

RESOLUTION NO. 1-2023
Introduced by Joel Hagy

A RESOLUTION APPROVING THE ASSUMPTION OF AN INTEREST OF THE CITY OF HAMILTON, OHIO IN THE FREMONT POWER SALES CONTRACT DATED JUNE 15, 2011, AND OTHER MATTERS, BY THE CITY OF HURON, OHIO.

WHEREAS, the City of Huron (the "City") 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, the City is also a member of American Municipal Power, Inc., ("AMP"); and

WHEREAS, the City, along with other AMP Members (collectively "Participants"), entered into a Power Sales Contract regarding the American Municipal Power Fremont Energy Center dated June 15, 2011 ("PSC"); and

WHEREAS, in order to obtain such sources of electric capacity and energy, each Participant purchases its PSCR Share (as defined in the PSC) of the output of the Power Sales Contract Resources (as defined in the PSC) from AMP; and

WHEREAS, the City has determined that it requires additional electric capacity and energy; and

WHEREAS, the City of Hamilton, Ohio is a Participant under the PSC ("Assignor"); and

WHEREAS, the City desires to accept the assignment of and agrees to assume 0.245% (1,138 kW) from Assignor's PSCR Share (the "Assigned Share") along with the other rights and obligations of Assignor under the PSC, including, without limitation, any obligation of Assignor to purchase Step Up Power and pay Step Up Costs, related to the PSCR Share (as such terms are defined in the PSC) (the "Assignment"); and

WHEREAS, AMP, on behalf of the remaining Participants, has waived or will waive, upon the effectiveness of this Resolution and certain other prerequisites, the right of first refusal to assume Assignor's rights under the PSC; and

WHEREAS, the Village, Assignor and AMP desire to enter into an Assignment and Assumption Agreement ("Assignment Agreement") which sets forth the parties' respective rights and obligations with regard to the Assignment.

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

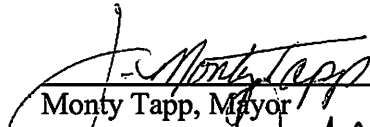
Section 1. That the City Manager shall be, and he hereby is, authorized and directed to enter into an Assignment and Assumption Agreement by and among the City of Hamilton, Ohio, the City of Huron, Ohio, and American Municipal Power, Inc. Relating to the Power Sales Contract regarding AMP's Fremont Energy Center and the Participants dated June 15, 2011, which agreement shall be substantially in the form of Exhibit "A" attached hereto and made a part hereof, with such completions and changes therein as may be necessary and approved by the City Manager.

Section 2. That the City is hereby authorized, through the execution and delivery of the Assignment and Assumption Agreement, to acquire the Assigned Share, and the City Manager is authorized to execute and deliver any and all documents necessary for the City to acquire the Assigned Shares and to carry out Assignor's related obligations under the PSC.


Section 3. That if any section, subsection, paragraph, clause or provision or any part thereof of this resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this resolution shall be unaffected by such adjudication and all the remaining provisions of this resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 4. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

Section 5. That this Resolution shall be in full force and effect from and immediately after its adoption.



Monty Tapp, Mayor

ATTEST: 

Clerk of Council

ADOPTED: 

Assignment and Assumption Agreement

This Assignment and Assumption Agreement (“**Agreement**”), dated as of _____, 2022 (“**Effective Date**”), is by and among the City of Hamilton, Ohio (“**Hamilton**”), the City of Huron, Ohio (“**Huron**”), and American Municipal Power, Inc. (“**AMP**”).

WHEREAS, Hamilton is a party to the Power Sales Contract regarding AMP’s Fremont Energy Center between AMP and the Participants dated June 15, 2011 (“**PSC**”);

WHEREAS, pursuant to the PSC, Hamilton purchases its PSCR Share of the output of the Power Sales Contract Resources from AMP;

WHEREAS, Hamilton’s current PSCR Share is 2.487% (11,550 kW);

WHEREAS, Huron is also a party to the PSC as a Participant;

WHEREAS, Hamilton desires to assign to Huron all of its rights and delegate to Huron all of its obligations under the PSC related to 0.043% (200 kW) (the “**Assigned Share**”) from its PSCR Share and the obligations related thereto;

WHEREAS, Huron desires to accept such assignment of rights and delegation of obligations under the PSC; and,

WHEREAS, AMP, on behalf of itself and on behalf of the remaining Participants, desires to consent to the Assignment.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Hamilton irrevocably (a) assigns to Huron the Assigned Share and all of its accompanying rights under the PSC attributed to the Assigned Share and (b) delegates to Huron all of its accompanying obligations under the PSC, including the obligation to buy the Assigned Share of the Power Sales Contract Resources from AMP, from and after the Effective Date (collectively, the “**Assignment**”).

1.2 Assumption. Huron unconditionally accepts all of Hamilton’s rights and obligations in, to and under the PSC, including, without limitation, any obligation of Hamilton to purchase Step Up Power and pay Step Up Costs related to the Assigned Share, and assumes and agrees to be bound by, fulfill, perform and discharge all of the liabilities, obligations, duties and covenants under or arising out of the PSC from and after the Effective Date (collectively, the “**Assumption**”).

1.3 Consent. AMP, on behalf of itself and on behalf of the remaining Participants, consents to the Assignment and the Assumption. AMP, Hamilton and Huron acknowledge and agree that, from and after the Effective Date, Huron’s PSCR Share is 0.062% (290 kW), subject to adjustment as set forth in the PSC. AMP and Hamilton acknowledge and agree that, from and after the Effective

Date, assuming the Other Assignments have also occurred, Hamilton's PSCR Share is 2.156% (10,012kW), subject to adjustment as set forth in the PSC. For purposes of this Section 1.3, "Other Assignments" refers to anticipated assignments of additional portions of Hamilton's PSCR Share to other PSC Participants, which may occur before, after, or together with the Assignment. The Other Assignments are anticipated to include the assignment of 0.288% (1,338 kW) from Hamilton's PSCR share.

2. Representations and Warranties.

2.1 Hamilton's Representations and Warranties. Hamilton represents and warrants as follows:

(a) It has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) It has taken all necessary action to authorize the execution of this Agreement.

(c) It is the sole legal and beneficial owner of the rights granted to Huron by this Agreement, free and clear of any lien, security interest, charge or encumbrance.

(d) It has performed all of its obligations under the PSC that are required to be performed on or before the Effective Date.

2.2 Huron's Representations and Warranties. Huron represents and warrants as follows:

(a) It has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) It has taken all necessary action to authorize the execution of this Agreement.

2.3 AMP's Representations and Warranties. AMP confirms that, to the best of its knowledge, as of the Effective Date of this Agreement, all conditions set forth in Section 26(C)(i)-(vi) of the PSC have been met, and represents and warrants as follows:

(a) It has the full right, power and authority to enter into this Agreement and to consent to the Assignment and the Assumption.

(b) It has taken all necessary action to authorize the execution of this Agreement.

3. Definitions. Capitalized terms used and not defined in this Agreement have the respective meanings assigned to them in the PSC.

4. Miscellaneous.

4.1 Further Assurances. Upon another party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

4.2 Survival. Subject to the limitations and other provisions of this Agreement, the representations of the parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

4.3 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set forth below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Hamilton: City of Hamilton
345 High Street
Hamilton, Ohio 45011
Attention: City Manager

Notice to Huron: City of Huron
417 Main Street
Huron, OH 44839
Attention: City Manager

Notice to AMP: American Municipal Power Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attention: President & CEO

4.4 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

4.5 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party to this Agreement.

4.6 Choice of Law. This Agreement is governed by, and construed in accordance with, the laws of the State of Ohio, without regard to the conflict of laws provisions.

4.7 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of

this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

City of Hamilton, Ohio

City of Huron, Ohio

By: _____

By:  _____

Name: _____

Name: MATT LASKO

Title: _____

Title: 01/10/2023

Approved as to Form

Approved as to Form

By: _____

By:  _____

Name: _____

Name: TODD SCHREINER

Title: _____

Title: LAW DIRECTOR

**Acknowledged and agreed with respect to Sections 1.3 and 2.3 hereof:
American Municipal Power, Inc.**

By: _____

Name: _____

Title: _____

Approved as to Form

By: _____

Rachel Gerrick
SVP & General Counsel for Corporate Affairs