

A RESOLUTION TO APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF A POWER SALES CONTRACT WITH AMERICAN MUNICIPAL POWER, INC. AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH REGARDING PARTICIPATION IN THE AMP SOLAR PROJECT II; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Hudson, Ohio (the "Municipality") 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 capacity and associated energy for the benefit of its citizens and customers; and

WHEREAS, in order to satisfy the electric capacity and associated energy requirements of its electric utility system, the Municipality has heretofore purchased, or desires to do so in the future, economical and reliable electric capacity and associated energy from, or arranged by, American Municipal Power, Inc. (hereinafter, "AMP"), an Ohio non-profit corporation, of which the Municipality is a AMP Member; and

WHEREAS, the Municipality, acting individually and, along with other municipalities which own and operate electric utility systems, jointly through AMP, endeavors to arrange for the availability of reliable, environmentally responsible, reasonably priced supplies of electric capacity and associated energy for ultimate delivery to or on behalf of its customers; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its Members, such Members, including the Municipality, being, and to be, political subdivisions of their respective states that operate electric systems in, as of the date of adoption hereof, Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia; and

WHEREAS, Municipality has determined it requires additional long-term sources of reliable, environmentally sound and reasonably priced electric capacity and energy and has requested that AMP arrange for the same; and

WHEREAS, in furtherance of such purpose, Municipality, along with other Members (collectively, "Participants") requested and AMP agreed that it will either directly by itself or otherwise arrange for the financing, acquisition, construction, operation and ownership, in whole or in part, of solar generation at agreed upon solar sites and possible additional solar sites having an expected net rated electric generating capacity of up to an aggregate total of a nominal 80 MW (or such larger amount as approved or set forth in the AMP Solar Project II Power Sales Contract (hereafter "PSC")) capacity (to be known collectively as the "AMP Solar Project II"); and

WHEREAS, AMP has resolved, in accordance with the PSC, to develop, including, as appropriate, the financing, acquisition, construction, ownership and operation of, and arrangements for the acquisition, financing, and payment for the AMP Solar Project II as well as other arrangements related thereto, which AMP and, in certain cases, the Participants, deem necessary to enable AMP to fulfill its obligations hereunder to sell and transmit, or otherwise make available, electric capacity and energy to the Participants; and

WHEREAS, the PSC between AMP and Municipality, a copy of the form of which is on file with the Clerk, sets forth the terms and conditions, rights, duties, obligations, and covenants of the parties with respect to the AMP Solar Project II; and

WHEREAS, in order to lower the Project costs to the Municipality and other Participants, AMP is investigating utilizing a “tax equity investor” structure for Solar Project II as contemplated in the PSC; and

WHEREAS, AMP has provided appropriate information regarding the AMP Solar Project II, as such officers and representatives of the Municipality deem necessary or appropriate, to enable the Municipality to evaluate the benefits and risks of the AMP Solar Project II, to take actions contemplated by the Resolution hereinafter set forth and to determine that the same are in the public interest; and

WHEREAS, the proposed form of the PSC has been reviewed by this body and this body has been advised on the same; and

WHEREAS, in order to obtain such sources of electric capacity and energy, the Participants are willing to pay AMP for their respective rights to such electric capacity and energy and transmission service at rates that are sufficient, but only sufficient, to enable AMP to (i) recover all costs and expenses incurred with respect to, and arrangements for the acquisition, financing, and payment for the Project as set forth herein, and related service arrangements undertaken by AMP to enable it to fulfill its obligations hereunder, and (ii) recover any other expenditures or revenues authorized hereunder as more fully set forth in the PSC; and

WHEREAS, AMP and certain Members have determined that the AMP Solar Project II is an appropriate and reasonable option for AMP Members and it is necessary and desirable for this body to approve AMP Solar Project II and the form of the PSC.

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

Section 1. The PSC, substantially in the form on file with the Clerk, including Appendices thereto is approved, and the City Manager is hereby authorized to execute and deliver such PSC, with such changes or modifications as the City Solicitor may approve as neither inconsistent with this Resolution nor materially detrimental to the Municipality, her execution of the PSC to be conclusive evidence of such approval, including without limitation, PSC modifications designed to accommodate a tax equity investor should the Participants and AMP find it advantageous to the Participants to structure the AMP Solar Project II or its ownership with a tax equity investor.

Section 2. The City Manager is hereby authorized to acquire on behalf of the Municipality, as a Participant, as defined in the PSC, a Project Share as defined in the PSC, without bid, from AMP of up to 5820 kW and to execute and deliver any and all documents necessary to become a Participant in the AMP Solar Project II pursuant to the conditions set forth herein and in the PSC and to carry out its obligations thereunder as the City Manager deems in the best interests of the Municipality:

Section 3. The Assistant City Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative for any meetings or determinations of the Participants or the Participants Committee pursuant to the PSC and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote Municipality's Project Share with regard to any determinations regarding the AMP Solar Project II as set forth in the PSC.

Section 4. The City Manager may appoint, in writing from time to time as necessary, another representative of the Municipality as the Assistant City Manager's alternate to carry out the duties set forth in Section 3 hereof.

Section 5. Is it found and determined that all formal actions of this body concerning and relating to the adoption of this Resolution were adopted in an open meeting of a quorum of this body, and that all deliberations of this body and of any its committees that resulted in such formal action, were held in meetings open to the public, in compliance with all legal requirements.

Section 6. If any section, subsection, paragraph, clause or provision or any part thereof of this Resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Resolution shall be unaffected by such adjudication and all the remaining provisions of this Resolution 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 7. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is necessary to meet the deadline for AMP to meet the subscription minimums to proceed with the AMP Solar Project II that is the subject of this Resolution; wherefore, this Resolution shall be in effect immediately upon its passage provided it receives the affirmative vote of five members of Council, except that six affirmative votes shall be required if all members are present; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

PASSED:

David A. Basil, Mayor

ATTEST:

Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on _____, 2016.

Elizabeth Slagle, Clerk of Council