

Resolution No. \_\_\_\_\_

Passed \_\_\_\_\_

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**RESOLUTION NO. 21-10****A RESOLUTION AUTHORIZING THE DIRECTOR OF UTILITIES OF THE CITY OF ORRVILLE TO APPROVE THE EXECUTION OF AN EFFICIENCY SMART POWER PLANT SCHEDULE AGREEMENT BETWEEN THE CITY OF ORRVILLE AND AMERICAN MUNICIPAL POWER, INC.**

WHEREAS, the City of Orrville, Ohio ("Municipality") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, American Municipal Power, Inc. ("AMP" and formerly known as AMP-Ohio) 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 AMP members ("Members"), such Members, including Municipality, being, as of the date hereof, political subdivisions that operate municipal electric utility systems in Ohio, Kentucky, Michigan, Pennsylvania, Virginia and West Virginia; and

WHEREAS, AMP and Municipality have entered into a Master Services Agreement (MSA), AMP Contract No. C-1-2006-4739, pursuant to which AMP provides certain services to Municipality as set forth in various schedules to the Master Services Agreement (the "Schedules"); and

WHEREAS, AMP and Municipality entered into a Power Sales Contract, dated as of January 1, 1988, relating to the Richard H. Gorsuch Generation Station Project ("Gorsuch Project") under which Municipality has been receiving a share of the power and energy from the Gorsuch Project and has paid for its share of the costs thereof; and

WHEREAS, on April 1, 2009, AMP was served with a Notice of Violation ("NOV") from the U.S. EPA alleging AMP and the previous owner of the Gorsuch Project had violated the Clean Air Act by performing certain work performed at the Gorsuch Project in 1981 – 1986 (before AMP had an interest in the Gorsuch Project), and again in 1988 – 1991, which should have triggered "New Source Review"; and

WHEREAS, similar NOVs were issued to nearly all regional utilities with coal fired generation in the past; and

WHEREAS, with the approval of the Gorsuch Project participating municipalities' representatives and its Board, AMP has entered into a "Consent Decree" with the U.S. EPA which has been filed with the U.S. District Court for the Southern District of Ohio; and

WHEREAS, the Consent Decree requires, among other things, AMP to implement a energy efficiency program that encompasses the participating Gorsuch Project municipalities that will cost not less than \$15 Million and which is expected to provide approximately twice that amount in power and energy cost savings; and

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WHEREAS, AMP and the Vermont Energy Investment Corporation ("VEIC") have negotiated a relationship regarding the implementation of an energy efficiency program for AMP to be known as the Efficiency Smart Power Plant ("ESPP"); and

WHEREAS, in furtherance thereof AMP and VEIC entered into an ESPP agreement ("ESPP Agreement") for AMP to pay VEIC to provide a comprehensive set of energy efficiency services ("ESPP Services") designed to comply with the Consent Decree and lower the total need for higher cost electric generation facilities and/or purchased power and thereby reduce Municipality's customers' bills (the "ESPP Services"), to be offered to Gorsuch participants as well as other AMP members contingent upon the attainment of specific subscription levels of AMP member municipalities referred to in the ESPP Agreement as "Critical Mass Participation"; and

WHEREAS, AMP has provided the Municipality with copies of the Consent Decree and ESPP Agreement; and

WHEREAS, AMP and Municipality desire to enter into a Schedule ("ESPP Schedule"), under the MSA, which provides that AMP will obtain and sell to Municipality, and Municipality will agree to take and pay for, a share of the ESPP Services which AMP has contracted to acquire in the ESPP Agreement; and

WHEREAS, as set forth in the ESPP Schedule, AMP's sale, and Municipality's purchase, of the ESPP Services is contingent on achieving Critical Mass Participation by the Critical Mass Date (as defined in the ESPP Agreement); and

WHEREAS, Municipality has the option to defer payments under the ESPP Schedule to better match the expenditures with the energy and cost savings thereunder.

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

Section 1: That the ESPP Schedule between Municipality and AMP, substantially in the form on file with the Clerk, including Appendices thereto, are approved, and the Director of Utilities of the City of Orrville is hereby authorized to execute and deliver the ESPP Schedule, with such changes as the Director of Utilities may approve as neither inconsistent with this Resolution nor materially detrimental to the Municipality, his or her execution of the ESPP Schedule to be conclusive evidence of such approval.

Section 2. That the Director of Utilities is hereby authorized to take any action necessary for Municipality to fulfill its obligations under the ESPP Schedule and to be a Full Participant.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

Section 4. 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

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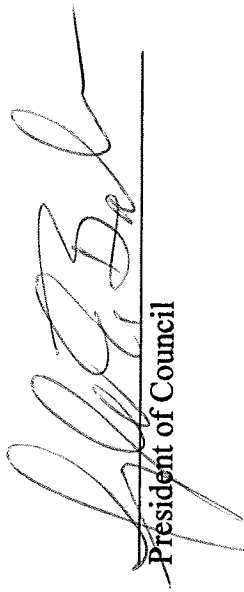
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to be invalid, the remainder of this Resolution shall be unaffected by such adjudication and all the remaining provisions of this Resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 5. That this Resolution shall take effect at the earliest date allowed by law.


Passed this 20<sup>th</sup> day of September 2010.

  
President of Council

Attest:

T Peppard  
Clerk of Council

Approved:

  
Mayor

Date 9/20/10

0400

**RECORD OF RESOLUTIONS**

Dayton Legal Blank, Inc., Form No. 30045

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