

MAR 11 1991

ORDINANCE NO. 91-30 ACCMS

APPENDIX A

PRELIMINARY AGREEMENT
BETWEEN
THE CITY OF JACKSON, OHIO
AND
AMERICAN MUNICIPAL POWER-OHIO, INC.
DATED
FEBRUARY 15, 1991

WHEREAS, The City of Jackson, Ohio (Jackson) is an Ohio municipal corporation which owns and operates an electric utility system for the benefit of its citizens and taxpayers;

WHEREAS, American Municipal Power-Ohio, Inc. (AMP-Ohio) is an Ohio nonprofit corporation, federally tax-exempt under Section 501(c)(12) of the Internal Revenue Code, whose membership is made up of and limited to Ohio municipal corporations which own and operate electric utility systems;

WHEREAS, Seventy-six (76) municipalities, including Jackson, are members of AMP-Ohio (Members);

WHEREAS, one of AMP-Ohio's primary functions is to arrange for economic and reliable power supply for its Members;

WHEREAS, Jackson is currently licensed by the Federal Energy Regulatory Commission (FERC) for the development of FERC Project No. 6939 for the Belleville Hydroelectric Project (Project);

WHEREAS, the licensed nameplate capacity of the Project is forty-two (42) megawatts and Jackson has estimated the annual energy production to range between 180 and 220 gigawatt hours.

WHEREAS, the parties recognize that all sixteen licenses issued September 1989 by the FERC for the Upper Ohio River Basin, including the Project, are subject to pending judicial appeals. Petitions for review have been filed with the United States Court

of Appeals for the District of Columbia Circuit by the United States Department of the Interior (Fish and Wildlife Service), the States of West Virginia and Pennsylvania, and the Friends of the Earth and American Rivers. Generally speaking, these appeals allege that the FERC's environmental review was inadequate with respect to all sixteen licenses. Based upon proposals by the parties, it appears that briefing will occur during the summer of 1991, although the Court has not yet set a procedural schedule. In view of the appeals, the FERC has stayed eleven other licenses other than certain license conditions concerning water quality monitoring, development of a plan for a bioengineering test facility, and mussel bed monitoring. Jackson has moved for a similar stay pending appeal, which motion is pending before the FERC.

WHEREAS, Jackson has been exploring arrangements with other parties interested in using Project output that is surplus to Jackson's needs and in working with Jackson to develop and operate the Project.

WHEREAS, AMP-Ohio, on behalf of its Members, expressed interest in the Project.

WHEREAS, Jackson and AMP-Ohio believe it would be mutually beneficial to develop the Project for a number of AMP-Ohio Members, including Jackson.

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

SECTION ONE - DEFINITIONS

- (A) Agreement shall mean this Preliminary Agreement.
- (B) Construction Subscription shall mean a binding commitment by a Member or group of Members to finance such Member's or group of Members' aliquot share of the costs of construction of the Project or which, when aggregated with other such commitments, will allow AMP-Ohio to finance the construction and initial operation of the Project.
- (C) Construction Subscription Date shall mean the later of (i) December 15, 1991 or (ii) 180 days prior to the required start of construction date as required by the FERC Project No. 6939 license.
- (D) Developmental Subscription shall mean a commitment by a Member or group of Members to AMP-Ohio to fund, or otherwise be responsible for an aliquot share of the costs of the development of the Project, including the costs of compliance with all license requirements up to, but not including, a commitment to construct the Project.
- (E) Member shall mean an Ohio municipal corporation which is a member of AMP-Ohio, including Jackson.
- (F) Participants shall mean any Member which enters into an agreement for, as the context requires, either a Developmental Subscription or Construction Subscription.

(G) Payment shall mean the payment of Jackson's out-of-pocket costs and a rate of return thereon as specified in Sections Four and Six of this Agreement.

SECTION TWO - STATEMENT OF INTENT

A. As more fully set forth below in this Agreement, Jackson and AMP-Ohio, on behalf of its Members, are contemplating partnership-like arrangements such that the Project will be jointly owned by Jackson and whatever AMP-Ohio Members elect to participate (or by AMP-Ohio on behalf of certain participant Members, including Jackson, if mutually beneficial). The intent of the parties is that all risks and benefits associated with the Project will be shared among Jackson and the other Participants in proportion to their respective interests in the Project. Management of Project development, and responsibility for Project operation and maintenance upon Project completion, are expected to be handled by AMP-Ohio on behalf of Jackson and the other Participants. Any arrangements ultimately agreed upon will need to comply with all applicable laws, regulations and policies of the FERC. This may involve, if appropriate and required, the inclusion of AMP-Ohio or the other Participants as co-licensees on the Project license.

B. Jackson and AMP-Ohio contemplate that the Project will be jointly owned, either actually or beneficially, by Jackson and the other Participants. Each Participant's entitlement to Project output and benefits, and responsibility for Project costs, will be determined by that Participant's percentage of

participation. In short, the parties contemplate a partnership-like arrangement with pro rata sharing among the Participants of Project risks and benefits.

C. The precise legal nature of the arrangements to be utilized to achieve the underlying objective outlined above has not yet been determined. Jackson, the other Participants and AMP-Ohio will explore the options available, including, but not necessarily limited to, such options as undivided ownership among the Participants, Project ownership by a new legal entity comprised of the Participants, or ownership by AMP-Ohio. The legality, financeability and desirability of the various options will be among the factors taken into account in making a final determination of the appropriate form of the arrangements to be entered into by the Participants. Also to be considered will be the effects of any such arrangements on the Project license, including such matters as whether a given format would require a transfer of the Project license in whole or in part and whether the FERC would grant any such transfer.

SECTION THREE - PROJECT MANAGEMENT

A. Upon execution and subject to the provisions of this Agreement, AMP-Ohio will assume responsibility for all aspects of Project development and license compliance, including:

(1) Securing Developmental Subscriptions from its Members at levels sufficient to account for 100% of Project participation. By execution of this letter, Jackson agrees to enter into an agreement for a Developmental Subscription of a

nominal 3 MW of the Project (7.14286¢) on the same terms and conditions as the other Participants;

(2) Compliance with the Project license and orders of the FERC in connection therewith; and,

(3) All other matters necessary and appropriate for complete, timely and successful development of the Project including securing Construction Subscriptions from Members at levels sufficient to account for 100% of Project participation.

B. Upon achieving full Construction Subscription AMP-Ohio shall be responsible for the financing, construction, operation and maintenance of the Project, including making arrangements to allow the delivery of the Project output to Participants.

C. Unless and until the Project license is transferred in whole or in part from Jackson to the Participants, AMP-Ohio or a new legal entity: (i) Jackson as licensee shall retain such authority and right as is necessary and appropriate to enable Jackson to ensure that compliance with the license and orders of FERC in connection therewith is fully achieved, consistent with the rights and obligations of Jackson as Project licensee; and (ii) in the event Jackson and AMP-Ohio disagree as to the action required for such compliance, the parties will promptly and in good faith attempt to reach agreement, provided that, until such transfer, Jackson as sole licensee shall ultimately retain any and all rights and ability necessary to protect the license and its status as licensee, any such unilateral action by Jackson to be at Jackson's sole cost.

D. Until such time as full Developmental Subscription is achieved, the Project consultants retained by Jackson shall remain in Jackson's employ. Jackson and AMP-Ohio shall each appoint one member to a Project Committee which must unanimously approve, in advance, any efforts by such consultants in connection with the Project the cost of which would be the responsibility of AMP-Ohio. Subsequent to full Developmental Subscription, Jackson agrees that it would not object should AMP-Ohio desire to retain such consultants to work directly for AMP-Ohio on the Project.

SECTION FOUR - COST SHARING

A. Effective March 1, 1991, AMP-Ohio shall assume responsibility for, and shall pay, all costs incurred from March 1, 1991 in connection with the Project. Upon invoice by AMP-Ohio, and in accordance with the agreement for Developmental Subscription entered into by Jackson in accordance with Section Three (A) of this Agreement, Jackson will reimburse AMP-Ohio for Jackson's pro rata share of all such costs (including a pro rata share of the Payment, as defined and as set forth below). AMP-Ohio will be responsible for obtaining reimbursement for the balance of Project costs from the other Participants or its funds generally. For purposes of this provision, Project costs include, but are not necessarily limited to, all costs, fees and expenses (including the costs associated with the review proceedings in the court of appeals mentioned above), incurred in connection with compliance with the Project license, development

and financing of the Project, and development of arrangements among and for the Participants in connection with the Project.

B. In recognition of the significant legal, engineering and other expenses heretofore incurred by Jackson in acquiring, complying with, and defending the license, and the significant risks associated therewith and the time and efforts of Jackson officials, AMP-Ohio shall, as a part of Project costs, pay to Jackson all of its out of pocket costs as set forth on Exhibit A hereto, plus a rate of return on said amount as set forth in Section Six herein, (the total of such amounts shall be referred to as the Payment). The Payment shall be made as further set forth herein. In consideration thereof, Jackson shall defend AMP-Ohio and hold it harmless from any and all obligations relating to contracts or relationships with legal, engineering, finance consultants or other vendors entered into by the City of Jackson regarding the Project prior to the date of this Agreement.

C. On or before April 30, 1991, AMP-Ohio shall pay Jackson its out of pocket costs in the total amount shown on Exhibit A hereto, as a portion of the Payment. AMP-Ohio's obligation to make such portion of the Payment as shown on Exhibit A hereto is expressly conditioned upon the ability of AMP-Ohio to enter into binding Developmental Subscription agreements with its Members, or groups of Members, for the balance of the Project not reserved by Jackson.

SECTION FIVE - TERMINATION OPTIONS

A. AMP-Ohio has preliminarily determined, based upon information made available by Jackson and its consultants, that the Project is technically and economically feasible and constitutes an attractive long-term resource for many of its Members. AMP-Ohio's analysis is based, in part, upon a plan which utilizes the procurement of back-up capacity as a part of the overall project to back up all or a portion of the Project's output. AMP-Ohio shall diligently, in good faith, and without undue delay, undertake such further Project analyses as AMP-Ohio may desire, and shall exercise its best efforts to enlist sufficient Developmental Subscription by Participants to account for full utilization of the Project's output, by April 30, 1991. If at any time prior to April 30, 1991, AMP-Ohio determines that it will be unable to enlist full Developmental Subscription to this Project, it shall immediately terminate this Agreement.

B. Subsequent to full Developmental Subscription and further studies funded thereby, AMP-Ohio will, if it determines that the Project is economically viable, use its best efforts to enter into additional Construction Subscription agreements with its Members, by the Construction Subscription Date, sufficient to allow AMP-Ohio to finance, or arrange for the financing of, full Project development and construction. If at any time prior to the Construction Subscription Date AMP-Ohio determines that it will be unable to enlist full Construction Subscription for this Project, it may immediately terminate this Agreement.

C. Jackson shall have the right to terminate this Agreement and to develop the Project without AMP-Ohio or any Members unless: (i) AMP-Ohio notifies Jackson on or before April 30, 1991 that AMP-Ohio has achieved sufficient Participant Developmental Subscription enabling AMP-Ohio to commit to Project development; and, (ii) AMP-Ohio notifies Jackson on or before the Construction Subscription Date that AMP-Ohio has achieved sufficient Participant Construction Subscription to enable AMP-Ohio to finance, or arrange for the financing of, Project construction and initial operation.

D. In the event of any termination of this Preliminary Agreement by either party: (i) AMP-Ohio shall remain responsible for its share of Project costs incurred through such termination date and thereafter shall have no further responsibility to Jackson in connection with the Project; (ii) subject to the provisions of Section Five (E) of this Agreement, Jackson shall have no further responsibility to AMP-Ohio or its Members with respect to the Project; and (iii) AMP-Ohio shall have no further rights in the Project.

E. If, after at least the initial portion of the Payment has been paid to Jackson pursuant to Section Four (C) of this Agreement, AMP-Ohio concludes that the Project construction is not feasible and terminates this Agreement, Jackson may transfer all or any portion of the rights and interests in and to the Project and Project license to a third party. In the event that the compensation received by Jackson from such third party is in

an amount in excess of Jackson's developmental costs not otherwise recovered, AMP-Ohio shall be entitled to 50% of all such excess compensation; provided that in no event shall AMP-Ohio's recovery under this provision exceed the amount of any portion of the Payment theretofore paid to Jackson.

F. Notwithstanding Section Five (C) of this Agreement, if Jackson has received a bona fide offer for project development which in its sole opinion is a better offer for development of the Project, Jackson may also terminate this Agreement at any time prior to the receipt from AMP-Ohio of a notice that AMP-Ohio has enlisted full Developmental Subscription to the Project provided that:

- (i) a prior written notice of such termination is given via telecopy and overnight service to AMP-Ohio;
- (ii) no such notice shall be given prior to March 15, 1991;
- (iii) such notice shall have an effective date for such termination no earlier than thirty (30) days subsequent to the date of such notice;
- (iv) Jackson reimburses AMP-Ohio for all developmental costs paid by AMP-Ohio under this Agreement upon such termination; and
- (v) AMP-Ohio may defeat such termination by giving Jackson a notice of sufficient Developmental Subscription at any time prior to the termination

date stated in the notice, along with an undertaking to match such bona fide offer.

SECTION SIX - BALANCE OF PAYMENT

Subsequent to AMP-Ohio obtaining the Construction Subscription from its Members and upon the initial financing, whether temporary or permanent, and expressly contingent thereon, AMP-Ohio shall pay Jackson, as a part of the development and construction costs of the Project the balance of the Payment. Such balance is to represent a rate of return on Jackson's out of pocket expenses paid in furtherance of the Project as listed on Exhibit A, in an amount to be agreed to by Jackson and the other Participants in good faith negotiations prior to the Construction Subscription Date.

SECTION SEVEN - FUTURE AGREEMENTS

Jackson and AMP-Ohio recognize that future agreements will be necessary in connection with Project development, ownership, financing and operation and maintenance. The parties will cooperate in good faith to bring the Project to commercial operation and to enter into such further agreements as may be


necessary and appropriate to accomplish that goal consistent with the basic concepts embodied in this Agreement.

Agreed to and Accepted:

AMERICAN MUNICIPAL POWER-OHIO, INC.

THE CITY OF JACKSON, OHIO

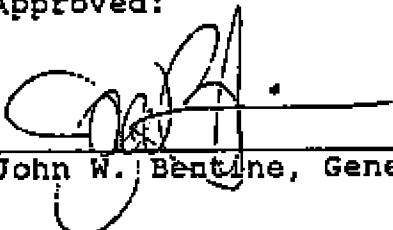
By: 
Kenneth L. Hagemann, P.E.
President

By: 
Name and Title


Date: March 4, 1991

Date: Feb. 27, 1991

Approved:


John W. Bentline, General Counsel

Approved:


Name and Title

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EXHIBIT A

OUT-OF-POCKET EXPENSES INCURRED BY
THE CITY OF JACKSON, OHIO IN CONNECTION WITH THE
BELLEVILLE HYDROELECTRIC PROJECT
THROUGH FEBRUARY 28, 1991

Green International (engineering)	\$ 20,994.05
J.S. Sawvel and Associates (engineering)	\$ 75,687.19
W.M. Lewis and Associates (license acquisition/engineering)	\$183,379.45
Baller Hammett, P.C. (legal services)	\$217,596.20
Upper Ohio River Basin Hydro Ass'n (BETF license article assessments)	\$ 3,000.00
City of Jackson Expenses (travel, copying, phones, etc. estimated @ 1% of other invoices)	\$ 4,774.17
Miscellaneous	\$ 1,130.00
TOTAL	<u>\$506,561.06</u>