

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ENERGY PURCHASE POWER SUPPLY SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC. (“AMP”).

WHEREAS, the City of Hudson, Ohio (the “City”) is a political subdivision organized and existing pursuant to the laws of the state of Ohio which owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and customers; and

WHEREAS, in order to satisfy the electric energy requirements of its electric utility system, the City has heretofore purchased economical and reliable energy from AMP, an Ohio non-profit corporation, of which the City is a member, or has heretofore purchased power arranged by AMP; and

WHEREAS, the City, acting individually and, along with other municipalities which own and operate electric utility systems, jointly through AMP, endeavors to arrange for reliable, reasonably priced supplies of electric energy for ultimate delivery to its customers; and

WHEREAS, City has executed a Master Services Agreement with AMP which sets forth the general terms and conditions for the provision of power supply and other services by AMP to the City; and

WHEREAS, AMP will negotiate with one or more reputable and financially sound third party power suppliers to enter into an agreement(s) to purchase electric energy for a term of no longer than five years, which will provide an economical source of electric energy (herein “Long Term Energy Purchase(s)”) for the City and other AMP Members; and

WHEREAS, AMP, on behalf of the City, desires to purchase from third party supplier(s) and then to resell the energy available from these Long Term Energy Purchase(s) on a long term basis to the City at contract cost (excluding any taxes, transmission costs, replacement energy, losses, congestion costs, or AMP service fees) not to exceed \$49 per MWh; and

WHEREAS, AMP, has prepared and delivered to the City the form of an Energy Purchase Power Supply Schedule, pursuant to which the City may purchase electric energy; and

WHEREAS, AMP has provided and will continue to provide appropriate personnel and information regarding the Long Term Energy Purchase(s) to the City, as such officers and representatives of the City deem necessary or appropriate, to enable the City to evaluate the benefits and risks of the Long Term Energy Purchase(s), to take actions contemplated by the Ordinance hereinafter set forth and to determine that the same are in the public interest; and

WHEREAS, in recognition of the unique nature of the Purchases described herein and pursuant to City Charter Section 6.04, competitive bidding is not required on the City's purchase of energy, through the Energy Purchase Power Supply Schedule.

NOW, THEREFORE, BE IT ORDAINED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1: The form of the Energy Purchase Power Supply Schedule between this City and AMP, substantially in the form attached hereto as Exhibit A, is approved, subject to and with any and all changes provided for herein and therein.

Section 2: The City Manager or the City Manager's designee are authorized to execute the Energy Purchase Power Supply Schedule and to acquire the City's energy from Long Term Energy Purchase, with a term of up to five years, and with a third party contract price (excluding any taxes, transmission costs, replacement energy, losses, congestion costs, or AMP service fees) not to exceed \$49 per MWh, and is further authorized to execute and deliver any and all documents necessary to participate in Long Term Energy Purchase, pursuant to the conditions set forth herein for a term of no more than five (5) years, as set forth in the Energy Purchase Power Supply Schedule.

Section 3: Competitive bidding is not required on the City's acquisition of its right to secure energy under the Energy Purchase Power Supply Schedule.

Section 4: 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 of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5: If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 6: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
William A. Currin, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

I hereby certify that the foregoing Ordinance was duly passed by the Council of said City  
on \_\_\_\_\_, 2014.

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Elizabeth Slagle, Clerk of Council

EXHIBIT A

**CITY OF HUDSON  
ENERGY PURCHASE POWER SUPPLY SCHEDULE**

**AMP Contract No. \_\_\_\_\_**

**A Schedule to**

**American Municipal Power, Inc.**

**and**

**City of Hudson, Ohio**

**Master Service Agreement No. 11-2005-4423**

WHEREAS, the City of Hudson, Ohio ("Municipality") and American Municipal Power, Inc. ("AMP") collectively ("Parties") have entered into a Master Service Agreement ("Agreement") under which certain services may be provided under schedules thereto;

WHEREAS, in order to obtain economical electric energy the Municipality desires to purchase electric energy from AMP or have AMP arrange for the same on behalf of the Municipality;

WHEREAS, AMP will negotiate with one or more reputable and financially sound third party power suppliers to enter into an agreement(s) to purchase electric energy for a term beginning on June 1, 2014 and ending December 31, 2018, which will provide an economical source of electric energy (herein "Long Term Energy Purchase(s)") for Municipality; and

NOW, THEREFORE, in consideration of the conditions, terms and covenants hereinafter contained, the Parties hereto do hereby mutually agree as follows:

**ARTICLE I**  
**TERM**

Subject to the conditions contained herein, this Schedule shall be for a term beginning on June 1, 2014 and ending December 31, 2018.

**ARTICLE II**  
**CONTRACT QUANTITIES AND RATE**

SECTION 201 - CONTRACT QUANTITIES: For the compensation hereinafter set forth, and pursuant to the terms and conditions contained herein, AMP shall arrange for the delivery of energy to the Municipality. The Municipality shall be invoiced and responsible for paying, and AMP is entitled to receive as compensation, the following:

- A. Actual monthly transmission fees, congestion charges, ancillary services, unforced capacity charges, losses, customer charges, replacement energy, and taxes or other such costs incurred by AMP to deliver the energy to the Municipality's Delivery Point; and
- B. AMP's Service Fee B, as defined in the Agreement, for all energy sold or arranged for and delivered pursuant to this Schedule, unless the same is paid for under another power supply schedule; and
- C. The contract rates or fees that AMP pays or incurs for each MW or MWh of energy supplied to the Municipality, as set forth in the transaction confirmation set forth in the Appendix A.

The long term energy purchases anticipated to be executed as a transaction confirmation between AMP and third party power suppliers for the benefit of Municipality will be a remaining requirements product (subject to final pricing upon execution). The

Municipality authorizes AMP to purchase the remaining requirements energy on behalf of the Municipality with a term beginning on June 1, 2014 and ending December 31, 2018, so long as the third party energy supply contract price for energy purchased under this Schedule (excluding any taxes, transmission costs, replacement energy, losses, congestion costs, or AMP service fees) does not exceed \$49 per MWh.

SECTION 202 – PROCEDURES FOR POWER SUPPLY ACQUISITION AND SALE:

It is understood and anticipated that AMP may throughout the term of this Schedule, enter into energy purchase transaction confirmations or other arrangements on behalf of the Municipality, subject to the approval of Municipality's Authorized Representative, to implement the Long Term Energy Purchases contemplated in Section 201 of this Schedule. The steps that will be followed in securing such Long Term Energy Purchases are set forth below.

At the time that AMP recommends that a Long Term Energy Purchase should be finalized, the following shall take place:

1. Authorized personnel of AMP shall confer with the Municipality's Authorized Representative (or his/her designee) on a recorded telephone line or through E-mail, regarding AMP's recommended Long Term Energy Purchases that meet the requirements of Section 201 prior to executing a transaction confirmation with a third party power supplier. AMP will provide power supply recommendations to Municipality's Authorized Representative based upon the best market information available to AMP at the time any conferring takes place.

2. If the Municipality's Authorized Representative approves AMP's recommendation and authorizes acquisition of the Long Term Energy Purchase

over a recorded telephone line or through E-mail, then AMP shall acquire the Long Term Energy Purchase on behalf of the Municipality subject to the effective date and other terms and conditions approved by the Municipality's Authorized Representative.

3. AMP will enter into a transaction confirmation or other arrangement with the authorized and approved third party power supplier as soon as reasonably possible after approval is received as set forth above.

4. Once a Long Term Energy Purchase is finalized and transaction confirmation executed, a copy of the transaction confirmation between the supplier and AMP shall be added to Appendix A and become part of this Schedule.

5. Municipality's Authorized Representative shall execute a transaction confirmation with AMP. A copy of the Member transaction confirmation shall be added to Appendix A and become part of this Schedule.

### **ARTICLE III** **DELIVERY POINT**

The delivery point(s) for electric energy to be delivered hereunder ("Point of Delivery" or "Delivery Point") shall be the Municipality's interconnections with its Regional Transmission Organization ("RTO"), PJM ("Pennsylvania Jersey Maryland"), or its successor.

### **ARTICLE IV** **GENERAL**

SECTION 401 - FIRMNESS OF SUPPLY: Firmness of supply under this Schedule shall be equal to the firmness provided by the power supply schedules and

transmission service arrangements executed by AMP, which are utilized to provide energy under this Schedule.

AMP's obligations hereunder are specifically dependent upon the performance of the suppliers listed in Appendix A or otherwise agreed to by the Parties. In the event of default of a power supplier, AMP shall provide replacement energy to Municipality and Municipality shall pay any cost difference (if any) of the replacement energy (or, if the cost of replacement energy is less, then Municipality shall pay that lower cost). Should a third party supplier default to such a degree that the agreement by and between that third party supplier and AMP is terminated, AMP shall use its best efforts to execute an alternate energy supply agreement, with another supplier unless otherwise agreed to in writing by Municipality.

Notwithstanding the foregoing, AMP agrees that it will notify Municipality promptly of any default by a supplier which may result in AMP's purchase of replacement energy for Municipality (hereinafter "Supplier Default"). AMP also agrees that in an event of a Supplier Default, AMP shall take all appropriate legal action to enforce the terms of AMP's contracts with the defaulting supplier and/or seek appropriate damages from supplier on Municipality's behalf. Municipality is, and shall be, third party beneficiary of such legal action and will be reimbursed or credited by AMP a *pro rata* share of any net recoveries against the defaulting supplier or Municipality's increased costs occasioned by the Supplier Default, whichever is less.

Municipality specifically acknowledges that although energy made available from the supplies listed in Appendix A or otherwise agreed to by the Parties are intended to be the primary source of energy pursuant to this Schedule, AMP may, from time to time,



substitute for actual delivery purposes, other energy; provided that such substitute energy be of a similar firmness and reliability as that made available under the third party power supplier transaction confirmation(s) and further provided that such substitution does not result in increased costs to Municipality.

When third parties providing firm transmission service interrupt deliveries from AMP to Municipality, AMP will use commercially reasonable efforts to deliver energy across other parties' transmission systems if interruptions occur from the primary firm transmission provider's system.

All other terms and conditions of the Agreement between AMP and the Municipality that are not consistent with the terms and conditions of this Schedule shall be applicable as if fully restated herein.

SECTION 402 – AUTHORIZED REPRESENTATIVE: The Municipality's Representative shall be the Public Works Director until modified by written notice to AMP by the Municipality.

SECTION 403 – BIDDING NOT REQUIRED: Pursuant to the Municipality's Charter at Section 6.04, competitive bidding is not required on the Municipality's purchase of power and energy, through the Non-Pool Power Sales Schedule.

*[Intentionally left blank – signatures on following page]*

**CITY OF HUDSON, OHIO**

**AMERICAN MUNICIPAL POWER, INC.**

By: \_\_\_\_\_  
Scott N. Schroyer

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Interim City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
R. Todd Hunt  
City Solicitor

\_\_\_\_\_  
John W. Bentine  
Senior VP / General Counsel

## APPENDIX A