main Relocation Project to Vernon Nagel, Inc. for \$307,053.25

Roll call vote on the above motion:

Yea-Baer, Bialorucki, Siclair, Comadoll, Knepley, Durham, Haase

Nay-

**Yea-7, Nay-0. Motion Passed.**

**Approval of Plans and Specifications for the Oberhaus Interceptor I/I Reduction Project**

Mazur stated if the plans and specs are approved for advertisement, the bids would open on September 15, 2021. The estimate is a little bit higher than what was budgeted. During the design of this we increased the scope a little to include some sewer lining under Woodlawn and around some of the other properties in that area. If the bids do come in over what was budgeted, as explained in the memo since it's in the same sewer fund as the Front Street and Palmer Ditch project, the savings from the that project could be used for the additional scope in this project. Comadoll stated this project needed to be done a long time ago, I'm glad we are finally doing it. Mazur explained one of the reason for lining is so we don't have to cut into some of the parking lots into the road. If we are already doing lining in one spot and they are already mobilized, it's not much more of an effort to move the lining crew to go ahead and line underneath the road and prevent street cuts from happening.

Motion: Comadoll Second: Knepley  
to approve the plans and specifications and go out to bid for the Oberhaus Interceptor I/I Reduction Project

Roll call vote on the above motion:

Yea-Baer, Siclair, Comadoll, Knepley, Durham, Haase

Nay-

Abstain-Bialorucki

**Yea-6, Nay-0, Abstain-1. Motion Passed.**

**Finance Department Update**

Mazur reported shut off day was on August 4<sup>th</sup>. We have been having lower than average shutoffs but, we are getting a little closer to normal. It was a higher usage month so people's bills were higher. The collections are actually going really well for all the enterprise funds. It is a good sign that all the utilities are healthy. The population is healthy financially if everybody is paying their bills. We rolled the month of July successfully. That was a chore but, we worked closely with Don Schonhardt. He was pretty happy with the results. We had a couple issues pop up in payroll that were kind of anomalies. A direct deposit didn't go to the correct bank account so, it came back. We identified a couple of issues and got it reconciled, moved on and rolled the month. The budget forms are complete, personnel forms and departmental budgets are being put together. The monthly reports are complete the unencumbered balance of the General Fund is down about \$200,000 from the previous month but that's largely due to a third pay occurring in July. We should see that continue to start building back up. The insurance adjuster came out for the vehicle that was damaged at the Water Treatment Plant. We are in the process of remitting the payment to the former owner of the Brick 'n Brew for half of the fire escrow funds as they finally got a Certificate of Occupancy. We will remit the rest when the occupancy permit is acquired for the unfinished section. Bialorucki asked Mazur to explain what that is. Mazur explained fire escrow fund is the insurance company, the insurance claim piece that we remit if they rehab the building or submit a letter to us that they are not going to rehab or rebuild the building. They have to show that they have the Certificate of Occupancy for us to give that payment back to them. Bialorucki questioned it goes back to the former owner even though the

new owner Mazur interjected it goes to the named insured. They have their own separate contract. For our purpose, it's to the named insured. Income tax collections are up from 2021 by about 12.6%. That is partly due, we believe, to the fact that the 2020 due date last year was in July for income tax and income tax filing and we did implement the 30% reciprocity tax collection. There are some employers that are withholding employee income taxes and we are seeing some of that. We can't give you a number on that right now it's impossible to track. We will be able to provide better information with next year's filing to know what is coming in. 2020 being the anomaly year, we looked up 2019 and are about 11% up from 2019's collections. That is a difference of about \$443,000 ahead. We projected in the budget a \$4,250,000 income tax collection. Last year we had a really strong end to the year that helped carry us into the next year. If we remain current and strong, we should have some positive news. We did project low on the income tax collection at \$4.25 million. We finished the year of 2020 at almost \$4.6 million in income tax collections. If we do hit the \$4.6 million then that puts us quite a bit ahead from what we projected. We are focusing on the debt schedule and working with Don Schonhardt to take a look at that. We have bonds, we just need to put together what we have for OWDA loans, that's the water and sewer projects that are out there. The tricky part in this is during COVID they deferred some of the payments so we have to figure out how we want to present it to council next week. The last piece is we have used approximately \$1,100 of funds out of the \$8,800 that was set aside for Schonhardt and Associates. I think the Mayor hit on this, the recommendation to keep them on board at least through the end of the year because there's some year-end stuff that has to occur so Schonhardt can help the new Finance Director get through that piece if he needs help, not assuming he does.

#### **AROUND THE TABLE**

Mazur - Census Numbers. I don't know if anybody saw that Henry County's population is down and Napoleon's population is up 1.3%. We were at 8,749 and are up to 8,860. We talked about this at other meetings that the population was showing a decline of about 11% at the end of 2019. To me that was just bizarre that projections were even close to that. I knew there was something wrong. We had mutual aid over the weekend to Coldwater with the Electric Department. They had some nasty storms go through. Cuyahoga Falls and Genoa also had some issues. When you see communities like Coldwater and Cuyahoga Falls needing mutual aid, it can happen to anybody. Those are tight systems.

Harmon – no items tonight.

Knepley – Mr. Mayor you did a really nice job on Saturday.

Comadoll – I'm getting numerous complaints about Verizon Wireless. They said their service here in Napoleon is terrible. Do we have a contract with them? Mazur - just for our usage. Comadoll - nothing that we can do to have them come in and see what's going on why nobody is getting out. Mazur - I've noticed that too. Durham - a lot of that is due to the influx with the traffic of people here for the fair. The majority of cell phone carriers will go down when that population bumps up. Maassel – they are not ready for that much volume. Comadoll - is there any way we can offer for a price the southside tower and put some kind of network on that to help out. People asked me that at the fair yesterday. Told them we've got a council meeting Monday night I'll bring that up and see if there's something that we can do. Durham - from experience if they continue to call the carrier enough the carrier can put out a temporary tower when there is an increase in population. I know that at football games for instance they could put out a mobile tower in that parking lot. It would help but enough people have to complain to the company directly. Mazur - without building it for them Comadoll - we don't want to end up with the same situation as the regular water tower. Maassel - here's what we'll do. I will have Amanda draft a letter and I will sign it on behalf of the citizens of Napoleon. Siclair – can we do something like that with Spectrum also? Maassel - we can do that with Spectrum also. Mazur – I was going to suggest there's the 5g network and small cell wireless they are putting in. We can start having a conversation about strategic placement of some of those cell beacons. That is what I would recommend.

Sicclair - I just wanted to also say nice job on Saturday, Mayor. It was a really nice event, it was pretty cool and a nice showcasing of the City of Napoleon and all that turned out for it. Thank-you for your contribution.

Maassel – I thought Commissioner Mires did a nice job. There were a lot of little details that went along. It was kind of interesting, everyone was talking and once she started to move it got really quiet. They were certainly paying attention and she wasn't in the air that long. I think it was less than five minutes by time she left the truck to the time she got up. A really good job. I know the commissioners worked on it and really appreciate them





**CITY OF NAPOLEON**  
**2022 BUDGET PROPOSED TIMELINE FOR COUNCIL'S APPROVAL**

<b>August 23</b>	<b>Finance and Budget Committee meeting</b> – Proposed 2022 Budget Calendar & 2022 Debt payments
<b>September 1</b>	Send Appropriation Request letter to Departments/Divisions
<b>September 27</b>	<b>Finance and Budget Committee meeting</b> – Review miscellaneous Appropriations for 2022 (Dependent on new Finance Director's completion)
<b>October 1</b>	Budget Requests due from Departments/Divisions
<b>October 1 – 8</b>	Departments/Divisions meet with City Manager and Finance Director regarding their requests  2022 Revenue Estimate prepared
<b>October 11-22</b>	Finance Director and City Manager review requests – provide recommendations
<b>October 25</b>	<b>Finance and Budget Committee meeting</b> -review 2022 Revenue Estimates & Initial Income Tax projections
<b>November 5 &amp; 6</b>	Department Budget Hearings with Council
<b>November 15</b>	First Reading of Budget – Mayor presents 2022 Budget to Council
<b>December 6</b>	Second Reading of Budget
<b>December 20</b>	Pass Budget

**ORDINANCE NO. 031-21**

**AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NAPOLEON, OHIO, THE COMMUNITY IMPROVEMENT CORPORATION OF HENRY COUNTY, OHIO, AND KELLER LOGISTICS, INC., REGARDING THE CONSTRUCTION OF AN INDUSTRIAL BUILDING WITHIN THE CITY OF NAPOLEON, OHIO; AND DECLARING AN EMERGENCY**

**WHEREAS**, the City desires to encourage commercial and industrial development and create and preserve jobs and employment opportunities within the City; and,

**WHEREAS**, based on the results of an examination of office and industrial space needs within the City, and induced by and in reliance on the economic development incentives provided in the Economic Development Agreement, Keller Logistics, Inc. expects to build an approximate one hundred thousand (100,000) square foot industrial building in the City; and,

**WHEREAS**, to facilitate the construction of the industrial building, which the City reasonably expects will result in the creation of new jobs and employment opportunities within the City, the City has agreed to provide certain incentives to the Keller Logistics, Inc., said incentives listed in the Economic Development Agreement, and sell a parcel of real property, which parcel is depicted on EXHIBIT A and referred to as the “Property” in the Economic Development Agreement, to Keller Logistics, Inc. for a purchase price of thirty thousand three hundred dollars (\$30,300.00) and other valuable consideration provided therein, including construction of the industrial building by April 1, 2023; and,

**WHEREAS**, the City has determined to offer the economic development incentives described therein to induce Keller Logistics, Inc. to construct a facility within the City which the City expects will result in the creation of new jobs and employment opportunities within the City and will improve the economic welfare of the people of the State and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution.

**Now Therefore,**

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

Section 1. That, the Economic Development Agreement between the City of Napoleon, Ohio, the Community Improvement Corporation of Henry County, Ohio, and Keller Logistics, Inc., substantially in the form as currently on file in the office of the City Finance Director, is hereby approved and accepted; moreover, the City Manager is both authorized and directed to execute said Agreement.

Section 2. 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 3. 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 4. 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. The reason for the Emergency Clause is the fact that this Ordinance is necessary to begin the construction contracting and subcontracting process, begin construction in a timely manner, avoid a foreseeable rise in steel pricing that may affect the feasibility of the project, 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:

\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council

*I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Ordinance No. 031-21 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021; & 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.*

\_\_\_\_\_  
*Roxanne Dietrich, Clerk of Council*

**RESOLUTION NO. 032-21**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO ACQUIRE 12.91 ACRES OF LAND, LOCATED WITHIN THE CITY OF NAPOLEON, OHIO; AND DECLARING AN EMERGENCY**

**WHEREAS**, pursuant to City of Napoleon Charter Section 6.01, Council may provide, by ordinance or resolution, a method for the City to purchase, construct, lease, sell, or to otherwise dispose of real property and, tangible or intangible personal property, including the contracting therefor, that may be contrary to any provision of the laws of Ohio.

**WHEREAS**, the City of Napoleon desires to acquire a certain 12.91 acres of land, located within the City of Napoleon, Ohio; and,

**WHEREAS**, the City of Napoleon desires to acquire said land for further economic development of the City; **Now Therefore**;

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

Section 1. That, the City of Napoleon authorizes and directs the City Manager to execute any and all documents necessary for the acquisition of twelve and ninety-one one hundredths (12.91) acres of land which is located within the City of Napoleon.

Section 2. That, the properties listed are identified as at the location of the intersection of Commerce Drive and Interchange Drive, Napoleon, Henry County, Ohio; Parcel Number 28-070032.0000 and Parcel Number 28-070032.0300, consisting of twelve and ninety-one one hundredths (12.91) acres of land in total.

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 5. 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 allow for the City to begin economic development of the property; 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:

\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council

*I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Resolution No. 032-21 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021; & 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.*

\_\_\_\_\_  
*Roxanne Dietrich, Clerk of Council*



# City of *NAPOLEON*, Ohio

255 West Riverview Avenue • P.O. Box 151  
Napoleon, Ohio 43545-0151  
Phone: (419) 592-4010 • Fax: (419) 599-8393  
Web Page: [www.napoleonohio.com](http://www.napoleonohio.com)

## MEMORANDUM

*Mayor*  
Jason Maassel

*Members of Council*

**PRESIDENT:**  
Joseph Bialorucki

**PRESIDENT PRO-TEM:**  
Daniel Baer

John Ross Durham  
Jeff Comadoll  
Kenneth Haase  
Lori Siclair  
Molly Knepley

*City Manager*  
Joel L. Mazur

*Acting Finance  
Director*  
Joel L. Mazur

*Law Director*  
Billy D. Harmon

**DATE:** September 7, 2021  
**TO:** Members of City Council  
Mayor Jason P. Maassel  
**From:** Joel L. Mazur, City Manager  
**SUBJECT:** Luzny Property Purchase Update

As staff continues to research potential issues with purchasing the Property located to the West of the intersection of Commerce Dr. and Interchange Dr., we have discovered a few things that will complicate the transaction but does not prohibit Napoleon from purchasing the property and preparing it for any type of industrial development.

First, it was discovered that the property may have potential wetlands. This was discovered when ODOT was working with the former property owner to purchase the property. The former owner allowed ODOT to complete a wetland determination on the property and once there was evidence of wetlands on the property, ODOT stopped the study and did not go through with the transaction.

Also, it is suspected through research that the other former owner of the property allowed for someone to discard ditch dredgings on the property, which is likely how the 'wetland' plants arrived on the site and established themselves.

Knowing this, it has been determined that approximately 2.8 acres of the land is impacted by wetlands. We suspect that given the state of the property, these wetland impacts will be classified as tier 1 wetlands, which is the lowest quality wetland.

When wetlands are involved in property development, the governing agency could be the Ohio Department of Natural Resources or the U.S. Army Corps of Engineers depending on the location of the wetlands and proximity to waterways. In this case, it is likely that the U.S. Army Corps of Engineers will have jurisdiction.

In the case where a property has wetlands, the only way to develop the property that is impacted is to mitigate the wetlands. First, a Wetland Determination and Delineation study needs to be completed. Then, in order to mitigate the wetlands, the property owner can pay a sum of money to an agency in order to purchase and develop land into wetlands in another area. There is a formula and an acreage attached to the mitigation, but in this case, it is suspected that it will cost somewhere in the range of \$37,500 - \$48,000/acre.

If these estimates are accurate, then the total cost breakdown to purchase the property, complete the due diligence, complete the wetland study, mitigate the wetland and complete the cleanup of the property is below:

• Phase I Assessment and Wetland Study:	\$6,000
• Property Purchase:	\$95,000
• Property Cleanup:	\$17,500
• Wetland Mitigation:	<u>\$134,400</u>
	<b>\$252,900</b>

At this conservative value, this would put the total property expenses at approximately \$19,589/acre, which is still at or below the fair market value of industrial property in Napoleon. I estimate fair market value of this property with all of this documentation at approximately \$20,000 - \$25,000/acre.

It is my recommendation to move forward with the purchase of the property for the following reasons: First, properly mitigating the wetlands puts the property back into a position to be developed. Fallow land inside the City limits is not productive for the community.

Second, this puts the City into a position to manage what type of development occurs at the site. This is a strategic location given its

proximity to the solar field and location inside of the industrial area of Napoleon. There are still plenty of opportunities for productive development for the City.

Third, ODOT was interested in the property once before. It is possible that they would be interested in the property again knowing that the wetland mitigation has occurred, and the property is for sale.

There are risks associated with moving forward. We could find that the property is impacted by a great amount of wetlands now or the grade of wetland is higher and would cost more to mitigate. However, in my opinion, the cost to put this property back into productive reuse outweighs the expense of the work needed to make it happen. I recommend moving forward with the purchase.

**RESOLUTION NO. 034-21**

**A RESOLUTION AUTHORIZING A CONTRIBUTION TO THE HENRY COUNTY AGRICULTURAL IMPROVEMENT ASSOCIATION; AND DECLARING AN EMERGENCY**

**WHEREAS**, the Henry County Agricultural Improvement Association presented a plan to City Council regarding the construction a modern facility for animal shows and general use at the Henry County Fairgrounds; and,

**WHEREAS**, this Council recognizes that this facility would help attract people to Napoleon and help generate agritourism activity for the betterment of the City, its businesses and its residents, which among several things, creates and preserves jobs and employment opportunities in the City and the State and improves the economic welfare of the people of the City and of the State; and,

**WHEREAS**, this Council desires to further advance this plan and has determined to financially assist the Henry County Agricultural Improvement Association with the construction of the new facility. **Now Therefore**,

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

Section 1. That, in an effort to further advance the plan as referenced in the preamble of this Resolution, the City Finance Director is directed and authorized to reduce the electric utility rates for this facility as a credit in the amount of twenty thousand dollars (\$20,000) on an annual basis for four (4) years, commencing in the year that the facility opens. The amounts contributed herein are to be capped at twenty thousand dollars (\$20,000) per year, with no authorization of carryover from year to year.

Section 2. That, the four (4) annual credits are contingent upon the construction of the aforementioned facility. If the facility is not constructed or does not open, no credit for a reduction in the electric utility rate based on this Resolution shall be made to the Henry County Agricultural Improvement Association without further consideration and authorization from this Council.

Section 3. That, this credit is designated solely for the construction of the new facility. If it is found that the credit or funds saved based on this credit are used for operation of this or other facilities, the City of Napoleon Finance Director is authorized and directed to bill the Henry County Fair Board for the credited amount not used toward said construction.

Section 4. That, this Council authorizes and directs the City Manager to waive any tap fees and/or permit fees associated with the construction of this facility.

Section 5. 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 6. 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 7. 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 allow for economic projects to timely move forward; projects that will create jobs; 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:  
\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council

*I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Resolution No. 034-21 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_; 2021; & 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.*

\_\_\_\_\_  
*Roxanne Dietrich, Clerk of Council*

**ORDINANCE NO. 035-21**

**AN ORDINANCE APPOINTING KEVIN GARRINGER AS THE CITY FINANCE DIRECTOR FOR THE CITY OF NAPOLEON, OHIO; AND, DECLARING AN EMERGENCY**

**WHEREAS**, the Personnel Committee has met and conducted interviews over the past several weeks; and,

**WHEREAS**, the Personnel Committee has presented the written recommendation that Kevin Garringer be selected as the new City Finance Director; and,

**WHEREAS**, the Napoleon City Council does hereby accept the recommendation of the Personnel Committee and does hereby appoint Kevin Garringer as the new Finance Director for the City of Napoleon; **Now Therefore:**

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

Section 1. That, this Council appoints Kevin Garringer to the full time regular employment position of Napoleon City Finance Director, effective on or about September 13, 2021 or as otherwise agreed upon by Council President and Kevin Garringer. If the start date is different than September 13, 2021, the different date shall be provided, in writing, to the Clerk of Council.

Section 2. That, effective on or about September 13, 2021, the annual salary for this position shall be ninety-three thousand dollars (\$93,000), prorated as necessary according to City pay periods. Kevin Garringer shall thereafter be subject to continued annual performance reviews by the Personnel Committee or City Council and, after each satisfactory review, said salary may be increased by an amount determined by Council.

Section 3. That, benefits for the City's Finance Director shall accrue and be in accordance with Chapter 197 of the Codified Ordinances (Personnel Code) and the applicable provisions of the City's Employment Policy Manual for full time regular employees, both as may be amended from time to time. The City Finance Director shall, upon appointment, receive one hundred twenty (120) hours of paid vacation that must be used on or before the one (1) year anniversary of the above stated hire date. If any of the vacation is not used prior to said date the unused vacation expires with no duty on the City to compensate the Finance Director for the unused vacation time ("use it or lose it"). The City Finance Director shall thereafter accrue vacation time as directed by the City Personnel Code, accruing one hundred sixty (160) annual hours at the appropriate rate. Further, City Finance Director shall, upon appointment receive approximately twelve (12) hours of personal time, available on the first day of employment.

Section 3. 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 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 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 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, and for the further reason that this legislation must be in effect at the earliest possible time to allow for effective legal services to be rendered to the City, including those legal services related to public peace, health or safety; 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 be in effect at the earliest possible time to allow for proper payment of wages to employees, proper payment being essential to the harmony of the necessary workforce, 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:  
\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council

*I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Ordinance No. 035-21 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.*

\_\_\_\_\_  
*Roxanne Dietrich, Clerk of Council*

**ORDINANCE NO. 030-21**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT OR CONTRACTS, FOR THE SALE OF CITY OWNED BULK ELECTRIC SYSTEM (BES) 69KV ASSETS TO AMERICAN MUNICIPAL TRANSMISSION, LLC, A SUBSIDIARY OF AMERICAN MUNICIPAL POWER, INC. (AMP); 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 this Municipality, being political subdivisions that operate municipal electric utility systems in Delaware, Indiana, Kentucky, Ohio, Maryland, Michigan, Pennsylvania, Virginia and West Virginia; and,

**WHEREAS**, American Municipal Transmission, LLC is an Ohio nonprofit limited liability company, and a subsidiary of American Municipal Power, Inc. (“AMP”), organized to own and operate facilities, or to provide otherwise, for the transmission of electric energy, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of AMP’s members, including the City of Napoleon, Ohio; 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**, American Municipal Transmission, LLC is willing to purchase the Municipality’s transmission facilities in order to relieve the 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 American Municipal Transmission, LLC 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:

\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council

*I, Roxanne Dietrich, Clerk of Council for the City of Napoleon, do hereby certify that the foregoing Ordinance No. 030-21 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021; & 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.*

\_\_\_\_\_  
Roxanne Dietrich, Clerk of Council



# City of *NAPOLEON*, Ohio

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## MEMORANDUM

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Jason Maassel

*Members of Council*

**PRESIDENT:**  
Joseph Bialorucki

**PRESIDENT PRO-TEM:**  
Daniel Baer

John Ross Durham  
Jeff Comadoll  
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Lori Siclair  
Molly Knepley

*City Manager*  
Joel L. Mazur

*Acting Finance Director*  
Joel L. Mazur

*Law Director*  
Billy D. Harmon

**DATE:** September 7, 2021  
**TO:** Members of City Council  
Mayor Jason P. Maassel  
**From:** Joel L. Mazur, City Manager  
**SUBJECT:** Industrial Substation Update

As we continue to review the reconfiguration of the Industrial Substation, we have identified the following changes to the Agreement. First, we believe the estimates we received from 2019 are lower than what today's prices would be to rebuild the substation. Additionally, we identified that Circuit Breaker No. 3 cannot be included in the asset transfer, which lowers the total transaction revenue to \$5,095,257. The City of Napoleon will retain ownership of this breaker and appurtenances. We have always communicated that only assets that can have their value recovered through formula rates would be transferred to AMPT.

Staff will continue to work through the rebuild of the substation whether or not City Council decides to move forward with the transfer to AMPT. My recommendation is to continue forward with the transaction as the costs for the AMPT portion of the rebuild are also inflating. This transaction is still the best option for the rate payers of Napoleon.

**ASSET PURCHASE AND SALE AGREEMENT**

**between**

**THE CITY OF NAPOLEON, OHIO**

**(Seller)**

**and**

**AMP TRANSMISSION, LLC**

**(Buyer)**

**Dated \_\_\_\_\_, 2021**

CONFIDENTIAL - DRAFT

## **ASSET PURCHASE AND SALE AGREEMENT RELATED TO THE INDUSTRIAL SUBSTATION**

This Asset Purchase and Sale Agreement (this "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between The City of Napoleon, Ohio, an Ohio municipal corporation ("Seller"), and AMP Transmission, LLC, an Ohio nonprofit limited liability company ("Buyer"). Seller and Buyer are referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

A. Seller owns five (5) 69kV breakers and associated equipment, including current and voltage transformers, station post insulators and associated equipment. 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. Finally, Seller owns as 5.28 miles of 69 kV transmission line between Seller's industrial substation and the Napoleon substation owned by Buyer.

For clarity, the 69 kV facilities and associated equipment, as more particularly described on Exhibit A (collectively the "Equipment") does not include any other facilities and equipment associated with voltages less than 69 kV within the substation footprints.

B. Buyer is an Ohio nonprofit limited liability company, and a subsidiary of American Municipal Power, Inc. ("AMP"), organized to own and operate facilities, or to provide otherwise for the transmission of electric energy, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of AMP's members, including Seller.

C. 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.

D. 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, in the form attached as Exhibit B (the "Ground Lease"), on the terms and conditions set forth in this Agreement.

E. To further protect Buyer's rights to access the Transferred Assets, 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 Assets and any replacements and substitutions thereof, pursuant to that certain Easement in the form attached as Exhibit C (the "Easement").

F. The Parties acknowledge that, upon completion of the transfer of assets, Buyer agrees to finance and construct necessary replacements or improvements to the

existing assets and operate the breaker to the interconnection with American Transmission Systems, Incorporated (“ATSI”) normally closed. Buyer agrees that construction of the necessary replacements or improvements will occur within a commercially reasonable period of time after the execution of this Agreement. Seller agrees that it may be required to undertake improvements of Seller’s retained assets in order to achieve the agreed upon transmission replacements and improvements.

G. The Parties have entered into an Operations and Maintenance Agreement (“O&M Agreement”) pursuant to which Seller agreed to assume certain responsibilities and implement procedures with respect to the operation and maintenance of previously transferred assets on behalf of Buyer. The Parties will modify the O&M Agreement to the extent necessary to include the Transferred Assets in the existing O&M Agreement.

H. The Parties have entered into an Interconnection Agreement pursuant to which Buyer agreed to provide to Seller in coordination with, but separate from, the transmission service that will be provided by PJM. The Parties will modify the Interconnection Agreement to the extent necessary.

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:

“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.

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

“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 incurrance 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.

“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.

“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 the North American Electric Reliability Corporation (“NERC”) and the Federal Energy Regulatory Commission (“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.

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

“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.

“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.

“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.

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

“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 Transferred Assets 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 Effective Date, this Agreement.

“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 or 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.

“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.

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

- (a) 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.
- (b) 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.

## 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; 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) the Equipment;
  - (ii) the Inventory;
  - (iii) the Major Maintenance Spare Parts;
  - (iv) the Transferred Licenses;
  - (v) Seller's interest in any personal property included in the Transferred Real Property Assets; and
  - (vi) 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 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 Contracts or Transferred Licenses and other matters noted on Schedule 2, if any (collectively, the "Assumed 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. By way of clarification, if a liability arose on or prior to Closing, the liability shall remain the responsibility of Seller.

**2.3 Purchase Price.** The purchase price for the Transferred Assets shall be five million, ninety-five thousand, two hundred fifty-seven dollars and forty-four cents (\$5,095,257.44) (the "Purchase Price").

## 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):

**3.1 Formation and Power.** Seller is a municipal corporation duly formed and existing under the laws of the State of Ohio, and has full right, power and authority 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 have such right, power and authority would not have a material effect adverse to Seller's right to consummate the Transactions.

**3.2 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.

**3.3 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 conflict with or result in a breach of any provision of the organizational documents of Seller.

**3.4 Approvals.**

- (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) 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.

**3.5 Licenses.** 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. 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.

**3.6 Compliance with Law.** The Transferred Assets have been and are currently operated in compliance with all Licenses and all applicable Laws. Seller is not, and has not been, in violation of or in default under any Law applicable to it or the Transferred Assets, and 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.

**3.7 Environmental Matters.**

- (a) 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) 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.

**3.8 Transferred Assets.**

- (a) Exhibit D contains the separate legal description 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 to use or 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) Exhibit A contains a complete listing of the Transferred Personal Property Assets.

- (c) Seller holds good and marketable title to, and is the record owner of fee simple title to, the Subject Property, the Transferred Assets, and related rights, free and clear of all Encumbrances, other than Permitted Encumbrances.

**3.9 Litigation and Condemnation Proceedings.** 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.

**3.10 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. Seller does not have knowledge of any material defect in any of the Transferred Assets.

**3.11 Inspection and Acceptance.** Buyer may, but is not required, to visit Seller's facilities to inspect the Transferred Assets not later than ten (10) business days prior to closing. Buyer may reject any Transferred Assets that contain defective materials or workmanship or do not conform to Buyer's specifications prior to closing.

**3.12 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. 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. 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.

**3.13 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.

**3.14 Insurance.** The Transferred Assets are self-insured by Seller.

**3.15 Absence of Certain Changes.** To Seller's knowledge, no condition or effect exists that, individually or in the aggregate with any other conditions or effects, is or would reasonably be expected to be materially adverse to the ownership or operation of the Transferred Assets.

**3.16 Undisclosed Liabilities.** 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 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.

**3.17 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 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):

**4.1 Organization and Power.** Buyer is a non-profit 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.

**4.2 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 do not conflict with or result in a breach of any provision of the organizational documents of Buyer.

**4.3 Approvals and Buyer's Required Regulatory Approvals.**

- (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.
- (d) 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.

**4.4 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.

**4.5 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 5 COVENANTS OF SELLER AND BUYER**

**5.1 Commercially Reasonable Efforts to Close.** 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.

**5.2 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.

**5.3 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 Ground 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) 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. Consistent with their respective document retention policies, 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.
- (c) Seller agrees that the valuation methodology and conclusion accurately reflect the value of the Transferred Assets and enable Buyer to comply with FERC accounting requirements, if applicable, or other legal or accounting requirements.

**5.4 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 has 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.

**5.5 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.

**5.6 Confidentiality.**

- (a) Unless and until the Closing occurs, Seller shall keep confidential, except as may be approved in writing by Buyer, or as may be required under applicable Law, (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, 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 that contains information described in clause (1) above (the "Buyer Confidential Information"). Buyer shall keep confidential, except as may be approved in writing by Seller, or as may be required under applicable Law, (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").

- (b) 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 (iv) the extent otherwise requested by any governmental agency, regulatory authority (including any self-regulatory organization claiming to have jurisdiction) or any bank examiner.
- (c) 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.
- (d) 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.

**5.7 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.**

## **ARTICLE 6 ADDITIONAL COVENANTS OF SELLER AND BUYER**

Seller and Buyer, as applicable, hereby additionally covenant, promise and agree as follows:

**6.1 Access and 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 and Assumed Liabilities; (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; (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. 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.

**6.2 Operations During Interim Operational Period.** 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 that would be part of the normal course of business.

**6.3 Notice of Certain Events.** Buyer's receipt of information pursuant to this Section 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.

**6.4 Right of First Offer.** Except as provided below, if Buyer hereafter seeks to sell 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 of its intent 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. The Parties shall have forty-five (45) days after Seller notifies Buyer in writing of its intent to acquire such assets or equity to negotiate the principal business terms of that transaction which shall consist of the net book value of the assets at the time of closing, as well the remaining useful life, which determination shall be consistent with the valuation methodology used to determine the

purchase price set forth herein. 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 seventy-five (75) days. 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 net book value, provided that the revenue from any sale to any unaffiliated third party in excess of the net book value 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; or, (b) any transaction not involving all or substantially all of the Transferred Assets or their replacements.

**6.5 Right to Lease-Back.** If Buyer is not permitted to recover all or substantially all of its costs, plus a FERC-approved margin through its FERC-approved tariff, or in the event that Buyer's survey or title search identify any issues that would materially and negatively impact Buyer's ownership or operation of the Transferred Assets, then Buyer shall provide notice in writing to Seller. Upon such notice, Seller shall enter into an operating lease to cover Buyer's costs (i.e., Buyer's cost of interest carrying costs, depreciation, and any FERC-required interest) for a term that extends until the assets become available for cost recovery. This right shall not extend beyond the final adjudication of Buyer's request for such cost recovery before the FERC.

**6.6 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.

**6.7 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 7 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:

**7.1 Termination of Agreement.** This Agreement shall not have been duly terminated.

**7.2 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.

**7.3 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.

**7.4 Transfer of Licenses.** All Transferred Licenses that lawfully may be transferred on or prior to Closing shall have been transferred to Buyer at Closing.

**7.5 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.

**7.6 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.

**7.7 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.

**7.8 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.

**7.9 FERC Approvals.** The Parties shall have received FERC acceptance of all agreements related to the Transferred Assets 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 8 CLOSING**

**8.1 Closing.** The Closing provided for in this Agreement will take place on the Closing Date 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").

**8.2 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 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 Ground Lease Agreement;
- (e) the Easement;
- (f) 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;

- (g) 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;
- (h) Evidence, in form and substance reasonably satisfactory to Seller, of the receipt by the applicable party of its Required Regulatory Approvals;
- (i) 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);
- (j) Documents, if any, necessary to transfer any of the Transferred Assets not covered by the foregoing or as reasonably requested by Buyer;
- (k) Certificates of non-foreign status in the form required by Section 1445 of the Code duly executed by Seller; and
- (l) 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 9 TERMINATION**

**9.1 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 Buyer or Seller, as applicable, pursuant to other provisions of this Agreement.
- (d) 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 8.1 or Section 8.2, 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");

- (e) 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.

**9.2 Effect of Termination.** If this Agreement is validly terminated pursuant to Section 9.1, 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 9.2 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 10 INDEMNIFICATION**

**10.1 Indemnity by Buyer.** To the fullest extent permitted by law, Buyer shall indemnify, defend, and hold harmless Seller and its trustees, members, officers, employees, agents, and their subsidiaries and affiliates (collectively "Seller Indemnified Parties") from and against all claims, damages, losses, fines, penalties, and expenses arising out of or in connection with the Transaction, 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 Excluded Assets or the Excluded Liabilities.

Buyer's indemnification obligation exists regardless of whether or not the claim, damage, loss, fine, penalty, or expense is caused in part by one or more of the Seller Indemnified Parties. But this section does not obligate Buyer to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

In claims against one or more of the Seller Indemnified Parties by any direct or indirect employee of Seller, a subcontractor, or a person or entity for whom Seller or a subcontractor may be liable, the indemnification obligation will not be limited by a limitation on the amount or type of damages or penalties. Buyer's indemnification obligation will survive termination of this Agreement.

**10.2 Purchase Price Adjustment.** Solely for Tax account and reporting purposes, the Parties agree to treat all payments made pursuant to this Article 10 as adjustments to the Purchase Price unless otherwise required by applicable Law or taxing authority interpretations thereof.



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.

**11.3 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.

**11.4 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.

**11.5 Entirety of Agreement; Amendments.** This Agreement (including the Schedules, Appendices and Exhibits hereto) 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 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.

**11.6 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.

**11.7 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.

### **11.8 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 or Henry 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.

**11.9 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 Transferred Assets, as applicable.

**11.10 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.

**11.11 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.

**11.12 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.

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

**SELLER:**

THE CITY OF NAPOLEON, OHIO

By: \_\_\_\_\_  
Name: Joel L. Mazur  
Title: City Manager

Approved as to form:

By: \_\_\_\_\_  
Name: Billy D. Harmon  
Title: Law Director

**BUYER:**

AMP TRANSMISSION, LLC

By: \_\_\_\_\_  
Name: Pamala M. Sullivan  
Title: President

Approved as to form:

By: \_\_\_\_\_  
Name: Lisa G. McAlister  
Title: General Counsel

CONFIDENTIAL - DRAFT

**Schedule 1 – Permitted Encumbrances**

There are no Permitted Encumbrances.

**Schedule 2 – Assumed Liabilities**

There are no Assumed Liabilities.

CONFIDENTIAL - DRAFT

**Exhibit A**  
**Equipment**  
**[See Attached]**

CONFIDENTIAL - DRAFT

**Exhibit B**

**Ground Lease Agreement**

**[See Attached]**

CONFIDENTIAL - DRAFT

## GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into this \_\_\_ day of \_\_\_\_\_, 2021 (the "Commencement Date"), between The City of Napoleon, Ohio, an Ohio municipal corporation ("Lessor"), and AMP Transmission, LLC, an Ohio non-profit corporation ("Lessee").

### RECITALS

A. Lessor operates an electric distribution utility in Napoleon, Ohio. Prior to the date of this Lease, Lessor owned five (5) 69kV breakers and associated equipment, including current and voltage transformers, station post insulators and associated equipment. 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. Finally, Seller owns as 5.28 miles of 69 kV transmission line between Seller's industrial substation and the Napoleon substation owned by Buyer. (collectively, the "Equipment"), as described more fully in the Purchase Agreement (defined below).

B. On the Commencement Date, Lessor has sold the Equipment to Lessee, pursuant to an Asset Purchase and Sale Agreement (the "Purchase Agreement"). As contemplated in that agreement, the Equipment or its replacements shall remain in place at the Substations located at 1939 Enterprise Avenue, Napoleon, Ohio 43545 ("Industrial Substation"), to be used in connection with the transmission of electricity from the transmission grid to Napoleon's distribution utility at the Substation.

C. Through this Lease, Lessor seeks to provide Lessee with access on a non-exclusive basis to the Leased Premises (defined below), and with the right to occupy on a non-exclusive basis the Leased Premises to permit it to own, operate, maintain, repair and replace the Equipment during the term of this Lease, on the terms set forth more fully below.

D. On the Commencement Date, Lessor has also provided to Lessee a Perpetual Access Easement (the "Easement"), granting Lessee rights to access to the Equipment and the Leased Premises and the right to own, operate, maintain, repair and replace the Equipment at the Leased Premises for so long as Lessee or its successors and assigns own any of that Equipment or its replacements, on the terms set forth in that Easement.

### AGREEMENTS

NOW, THEREFORE, in consideration of the rents and mutual covenants herein contained, Lessor and Lessee do hereby covenant, promise and agree as follows:

#### I. LEASED PREMISES AND ACCESS RIGHTS

A. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, on a non-exclusive basis with Lessor, the real property described on Lease Exhibit A, attached hereto, and by this reference incorporated herein, together with all rights and appurtenances thereto (the "Leased Premises"), situated in the County of Henry, State of Ohio. All references to the Leased Premises shall be deemed to include any subsequent improvements to the Leased Premises, whether made by Lessor or Lessee. The provisions of this Lease are all covenants running with the land.

B. The parties acknowledge that the Leased Premises are contained within the Industrial Substation and on, around and under the 69 kV transmission line that connects the two substations. Lessor hereby grants Lessee and its directors, managers, officers, employees, agents, contractors (collectively, its "Representatives") and its and their invitees access at no charge to them to and across the Substation properties and on, around and under the 69 kV transmission line during the Term to enable access to the Leased Premises by Lessee and its Representatives and invitees. In addition, Lessee and its Representatives shall have reasonable access to and use of, at no charge to them, the Substation facilities (e.g., storage facilities) as requested by Lessee in connection with the ownership, operation, maintenance, repair, replacement, improvement, and removal of the Equipment and the use of the Leased Premises.

C. Lessor shall supply Lessee with utilities and water as necessary or appropriate for its activities at the Leased Premises. Charges, if any, for those services shall be provided for in the O&M Agreement, and if not otherwise stated, shall be for Lessor's account.

D. Lessee agrees that it and its Representatives shall comply with Lessor's reasonable safety rules at the Substation.

## **II. LEASE TERM**

The initial term of this Lease (the "Initial Term") shall commence at 12:01 a.m., on the Commencement Date, and end at 11:59 p.m. on \_\_\_\_\_, 2071, unless sooner terminated or extended, as provided herein. At Lessee's option, which may be exercised by Lessee in writing at any time prior to the expiration of the Initial Term, Lessee may extend the term of this Lease for an additional ten year term, commencing with the expiration of the Initial Term (the "Extended Term" and collectively with the Initial Term, the "Term").

In the event that Lessee sells or transfers the Equipment to Lessor or a third party, this Lease shall terminate once the asset transfer is complete unless the Lease is also transferred with the Equipment.

## **III. LEASE PAYMENTS**

A. Commencing on the Commencement Date, Lessee shall pay to Lessor as "Base Rent" for the Leased Premises, without notice, set-off, deduction or demand, the sum of Twenty-Three Thousand Two Hundred Fifty Dollars (\$23,250) as a one-time,

upfront payment payable on the Commencement Date. Lessor acknowledges the receipt of the full payment for the initial term, which shall be applied as a prepaid rent credit.

B. In the event that Lessor shall be required to pay any transaction privilege or sales tax levied upon or assessed against the Base Rent or additional rental received by Lessor by any governmental authority having jurisdiction paid by Lessee to Lessor hereunder ("Rental Taxes"), specifically excluding Lessor's income tax, Lessee shall pay its Pro Rata Share of those Rental Taxes in addition to the Base Rent which Lessee is required to pay Lessor herein. The amount required to be paid by Lessee to Lessor for Rental Taxes shall be paid on or before the date the taxes are due and shall be considered as the payment of taxes, and not the payment of rent.

C. Lessee shall pay its Pro Rata Share of any Real Estate Taxes imposed on the Leased Premises as described herein and in Section VII. "Real Estate Taxes" shall mean: all taxes and assessments, general, special or otherwise, levied upon or with respect to the Leased Premises and the land upon which it is located and related personal property, whether imposed by federal, state or local governments, or any school, agricultural, lighting, drainage or other improvement district; taxes and assessments of every kind and nature whatsoever levied, assessed and imposed on Lessor in lieu of or in substitution for existing or additional real or personal property taxes or assessments; and the cost of contesting by appropriate proceedings the amount or validity of any of the aforementioned taxes or assessments; provided, that Real Estate Taxes shall not include income taxes of Lessor. In the case of special assessments payable in installments, only the amount of each installment due and payable during a single calendar year shall be included in Real Estate Taxes for that year. All rentals due under this Lease (Base Rent, Rental Taxes, and Real Estate Taxes) shall be paid to Lessor at its address of record as set forth below.

D. This Lease is intended to be and shall be deemed and construed as a "gross lease," pursuant to which Lessee shall have use and access to the Leased Premises net of any other costs or expense other than the Base Rent, the Rental Taxes, the Real Estate Taxes provided for above and any personal property taxes owed on the Equipment. The parties agree that any other charges to Lessee, if any, shall be addressed in the O&M Agreement. If not provided for thereunder, then those other charges shall be for the account of Lessor, not Lessee. Without limiting the foregoing, Lessee shall not be responsible for impositions, charges or expenses of any nature whatsoever, including without limitation any of the following: all electrical power, security, janitorial services, water, waste disposal, gas, maintenance of refuse removal facilities, insurance premiums, licenses, maintenance, supplies, costs of operation, and remodeling.

E. Each of Lessee and Lessor shall keep the Leased Premises and all adjacent sidewalks, parking and service areas free and clear of all debris, trash, garbage, and waste resulting from the operation of their respective business.

#### **IV. MAINTENANCE**

Lessor agrees to maintain the Leased Premises and all improvements thereon in good condition and repair (ordinary wear and tear and casualty and condemnation

excepted) and Lessee shall have no responsibility for the maintenance and repair of the Leased Premises, except as otherwise set forth in the Operating Lease and provided, further that Lessee shall be responsible for damage and repair of the Leased Premises caused by the actual conduct of Lessee or its employees or agents. The Operating Lease shall address the rights of the parties to build, re-build, remodel, replace, demolish or raze any improvements located from time to time on the Leased Premises which contain or support the Equipment.

## **V. ENVIRONMENTAL LAWS**

Lessee and Lessor shall each comply with all federal, state and local laws relating to environmental matters, and to the extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor and Lessor's shareholders, officers, directors, managers, members, employees and agents (collectively, as applicable, the "Indemnified Parties") from and against any and all claims, demands, liabilities, fines, penalties, losses, costs and expenses, including cost of compliance, remedial costs, clean-up costs, reasonable attorney's fees, and court costs arising from or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant or hazardous or toxic material, substance or matter from, on or at the Leased Premises as a result of any act or omission on the part of Lessee or its directors, officers, employees, contractors or agents. These indemnification and defense obligations shall survive the expiration or termination of this Lease. Lessee shall not be responsible for any environmental matter which first arose before the Commencement Date, including any environmental matter discovered thereafter which occurred on or before that date.

## **VI. NO MORTGAGE BY LESSOR**

During the term of this Lease, Lessor shall not at any time encumber or permit the Leased Premises to be encumbered with any senior lease, mortgage, deed of trust, or other lien or encumbrance in connection with any financing or indebtedness for the benefit of Lessor or otherwise.

## **VII. TAXES AND ASSESSMENTS; INSURANCE; AND CONSTRUCTION**

A. Property insurance must be procured by each Party for their owned assets from an insurance company with a Best A-/VII rating or better. Lessee shall insure the assets that have shared ownership with Lessor. All insurance proceeds shall be paid to and owned exclusively by the party procuring that policy.

B. Lessee shall procure commercial general liability insurance from an insurance company with a Best A-/VII rating or better in the amount of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and not less than TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) in the aggregate.

C. Property insurance must be procured by each Party for their owned assets from an insurance company with a Best A-/VII rating or better. Lessee shall insure the

assets that have shared ownership with Lessor. All insurance proceeds shall be paid to and owned exclusively by the party procuring that policy.

D. Lessee's policy of insurance shall name Lessor as an additional insured and shall deliver the policy of insurance or a copy thereof to Lessor prior to the Commencement Date. Renewals thereof as required shall be delivered to Lessor at least thirty (30) days prior to the expiration of the policy terms. Lessee shall notify Lessor at least thirty (30) days prior to cancellation of the insurance.

## **VIII. TERMINATION OR EXPIRATION**

A. At the expiration of the Term of this Lease, as the same may be duly extended, or sooner terminated pursuant to this Lease, all Lessee-owned improvements (if any), may be removed by Lessee during the succeeding ninety (90) days following that termination (and Lessee shall have continued access and occupancy rights for no additional rent during that period) at its discretion. That period shall be extended by each day for which access to the Leased Premises is restricted by Lessor. Any property not removed by Lessee during that period shall become the property of Lessor "AS-IS" and without warranty.

B. Except for the removal period noted above, any holding over after the expiration of the term of this Lease shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice by Lessor or Lessee, and upon terms and conditions under this Lease as existed during the last year of the term hereof or any extended term.

C. Lessee shall restore any damage to the Leased Premises or the Substation caused by the removal of any Equipment, provided, however, that nothing in this Lease shall require Lessee to replace any of the Equipment or to restore any electric transmission facility following Lessee's removal or abandonment of that Equipment, regardless of the operating condition of that Equipment. Lessor hereby assumes responsibility for assuring that the power transmitted to the Substation can be transmitted outside of the Substation following the expiration of the Term, regardless of the reason for the termination of this Lease.

## **IX. PERMITTED USE; COMPLIANCE WITH LAWS AND REGULATIONS**

A. Throughout the term of this Lease and during any extended terms of the Lease, Lessee shall be permitted to use and occupy the Leased Premises for any lawful purpose consistent with the ownership, operation, maintenance, repair, replacement, improvement, and removal of transmission equipment, and for any other purpose incident thereto. Lessee shall comply during the Term and any Extended Terms with all present and future laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, administrative decisions, and other holdings or requirements of all governmental authorities (whether state, federal or local), ordinary or extraordinary, foreseen or unforeseen, concerning the Leased Premises or improvements thereon, except Lessee shall have no obligation for environmental matters which existed on or adjacent to the Leased Premises on the Commencement Date.

B. To the extent permitted by law, Lessee shall defend, hold harmless and indemnify Lessor and its Indemnified Parties, from and against all fines, penalties or claims for damages of every kind and nature (including without limitation reasonable attorneys' fees and expenses) arising out of any failure by Lessee and its Representatives to comply with any laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, the intention of the parties being with respect thereto that each party during the Term shall discharge and perform all their respective obligations in accordance therewith. Each party further covenants and agrees that it will procure and maintain, at its own expense, all required licenses, operating permits, certificates, or other items required by any governmental, regulatory, or licensing body with respect to its operations at the Substation and on the Leased Premises.

## X. TRANSFER OR CONDEMNATION

A. Total, Substantial, or Unusable Remainder. If at any time during the term of this Lease:

(1) *Total or Substantial Taking.* Title to the whole or substantially all of the Leased Premises shall be transferred, this Lease shall terminate and expire on the date possession is transferred; or

(2) *Remainder Unusable for Purposes Leased.* Title to a substantial portion of the Leased Premises shall be transferred, and the remaining part of the Leased Premises cannot feasibly be used or converted for use by Lessee for the purpose for which it was being used immediately prior to the event, Lessee may, at its option, terminate this Lease within ninety (90) days after the transfer by serving upon Lessor at any time within said ninety (90) day period, a thirty (30) day written notice of Lessee's election to so terminate accompanied by a certificate of Lessee that the remaining part of the Leased Premises cannot feasibly be used or converted for use by Lessee for that purpose.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Leased Premises, the Term shall not be reduced or affected in any way. In that case, the parties shall confer in good faith to determine whether adjustments to the Base Rent and other terms hereof and under the O&M Agreement shall be made to restore the parties, to the greatest extent feasible, to their situation immediately prior to that partial taking, in light of their Pro Rata Share and operations on the Leased Premises.

C. Award Payments. In the event of a taking pursuant to any of the foregoing subsections, Lessor and Lessee shall work in good faith to divide the award according to their respective interests in the Leased Property, and if they are unable to reach agreement, the award shall be shared according to their Pro Rata Interests, except awards with respect to personal property owned by each party shall belong to that party alone.

D. Rights of Participation. Each party shall have the right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

E. Notice of Proceeding. In the event Lessor or Lessee shall receive notice of any proposed or pending condemnation proceedings affecting the Leased Premises, the party receiving the notice shall promptly notify the other party of the receipt and contents thereof.

F. Relocation Benefits. Lessee is not waiving any of its rights to any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

G. Covenant Not to Exercise Condemnation Powers. To the fullest extent permitted by law, Lessor agrees not to exercise its condemnation powers to acquire any or all of Lessor's interests in the Leased Premises or any of the Equipment, rights or other interests of Lessor therein.

## **XI. DESTRUCTION OF EQUIPMENT OR IMPROVEMENTS**

If all or any portion of the Equipment or improvements constructed by Lessee on the Leased Premises should be destroyed by fire, flood or other casualty, then Lessee shall have the right to repair or replace those items at its own cost, except to the extent the damage was caused by Lessor or its Representatives.

## **XII. DEFAULT; REMEDIES**

A. Each of the following shall constitute an Event of Default in breach of this Lease:

(1) A party shall fail to pay any amounts due hereunder or any other agreements between them on any day upon which the same is due, and the same shall not be paid within fifteen (15) days after written notice from the party to the other of that failure to pay;

(2) A party shall do or permit anything to be done, whether by action or inaction, contrary to any material covenant or agreement on the part of that party in this Lease or the O&M Agreement or otherwise contrary to any of the material covenants, agreements, terms or provisions of this Lease or the O&M Agreement, or the party shall otherwise fail in the keeping or performance of any of the covenants, agreements, terms or provisions contained in this Lease or the O&M Agreement which on the part or behalf of that party are to be kept or performed, and that party remains in violation sixty (60) days after written notice thereof from the other party; provided, however, that if the default cannot be reasonably corrected within a sixty (60) day period, then the party shall not be deemed in default if it has, within that sixty (60) day period, commenced to correct the default and diligently thereafter pursues the correction to completion, subject to an event of enforced delay (together with the period noted in subsection A(1) above, as applicable, a "Cure Period").

(3) An involuntary petition shall be filed against a party under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, or a receiver of or for the property of that party shall be appointed without the acquiescence of the other party, and that situation shall continue and shall remain undischarged or unstayed for an aggregate period of one hundred twenty (120) days;

(4) A party shall make an assignment of its property for the benefit of creditors or file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by the party under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or whenever a petition shall be filed by the party under the arrangement provisions of the United States Bankruptcy Code;

(5) A party shall abandon the Leased Premises prior to the termination of the Lease and not cure that abandonment within ninety (90) days of notice from the other party, provided, however, that Lessee shall not be deemed to have abandoned the Leased Premises so long as the O&M Agreement or any successor thereto shall remain in place and for a period of 180 days following its termination;

B. Upon the occurrence of any Event of Default on the part of a party, as set forth in this Lease, and in addition to all other rights and remedies the other party may have under this Lease or under applicable law, the non-defaulting party shall have the following rights and remedies, but it shall not have any obligation to do so:

(1) It may enter into and upon the Leased Premises to do all things reasonably deemed necessary or desirable by that party to cure any Event of Default, and the defaulting party shall pay the non-defaulting party on demand all sums expended by it in curing or attempting to cure any such Event of Default, together with interest on those sums at six percent (6%) per annum;

(2) It may continue this Lease in effect until it elects to terminate the Lease by written notice to the defaulting party, and the defaulting party shall remain liable to perform all of its obligations under this Lease, and the non-defaulting party may enforce all of its rights and remedies, including the right to recover all amounts and all other payments and charges payable hereunder to it as the same fall due. If the defaulting party abandons the Leased Premises or fails to maintain and protect the Leased Premises as herein provided, the non-defaulting party may do all things necessary or appropriate to maintain, preserve and protect the Leased Premises. The defaulting party agrees to reimburse the non-defaulting party on demand for all amounts reasonably expended by it in maintaining, preserving and protecting the Leased Premises;

(3) Upon the occurrence of one or more of the Events of Default listed above, the non-defaulting party may at any time thereafter, but not after the default is cured, give written notice ("Second Notice") to the defaulting party specifying the Event(s) of Default and stating that this Lease and the Lease term hereby demised shall expire and terminate on the date specified in that notice, which shall be at least thirty (30) days after the giving of the Second Notice, and upon the date specified in the Second Notice,

this Lease and the Lease Term shall expire and terminate as of that date. The defaulting party shall pay all amounts due to the non-defaulting party, less any undisputed amounts it owes the defaulting party.

C. No right or remedy herein conferred upon or reserved to a party is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

### **XIII. NON-WAIVER**

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or conditions. Acceptance of rent by Lessor during a period in which Lessee is in default in any respect other than payment of rent shall not be deemed a waiver of the other default.

### **XIV. NOTICES**

Any notice required to be given or which may be given hereunder shall be in writing, delivered in person, by overnight delivery service, or by certified mail, postage prepaid, return receipt requested, addressed to the party at the following address or at such other change of address as may, from time to time, be communicated to the other party in the same manner as notice hereunder is required to be given. The addresses of parties to which all notices are to be mailed are:

Lessor:

City of Napoleon, Ohio  
255 West Riverview Avenue, PO Box 151  
Napoleon, Ohio 43545  
Attn: Joel Mazur  
Phone: 419-592-4010  
E-Mail: [jmazur@napoleonohio.com](mailto:jmazur@napoleonohio.com)

With a copy to:

Law Director, City of Napoleon, Ohio  
255 West Riverview Avenue, PO Box 151  
Napoleon, Ohio 43545  
Attn: Bill Harmon  
Phone: 419-592-4010  
E-Mail: [bharmon@napoleonohio.com](mailto:bharmon@napoleonohio.com)

Lessee:

AMP Transmission, LLC  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
Attn: Pamala M. Sullivan  
Phone: 614-540-0971  
E-Mail: [psullivan@amppartners.org](mailto:psullivan@amppartners.org)

with a copy to:

AMP Transmission, LLC

1111 Schrock Road, Suite 100  
Columbus, OH 43229  
Attn: Lisa G. McAlister  
Phone: 614-540-1111  
Fax: 614-540-6397  
E-Mail: lmcAlister@amppartners.org

That notice shall be deemed given when personally delivered, on the delivery date if delivered via overnight delivery service, upon transmission if sent by e-mail or facsimile before 5:00 p.m. local time of the recipient on a Business Day, or on the next Business Day if sent thereafter, or, if mailed in accordance with the provisions hereof, then five (5) Business Days following the deposit of the written notice in the United States mails. A "Business Day" is any day that is not a Saturday, Sunday or any day on which banks located in the State of Ohio are authorized or obligated to close.

#### **XV. EASEMENTS**

A. Lessor has granted to Lessee the Easement. The parties agree that the rights under the Easement are independent of this Lease and shall have legal effect notwithstanding the amendment or termination of this Lease.

B. Lessor agrees, at the request of Lessee and at Lessee's sole expense, to grant additional easements over, under, upon or across the Leased Premises as may be reasonably necessary in Lessee's opinion to enable the Leased Premises, and any improvements constructed or to be constructed thereon, to be adequately served by gas, electricity, water, sewer, telephone and other utilities and to permit Lessee, its Representatives, independent contractors, licensees and invitees to have full and reasonable access to the Leased Premises for any purposes permitted under this Lease or the Easement. Those easements shall be subject to Lessor's reasonable approval.

#### **XVI. CONSTRUCTION OF TERMS**

This Lease shall not be strictly construed either against the Lessor or the Lessee. The term "including" shall mean "including without limitation" regardless of whether so stated. Whenever reference is made to persons, unless the context otherwise requires, words denoting the singular number may, and where necessary shall, be construed as depicting plural number, and words of the plural number may, and where necessary shall, be construed as denoting the singular and words of one gender may, and where necessary shall, be construed as denoting another gender as is appropriate.

## **XVII. ASSIGNMENT, SUBLETTING**

A. Transfers. Lessee may assign, mortgage, pledge, encumber, dispose, sublease, convey or transfer this Lease (a "Transfer") with or without the prior written consent of Lessor in each instance; provided that the assignee (other than a Lender or mortgagee) shall acquire all or substantially all of the Equipment or its replacements. Lessor shall not seek to alter the terms of this Lease, the Easement or the O&M Agreement in connection with that Transfer without the express written consent of Lessor and that Transferee, and, if Lessee would have any increased liability, duties or burdens due to that change, of Lessee.

B. Subleases. Without the prior written consent of Lessor, Lessee shall not assign its rights under this Lease to any other Person; provided, however, that contracting operation, maintenance, repair or replacement services to another Person, including Lessor pursuant to the O&M Agreement, shall not constitute a sublease hereunder.

## **XVIII. ENTIRE AGREEMENT**

This Lease, the Easement, the O&M Agreement, the Purchase Agreement and the exhibits attached to any of the foregoing set forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Leased Premises and this Lease, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as set forth in those documents. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by each of them.

## **XIX. PARTIAL INVALIDITY**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **XX. BINDING EFFECT**

All of the terms, covenants, conditions and provisions contained in this Lease shall be binding upon and shall inure to the benefit of the Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns. A mortgagee is a third party beneficiary of the mortgagee provisions contained in this Lease.

## **XXI. HEADINGS**

As used herein, any section or paragraph headings or defined terms are for convenience only and are not to be used in the construction of the sections nor are they meant to limit or expand the content of the sections.

## **XXII. TIME OF THE ESSENCE**

Time is of the essence of this Lease and each and every provision hereof.

### **XXIII. MEMORANDUM OF LEASE**

This Lease shall not be recorded without the written consent of both parties. Concurrently with the execution of this Lease, the parties shall execute and cause to be recorded a Memorandum of Lease in the form attached hereto as Lease Exhibit B.

### **XXIV. INDEMNITY**

A. Indemnification. Notwithstanding the termination of the Lease for any reason, Lessee shall to the extent permitted by law at all times, indemnify, protect and hold harmless Lessor and its Indemnified Parties against and from all liability, loss, cost, damage or expense sustained by Lessor:

(1) On account of or through the use of the Leased Premises or improvements or any part thereof by Lessee or its Representatives, or by any other person at the invitation or request of that party, for any purpose inconsistent with the provisions of this Lease;

(2) Arising out of, or directly or indirectly due to any failure of Lessee, in any respect, to promptly and faithfully satisfy its obligations under this Lease;

(3) Arising out of, or directly or indirectly due to, any accident or other occurrence causing injury to any person or persons or property resulting from the use of the Leased Premises and improvements or any part thereof by Lessee.

B. Liens. Lessor shall not permit any monetary liens to encumber the Leased Premises which have priority over the Lease. In the event Lessor encumbers the Leased Premises subsequent to the date of this Lease, (i) the Lease shall retain its priority position, and (ii) the holder of each Lessor Mortgage or security interest shall execute and deliver to Lessee a fully executed and acknowledged non-disturbance agreement in a commercially reasonable form, and reasonably acceptable to Lessee and any Lessee Mortgagee whereby the holder agrees, among other things, to recognize Lessee's rights under this Lease and not to disturb Lessee's possession and use of the Leased Premises and such other appurtenant rights and easements in the Leased Premises. With respect to other monetary encumbrances (i.e., mechanics' liens, judgment liens, tax liens, etc.), Lessor shall take any such actions as are required to prevent any material adverse effect to Lessee's use hereunder as a result of such encumbrances.

C. Personal Injury. Each party shall hold the other party harmless from any personal injury to the other party or its Representatives, invitees or third parties, or to other occupants of any part of the Leased Premises, or for any damage to any property of the other party or of any other occupant of any part of the Leased Premises, to the extent caused by the negligence or willful misconduct of that party or its Representatives.

The indemnities set forth in this Article shall not apply to any loss directly caused by the gross negligence or intentional misconduct of the other party or its Representatives.

## **XXV. ESTOPPEL CERTIFICATES**

Lessor or Lessee, including Lessee's assignees and sublessees, may request, from time to time, a certificate from the other party, or a statement, within twenty (20) days of demand in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the dates to which the Base Rent and other charges have been paid in advance, if any, (c) for any certificate by Lessee, Lessee acceptance and possession of the Leased Premises, (d) the commencement of the Lease term, (e) the Base Rent provided under the Lease, and (f) that the other party is not in default under this Lease (or if it claims a default, the nature thereof), (g) that the party claims no offsets against amounts owed to the other, and (h) other information as shall be reasonably necessary to establish the status of the tenancy created by this Lease. It is intended that any statement delivered pursuant to this Article may be relied upon by any prospective purchaser, Mortgage holder or assignee of any Mortgage holder of the Leased Premises.

## **XXVI. FORCE MAJEURE**

If Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any acts required hereunder, other than the payment of Rent, by reason of a Force Majeure Delay, then performance of such acts shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equal to the period of such delay.

## **XXVII. OPERATOR**

To the extent that Lessee engages a third party other than Lessor (each, an "Operator") to operate, maintain, repair and replace the Equipment or to otherwise act with respect to the Leased Premises, the Operator may perform, on Lessee's behalf, any or all of the obligations of Lessee under this Lease, and Lessor agrees to accept performance of those obligations from the Operator as though the same were performed by Lessee. To the extent Operator shall be acting on behalf of Lessee, pursuant to the O&M Agreement or otherwise, Lessor shall not treat its failure to perform those functions as a breach by Lessee of its obligations hereunder.

## **XXVIII. QUIET ENJOYMENT AND COOPERATION**

A. Lessee, upon paying the Base Rent and all other charges owing under this Lease, and upon performing all of its obligations under this Lease, will peaceably and quietly enjoy its non-exclusive rights to access and occupy the Leased Premises, subject to the terms of this Lease. Lessee shall use commercially reasonable efforts to assure that its activities in connection with the Lease do not unreasonably interfere with the use by Lessor of the Substation or the Leased Premises or other assets not owned by Lessee, subject to Lessee's rights to maintain, service, repair and replace the Equipment at times it deems necessary or appropriate.

B. Each party shall execute further agreements or instruments reasonably requested by the other party to carry out the terms hereof and the other referenced agreements and the contemplated transactions.

## **XXIX. GOVERNING LAW/DISPUTE RESOLUTION**

A. This Lease 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 legal proceeding arising out of or relating to this Lease, or any of the other agreements noted herein or the transactions contemplated hereby or thereby, and agrees that any proceedings arising out of this Lease or any of those other agreements or transactions shall be brought and prosecuted exclusively in a state court of competent jurisdiction located in the state or federal courts located in Franklin County or Henry 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 Forums, 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 Lease or those agreements or transactions brought in any of those Forums and any claim that any proceeding brought in any of those Forums has been brought in an inconvenient forum.

C. Unless otherwise provided pursuant to this Lease, all disputes between the parties shall be resolved, if possible, in accordance with the following dispute resolution procedures.

## **XXX. NO PARTNERSHIP**

Nothing in this Lease is intended or shall be construed to create any partnership, joint venture or similar relationship between Lessor or Lessee; 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 Lessor nor Lessee shall be prevented from exercising their respective rights or pursuing their remedies as owners of the Substation, Equipment, as applicable.

## **XXXI. COUNTERPARTS**

This Lease may be executed in counterparts and each of which shall be deemed to be an original, and together which shall constitute one instrument. Counterparts may

be delivered by facsimile or other electronic means and shall be effective upon that delivery as if a signed original had been delivered at that time to the other party.

### **XXXII. LIMITATION 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 AFFILIATES, 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 LEASE 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 OTHER AGREEMENT BETWEEN THEM, IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER THIS LEASE OR OTHER 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).

### **XXXIII. LESSOR REPRESENTATIONS AND WARRANTIES**

A. Lessor's Representations. Lessor hereby represents and warrants to Lessee that:

(1) Lessor has no actual knowledge of any existing physical conditions of the Leased Premises which would prevent, significantly restrict or make more expensive Lessee's development of the Leased Premises for the purposes specified in this Lease, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

(2) The execution of this Lease will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Lessor is a party or by which the Leased Premises or any part thereof is bound.

(3) Without having made any specific investigation thereof, and without undertaking to do so, Lessor has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Lessee's development of the Leased Premises pursuant to this Lease. To the best of Lessor's knowledge, the Leased Premises is currently in material compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Leased Premises.

(4) To the best of Lessor's knowledge, neither the Leased Premises nor any part thereof violates any Environmental Law. Without limiting the foregoing, except as disclosed in writing to Lessee, to the best of Lessor's knowledge no Hazardous Materials have been disposed of on the Leased Premises or have been accumulated or burned on the Leased Premises, no part of the Leased Premises or any improvements thereon contain asbestos or asbestos-containing materials (including, without limitation, acoustical plaster, fireproofing, pipe and boiler insulation or similar materials), and no underground storage tanks are located on or under the Leased Premises. "Environmental Law" means all laws of any governmental authority having jurisdiction over the Leased Premises addressing pollution or protection of the environment and all amendments to such laws and all regulations implementing any of the foregoing. "Hazardous Material" shall mean any pollutant, contaminant, hazardous substance, hazardous waste, medical waste, special waste, toxic substance, petroleum-derived substance, waste or additive, asbestos, polychlorinated biphenyl (PCB), radioactive material, or other compound, element or substance in any form (including products) regulated or restricted by or under any Environmental Law.

(5) Lessor warrants that Lessor holds a fee simple interest in the Leased Premises and that the Leased Premises are free of any liens, encumbrances or restrictions of any kind that may interfere with Lessee's anticipated use of the Leased Premises. During the Term of this Lease, Lessor covenants and agrees that neither Lessor nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Lessee of its rights granted by this Lease; or (ii) take any action which will interfere with or impair Lessee's access to the Leased Premises for the purposes specified in this Lease. Lessor further covenants that, to the best of Lessor's knowledge, there are no outstanding written or oral leases, purchase or sale agreements or other agreements or restrictions encumbering, or in any way affecting the Leased Premises, and no person or entity has any right with respect to the Leased Premises, whether by option to purchase, contract or otherwise, that would prevent or interfere with any of Lessee's rights under this Lease.

(6) The representations and warranties set forth in this Section shall survive the execution and delivery hereof.

#### **XXXIV. EXHIBITS AND INCORPORATION**

The following exhibits, which are attached hereto or are in the possession of the Lessor and Lessee, are incorporated herein by reference as though fully set forth:

Lease Exhibit "A"	Legal Description of Leased Premises
Lease Exhibit "B"	Memorandum of Ground Lease

**[SIGNATURES ARE ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed this Lease effective as of the day and year first above written.

**LESSOR:**

**THE CITY OF NAPOLEON, OHIO,**

By: \_\_\_\_\_  
Name: Joel L. Mazur  
Title: City Manager

STATE OF OHIO            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2021, by \_\_\_\_\_ as the \_\_\_\_\_ of the City of Napoleon, Ohio, an Ohio municipal corporation, on behalf of that entity.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**LESSEE:**

**AMP TRANSMISSION, LLC,**

By: \_\_\_\_\_  
Name: Pamala M. Sullivan  
Title: President

STATE OF OHIO            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2021, by \_\_\_\_\_ the \_\_\_\_\_ of AMP Transmission, LLC, an Ohio non-profit limited liability company, on behalf of the corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**LEASE EXHIBIT A**

Legal Description of the Leased Premises

That certain real property situated in the State of Ohio, County of Henry, more particularly described as follows:

Parcel No. \_\_\_\_\_

CONFIDENTIAL - DRAFT

**LEASE EXHIBIT B**  
Memorandum of Lease

WHEN RECORDED MAIL TO:

Attn:

**MEMORANDUM OF GROUND LEASE**

This MEMORANDUM OF GROUND LEASE is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between The City of Napoleon, Ohio, an Ohio municipal corporation, as "Lessor" (having an office at 255 West Riverview Avenue, Napoleon, Ohio 43545), and AMP Transmission, LLC, an Ohio non-profit corporation, as "Lessee" (having an office at 1111 Schrock Road, Suite 100, Columbus, Ohio 43229), with reference to the following facts:

A. Lessor and Lessee have entered into a Ground Lease of even date herewith (the "Lease"). Under the Lease, Lessee is leasing from Lessor that certain real property located in Henry County, Ohio and more particularly described on Exhibit A attached hereto and made a part hereof by reference (the "Leased Premises").

B. Lessor and Lessee desire to provide record evidence of Lessee's leasehold interest in the Leased Premises.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in the Lease, and in this Memorandum of Ground Lease, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. The terms, provisions, covenants, conditions and agreements set forth in the Lease are by this reference incorporated herein.

2. The term of the Lease began on the "Commencement Date" as defined in the Lease, and shall continue until \_\_\_\_\_, 2071, unless sooner terminated or as extended, as provided in the Lease. Lessee shall have the right to extend the Lease for an additional 10-year term, subject to the conditions set forth in the Lease.

3. In addition to those terms referenced above, the Lease contains numerous other terms, covenants, conditions and provisions which affect the Leased Premises, and notice is hereby given that reference should be had to the Lease directly with respect to those terms, covenants, conditions and provisions. Copies of the Lease are maintained at the offices of Lessor and Lessee, as set forth above. This Memorandum of Ground Lease does not alter, amend, modify or change the Lease in any respect, is executed for recording purposes only, is not intended to be a summary of the Lease, and is subject to

the terms of the Lease. In the event of conflict between this Memorandum and the Lease, the Lease shall control.

4. This Memorandum shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned parties have executed this Memorandum as of the day and year first above written.

**LESSOR:** **CITY OF NAPOLEON, OHIO,**

By: \_\_\_\_\_  
Name: Joel L. Mazur  
Title: City Manager

STATE OF Ohio )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 2021, by \_\_\_\_\_ as the \_\_\_\_\_ of The City of Napoleon, Ohio, an Ohio municipal corporation, on behalf of that entity.

My commission expires: \_\_\_\_\_  
Notary Public

**LESSEE:** **AMP TRANSMISSION, LLC,**

By: \_\_\_\_\_  
Name: Pamala M. Sullivan  
Title: President

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 2021, by \_\_\_\_\_ the \_\_\_\_\_ of AMP Transmission, LLC, an Ohio non-profit limited liability company, on behalf of the corporation.

My commission expires: \_\_\_\_\_  
Notary Public

**Exhibit C**

**Easement**

**[SEE ATTACHED]**

CONFIDENTIAL - DRAFT

## PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT (this "Easement" or the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), between THE CITY OF NAPOLEON, OHIO, an Ohio municipal corporation ("Grantor") and AMP TRANSMISSION, LLC, an Ohio non-profit limited liability company ("Grantee").

### RECITALS

A. Grantor and Grantee are parties to that certain Asset Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2021 (the "Purchase Agreement"), pursuant to which, among other things, on the date hereof:

(i) Grantor sold to Grantee the Equipment (as defined in the Purchase Agreement) (collectively, and including any replacements, substitutions or additions thereto from time-to-time, the "Purchased Assets"); and

(ii) Grantor retained the fee interest in the real property underlying the Purchased Assets, which property is more particularly described in Easement Exhibit A (the "Property").

B. Because the Purchased Assets (or their replacements) will remain situated in, on or over a portion of the Property (the "Leased Area"), Grantor has agreed to provide Grantee with this Easement, providing Grantee with rights to access and occupy, on a non-exclusive basis, the Leased Area and permitting the Equipment (or its replacements, substitutions and proceeds thereof) to remain on the Property at Grantee's discretion, subject to the terms hereof. The Leased Area is further described on Easement Exhibit B.

C. Pursuant to the Purchase Agreement and concurrent with the execution and delivery of this Agreement, Grantor and Grantee entered into that certain Ground Lease (the "Lease") pursuant to which Grantor also granted Grantee rights to access and occupy the Property and the Leased Area.

D. The parties intend that this Easement shall have independence from the rights and obligations set forth in the Applicable Agreements (defined below). Accordingly, this Easement shall remain in effect notwithstanding any termination or modification of any of those agreements, unless expressly set forth in an amendment hereof.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the sum of ten dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

. **Definitions and Rules of Construction.**

.. **Defined Terms.** The following terms when used in this Agreement shall have the meanings specified in this Section 1.1.

“Applicable Agreements” means the Purchase Agreement, the Lease, the Operating Lease and any other agreement or instrument entered into by the Parties relating to the Purchased Assets or the Property, as any of those may be amended from time-to-time.

“Emergency” shall mean a condition or situation that (i) presents an imminent physical threat of danger to life, health or property or could reasonably be expected to cause significant disruption of access to or the operation of the Equipment, or (ii) that is likely to or could reasonably be expected to result in an imminent violation of applicable law.

“Facilities” mean those facilities and Improvements located at, on, over or under the Property in which Grantee needs or reasonably requests to use, including storage space, parking facilities, communication facilities, equipment monitoring and control rooms, utility lines, connection points for integrating the Purchased Assets or their replacements with the Grantee’s systems and equipment, and receiving areas, regardless of whether those facilities are located within the Leased Area.

“Force Majeure Event” shall mean any event that both (i) restricts or prevents performance by a Party under this Agreement, and (ii) is not reasonably within the control of the Party or caused by the default or negligence of the Party and could not be overcome or avoided by the exercise of due care. “Force Majeure Event” includes: acts of God; Emergency conditions; failure of facilities due to unusually severe actions of the elements like drought, flood, earthquake, storm, fire, lightning, hurricane, tornado or epidemic; war, terrorism, civil disturbance, sabotage, riot or public disorder; strike or labor action; accident; curtailment of supply, unavailability of construction materials or replacement equipment beyond the Party’s reasonable control; inability to obtain and maintain rights-of-way, permits, licenses and other required authorizations from any Governmental Authority or person for any of the facilities or equipment necessary for performance by the Party hereunder; and actions, failures to act or restraints of any Governmental Authority (including expropriation, requisition and changes in law or regulations) to the extent preventing or delaying performance by the Party hereunder. Settlement of strikes and labor disputes which are Force Majeure Events shall be wholly within the discretion of the Party whose employees are on strike or involved in the labor dispute.

“Governmental Authority” means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, authority, agency, court, instrumentality or judicial, regulatory or administrative body or entity, including any industry or regional bodies regulating the operations of a Party, like the North American Electric Reliability Corporation, and any balancing area authority, regardless of whether its orders or decisions have the force of law.

“Governmental Requirements” shall mean all local, state and federal governmental laws, statutes, rules and regulations, building codes, ordinances (zoning or otherwise) and

permits which are, or will be, adopted, granted, amended, modified or supplemented and which govern, affect or relate to the use, development, zoning, improvement, operation or ownership of the Property, or any portion thereof.

“Grantor Assets” shall mean all assets and Improvements owned by Grantor individually, and not as a tenant in common, located on the Property which were not included in the Purchased Assets.

“Improvements” shall mean all structures, improvements, facilities, systems, fixtures and equipment of any kind now or hereafter located on the Property, whether above or below the land surface, whether real or personal property, and whether permanent or temporary, including without limitation, all buildings, sheds, energy plants, tanks, pipelines (including meters, connections, valves and other associated equipment), cables, wires, conduits, cable trays, trenches, mains, lines, ducts, fences, towers, antennae, tunnels, driveways, streets, alleys, paved parking areas, pathways, screening walls, awnings, retaining walls, plantings, shrubs and other landscaping, irrigation and drainage pipes and facilities, lighting fixtures and signs.

“Party” or “Parties” shall individually or collectively, as the case may be, mean Grantor and its successors and assigns, or Grantee and its successors and assigns.

“Party’s Property” means the assets and property owned by that Party located at the Property.

“Permittees” shall mean: the Party, its owners and managers, and their respective directors, managers, officers, employees and agents, contractors, and invitees; provided, however, that a Party shall not be included in the definition of a “Permittee” of the other Party under this Agreement.

“Person” shall mean any individual, partnership, corporation, limited liability company, trust, estate or other legal entity.

. **Grant of Easements.**

.. **Access and Use Easement for the Property.** Grantor grants to Grantee in perpetuity and at no charge, a non-exclusive easement, in, on, over, under, across and through the Property for the purpose of permitting Grantee (and its Permittees) to access the Property (including the Leased Area) and for the access and use of the Facilities located at or on the Property. This easement shall permit Grantee to own, operate, maintain, repair, replace, improve, remove and remediate the Purchased Assets at, on, under or over the Leased Area, and to exercise and enjoy Grantee's rights relating to those assets, and any purpose incidental thereto, as well as to permit it to exercise all rights and duties set forth in any Applicable Agreement. Grantor shall provide Grantee with all required utility services (including without limitation electricity, water, sewer, communication, and natural gas) (collectively, "Utilities") necessary or appropriate for the operation of the Purchased Assets in the manner in which they have historically been operated, and if Grantor does not provide those services, Grantee may arrange for the provision thereof by others. Grantee shall be provided with access to all locked or password protected areas of the Property (including equipment monitoring or regulating any of the Equipment) necessary or appropriate to permit the use and enjoyment of the easement rights granted and the Purchased Assets. Grantor shall provide Grantee with keys, cardkeys, passcodes or other applicable devices to permit that access at all times to the Leased Area and the Facilities, all at no additional cost to Grantee. This easement shall include rights to temporary use of the Property for the construction and maintenance of the Purchased Assets.

.. **Use of Property and Facilities.** The easement granted herein may be utilized in any lawful manner which is within the stated purposes noted herein, and all activities and purposes reasonably-related thereto; provided, however, that Grantee's use of the easement granted herein and Grantor's use of the Property and Improvements shall be further subject to the following:

- (i) neither Party nor its Permittees shall use the rights pursuant to this Easement or the Party's Property in a manner that unreasonably interferes with the use of the other Party's Property or rights provided pursuant to any Applicable Agreement;
- (ii) neither Party nor its Permittees shall use the rights pursuant to this Easement or Party's Property in a manner that unreasonably interferes with the use of or damages the other Party's Property;
- (iii) neither Party nor its Permittees shall use the rights pursuant to this Easement or the Party's Property in a manner or for a purpose which causes the other Party or any of the other Party's Property to be in violation of, or in noncompliance with, any Governmental Requirements;
- (iv) neither Party nor its Permittees shall use the rights pursuant to this Easement or easements granted to such Party herein in a manner which constitutes or produces a nuisance or disturbance to the other Party's Property other than noises, vibrations, odors, dust, emissions and electro-

magnetic interferences or disturbances and the like which are lawfully and customarily incidental to the transmission of electrical energy or other uses currently existing at the Power Station as of the date of this Agreement and as it may change hereafter in the ordinary course of its operations; **and**

- (v) neither Party nor its Permittees shall construct Improvements or undertake any actions on the Property or alter any of the Equipment in a manner that interferes with the use or operation of the other Party's Property without the prior written consent of that other Party.

. **Maintenance and Repair.** Any and all Equipment which are used in connection with an easement granted hereunder shall be used, operated, maintained, repaired, altered, improved, replaced and/or removed in accordance with the O&M Agreement for so long as it remains in effect. Thereafter, Grantor and Grantee shall each have the right to use the Equipment in compliance with the provisions of Section 2.2 unless they otherwise agree.

. **Relocation of Easements.** At the request of either Party, the areas burdened by the easement granted herein shall be subject to relocation upon the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. The cost of the relocation shall be determined as set forth in the O&M Agreement, which provisions shall continue to apply even after its termination unless the Parties otherwise agree.

. **Defaults/Enforcement**

.. **Defaults.** A Party shall be in default under this Agreement if the Party: (a) fails to pay amounts due hereunder (other than disputed payments) and the failure is not cured within thirty (30) days after the Party has received notice of the default pursuant to Section 10.2; or (b) defaults on any other material obligation under this Agreement after notice provided pursuant to Section 10.2 by the other Party, provided, the Party shall have up to sixty (60) days after the notice is given to cure the default or make substantial progress (in the reasonable opinion of the other Party) towards curing the default (but in no event shall the cure period exceed one hundred (100) days).

**5.2 Remedies.** In the event of a default by a Party, the non-defaulting Party (or its Permittees as directed by and on behalf of the non-defaulting Party), shall have the following remedies (but without obligation), exercisable only after due inquiry that a default has occurred and is continuing:

A. In its sole and absolute discretion, to cure the default of the defaulting Party by making or tendering the required payment or performance and permitting the defaulting Party's continued exercise of its other rights under this Agreement, provided that any amounts paid by the non-defaulting Party shall be treated as a demand loan to the defaulting Party, which loan shall accrue interest

until repaid in full at the rate of interest per annum equal to the lesser of (i) five percent (5.0%) above the prime rate which is the rate reported in the "Money Rates" section of *The Wall Street Journal* or (ii) the maximum rate of interest permitted by applicable law ("Default Interest Rate");

B. To seek monetary damages and/or bring an action to specifically enforce the provisions of this Agreement; or

C. To exercise (or appoint any of its Permittees to exercise on its behalf) any and all other rights and remedies which the non-defaulting Party might otherwise have at law or in equity, except as provided below.

Under no circumstances shall termination of this Agreement or blocking the access to and use of the Property as noted herein be available to the non-defaulting Party as a remedy for the breach or default of a defaulting Party. The Parties agree that other than specific performance, the remedies of the Parties are limited to monetary damages. Except as noted above, all of the foregoing remedies are cumulative and non-exclusive, and the exercise of any one remedy at any one time shall not constitute the waiver of any other remedy at a later or different time; provided, however, that all available remedies shall be subject to the limitations on liability provided for pursuant to any Applicable Agreements.

**5.3. Reimbursement of Expenses to Cure; Lien.** If any Party elects to cure an event of default of another Party, the defaulting Party will reimburse the curing Party upon demand for its expenses incurred in rendering the cure, plus interest at the Default Interest Rate.

**5.4 No Waiver.** The failure of any aggrieved Party to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right thereafter to do so, nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Agreement. A Party shall be considered to have waived any rights hereunder only if the waiver shall be in writing and signed by the waiving Party.

**5.5 Force Majeure.** Except for the obligations of either Party to make payments of amounts then due hereunder to the other Party, obligations of either Party shall be excused from performance and shall not be considered to be in default in respect to any obligation hereunder to the extent the failure of performance shall be due to a Force Majeure Event, but only to the minimum extent that performance is actually prevented by the Force Majeure Event. A Party shall give notice of delay due to a Force Majeure Event to the other Party promptly upon obtaining actual knowledge of the occurrence of the event with respect to which the Party intends to claim a permitted delay hereunder.

**6. Termination.** Unless Grantee otherwise expressly agrees in writing, this Easement shall continue so long as and shall not terminate so long as any of the Purchased Assets exist on the Property, including any replacements of or additions to those Purchased Assets, and for so long as any of the Applicable Agreements remain in

effect, whichever is longer. If the Lease is terminated without a replacement lease being entered into between the Parties, and Grantee has not agreed that this Easement shall terminate, Grantee shall continue to have a continuing non-revocable, permanent license and easement to access and occupy the Property and Leased Area as provided herein. If Grantee has approved a termination of this Easement, Grantee shall record in the public records of Henry County, Ohio, a notice of termination of this Easement within sixty (60) days of the termination date.

**7. Arbitration; Governing Law; Waiver of Jury Trial.** This Easement shall be governed by the laws of the State of Ohio, without regard to its conflict of laws principles. 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 CONTEMPLATED HEREBY.

**8. Run with Property.** Each and all of the easements, covenants, conditions and restrictions set forth in this Agreement shall run with and bind the Property. All covenants, conditions and restrictions set forth in this Agreement shall be equitable servitudes. All of the easements, covenants, conditions and restrictions set forth in this Agreement shall benefit and be binding upon each Party and their respective heirs, successors and assigns and shall create reciprocal rights and obligations, and privity of contract and estate between and among, the Parties and their respective heirs, successors and assigns. No Permittee of a Party shall acquire any rights of a Party hereunder, except to the extent the Party's rights are expressly assigned to the Permittee and the Permittee expressly assumes in writing the obligations, duties and liabilities of the Party under this Agreement accruing from and after the date of assignment. In no event shall the consent or approval of any Permittee be required in connection with, or as a condition to, any amendment, modification or termination of this Agreement.

**9. Miscellaneous Provisions.**

**9.1 Constructive Notice and Acceptance.** Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Agreement, whether or not any reference to this Agreement is contained in the instrument by which the Person acquired an interest in the Property.

**9.2 Notices.** Any notice required or authorized to be given hereunder or any other communications between the Parties shall be in writing (unless otherwise expressly provided) and shall be served personally, by reputable express courier service (such as Federal Express) for next business day delivery, or by facsimile transmission, and in any such case, addressed to the relevant Party at the address stated below (as such address may be updated pursuant hereto). Any notice given personally shall be deemed to have been served on delivery, any notice given by express courier service shall be deemed to have been served one (1) business day after the same shall have been delivered to the relevant courier, and any notice so given by facsimile or e-mail transmission shall be deemed to have been served upon successful dispatch if sent before 5:00 p.m. on a business day, or on the next business day if sent thereafter. As proof of service it shall be sufficient to produce, as applicable, a receipt showing personal service, the receipt of a reputable courier company showing the correct address of the addressee, or an activity report of the sender's facsimile machine or computer, certified by the sender to be true, complete, and correct and showing the correct facsimile number or e-mail address, as applicable, of the Party on whom notice is served, the correct number of pages transmitted and the date of dispatch, and a status report indicating a successful transmission.

The Parties' addresses for service are as follows, although each Party may change its address for service by written notice to the other Parties given as provided in this Section 9.2:

If to Grantor:

City of Napoleon, Ohio  
255 West Riverview Avenue, PO Box 151  
Napoleon, Ohio 43545  
Attn: Joel Mazur  
Phone: 419-592-4010  
E-Mail: jmazur@napoleonohio.com

With a copy to:

Law Director, City of Napoleon, Ohio  
255 West Riverview Avenue, PO Box 151  
Napoleon, Ohio 43545  
Attn: Billy D. Harmon  
Phone: 419-592-4010  
E-Mail: bharmon@napoleonohio.com

Grantee: AMP Transmission, LLC  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
Attn: Pamala M. Sullivan  
Phone: 614-540-0971  
E-Mail: psullivan@amppartners.org

with a copy to: AMP Transmission, LLC  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
Attn: Lisa G. McAlister  
Phone: 614-540-1111  
Fax: 614-540-6397  
E-Mail: lmcaster@amppartners.org

**9.3 Headings.** Section headings used in this Agreement are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit or describe the scope and intent of the particular provisions to which they refer.

**9.4 Effect of Invalidation.** Each covenant, condition and restriction of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition and restriction. If any covenant, condition or restriction of this Agreement is held to be invalid by any court, the invalidity of the covenant, condition or restriction shall not affect the validity of the remaining covenants, conditions and restrictions hereof.

**9.5 Estoppels.** Within twenty (20) days following a request in writing by a Party, the other Party shall execute and deliver to any prospective purchaser or other lender to the requesting Party an estoppel certificate confirming that (i) this Agreement is in full force and effect, and has not been modified or amended (or stating any modifications or amendments), and (ii) to the knowledge of the certifying Party, there are no existing uncured defaults by any Party under this Agreement (or if any default exists, a description of the default).

**9.6 Amendments.** Any amendments or modifications of this Agreement shall be made only in a writing executed by all Parties.

**9.7 Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against any of the Parties.

**9.8 Exhibits.** All exhibits attached to this Agreement are incorporated herein by this reference.

**9.9 Third Party Beneficiaries.** Except as otherwise expressly set forth herein, this Agreement is not intended to benefit any third party.

**9.10 Further Assurances.** Each Party agrees that it will, at any time and from time to time, upon the written request of the other Party, execute and deliver further documents (in recordable form, if appropriate under the circumstances) and do further acts and things, as the requesting Party may reasonably request to effect the purposes of this Agreement.

**9.11 Entire Agreement.** This Easement sets forth the entire agreement of the Parties and supersedes all prior agreements related to its subject matter, provided, however, that nothing in this Agreement shall affect the terms of any of the Applicable Agreements.

**9.12 No Partnership.** The Parties are independent of each other and no partnership, joint venture, association or principal and agency relationship between the Parties is created hereby.

IN WITNESS THEREOF, the Parties have entered into this Agreement as of the date first set forth above.

THE CITY OF NAPOLEON, OHIO,  
an Ohio municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

AMP TRANSMISSION, LLC,  
an Ohio non-profit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

This instrument prepared by, and when recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF OHIO            }  
  } ss.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Napoleon, Ohio, an Ohio municipal corporation, on its behalf.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Seal:

\_\_\_\_\_  
Notary Public Signature

STATE OF OHIO            }  
  } ss.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of AMP Transmission, LLC, an Ohio non-profit limited liability company, on its behalf.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Seal:

\_\_\_\_\_  
Notary Public Signature

**EASEMENT EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property situated in the State of Ohio, County of Henry, more particularly described as follows:

Parcel 280795140080

Located on Industrial Drive within the Napoleon city limits

41.411080, -84.096479

0.9301 acres

TShp: LIBERTY TWP | Qtr: NE | Sctn: 7 | Twn: 5 | Rng: 7 | Desc: 6.355 PCL SLIDE 265B

CVT: HENRY COUNTY | SDIV: SUBSTATION SUBDIVISION (NE 7-5-7) SLIDE 265B |

Lot 4 | Desc: SLIDE 265B ETAL

CONFIDENTIAL - DRAFT

**EASEMENT EXHIBIT B**

**LEGAL DESCRIPTION OF THE LEASED AREA**

That certain real property situated in the State of Ohio, County of Henry, more particularly described as follows:

Parcel 280795140080

Located on Industrial Drive within the Napoleon city limits

41.411080, -84.096479

0.9301 acres

TShp: LIBERTY TWP | Qtr: NE | Sctn: 7 | Twn: 5 | Rng: 7 | Desc: 6.355 PCL SLIDE 265B

CVT: HENRY COUNTY | SDIV: SUBSTATION SUBDIVISION (NE 7-5-7) SLIDE 265B |

Lot 4 | Desc: SLIDE 265B ETAL

CONFIDENTIAL DRAFT

## Exhibit D

### Legal Description of Site

That certain real property situated in the State of Ohio, County of Henry, more particularly described as follows:

Parcel 280795140080

Located on Industrial Drive within the Napoleon city limits

41.411080, -84.096479

0.9301 acres

TShp: LIBERTY TWP | Qtr: NE | Sctn: 7 | Twn: 5 | Rng: 7 | Desc: 6.355 PCL SLIDE 265B

CVT: HENRY COUNTY | SDIV: SUBSTATION SUBDIVISION (NE 7-5-7) SLIDE 265B |

Lot 4 | Desc: SLIDE 265B ETAL

4818-4373-2204, v. 1



# City of **NAPOLEON**, Ohio

## Water Treatment Plant

527 Welsted Street Napoleon, Ohio 43545-0151  
Phone: (419) 592-8811

Web Page: [www.napoleonohio.com](http://www.napoleonohio.com)

### MEMORANDUM

To: **Joel Mazur, City Manager**  
From: **Jeff Weis, Water Superintendent,**  
**Jeremy Okuley, Wastewater Superintendent**  
cc: **Mayor & City Council**  
Date: **August 30, 2021**  
Subject: **Wash Water Basin Controls Upgrade**

Mr. Joel Mazur,

The City of Napoleon's Water and Wastewater Treatment Plants would like to proceed with the controls upgrade at the Wash Water basin with Koester Corporation. The purchase of the controls upgrade will be split between the Water and Wastewater plants as approved in the 2021 budgets. The quote for this work came in at \$28,044.00 which is under what was set aside in both Departments to cover the costs for the upgrade. Koester Corporation is currently working on the Wastewater plant controls upgrade and did the complete controls upgrade at the Water Plant. It is our recommendation to move forward with Koester Corporation since they are familiar with our systems as well as a company located in town.

Sincerely,

Jeffrey L. Weis

Water Treatment Superintendent

Jeremy Okuley

Wastewater Treatment Superintendent



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

813 N. PERRY STREET  
NAPOLEON, OHIO 43545

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*professional engineering • industrial systems*

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August 24, 2021

Jeff Weis  
Napoleon Water Treatment Plant  
527 Welsted Street  
Napoleon, Ohio 43545

Subject: Wash Water Basin Controls Replacement Budgetary  
Quote #: 21-113-CD

Dear Jeff:

Per your request, Koester Corporation is pleased to quote the Wash Water Basin Controls Replacement. We quote the following:

**Wash Water Basin Controls Replacement**

- One (1) Subpanel Replacement
- One (1) Interior Door Replacement
- One (1) 60A Main Fused Disconnect
- Three (3) Single-pole Power Distribution Blocks
- One (1) Surge Protector
- One (1) 2-pole fuse block for existing transformer primary protection
- Two (2) 1-pole circuit breakers for existing transformers secondary protection
- Two (2) PowerFlex 525 VFD's, 10HP, with circuit protection
- One (1) 24VDC Power Supply with circuit protection
- One (1) 24VDC UPS for PLC and communications
- One (1) Panel Light
- One (1) Panel Heater
- One (1) Ground Bar
- One (1) CompactLogix system including the following:
  - One (1) CompactLogix Processor, AB 1769-L24ER-QB1B
  - One (1) Isolated Analog Input Card, AB 1769-IF4I
- One (1) EtherNet Switch
- One (1) PanelView Plus 7, AB 2711P-T4W21D8S
- Two (2) Panel-mount HIM modules for VFD's
- Two (2) 3-position Selector Switch
- Ten (10) Control Relays
- Two (2) Pump Seal Relays
- One (1) 120V Receptacle
- One (1) Lot of Terminals, DIN Rail, and Wireway
- One (1) Lot of Labor to build, wire and test panel
- One (1) Lot of Labor to install new controls and run communications to the raw water panel in existing conduit

- One (1) Lot of Engineering to develop drawings and programming for the PLC, panel HMI, and Plant SCADA

**Price: ..... \$28,044.00**

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

Delivery: 6 – 8 weeks, ARO Prox.  
F.O.B.: Napoleon, OH, Prepaid & Add  
Terms: Net 30 Days

**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

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

## Memorandum

**To:** City Council, Mayor, City Manager, City Law Director, Finance Director, Department Supervisors, News media  
**From:** Roxanne Dietrich, Clerk of Council  
**Date:** September 3, 2021  
**Subject:** Technology and Communications Committee – Cancellation

The regularly scheduled meeting of the **Technology and Communications Committee** for Tuesday, September 7, 2021 at 6:15 pm has been CANCELED due to lack of agenda items.



**CITY OF NAPOLEON, OHIO**

**OPERATIONS DEPARTMENT**

PO Box 151, 1775 INDUSTRIAL DR.

NAPOLEON, OH 43545

PHONE: (419) 599-1891 FAX: (419) 592-4379

WEB PAGE: [WWW.NAPOLEONOHIO.COM](http://WWW.NAPOLEONOHIO.COM)

**Operations Superintendent**

Jeffery H. Rathge

**Water Distribution Foreman**

Brian Okuley

**Streets/Sewer Foreman**

Roger Eis

**Refuse/Recycling Foreman**

Perry Hunter

**Head Mechanic**

Tony Kuhlman

## **PRESS RELEASE**

### **Refuse and Recycling Holiday Route Schedule**

The City of Napoleon's refuse and recycling routes will be scheduled as follows for the week of September 6, 2021 due to the upcoming **Labor Day** holiday:

**Monday, September 6 – HOLIDAY – NO PICK UP**

Tuesday, September 7 – Monday Route

Wednesday, September 8 – Tuesday Route

Thursday, September 9 – Wednesday and Thursday Routes

Friday, September 10 – Friday Route

The Wednesday route will run together with the Thursday route. For those that are affected, please make an extra effort to have your refuse and recycling to the curb by 7:00 AM on Thursday. There is a possibility of later than usual pick-up times during the double day.

Please contact the Operations Department between 7:00 AM and 3:30 PM at 419-599-1891 with any questions regarding this matter.

###

## AMP Update for Aug. 27, 2021

American Municipal Power, Inc. <webmaster@amppartners.org>

Fri 8/27/2021 5:09 PM

To: Roxanne Dietrich <rdietrich@napoleonohio.com>

Having trouble viewing this email? [Click here to view web page version](#)



**Aug. 27, 2021**

### **AMP August Board Meeting update**

*By Jolene Thompson - President/CEO*

The AMP Board of Trustees met in person on Aug. 18 and 19. The meeting was also available to Board and Committee members virtually.

The Board heard a presentation on green hydrogen and battery storage. They also adopted a resolution updating AMP's sustainability principles and reframing them as Environmental, Social and Governance (ESG) principles.

Staff offered brief remarks on the majority of Committee reports in light of an AMP strategic planning wrap-up session that was held on Aug. 18. Board-member strategic plan working groups reported out and the full Board approved the 2021-2024 AMP Strategic Plan priorities and key initiatives. More information on the strategic plan will be presented to AMP Members at the upcoming AMP Annual Conference.

The AMP Wall of Fame Ceremony took place on Aug. 18 honoring the 2020 and 2021 inductees: Mike Weadock, former safety service director for the City of St. Marys and former Chair of the AMP Board of Trustees; John Coyle, partner at the law firm of Duncan and Allen; and Marc Gerken, former AMP President/CEO.

The Nominating Committee met separately on Aug. 24 to select recipients for the AMP Annual Awards that will be announced during the AMP Annual Conference.

The next Board meeting will be held Sept. 20.

If you have any questions or need additional information about the Board meeting, please contact me at [jthompson@amppartners.org](mailto:jthompson@amppartners.org) or 614.540.1111.

### **Hot August continues to create new CPs**

*By Mike Migliore - vice president of power supply and marketing*

PJM experienced its highest load of the year on Tuesday, Aug. 24, with a peak of 148,751 MW from 5 to 6 p.m. The peak on Thursday, Aug. 26, also moved on the board as the fifth CP, edging out Aug. 25. Thursday's peak was set at an early hour of 3 to 4 p.m. due to several storms that moved through PJM after 4 p.m. The AEP zone saw hot weather throughout its large territory, which stretches from Northern Indiana through Virginia. This led to a new AEP peak load on Tuesday from 4 to 5 p.m. It was hot that evening, so the 6 to 7 p.m. load remained high and was only 13 MW (0.06 percent) lower than the 5 p.m. 1CP hour. The Dayton zone saw a similar close shave. The peak on Tuesday from 5 to 6 p.m. was a mere 2 MW (0.06 percent) lower than the current 1CP that was set on Aug. 12. With heat indexes forecasted above 100 degrees for Wednesday, Aug. 25, alerts for a high likelihood of peaks for most zones were sent out, but rain and thunderstorms persisted in Ohio for most of the day keeping loads below previous peak levels. The Penelec zone missed a new 1CP by 1 MW (0.03 percent) on Wednesday, Aug. 25. Current 1CPs and 5CPs are shown below.

<b>ZONE</b>	<b>2021 Peak Load</b>	<b>Date</b>	<b>Hour Ending EPT</b>	<b>2020 Peak</b>
AEP	<b>21,944</b>	8/24/2021	17	21,657
FE	<b>12,604</b>	6/29/2021	15	12,465
APS	<b>8,865</b>	8/12/2021	17	8,638
PPL	<b>7,523</b>	6/30/2021	16	7,260
DUKE	<b>5,306</b>	8/12/2021	16	4,975
DELMARV	<b>4,006</b>	8/12/2021	18	4,086
DAYTON	<b>3,317</b>	8/12/2021	17	3,296
PENELEC	<b>2,899</b>	6/29/2021	14	2,911
METED	<b>3,072</b>	8/12/2021	18	2,976

PJM 1CP	<b>148,751</b>	8/24/2021	18	144,320
PJM 2CP	<b>148,209</b>	8/12/2021	17	143,576
PJM 3CP	<b>146,855</b>	6/29/2021	17	143,261
PJM 4CP	<b>146,007</b>	7/6/2021	17	141,264
PJM 5CP	<b>≈145,000</b>	8/26/2021	16	140,836

(EPT = Eastern Prevailing Time, also known as clock time)

## **Congressional budget reconciliation process sets stage for action on clean energy**

*By Marty Kanner - president, Kanner & Associates*

Both the House and Senate have taken the first step in advancing a \$3.5 trillion domestic spending and tax package intended to address a wide range of policy goals. By passing a non-binding budget blueprint, Congress has directed congressional committees to develop legislation by Sept. 15 to meet numerous objectives. The next step in the process is budget reconciliation - an arcane budget tool increasingly used to enact policy priorities given the fact that the legislation is not subject to a filibuster in the Senate and can pass on a simple majority vote.



In the energy space, the adopted budget resolution outlined a number of initiatives to address climate change. Because of the rules governing budget reconciliation, the legislation cannot include any program regulating carbon emissions. Instead, the blueprint calls for development of a "clean energy payment program." Details aren't yet available, but according to congressional staff, the program will provide utilities with grants tied to clean energy targets - or perhaps carbon reduction goals. The program could be voluntary, or Congress could design the program with both a carrot (the incentive payments) and a stick, levying penalties on utilities that fail to meet targets.

In addition, it is expected that the budget reconciliation legislation will include clean energy tax incentives. Energy tax bills pending in the House and Senate congressional committees would greatly expand and extend the existing energy tax credits. Notably, the proposals would create a "direct pay" option that would enable public power utilities to fully benefit from the federal tax incentives. In addition, the sphere of eligible technologies would expand to include energy storage, hydrogen, and hydropower safety and improvement investments. As well, the legislation would quadruple tax incentives for carbon storage.

Congressional Democrats assert that the reconciliation package, along with the bipartisan infrastructure bill's funding for clean energy technology, will largely meet President Biden's climate targets. Of course, that assumes that Congress enacts the budget reconciliation bill, which is far from certain. Congressional Republicans will oppose the legislation, and with an evenly split Senate and slim majority in the House, Democrats will need to be united to enact the package. This could prove to be a tall order, with Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) already balking at the size of the package, and House centrist Democrats almost scuttling the vote on the initial budget blueprint. Without a unified caucus fully behind these massive initiatives, Democratic leaders will need to decide whether to pare back the package - potentially including the clean energy programs.

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In anticipation of damages to public power systems in Connecticut and Massachusetts following the landfall of Hurricane Henri, the American Public Power Association put out the call for mutual aid. On Aug. 21, crews from Piqua, Tipp City and Westerville stepped up to answer the call.



The crews from Piqua, Tipp City and Westerville were sent to respond to the communities of Chicopee, Holyoke, Westfield and South Hadley, Mass. However, following the storm taking a more easterly track, it was determined that the damages did not require additional assistance and the crews were released home the morning of Aug. 23.

Thank you to all the responding communities for assisting with these restoration efforts!

If you have questions about mutual aid or want to learn more, please contact Jennifer Flockerzie at [jflockerzie@amppartners.org](mailto:jflockerzie@amppartners.org) or 614.540.0853.

## **2021 AMP Conference to feature session on state of the power market**

*By Zachary Hoffman - manager of communications and publications*

In the State of the Power Market session, Mike Zenker, managing director of research for NextEra Energy Sources, will provide attendees with an overview of the current state of energy and gas markets, while also providing predictions of what the future may bring.

For a full schedule of sessions or to register for conference, click [here](#).

## Energy market update

*By Jerry Willman - assistant vice president of energy marketing*

The September 2021 natural gas contract increased yesterday \$0.287/MMBtu to close at \$4.184. The EIA reported an injection of 29 Bcf for the week ending Aug. 20, which was below industry estimates of +37 Bcf. Last year was an injection of 45 Bcf and the five-year average was +44 Bcf. Storage is now 2,851 Bcf, 16.5 percent below a year ago and 6.2 percent below the five-year average.

On-peak power prices for 2022 at AD Hub closed yesterday at \$43.25/MWh, which was \$1.85/MWh higher for the week.

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

#### Week ending Aug. 27

MON	TUE	WED	THU	FRI
\$58.18	\$58.33	\$81.73	\$67.69	\$55.21

#### Week ending Aug. 20

MON	TUE	WED	THU	FRI
\$38.90	\$44.10	\$44.92	\$49.47	\$49.20

AEP/Dayton 2022 5x16 price as of Aug. 26 — \$43.25

AEP/Dayton 2022 5x16 price as of Aug. 19 — \$41.40

## AFEC weekly update

By Jerry Willman

The AMP Fremont Energy Center (AFEC) plant operated in 2x1 configuration for the week, except for Tuesday when combustion turbine unit two was removed from service for repairs. The plant cleared offline for the overnight hours Saturday through Tuesday based on PJM day-ahead economics. Duct firing operated for 70 hours this week. For the week, the plant generated at a 70-percent capacity factor (based on 675-MW rating).

## Social engineering red flags

By Jared Price - vice president of information technology and chief technology officer

The prevalence of phishing scams is at an all-time high. Because you are the key to preventing a cyberattack within your organization, it is important to question the legitimacy of every email you receive. Below is a list of questions to ask yourself about any links or attachments on the email that may help you realize that you are being phished.



### Are there hyperlinks in the email?

- Hover over any links and check the link address. Does it match the website for the sender exactly?
- Did you receive a blank email with long hyperlinks and no further information or context?
- Does the email contain a hyperlink that has a misspelling of a well-known website? (Such as Micorsoft)
- Is the sender's email from a suspicious external domain? (like micorsoft-support.com rather than microsoft.com)

### What about attachments?

- Did the sender include an email attachment that you were not expecting or that makes no sense in relation to the email's context?
- Does the sender ordinarily send you these types of attachments?
- Did the sender send an email with a possibly dangerous file type? Files with a .TXT extension are typically safe, but beware, files can be disguised with a different type of file extension.

If you notice anything about the email that alarms you, do not click links, open attachments or reply. You are the last line of defense to prevent cyber criminals from succeeding and making you or your company susceptible.