

SPONSOR: Hydro Project

ORDINANCE NO. 85-07

AN ORDINANCE AUTHORIZING THE EXECUTION OF A HYDRO DEVELOPMENTAL COST SHARING AGREEMENT BY THE CITY OF JACKSON WITH AMERICAN MUNICIPAL POWER-OHIO, INC.

WHEREAS, the City of Jackson (hereinafter "Municipality") owns and operates an electric utility system for the benefit of the Municipality, its citizens and taxpayers; and

WHEREAS, by working jointly with American Municipal Power-Ohio, Inc. (hereinafter "AMP-Ohio") and the other municipalities which are members of AMP-Ohio, the Municipality can supply its electric utility consumers with reliable service at reasonable rates; and

WHEREAS, a need has been identified for an environmentally sound, reasonably priced and reliable long term power source for the Municipality's electric utility consumers; and

WHEREAS, a number of licenses for the construction and operation of several regional hydroelectric facilities at existing dams may be available to AMP-Ohio or its members via purchase, application to the FERC or other cooperative arrangements; and

WHEREAS, AMP-Ohio desires to provide Municipality with the opportunity to participate in the development of new regional hydroelectric facilities, primarily located on the Ohio River, utilizing conventional as well as newer technologies, in order to provide the Municipality's electric utility consumers this reasonably priced, environmentally sound and reliable source of long term power; and

WHEREAS, AMP-Ohio anticipates that no less than 30,000 kilowatts (kW), and potentially 250,000 kW of hydroelectric capacity may be available; and

WHEREAS, it is necessary for the Municipality to enter into a contract (Agreement) with AMP-Ohio to provide for preconstruction development funding to allow for analyzing the technical, permitting, and economic aspects of the potential new hydroelectric projects (hereinafter the "Hydro Projects") and determine if the Municipality, in conjunction with AMP-Ohio and other participating municipalities, should proceed to construct, own and operate one or more new Hydro Projects; and

WHEREAS, under the terms of the Agreement, AMP-Ohio will report the results of the developmental studies to the Municipality prior to the Municipality committing to proceed with construction of one or more Hydro Projects if and only if in the Municipality's sole discretion it determines to do so; and

WHEREAS, Municipality desires to obtain, pursuant to the Agreement, rights to an amount of up to a nominal _____ kW of capacity of the Hydro Projects on the same terms and conditions as the other participating municipalities; and

WHEREAS, it is necessary for the Municipality to commit itself to pay, pursuant to the Agreement, a *pro rata* share of the developmental costs of the Hydro Projects in proportion to the kW of capacity from the Hydro Projects that Municipality chooses to reserve to the total kW reserved by all participating municipalities, such commitment limited, however to a financial obligation of no more than \$32.84 per kW reserved.

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

Section 1. That the form of the Hydro Projects Developmental Cost Sharing Agreement, attached hereto as Exhibit 1, is hereby approved, subject to and with any and all changes therein as hereinafter provided.

Section 2. That the Mayor, or his designated representative, is hereby authorized to execute a Hydro Developmental Cost Sharing Agreement substantially in the form of Exhibit 1 for up to a nominal amount of _____ kW, with the cost to the Municipality capped at \$32.84 per kW which cannot be exceeded without further action of this Council.

Section 3. That the authorization contained herein shall not obligate the Municipality to incur any liability for the actual construction of any Hydro Project without further action of this Council.

Section 4. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance, to the extent required to be, were taken in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in those formal action were in compliance with the Law.

Section 5. This Ordinance shall be effective at the earliest time permitted by law.

Date: 7/23/07

Ronald B. Spearman
PRESIDENT OF COUNCIL

Ann H. Brown
CLERK OF COUNCIL

Date: 7/26/07

Approved:
[Signature]
MAYOR

Exhibit 1

HYDRO PROJECTS
DEVELOPMENTAL SUBSCRIPTION AND COST SHARING AGREEMENT
BETWEEN AMERICAN MUNICIPAL POWER OHIO, INC. (AMP-OHIO)
AND
THE CITY OF JACKSON (MUNICIPALITY)

WHEREAS, AMP-Ohio has made a preliminary determination that its Members can beneficially utilize the output of one or more new hydroelectric power generation facilities at existing regional dams, utilizing conventional as well as newer technology, to be constructed, owned and operated by participating AMP-Ohio Members, or by AMP-Ohio on behalf of participating Members, of between a minimum of 30 megawatts (MW) and potentially 250 megawatts (MW), (hereinafter "Hydro Projects");

WHEREAS, AMP-Ohio has preliminarily determined that the Hydro Projects may be economically and technically feasible and environmentally desirable;

WHEREAS, it is prudent to conduct further economic and technical studies to determine, among other things, the projected costs of the Hydro Projects and to design and permit said Hydro Projects and to acquire, by application, purchase or other arrangements, FERC Licenses for the same (hereinafter "Developmental Phase"), in order to determine if the Hydro Projects should be constructed and if the Municipality, along with other AMP-Ohio Members, should commit to the construction of the same;

WHEREAS, Municipality desires to participate in the Developmental Phase and to reserve up to a nominal _____ kilowatts (kW) of the Hydro Projects' capacity;

WHEREAS, in order to fund the costs of the Developmental Phase, Municipality agrees to pay AMP-Ohio for Municipality's *pro rata* share of the costs of the Developmental Phase of the Hydro Projects up to, but not including, a commitment to construct the Hydro Projects;

WHEREAS, Municipality will subsequently authorize, and enter into only if it so chooses, additional agreements to authorize the construction and to finance Municipality's aliquot share of the costs of such construction of the Hydro Projects that, when aggregated with other such commitments, will allow the financing and construction of one or more Hydro Projects.

NOW, THEREFORE, in consideration of the following mutual promises, AMP-Ohio and the Municipality agree as follows:

SECTION 1 .TERM.

The term of this Agreement shall be in effect until December 31, 2009. Municipality shall notify AMP-Ohio of its desires regarding the actual construction of the one or more Hydro Projects no later than the date Construction Subscriptions are due for any given Hydro Project, as specified in Section four (4) of this Agreement. AMP-Ohio warrants that it will promptly cease all Developmental Phase activities if it is unable to enter into Hydro Developmental Cost Sharing Agreements with AMP-Ohio Members or groups of Members for at least 30 MW of Hydro Projects' Capacity.

SECTION 2 .SERVICES.

AMP-Ohio agrees to assume responsibility for all aspects of the Hydro Projects development, design, feasibility, and permitting including securing other Hydro Projects Cost Sharing Agreements from its other Member municipalities, and all other matters necessary to allow the complete, timely and successful development of the Hydro Projects, including making arrangements to attempt to secure Construction Subscriptions from AMP-Ohio Members at levels sufficient to allow construction of one or more Hydro Projects. Municipality agrees by execution of this Agreement, to a Developmental Subscription of up to a nominal _____ kW of Hydro Projects' capacity. As set forth in Section 4 hereof, said Developmental Subscription shall entitle the Municipality to an option to participate in future Hydro Projects developed hereunder, via a timely Construction Subscription, of the ownership or beneficial use of a nominal amount of capacity, from one or more Hydro Projects developed hereunder, equal to its Developmental Subscription as percentage of the total of all such Developmental Subscriptions times any given Hydro Project's nominal capacity.

SECTION 3 .REPORTING.

During the term of this Agreement, AMP-Ohio from time to time shall provide Municipality with reports on the development of each Hydro Project developed hereunder. Such reports shall set forth AMP-Ohio's arrangements among AMP-Ohio's other participating Members, the status of legal, engineering and AMP-OHIO CONTRACT NO.
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other aspects of each such Hydro Project, along with an accounting of the costs associated therewith that have been expended and invoiced to date. Additionally, AMP-Ohio shall make available to the Municipality upon request all studies or documents relating to each such Hydro Project in its possession.

SECTION 4 . CONSTUCTION SUBSCRIPTIONS, REPAYMENT

Upon conclusion of the Developmental Phase, or at such earlier time as AMP-Ohio deems appropriate, AMP-Ohio shall offer each member municipality that has entered into a Developmental Subscription a Construction Subscription of an amount of capacity in the Hydro Projects developed hereunder at least equal to its Developmental Subscription as percentage of the total of all Developmental Subscriptions, times the given Hydro Project's nominal capacity. Construction Subscription means a binding commitment by an AMP-Ohio member municipality sufficient to allow the financing of such member' s aliquot share of the costs of the construction of a given Hydro Project, including repayment of all costs of the Development Phase to AMP-Ohio and its Members that have entered into Developmental Subscriptions that when aggregated with other such commitments, will allow the construction and operation of the given Hydro Project. AMP-Ohio shall not be required to construct any given Hydro Project unless a sufficient number of member municipalities expressly and affirmatively determine to do so.

SECTION 5 . RATES, CHARGES AND BILLING.

(A) Developmental costs incurred pursuant to this Agreement shall be charged to Municipality in proportion to Municipality's Developmental Subscription of the Hydro Projects to the total of all Developmental Subscriptions. Such charges shall be invoiced monthly as incurred by AMP-Ohio. The Municipality shall pay the invoiced amounts no later than the due date shown on 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. The Municipality may elect to pay a monthly leveled, estimated cost, with periodic trueups to actual, by so indicating in the execution block of this Agreement.

(B) Municipality understands that the total developmental costs of the Hydro Projects prior to AMP-OHIO CONTRACT NO. *Execution Copy* Page 4 of 5

construction are not currently determinable. AMP-Ohio has projected it may incur less than one million dollars (\$1,000,000) in such costs (including AMP-Ohio's previously incurred costs related thereto). Based upon the minimum 30 MW of total Developmental Subscriptions, the maximum Developmental Subscription cost is \$32.84 per kW. Municipality hereby authorizes its *pro rata* share of such costs in an amount of up to \$32.84 per kW over the term of this Agreement. Any costs in excess of such \$32.84 per kW may not be billed to the Municipality without the Municipality's prior written agreement.

SECTION 6 .NOTICES

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

CITY OF JACKSON
Attn: Director of Public Service
145 Broadway Street
Jackson, Ohio 45640

Any notices given or required to be given hereunder to AMP-Ohio shall be sent to AMP-Ohio at the following address:

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

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

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 7 .MISCELLANEOUS

(A) Assignment. The terms, provisions, covenants and conditions of this Agreement 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, such consent not to be unreasonably withheld. AMP-OHIO CONTRACT NO. *Execution Copy*

(B) 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.

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

IN WITNESS WHEREOF, the authorized representatives of the Parties hereby execute this Agreement.

**THE CITY OF JACKSON, OHIO
APPROVED AS TO FORM:**

By: _____
John L. Detty
Jackson City Law Director
Date: _____

PLEASE CHECK ONE:

- _____ The Municipality elects levelized
- _____ Monthly Billing of its Developmental Costs
- _____ The Municipality DOES NOT elect levelized
- _____ Monthly Billing of its Developmental Costs

**AMERICAN MUNICIPAL POWER-OHIO, INC.
APPROVED AS TO FORM:**

By: _____
Marc S. Gerken, PE John W. Bentine, Esq.
President General Counsel
Date: _____