

SPONSOR: Neath / Stewart

ORDINANCE NO. 15-06

AN ORDINANCE TO AUTHORIZE THE ~~DIRECTOR OF PUBLIC SERVICE AND~~
~~THE CITY ENGINEER~~ ^{Mayor of the City of Jackson, Ohio,} TO EXECUTE A NEW MASTER SERVICES AGREEMENT WITH AMERICAN MUNICIPAL POWER – OHIO, INC. (AMP-OHIO) IN ORDER TO PURCHASE ELECTRIC POWER AND ASSOCIATED ENERGY AND OTHER SERVICES AVAILABLE FROM AMP-OHIO AND ITS AFFILIATED ENTITIES.

WHEREAS, the City of Jackson, Ohio (herein “Municipality”) is a municipal entity formed and organized pursuant to the Constitution and the laws of the State of Ohio that owns and operates a municipal electric system; and

WHEREAS, AMP-Ohio is a non-profit corporation engaged in the business of generating, transmitting, purchasing or otherwise providing low-cost electric power and energy and other technical services for the benefit of its municipal members which operate municipal electric systems; and

WHEREAS, the municipality is a member of AMP-Ohio and desires from time to time to take advantage of the services and benefits available to the members of said organization such as power supply and other technical services; and

WHEREAS, pursuant to Ordinance no. 118-85, Municipality has previously authorized and executed a Generic Agreement with AMP-Ohio which is currently in effect and sets forth the terms and conditions upon which AMP-Ohio provides services and benefits to Municipality; and

WHEREAS, the parties have negotiated a Master Services Agreement to replace the Generic Agreement, which sets forth the terms and conditions upon which AMP-Ohio will provide services and benefits to Municipality into the future and to reflect, among other things, changes in the electric industry since the execution of the Generic Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. That the Master Service Agreement between AMP-Ohio and Municipality for the provision of services, substantially in the form attached hereto, is hereby approved.

Section Two. That the Director of Public Service and City Engineer as hereby authorized to execute the Master Services Agreement substantially in the form attached hereto.

Section Three. That except for Schedules denoted herein which such Schedules shall remain in full force and effect pursuant to each surviving Schedule's respective terms, the Generic Agreement is hereby terminated. The surviving Schedules shall be governed by the terms and conditions of the Master Services Agreement except where such terms of the Master Services Agreement are in conflict with the surviving Schedules, in which case the terms of the surviving Schedules shall control.

Section Four. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section Five. This Ordinance shall go into effect at the earliest time permitted by law.

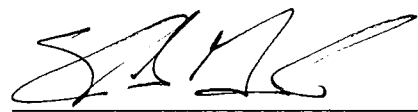
Date: 2/27/06


PRESIDENT OF COUNCIL


CLERK OF COUNCIL

Approved:

Date: 2/27/06


MAYOR

OHIO VERSION
August 11, 2005

MASTER SERVICES AGREEMENT

**AMONG THE
CITY OF JACKSON, OHIO
AND
AMERICAN MUNICIPAL POWER-OHIO, INC.
AND
AMP-OHIO AFFILIATED ENTITIES**

AMP-OHIO CONTRACT NO. C-10-2005-4376

Dated as of _____, 2005

OHIO VERSION
August 11, 2005

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APPENDICES

Appendix A Definitions

Appendix B Power Supply Schedule (MMSA-03____/S-03____)

OHIO VERSION
August 11, 2005

CITY OF JACKSON MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is made, entered into, and effective as specified herein by and among the City of Jackson, Ohio, existing under the laws of the State of Ohio (hereinafter "Municipality") and American Municipal Power - Ohio, Inc., a nonprofit Ohio corporation (hereinafter "AMP-Ohio"); AMPO, Inc., an Ohio for profit corporation that is wholly owned by AMP-Ohio; Municipal Energy Services Agency, a joint venture of Municipalities that are AMP-Ohio Members (hereinafter "MESA"); and Ohio Public Power Educational Institute, a nonprofit Ohio corporation (hereinafter "OPPEI") whose members are Members of AMP-Ohio.

WITNESSETH:

WHEREAS, AMP-Ohio is a nonprofit Ohio corporation organized, *inter alia*, to own and operate facilities, or to otherwise provide for the generation, transmission or distribution of electric power and energy, and to furnish technical services on a cooperative nonprofit basis for the mutual benefit of its Members, such Members being, and to be, municipal corporations that own and operate, or are initiating, municipal electric and/or other municipal utility systems; and

WHEREAS, Municipality is a Member of AMP-Ohio; and

WHEREAS, MESA is a joint venture of AMP-Ohio Members owning and operating municipal electric systems that is organized, *inter alia*, to provide technical, engineering and related services for AMP-Ohio Members and AMP-Ohio; and

WHEREAS, OPPEI is a nonprofit corporation of AMP-Ohio Members that is organized to provide educational services to municipal electric systems; and

WHEREAS, AMPO, Inc. is a wholly owned subsidiary of AMP-Ohio that is organized, *inter alia*, to provide gas and electric power aggregation services to municipal corporations; and

WHEREAS, Municipality desires from time to time to acquire a range of services and products that AMP-Ohio and/or the Affiliated Entities may offer to assist the Municipality in providing economical and reliable electric and/or other services to its customers, including but not limited to power supply and the planning and arrangements related thereto, the sale and purchase of electric power and energy, safety training and a wide range of other technical and educational services; and

WHEREAS, the Parties desire to execute this Master Agreement that contains general terms and conditions that will apply to all other agreements between the Parties; and

WHEREAS, the Municipality has adopted Ordinance No. _____ authorizing the Municipality to execute this Agreement;

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

Section 1. General

1.1 This Agreement contains the general terms and conditions that shall be applicable to all other subsequent agreements, usually referred to as Schedules, between the Municipality, on the one hand, and AMP-Ohio and/or the Affiliated Entities on the other. Each such Schedule shall be in writing, shall be executed by the Parties thereto and shall be incorporated as a part of this Agreement as if fully set forth herein and shall remain in full force and effect during the term of such Schedule, unless otherwise agreed in writing by the Parties.

1.2 Capitalized Terms when used in this Agreement and Schedules entered into hereunder shall have the meaning set forth in Appendix A attached hereto.

1.3 AMP-Ohio and the Municipality have previously entered into a "Generic Agreement" dated October 7, 1985 (AMP-Ohio Contract #C-10-85-741) approved by Ordinance 118-85 containing many similar terms and conditions as this Agreement. Upon the effective date of this Agreement, the Generic Agreement shall be void and of no further force and effect, except to the extent necessary for AMP-Ohio and the Municipality to fulfill all their remaining obligations pursuant to that Generic Agreement and all schedules entered into thereunder.

Section 2. Term

2.1 The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated by any Party, with or without cause, by providing to the other Parties not less than one hundred eighty (180) days prior written notice of such termination; provided, however, that if any Party terminates this Agreement pursuant to this Section, such termination shall not effect or excuse the performance of any Party under any provision of this Agreement that by its terms survives such termination; and provided, further, however, that this Agreement shall remain in effect to the extent that any Schedules executed and delivered hereunder prior to the effective date of said termination shall remain in effect in accordance with the terms of such Schedules and until all Parties have fulfilled all of their obligations hereunder and under such Schedules.

Section 3. Schedules for Power Supply

3.1 The Parties may desire to enter into Schedules for power supply and associated energy from time to time. Such Schedules for the purchase and sale of power and associated energy shall be known as Schedules for Power Supply. Schedules for Power Supply shall be governed by the terms and conditions set forth below, in addition to any other or modified terms and conditions set forth in such Schedules. Each such Schedule shall contain, at a minimum, the information set forth in Appendix B, attached hereto. All Parties to the Schedule shall execute each such Schedule before it becomes binding; provided, however, that if the Parties to such Schedule explicitly agree in such Schedule the same may have retroactive effect. With respect to each such Schedule, unless otherwise agreed in such Schedule, Seller shall be obligated to sell and deliver, or cause to be delivered, and Buyer shall be obligated to purchase and receive, or cause to be received, the Quantity of Product made available at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms and conditions of this Agreement and the applicable Schedule for Power Supply whether or not Buyer shall take delivery thereof. The terms Buyer and Seller shall have the meanings set forth in Appendix A. To the extent there is a conflict between the terms and conditions of this Master Services Agreement and Schedule executed hereunder, the term and conditions of the Schedule shall control.

3.2 It is understood and agreed by the Parties hereto that each Party shall cooperate to make arrangements with other entities to provide delivery service and facilities which will permit the establishment of the initial or additional Points of Delivery; and that no construction of facilities is or will be required to establish such Points of Delivery unless such construction, and the responsibility for payments therefor, is provided in a Schedule. Municipality shall, upon the request of AMP-Ohio, provide AMP-Ohio a diagram of

each Delivery Point including applicable metering, transformation and line voltage(s). Said diagram shall be updated and provided to AMP-Ohio as changes to the same are made.

3.3 In order to allow the Seller to conform with all applicable energy scheduling requirements imposed by reliability or regional transmission organizations and any other applicable guidelines, rules or regulations, but only if and to the extent specified in a Schedule for Power Supply, the Buyer shall provide Seller with a written energy schedule specifying the amount of electric power and energy to be delivered by Seller to each Delivery Point on behalf of the Buyer hereunder during each hour of the following month or other applicable time period. The Buyer shall have full responsibility for arranging to receive, or causing to be received at the Delivery Point(s), all power and energy scheduled or delivered pursuant to any Schedule for Power Supply.

3.4 It is understood by the Parties that AMP-Ohio's obtaining applicable energy consumption and load profile information from Municipality is often critical to AMP-Ohio's ability to satisfy reliably and economically the Municipality's electric energy and power requirements and plan for the same. Accordingly, Municipality agrees, to the extent practicable, to provide such available consumption and load profile information to AMP-Ohio as AMP-Ohio may reasonably request.

3.5 Electric power and energy furnished under this Agreement and any Schedule for Power Supply, including any power provided pursuant to any pool agreement, shall be in the form of three-phase alternating current having a frequency of sixty (60) hertz at such delivery voltage as is mutually agreed to by the Parties hereto.

3.6 The Municipality shall furnish or cause to be furnished, at its own expense, whatever reactive power requirements may be required from time to time by the entity or entities that physically deliver power and energy to the Municipality's Delivery Points under this Agreement and any Schedule for Power Supply. It is also understood that the delivery of Product pursuant to this Agreement and any applicable Schedule for Power Supply may require the Municipality to maintain a specific power factor or keep its power factor within a specified range. To the extent maintaining either a power factor range or a specified power factor is required, the Municipality shall take all necessary steps to maintain the range or specific power factor stated in the applicable Schedule. To the extent it does not so maintain such range or power factor, Municipality shall pay all charges incurred relating to such failure, whether incurred by AMP-Ohio, any Affiliated Entity or directly by the Municipality.

3.7 It is recognized by the Parties hereto that the feasibility of this Agreement for both Parties, as well as the ability of AMP-Ohio to receive power from others may be contingent upon operation in parallel (synchronism) of one or more electric systems through which power is delivered pursuant to this Agreement.

Section 4. Participation in a Power Pool

4.1 Various Members have formed certain pooling arrangements that are managed by AMP-Ohio to allow the Members to manage risks and to more economically arrange for the purchase of reliable power supply. All terms and conditions governing the participation in a power pool will be set forth in any Schedule for Power Supply relating to such power pool entered into hereunder.

Section 5. Other Services and Products

5.1 AMP-Ohio and the Affiliated Entities may offer a variety of Services and Products to Members in addition to power supply. The scope of the Services and Products to be rendered by AMP-Ohio and the Affiliated Entities along with the compensation for the same and any other terms or conditions shall be set forth in Schedules that may be executed by the Municipality, on the one hand, and AMP-Ohio or the respective Affiliated Entity, on the other.

5.2 Unless otherwise agreed in writing, the billing and invoicing terms and conditions along with the terms and conditions set forth in this Master Agreement shall be applicable to all Schedules with AMP-Ohio or any of the Affiliated Entities.

Section 6. Service Fees

6.1 In addition to any dues (known as "service fee A") payable as a requirement of membership in AMP-Ohio and any specific additional compensation set forth in any Schedule, the Municipality shall, unless otherwise set forth in a Schedule, also pay AMP-Ohio's power supply service fee (known as "service fee B") of up to seven-tenths of one mill (\$0.0007) per kWh for all energy made available hereunder to Municipality. At the time of the execution of this Agreement, the current level of service fee B as determined by the AMP-Ohio Board of Trustees is, and since January 1, 2000 has been, thirty-eight hundredths of one mill (\$.00038 per kWh). Unless otherwise set forth in a Schedule, service fee B may be prospectively increased or decreased at the sole option of AMP-Ohio's Board of Trustees at any time. Any such increases are limited, however, to an additional one-tenth of one mill (\$0.0001) per kWh over the previously authorized amount, for energy made

available hereunder in each calendar year on and after 2000 so long as this Agreement, and such Schedule for Power Supply is in effect; provided, however, that in the event AMP-Ohio's Board of Trustees elects not to increase service fee B in any such year, the increase in any following year may be up to an additional one-tenth of one mill (\$0.0001) per kWh for each prior year service fee B was not increased.

6.2 A fee for utilization of AMP-Ohio's Energy Control Center equal to a reasonable allocation of the direct and indirect costs of the operation of the same, including overheads, shall be paid by Municipality to AMP-Ohio for any Schedule for Power Supply wherein AMP-Ohio provides Requirements Power and Energy. Such Energy Control Center fee or the methodology to calculate the same shall be set forth in any such Schedule.

6.3 Charges under any Schedule may also include any other applicable fees, charges or cost allocations as appropriate. Any such fees, however, must be agreed to by the Municipality and set forth in the applicable Schedule executed by the Municipality and the respective other Parties thereto.

Section 7. Billing and Payment

7.1 Each month, AMP-Ohio shall render to the Municipality an invoice, or at AMP-Ohio's sole discretion, multiple invoices, for all amounts due under this Agreement and any Schedules. In addition to any netting permitted or required pursuant to Section 7.5 hereof regarding Schedules for Power Supply, AMP-Ohio may at its sole discretion, net out and/or combine any amount due under any Schedule so that only one invoice is generated for the Municipality for all amounts due and owing AMP-Ohio and the Affiliated Entities; provided, however, that such invoice, along with appropriate back-up information, shall be sufficient to allow the Municipality to segregate and identify all fees and charges billed on said invoice.

7.2 The Municipality shall pay the invoiced amounts no later than the due date shown on the invoice. Such date shall not be less than fifteen (15) days after the date of the invoice. The amounts due shall be considered paid when actually received by AMP-Ohio during normal business hours, or deposited in AMP-Ohio's account and available for AMP-Ohio's use. Amounts not paid on time or before the due date shall be payable with interest accrued at the lesser of: (i) the then current prime interest rate per annum of Citibank, N.A., or its successor, prorated by days from the due date to the date of payment; or (ii) the maximum rate that is authorized by law.

7.3 In case a portion of any amount included in an invoice rendered pursuant to this Section is in *bona fide* dispute, the entire amount shall be paid when due, and any difference between the billed amount and

the adjusted amount shall be promptly refunded after the determination of the adjusted amount, with interest thereon computed as provided in Section 7.2 hereof. Notice of any such dispute shall be in writing and submitted no later than ninety days from the due date of the invoice in dispute.

7.4 Billing disputes and any subsequent adjustments hereunder shall be limited to transactions occurring within a eighteen (18) month period ending on the last day of the month in which the notice of the dispute is submitted as required by Section 7.3 hereof.

7.5 Except for any payments due to AMP-Ohio, joint ventures of AMP-Ohio members, or an Affiliated Entity pursuant to, or with respect to, a note, debt instrument, or debt obligation of AMP-Ohio, any joint ventures of AMP-Ohio members, any Affiliated Entity, or the Municipality, all other mutual payment obligations due and owing each other on the same date pursuant to any Schedules shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual payment obligations exist and only one Party has a payment obligation during the billing cycle, that Party shall pay such sum in full when due. Any partial payments made by the Municipality shall be applied to the various payment obligations under the various Schedules in amounts determined in AMP-Ohio's sole discretion.

7.6 Schedules may modify the terms of this Section 7 for purposes of such Schedule.

Section 8. Remedies, Default

8.1 In the event a Party fails to make any payment due or to perform any other material term or condition of this Agreement or any Schedule entered into hereunder and such failure is not excused by Force Majeure, the non-defaulting Party shall provide written notice to the defaulting Party of such breach. Upon receipt of the written notice from the non-defaulting Party, the defaulting Party shall have thirty (30) days thereafter, except for non-payment under a Schedule for Power Supply in which case the defaulting party shall have seven (7) days thereafter, to cure the breach. If the defaulting Party fails to cure the breach within the applicable thirty (30) or seven (7) day period, the non-defaulting Party may, at its sole option do any, all or any combination of the following, i) suspend performance under this Agreement and any or all Schedules entered into hereunder; ii) after following the provisions of Section 12 of this Agreement terminate this Agreement and/or any or all Schedules; iii) after following the provisions of Section 12 of this Agreement bring a claim seeking specific performance or to recover amounts that the defaulting Party owes to the non-defaulting Party due to such breach or default; provided, however, that nothing contained herein shall preclude the defaulting Party from receiving amounts owed by the non-defaulting Party.

8.2 (a) If a non-defaulting Party exercises its right to terminate this Agreement and any Schedules for Power Supply entered into hereunder and outstanding at the time of the breach, the non-defaulting Party shall serve written notice upon the defaulting Party indicating that it is exercising its rights to terminate. In the written notice, the non-defaulting Party shall establish an early termination date which shall not be any earlier than the date of the written notice and no later than twenty (20) days after receipt of the written notice (hereinafter "Early Termination Date"). As of the Early Termination Date, the non-defaulting Party shall calculate the amount that is owing under each outstanding Schedule (hereinafter "Settlement Amount").

(b) Except for any Settlement Amounts due to AMP-Ohio, joint ventures of AMP-Ohio members, or an Affiliated Entity pursuant to, or with respect to, a note, debt instrument, or debt obligation of AMP-Ohio, any joint ventures of AMP-Ohio members, any Affiliated Entity, or the Municipality, which shall not be netted, the non-defaulting Party shall aggregate all other Settlement Amounts into a single amount by: netting against any and all other amounts due to the non-defaulting Party under this Agreement (i) all Settlement Amounts that are due the defaulting Party, plus (ii) any and all other amounts due to defaulting Party against all Settlement Amounts that are due to the non-defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable to one Party or the other. The Termination Payment shall be due to or due from the non-defaulting Party as appropriate.

(c) As soon as practicable after setting an Early Termination Date and calculating a Settlement Amount, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the non-defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) business days after such notice is effective, assuming such Termination Payment has been accurately calculated pursuant to the terms of this Agreement and the applicable Schedule.

8.3 If a failure to perform hereunder is due to an incident of Force Majeure and the Party that would otherwise be in default hereunder has a remedy against a third party related to such third party's default that gave rise to such Force Majeure, then that Party shall pursue such remedy on behalf of the non-defaulting Party and provide the non-defaulting party with a *pro rata* share of any net proceeds thereof.

8.4 Any Party claiming Force Majeure shall, as promptly as possible under the circumstances then extant, notify the other Party affected of the Force Majeure and its expected duration. The Party claiming Force

Majeure shall remedy the Force Majeure with all reasonable dispatch; provided, however, that nothing contained herein shall be construed to require a Party to settle any strike, lockout, work stoppage or other industrial disturbance or dispute in which it may be involved or to take an appeal from any judicial, regulatory or administrative action. Unless otherwise explicitly set forth in this Agreement or a Schedule, the non-claiming Party shall not be required to perform or resume performance of its obligations to the Party claiming Force Majeure corresponding to the obligations of the Party excused by Force Majeure.

Section 9. No Duty to Defend

Each Party agrees to provide its own defense regarding any and all claims, demands or actions for injuries to persons or property by any third parties in any way resulting from, growing out of, or arising in or in connection with: (i) this Agreement or any Schedules, (ii) the construction, maintenance or operation of the other Party's system or other property, (iii) the use of, or contact with, electric energy delivered hereunder after it is delivered to the other, and while it is flowing through the lines of the other Party, or is being distributed by the other Party, or (iv) any interruptions in service by the other Party.

Section 10. Limitation of Liability and Damages

10.1 EXCEPT AS SET FORTH IN THIS AGREEMENT OR SCHEDULE, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FOR ANY PRODUCT THAT AMP-OHIO OR ANY AFFILIATED ENTITY PROVIDES UNDER THIS MASTER AGREEMENT OR SCHEDULE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN A SUBSEQUENT SCHEDULE, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE

WAIVED. UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR SCHEDULE, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OR ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10.2 Each of the Parties shall provide, or cause to be provided and maintained, suitable protective devices on its system to prevent any loss, injury or damage that might result from single-phasing conditions, over or low voltage, reverse power flow, loss of synchronism, or any other fluctuation or irregularity in the supply of electric power and energy. Seller shall not be liable for any loss, injury or damage resulting from any such conditions or other fluctuations or irregularities in the supply of energy that could have been prevented by use of such protective devices.

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

energy which are not so made available. Each Schedule for Power Supply hereunder may contain additional or modified Force Majeure or other continuity and liability provisions as agreed to by the Parties to such Schedule.

10.4 Each Party assumes no responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by any other Party.

10.5 The Parties recognize that as cooperative, nonprofit ventures, AMP-Ohio and the Affiliated Entities operate basically at cost and are owned and controlled by their respective Members or participants, including, as applicable, Municipality. Accordingly, various liability limiting provisions in addition to those set forth herein may be set forth in subsequent Schedules.

Section 11. Miscellaneous Provisions

11.1 Agency. In order to promote efficient and economical transactions pursuant to this Agreement, the Parties agree that the Municipality may designate AMP-Ohio, or an Affiliated Entity, as its agent for purposes related to the provision of economical and reliable power and other services to the Municipality hereunder. Said designation shall be in writing and shall be specific as to type of transactions contemplated thereunder and shall be deemed accepted by AMP-Ohio or the Affiliated Entity unless the Municipality is notified in writing to the contrary within seven (7) days of receipt of the designation by AMP-Ohio or the Affiliated Entity.

11.2 Construction. In construing this Agreement and any Schedules, specific terms and conditions shall supersede general terms and conditions. In the event there is any conflict between any specific term or condition in this Agreement and any specific term or condition in any Schedule, the specific terms of the Schedule shall supersede the specific terms in this Agreement. In the event there is a conflict between the specific terms and conditions of any two or more Schedules, the specific terms and conditions of the most recent Schedule shall supercede the specific terms of the older Schedule or Schedules.

11.3 Assignment. The terms, provisions, covenants and conditions of this Agreement or any Schedule and the rights and obligations of the Parties thereto shall not extend to, inure to, bind, be transferred to or vest in the successors or assigns of either Party other than by operation of law, unless the prior written consent of the other respective Party or Parties shall be obtained.

11.4 Third Party Reliance. This Agreement is solely for the benefit of the Parties hereto and the term and conditions contained herein do not inure to the benefit of any third parties unless the same is expressly set forth in a Schedule or other written agreement.

11.5 Waivers. Any waiver at any time by either Party hereto of its right with respect to a default under this Agreement or Schedule, or with respect to any other matter arising in connection with this Agreement or Schedule shall not be deemed a waiver with respect to any subsequent default or any other matter. Except as provided in Section 7.4 hereof, any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement or Schedule shall not be deemed a waiver of such right.

11.6 Complete Agreement. This Agreement including any duly authorized and executed Schedules, constitutes the complete agreement of the Parties with respect to the Services and Products to be furnished hereunder. The Parties recognize, however, that Seller's ability to perform the obligations imposed by this Agreement and Schedules may be contingent upon the receipt of power or other products or services pursuant to other agreements, and revisions to, or the operation of the terms and conditions of, such other agreements may give rise to circumstances which, in order to carry out the intent of this Agreement or Schedules may require the amendment or revision of this Agreement or Schedules. Acquiescence to such amendment or revision of this Agreement and subsequent Schedules shall not be unreasonably withheld by any Party.

11.7 Governing Law. This Agreement and any Schedule and any controversies arising hereunder and thereunder are to be construed and determined in accordance with the laws and Constitution of the State of Ohio.

11.8 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any income, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, charge, or computation, the provisions of Section 7 of this Agreement shall apply.

11.9 Forward Contract. The Parties acknowledge and agree that all Schedules for Power Supply constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

Section 12. Dispute Resolution

12.1 The Parties agree to negotiate in good faith to settle any and all disputes arising hereunder.

12.2 Good faith mediation shall be a condition precedent to the filing of any litigation in law or equity by either Party against the other Party relating to this Agreement or subsequent Schedule except injunctive litigation necessary to solely restrain or cure an imminent threat to public or employee safety. Before the remedies provided for in this Section 12 may be exercised by either Party, such Party shall give written notice to the other Party that such Party believes that an event of default or impasse under this Agreement may have

occurred, specifying the circumstances constituting the event of default or impasse in sufficient detail that the other Party will be fully advised of the nature of the event of default or impasse. The responding Party shall prepare and serve a written response thereto within ten (10) business days of receipt of such notice.

12.3 The Parties shall attempt to resolve the controversy by engaging a single mediator, experienced in the subject matter, to mediate the dispute. The mediator shall be mutually selected by the Parties to the controversy and conduct mediation at a location in Ohio to be agreed upon by the Parties or absent agreement, by the mediator. Within two business days of selection, the mediator shall be furnished copies of the notice, this Agreement, response and any other documents exchanged by the Parties. If the Parties and the mediator are unable to settle the same within thirty (30) days from selection, or such other time as the Parties agree, the mediator shall make a written recommendation as to the resolution of the dispute. Each Party, in its sole discretion, shall accept or reject such recommendation in writing within ten (10) days. Should the Parties be unable to agree upon a single mediator within five (5) business days of the written response of the responding Party, any Party or the Parties jointly shall petition the Presiding Judge of the Court of Common Pleas of Franklin County Ohio, to appoint a mediator, experienced and knowledgeable in the matters which are the subject of the dispute. The costs of the Mediator and the mediation shall be shared equally by the Parties to the dispute.

12.4 In any litigation, any Party that fails to accept a mediator's recommendation regarding resolution of the dispute or disputes at issue shall be liable for the other Party's reasonable attorneys' fees and expenses incurred litigating such issue, not to exceed \$10,000, unless the result of such litigation materially improves such Party's position from such recommendation. For purposes of this subsection, "materially improve" shall mean, with regard to compensation or liability, twenty-five percent (25%) or greater improvement. All determinations under this paragraph shall be under the sole discretion of the presiding judge, and the record of the mediation and the mediator's recommendation shall be admissible for such purposes and for such purposes only, unless the Parties otherwise agree.

12.5 The Parties may mutually agree to waive mediation or subsequent to mediation waive their right to litigate in Court and, in either case, submit any dispute hereunder to binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or such other arbitration procedures to which they may agree. Such agreement shall be in writing and may otherwise modify the procedures set forth in this Section 12 for resolving any particular dispute.

12.6 Nothing in this Section 12 shall be construed to affect jurisdiction or venue over any dispute that is otherwise appropriate under law.

Section 13. Notices

13.1 Any notices given or required to be given hereunder to the Municipality shall be sent to the following addresses:

With a Copy To:

City of Jackson
Attn: Director of Public Service and City Engineer
145 Broadway Street
Jackson, Ohio 45640

Legal Advisor
John L. Detty
145 Broadway Street
Jackson, Ohio 45640

13.2 Any notices given or required to be given hereunder to AMP-Ohio or any affiliated Entity shall be sent to AMP-Ohio or the Affiliated Entity at the following address:

AMERICAN MUNICIPAL POWER - OHIO, INC.
Attn: President
2600 Airport Drive
Columbus, Ohio 43219

Said addresses shall be updated by the respective Parties by written notice to the other Parties as necessary.

13.3 Any notice sent via prepaid U.S. certified mail shall be deemed received by the receiving Party on the date signed for as received on the certified mail card. Any notice sent via prepaid U.S. regular mail, by personal service, facsimile, or courier or like service shall be deemed received when received by the receiving Party.

Section 14. Authority of Parties to Execute

14.1 THIS AGREEMENT has been authorized by the Parties hereto as follows: (i) the Municipality has authorized execution of this Agreement by _____ Ordinance which is attached hereto and made a part hereof as Appendix C; and (ii) AMP-Ohio and each of the Affiliated Entities have authorized this Agreement by the adoption of the Resolution by the respective Boards or officers which are attached hereto and made a part hereof as Appendices D-1, D-2, D-3, and D-4.

August 1, 2005

IN WITNESS HEREOF, the Parties execute this Agreement on this _____ day of _____, 2005
(Date of last execution hereunder).

CITY OF JACKSON, OHIO

By: _____

Title: _____

Date: _____

AMERICAN MUNICIPAL POWER-OHIO, INC.

By: _____
Marc S. Gerken, PE, President

Date: _____

MUNICIPAL ENERGY SERVICES AGENCY

By: _____
Marc S. Gerken, PE
AMP-Ohio President as Agent for MESA

OHIO PUBLIC POWER EDUCATIONAL INSTITUTE

By: _____
Marc S. Gerken, PE
AMP-Ohio President as Agent for OPPEI

APPROVED AS TO FORM:

By: _____
John W. Bentine, Esq.
General Counsel

Date: _____

AMPO, INC.

By: _____
Marc S. Gerken, PE
President

OHIO VERSION
August 11, 2005

APPENDIX A

Section 1 – Definitions – Unless otherwise specifically noted therein, these definitions apply to the Agreement, Schedules and subsequent agreements executed by the Parties.

- 1.1. “Affiliated Entity” means, respectively, MESA, OPPEI and AMPO, Inc.
- 1.2. “Agreement” means the Master Services Agreement of which this Appendix A is a part and any Schedules executed by Parties hereunder.
- 1.3. “Buyer” means the Party obligated to purchase the Product or Service.
- 1.4. “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank Holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern standard time (EST) or eastern daylight time (EDT) as the case may be in Columbus, Ohio.
- 1.5. “Commercially Reasonable Manner” means how a Buyer and Seller would act in purchasing a Product or Service in an arms length transaction given the market conditions as they exist at the time of the purchase.
- 1.6. “Delivery Point” means the point or points at which the Product will be delivered and made available for receipt , as specified in any Schedule.
- 1.7. “Early Termination Date” shall have the meaning set forth in Section 8.2 of the Agreement.
- 1.8. “Effective Date” shall mean, except as otherwise provided in a Schedule, the first date when the Agreement shall have been duly executed by all Parties.
- 1.9. “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Schedules, which event or circumstance was not

anticipated as of the date of the Schedule was executed, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which by the exercise of due diligence is unable to be overcome or cause to be avoided. Force Majeure shall include, but not be limited to, an act of God, riot, insurrection, war, explosion, labor dispute, necessary and unforeseen maintenance, repairs or replacements, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by flood, explosion, act of the public enemy, terrorism, epidemic, interruption of firm transmission or generation services reasonably relied upon and without a reasonable source of substitution to make deliveries hereunder, acts of God, war, riot, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, restraint by court order or other public authority or governmental agency, unforeseen and necessary maintenance, repairs or replacements, actions taken to limit the extent of disturbances on the electric grid or other similar causes beyond the control of the Party affected which causes such Party could not have avoided by exercise of due diligence and reasonable care.

1.10. "Member" means a member of AMP-Ohio.

1.11. "Party or Parties" means, as applicable, the parties to this Agreement

1.12. "Product" means electric capacity or energy, or any transmission capacity specified in a Schedule and any service offered by AMP-Ohio or an affiliated Entity.

1.13. "Quantity" means the quantity of the Product that Seller agrees to make available, sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase, accept, receive, or cause to be accepted or received, from Seller as specified in any Schedule.

1.14. "Requirements Power and Energy" means any Schedule that requires AMP-Ohio to utilize the personnel and equipment of the AMP-Ohio Energy Control Center to monitor the Schedule's instantaneous demand in order to have the Schedule's power and energy match as close as possible such demand.

1.15. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer deducting from such proceeds any costs reasonably incurred by Seller in reselling such Products and excluding additional transmission charges, if any, incurred by Seller delivering such Product to the third party purchasers.

1.16. "Schedule" means a subsequent written agreement, executed by the Applicable Parties, entered into under authority, and pursuant to the terms and conditions, of this Agreement that more particularly sets forth the specific terms and conditions governing the provision, sale or purchase, of a Product or any other transaction entered into hereunder.

1.17. "Schedule for Power Supply" means any supplemental agreement substantially in the form set forth Appendix B that sets forth the specific terms of the exchange of power and associated energy as described in Section 3 of the Agreement.

1.18. "Seller" means the Party to a Schedule or Transaction that is obligated to sell and deliver, or cause to be delivered, the Product or Service.

1.19. "Services" means the provision of technical, professional, administrative, consultative or managerial services offered and provided by AMP-Ohio or an Affiliated Entity.

1.20. "Settlement Amount" shall have the meaning set forth in Section 8.2 of the Agreement.

1.21. "Termination Payment" shall have the meaning set forth in Section 8.2 of the Agreement.

OHIO VERSION
August 11, 2005

APPENDIX B

**MASTER SERVICES AGREEMENT
POWER SUPPLY SCHEDULE**

MMSA-03 _____
S-03- _____

This Schedule shall confirm the transaction set forth below agreed upon between the _____ (hereinafter "Municipality") and American Municipal Power-Ohio, Inc. (hereinafter "AMP-Ohio") regarding the sale/purchase of the Product under the terms and conditions of the Master Service Agreement executed between the Parties and more particularly set forth below.

Seller: _____

Buyer: _____

Product Description

Firmness

Transmission Issues

Contract Quantity

Capacity _____

Energy _____

Contract Price

Capacity _____

Energy _____

Service Fee B Included in Price

Yes

No

Delivery Point _____

Delivery Period _____

Scheduling Requirements: _____

Other Terms: _____

This Schedule is being entered into pursuant to and in accordance with the Master Services Agreement executed between the Parties on _____ (“Master Services Agreement”) and constitutes part of and is subject to the terms and provision of such Agreement. Terms used but not defined herein shall have the meanings ascribed to them in Appendix A of the Master Services Agreement. The official executing on behalf of the Municipality warrants and represents that he/she has the requisite authority to bind the Municipality to this Schedule.

IN WITNESS HEREOF, the Parties affix their respective signatures below executing and authorizing this Schedule.

Signature Block

Note: If the Schedule is authorized by a municipal ordinance and/or an AMP-Ohio Board of Trustees, note the ordinance or resolution number below the signatures.

