

**REVISED FINAL
GORSUCH**

AMP CONTRACT NO. C-9-2009-7444-R

**THE CITY OF COLUMBUS, OHIO
GORSUCH PARTICIPATING SUBSCRIBING
MEMBER UTILITY SCHEDULE**

EFFICIENCY SMART POWER PLANT

DATED AS OF JULY 1, 2010

TO

**AMERICAN MUNICIPAL POWER, INC.
AND
THE CITY OF COLUMBUS, OHIO
MASTER SERVICES AGREEMENT
(AMP MSA NO. C-11-2005-4408)**

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(AMP MSA NO. C-11-2005-4408)**

WHEREAS, American Municipal Power, Inc. ("AMP" and formerly known as AMP-Ohio) and the above-named member of AMP ("Municipality") have entered into a Master Services Agreement, described above, 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 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 can provide up to twice that amount in overall energy cost savings; and

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”) consisting of a preliminary agreement (the “Preliminary Agreement”) and a final agreement (the “Final Agreement”) for AMP to pay VEIC to provide a comprehensive program of energy efficiency services (“ESPP Services”) designed to (i) comply with the Consent Decree (and under which said program must be approved by the U.S. EPA) and (ii) lower the total need for higher cost electric generation facilities 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 (“Subscribing Member Utilities” or “SMUs”) 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.

WHEREAS, Critical Mass Participation must be achieved by the Critical Mass Participation Date, as defined in the ESPP Agreement, through, among other things, the execution by a sufficient number of SMU’s of Schedules to receive ESPP Services (the “ESPP Schedules”); and

WHEREAS, AMP anticipates that the achievement of Critical Mass Participation by the Critical Mass Participation Date will allow the Final Agreement to become effective to offer the ESPP Services to AMP and the SMU’s at a the Energy Efficiency Charge prices set forth in Charge Appendix C (the “ESPP charges”); and

WHEREAS, AMP has offered to enter into this Participating SMU ESPP Schedule to provide that AMP will agree to obtain and sell to Municipality and Municipality will agree to become a Participating SMU and contribute to Critical Mass Participation in ESPP Services;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, it is agreed by and between Municipality and AMP as follows:

SECTION 1. DEFINITIONS AND EXPLANATIONS OF TERMS

Terms used but not defined herein shall have the meanings ascribed to them in Exhibit 1 to this Schedule or, if not defined herein or in Exhibit 1 to this Schedule, then in Appendix A of the Master Services Agreement.

SECTION 2. REPRESENTATIONS

Municipality represents to AMP that, as of the date this Schedule was executed by the Municipality:

- (i) Municipality has full legal right and authority to enter into the Master Services Agreement and this ESPP Schedule, to carry out its obligations hereunder and to furnish electric power and energy and related services to its customers;
- (ii) the Master Services Agreement and this ESPP Schedule have been duly executed and delivered by the appropriate officer or officers of Municipality pursuant to legislative action authorizing or directing the same; and

- (iii) Municipality recognizes that the availability of the ESPP Services at the prices set forth hereunder is contingent upon attaining Critical Mass Participation by the Critical Mass Date.

SECTION 3. TERM

A. This ESPP Schedule shall become effective on the later of (a) its execution by Municipality and AMP; or, (b) the date upon which total Critical Mass Participation is reached on or before the Critical Mass Participation Date ("Effective Date"). After the Effective Date, Municipality's entitlement to ESPP Resources shall be governed by this ESPP Schedule.

B. This ESPP Schedule shall remain in effect until December 31, 2013; *provided, however*, that Municipality shall remain obligated to pay to AMP any charges that shall have accrued hereunder and are unpaid as of such expiration date. The Term of this ESPP Schedule shall be extended for an additional three (3) year period ending December 31, 2016 unless written notice of termination is provided by either Party to the other not later than September 1, 2013.

SECTION 4. SELLER

AMP.

SECTION 5. PURCHASER

Municipality.

SECTION 6. TYPE OF TRANSACTION

A. AMP as Seller agrees for the term of this ESPP Schedule to provide to Municipality as Purchaser ESPP Services and Municipality agrees to take and pay for those ESPP Services for the term of this ESPP Schedule. AMP's obligations to provide ESPP Services hereunder are contingent upon, and subject to, the delivery to AMP of ESPP Services by VEIC in accordance with the ESPP Agreement or AMP's ability to secure replacement energy efficiency services in the event of a failure to deliver or default, or declaration of *Force Majeure*, by VEIC, and AMP shall not be liable to Municipality for any failure by AMP to deliver to Municipality its ESPP Services on account of *Force Majeure* or if an Uncontrollable Force shall have prevented AMP from making such delivery.

B. Municipality specifically agrees that, although the provision ESPP Services from the ESPP Agreement are intended to be the exclusive source of ESPP Services, AMP shall, in the event of a failure to deliver or default, or declaration of *Force Majeure*, by VEIC or another Contractor, and whether or not such failure or default leads to termination of the Preliminary Agreement or Final Agreement, use its best efforts to substitute for actual delivery replacement energy efficiency services.

SECTION 7. DELIVERY OF SERVICES

A. Municipality agrees to take and AMP agrees to use its best efforts to deliver to Municipality ESPP Services in accordance with the terms and conditions of the ESPP Agreement for the entire term of the Agreement Period, and in accordance with the provisions, of this ESPP Schedule. Municipality's ESPP Services in each Year during which this ESPP Schedule is in effect is set forth in Appendix A which may be modified from time to time by AMP with Municipality's approval, such approval not to be unreasonably withheld. For Full Participant SMU's, the ESPP Services to be made available shall be a range of similar levels of services designed to benefit each SMU's residential, commercial and industrial consumers, as well as that Municipality's facilities; provided, however that in

same instances, at AMP's sole discretion and at no additional cost to Municipality, additional ESPP Services over and above those otherwise available to Full Participant SMU's may be offered as well. Partial Participant SMU's shall be entitled to whatever ESPP Services that, in AMP's reasonable opinion, provides the best overall energy efficiency savings among all in order to assure compliance with the Consent Decree, with a secondary objective of providing a range of ESPP Services within the Partial Participant SMU's service area.

B. Municipality shall elect, on the signature page hereof, to be either a Full or Partial Participant SMU.

SECTION 8. RATES AND CHARGES

A. AMP shall establish and maintain rates or charges, or any combination thereof, for ESPP Services made available to Municipality under this ESPP Schedule. Such rates or charges, or any combination thereof, shall be set forth in the Charge Appendix, Appendix C hereto, and shall provide revenues which, taken together with the revenues received by AMP under the Related ESPP Schedules and any other ESPP related revenues under other agreements, grants, settlements or the like ("ESPP Related Revenues"), are sufficient, but only sufficient, to meet the Revenue Requirements.

B. Municipality's charges in respect of any Month during which AMP has made available to Municipality any ESPP Services under this ESPP Schedule (whether or not Municipality actually accepts delivery thereof) shall be paid by Municipality through rates or charges, or the combination thereof, as set forth in the Charge Appendix and shall, unless Municipality otherwise notifies AMP in writing, be invoiced on Municipality's regular monthly power supply invoice from AMP.

C. The initial Charge Appendix, set forth on Appendix C, reflects AMP's estimates of the initial ESPP Charges to meet total ESPP Revenue Requirements. At such intervals as it shall determine appropriate, AMP shall review and, if necessary, shall revise prospectively the Charge Appendix to ensure that the rates or charges, ESPP Related Revenues, or any combination thereof, as set forth therein and the like appendices in the Related ESPP Schedules, in the aggregate, continue to cover AMP's estimate of all of the Revenue Requirements and recognize other factors as determined appropriate by AMP. AMP shall notify Municipality of each revision to the Charge Appendix and set forth the effective date thereof, which date shall not be less than three (3) months after such notice prior to such effective date.

D. Municipality shall receive a credit against Municipality's portion of ESPP Revenue Requirements, up to, but not to exceed one hundred (100%) percent of Municipality's portion of ESPP Revenue Requirements, for all amounts respecting participation in the ESPP paid by Municipality under the Gorsuch Power Sales Contract or other agreements between such Municipality and AMP.

E. Municipality may elect to have AMP delay and/or spread the payments due hereunder, with an interest component equal to AMP's cost of money as follows, (i) spread the payments over a six (6) year period beginning January 1, 2011 or (ii) defer all payments for collection over the three (3) year period beginning January 1, 2014 or (iii) such other time periods requested by Municipality and approved by AMP's Board. Such election shall be made on the signature page hereof.

SECTION 9. ADDITIONAL COVENANTS OF MUNICIPALITY

A. Municipality covenants and agrees that it shall take no action the effect of which would be to prevent, hinder or delay AMP from the timely fulfillment of its obligations under this ESPP Schedule or Master Services Agreement; *provided, however*, that nothing contained herein shall be construed to prevent or restrict Municipality from asserting any rights which it may have against AMP.

B. As noted above, Municipality has been provided with copies of the ESPP Agreement between AMP and VEIC. Municipality covenants and agrees that Municipality shall use reasonable efforts to comply with all terms and conditions set forth in the ESPP Agreement, insofar as those terms and conditions apply to Municipality as an SMU, including all obligations set forth in Section 11.2 of Attachment B to the ESPP Agreement.

C. Municipality covenants and agrees to use all reasonable efforts to take all lawful actions necessary or convenient to fulfill all of its obligations under this ESPP Schedule.

SECTION 10. RELATIONSHIP TO AND COMPLIANCE WITH OTHER INSTRUMENTS

It is recognized by Municipality that AMP, in undertaking or causing to be undertaken the financing and administration of the ESPP, must comply with the requirements of the Related ESPP Schedules and the energy efficiency provisions of the Consent Decree, ESPP Agreement and other related agreements, decrees, licenses, permits, settlements, regulatory approvals, and the like, it is therefore agreed that this ESPP Schedule should be construed in a manner consistent with compliance with the provisions of all such agreements, decrees, licenses, permits, settlements, and regulatory approvals, and Municipality shall use reasonable efforts to assist AMP and VEIC in complying with same.

SECTION 11. MODIFICATION OR AMENDMENT OF THIS SCHEDULE

Except to the extent otherwise provided herein, with respect to supplements, amendments and modifications in the Appendices, this ESPP Schedule shall not be amended, modified or otherwise changed except by written instrument executed and delivered by each Party.

SECTION 12. APPLICABLE LAW; CONSTRUCTION

A. This ESPP Schedule is made under and shall be governed by the law of the State of Ohio; provided, however, that if Municipality is not domiciled in Ohio, the power and authority of Municipality to enter into this ESPP Schedule shall be construed in accordance with the laws of Municipality's domicile State or Commonwealth.

B. Headings herein are for convenience only and shall not influence the construction hereof.

SECTION 13. SEVERABILITY

If any Section, Subsection, Paragraph, Clause or provision or any part thereof of this ESPP Schedule shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ESPP Schedule shall be unaffected by such adjudication and all the remaining provisions of this ESPP Schedule 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 and the ESPP Schedule then interpreted to reflect the intention of the parties to the greatest extent permitted by law.

SECTION 14. SURVIVORSHIP OF OBLIGATIONS

The termination of this ESPP Schedule shall not discharge any Party hereto from any obligation that it owes to any other Party under this ESPP Schedule by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this ESPP Schedule or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this ESPP Schedule) shall survive the termination of this ESPP Schedule.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this ESPP Schedule to be executed by their proper, duly authorized.

MUNICIPALITY ELECTS TO BE A:

- Full Participant SMU** _____ (please initial)
- Partial Participant SMU** _____ (please initial)

MUNICIPALITY ELECTS TO HAVE THE CHARGES HEREUNDER DEFERRED:

- Yes, defer as indicated below** _____ (please initial)
 - (i) **to spread the payments over six (6) years beginning January 1, 2011,** _____ (please initial)
 - or
 - (ii) **to defer and pay over three (3) years beginning January 1, 2014, or** _____ (please initial)

**CITY OF COLUMBUS,
OHIO**

APPROVED AS TO FORM:

By: _____

By: _____
Municipal Legal Advisor

Title: _____

AMERICAN MUNICIPAL POWER, INC.

APPROVED AS TO FORM:

By: _____
Marc S. Gerken, P.E.
President/CEO

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

EXHIBIT 1

TO AMP/MUNICIPALITY EFFICIENCY SMART POWER PLANT SCHEDULE

**REGARDING
DEFINITIONS**

DEFINITIONS

In addition to the words or terms defined in the preamble to the Efficiency Smart Power Plant Schedule, the following words and terms, when used in the ESPP Schedule, shall have the meanings set forth in the ESPP Agreement, a copy of which has been made available to the Municipality.

- A. *Appendix* shall mean any of the appendices attached to this ESPP Schedule
- B. *Charge Appendix* shall mean the listing of charges, and the components thereof, *designed to recover* the Revenue Requirements associated with the ESPP Services. The Charge Appendix is attached hereto as Appendix C and may be revised from time to time in accordance with the provisions of Section 8 of this ESPP Schedule.
- C. *Effective Date* shall *have* the meaning set forth in Section 3 of this ESPP Schedule.
- D. *ESPP Related Revenues* shall have the meaning set forth in Section 8(A) of this ESPP Schedule.
- E. *ESPP Schedule* shall mean this Schedule between Municipality and AMP that is a Schedule to the Master Services Agreement.
- F. *Force Majeure* shall mean any event of *Force Majeure* under a Contract
- G. *Master Services Agreement* shall mean the contract document titled as such between Municipality and AMP referenced on the cover page of this ESPP Schedule.
- H. *Month or Monthly* refers to a calendar month.
- I. *Municipality* shall mean the AMP member executing this ESPP Schedule and is the Buyer hereunder
- J. *Operating Expenses* shall mean the sum of the following:
 - (i) the cost paid to VEIC under the ESPP Agreements and the cost to AMP of administration of the ESPP, including contributions to any reserve or contingency fund, taxes, the cost of insurance, and costs of compliance with and renewals of all required licenses and permits, legal, engineering, accounting and financial advisory fees and expenses, including repayment of any prudently incurred sums advanced by AMP for such purposes, whether incurred prior to the Effective Date or otherwise;
 - (ii) the cost, if any, to AMP to establish and maintain an allowance for working capital related to the ESPP;
 - (iii) the cost of measurement, verification and forecasting incurred by AMP in furtherance of or related to the ESPP and the energy efficiency program required by the Consent Decree, and all other costs not otherwise specified or recovered hereunder, but incurred by AMP in connection with the performance of its obligations under this ESPP Schedule;

- (iv) the costs of defending, compromising, and settling any suits or claims against AMP relating to the ESPP, the ESPP Schedule or Related ESPP Schedules or any service rendered from the ESPP and the payment of any judgments or verdicts related thereto; and
 - (v) repayment of any prudently incurred sums for expenditures advanced by AMP in connection with any of the costs set forth above, whether incurred prior to the effective date or otherwise.
- K.** *Party or Parties* refers to Municipality and AMP.
- L.** *Related ESPP Schedules* shall mean the ESPP Schedules between AMP and the other SMU's listed on Appendix B.
- M.** *Revenue Requirements* shall be the sum of all Operating Expenses, and the repayment with interest of any borrowings by AMP related to the ESPP program, less any ESPP Related Revenues, but only to the extent not appropriately allocated directly to individual SMUs.
- N.** *Uncontrollable Force* shall mean any cause beyond the control of a Party, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, pestilence, war, riot, civil disturbance, labor disturbance, sabotage, restraint or action by court or public authority, and failure of third parties to provide transmission, which by due diligence and foresight such Party, as the case may be, could not reasonably have been expected to avoid and shall include the failure of an energy efficiency Contractor both to perform and to pay amounts due, if any, under the related Agreement.
- O.** *Year* shall mean the twelve-month period commencing at 12:00 a.m. on January 1 of each calendar year; *provided, however*, that the first Year shall commence on the Effective Date set forth in Section 3 and shall expire at 12:00 a.m. on the next succeeding January 1.

Except where the content otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, public and private corporations, and any other legal entities.

**APPENDIX A
DESCRIPTION OF ESPP SERVICES**

Sector	Market	Market Service	Description
Residential	Retail Efficient Products	Influence purchase decisions at the point of sale	Discount products in retail locations (efficient lighting room air conditioners, refrigerators) Explore online sales with local vendors and others
	Residential Emerging Markets	Residential community efforts to be developed	Initially, second refrigerator and freezer turn-in program; other community efforts will be explored.
Commercial	Existing Business Facilities	Prescriptive time of replacement	Prescriptive incentives for efficient lighting, motors, HVAC at the time of replacement
		Custom lost opportunities and retrofit measures	Target high use customers; custom incentives
	New Business Construction / renovation	Lost opportunity measures	Incremental efficiency upgrades; managed as part of custom commercial; custom incentives
Industrial	Custom Services	Custom lost opportunities and retrofit measures	Target high use customers; custom incentives

Note: Only certain services may be offered to each Partial Participant SMU. See Section 7A.

PARTICIPANTS

Amherst, Ohio
Arcanum, Ohio
Breach City, Ohio
Bradner, Ohio
Brewster, Ohio
Columbiana, Ohio
Columbus, Ohio
Custar, Ohio
Dover, Ohio
Eldorado, Ohio
Elmore, Ohio
Galion, Ohio
Genoa, Ohio
Glouster, Ohio
Grafton, Ohio
Haskins, Ohio
Hubbard, Ohio
Hudson, Ohio
Jackson, Ohio
Jackson Center, Ohio
Lakeview, Ohio
Lodi, Ohio
Lucas, Ohio
Mendon, Ohio

Milan, Ohio
Minster, Ohio
Monroeville, Ohio
Napoleon, Ohio
New Bremen, Ohio
Newton Falls, Ohio
Niles, Ohio
Oak Harbor, Ohio
Oberlin, Ohio
Orrville, Ohio
Painesville, Ohio
Pemberville, Ohio
Prospect, Ohio
Seville, Ohio
S. Vienna, Ohio
St. Marys, Ohio
Tipp City, Ohio
Versailles, Ohio
Wadsworth, Ohio
Waynesfield, Ohio
Wellington, Ohio
Woodville, Ohio
Yellow Springs, Ohio

[TO BE REVISED]

EFFECTIVE JANUARY 1, 2011
GORSUCH PARTICIPANT EFFICIENCY SMART POWER PLANT
PRELIMINARY CHARGE INDEX

1. Applicability and Availability. This charge index is solely applicable to and available for the Participant SMU's that are Gorsuch Station Participants under the terms and conditions of this ESPP Schedule.
2. Rates and Charges. The charges for each billing period shall be determined as follows:
 - a) Base Charges. Charges for the each year shall be calculated by dividing an SMU's annual MWH sales for the last year for which such sales are available by twelve (12) (to arrive at an estimated monthly MWH sales amount) and multiplying that monthly MWH sales amount by a Base Service Charge as adopted from time to time in accordance with this ESPP Schedule.
 - (i) The Initial Base Service Charge for ESPP services for each Full Participant SMU for each billing period shall be One Dollar and Fifty Cents (\$1.50) per MWH of estimated monthly sales.
 - (ii) SMU's that are Full Participant SMU's and Gorsuch Participants and are thereby required under the Consent Decree to contribute to the ESPP program shall receive a credit on Initial Base Charges up to One Hundred Percent (100%) of all such contributions towards that Full Participants SMU's Initial Base Service Charges due and shall be invoiced hereunder for any positive difference.
 - (iii) SMU's that are Partial Participant SMU's and Gorsuch Participants and are thereby required under the Consent Decree to contribute to the ESPP program, but contribute amounts less than One Hundred Percent (100%) of the \$1.50 per MWH Initial Base Service Charge, based on estimated monthly MWH Sales, such participating SMU shall receive ESPP Services only as set forth in Section 7(A) of this ESPP Schedule and shall not be eligible for the ESPP System Average 70% Guarantee as set forth in Section 3 below. Each Partial Participant SMU shall be charged an amount equal to their credit from payments (or accruals of liability for the same) under their Gorsuch Power Sales Contract.
3. SMU ESPP System Average 70% Guarantee. Full Participant SMU's will be guaranteed to receive an amount of ESPP Services under the ESPP Schedule to decrease annual MWH usage a minimum of Seventy Percent (70%). Partial Participant SMU's shall not be eligible for this 70% Savings Guarantee. Full Participant SMU's contributing under the Gorsuch Consent Decree, to the extent that participation exceeds \$1.50 per MWH of estimated monthly MWH sales, shall be eligible for the 70% Savings Guarantee, but in no event will the Savings Guarantee exceed 70%.

4. Billing Period. The Billing Period shall be Monthly and be invoiced with the Municipality's monthly power invoice from AMP or as otherwise agreed by the Parties.

Effective: January 1, 2011

