

## **BOARD OF PUBLIC WORKS, CITY OF LEWES, DELAWARE**

### **RESOLUTION**

A RESOLUTION APPROVING AN ADVANCED METERING INFRASTRUCTURE PROGRAM; AUTHORIZING THE EXECUTION OF A CONTRACT RELATING TO THE ADVANCED METERING INFRASTRUCTURE PROGRAM AND A PROJECT PURCHASE AGREEMENT RELATING TO THE ADVANCE METERING INFRASTRUCTURE PROGRAM, EACH BETWEEN THE BOARD OF PUBLIC WORKS, CITY OF LEWES AND THE DELAWARE MUNICIPAL ELECTRIC CORPORATION; AND AUTHORIZING OTHER MATTERS RELATED THERETO.

WHEREAS, the Board of Public Works of the City of Lewes (the “Participating Member”) is a municipality, duly organized and validly existing under the laws of the State of Delaware (the “State”); and

WHEREAS, The Delaware Municipal Electric Corporation (“DEMEC”) is a municipal electric company and joint action agency incorporated in the State, established by certain cities and towns, and formed pursuant to Chapter 13 of Title 22 of the Delaware Code (the “Act”); and

WHEREAS, American Municipal Power, Inc. (“AMP”) is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its members (“Members”), such Members, including Municipality, being, as of the date hereof, political subdivisions that operate, or whose members operate, municipal electric utility systems in Delaware, Ohio, Indiana, Kentucky, Michigan, Pennsylvania, Maryland, Virginia and West Virginia; and

WHEREAS, DEMEC and the Participating Member have determined to undertake a project consisting of DEMEC’s acquisition, installation and development of Advanced Metering Infrastructure (“AMI”) for the Participating Member and the provision of AMI services for the Participating Member under a hosted solution strategy (the “AMI Program”) utilizing American Municipal Power, Inc. (“AMP”), a not for profit corporation, to provide certain of the related services on a subcontracted basis; and

WHEREAS, AMP has engaged in an RFP selection process and entered into resulting agreements with certain vendors (the “Vendors”) to provide certain AMI field equipment, communication components, and associated back office systems in connection with the AMI Program in order to provide a comprehensive AMI Program that has the advantages to participating AMP members of economies of scale, mitigation of risk from local technology deployment and support, and reduced burden of ongoing support; and

WHEREAS, DEMEC is a member of AMP and will enter into a contract with AMP whereby AMP will agree to provide the AMI Program and certain AMI Services, as described in

the “Schedule to Master Services Agreement between DEMEC and AMP for Participation in the Advanced Metering Infrastructure Program;” and

WHEREAS, the Participating Member and DEMEC desire to enter into a “Contract Relating To Advanced Metering Infrastructure Program” (the “DEMEC – Member AMI Contract”) pursuant to which DEMEC will provide, or cause to be provided by AMP and the Vendors, the AMI Program and certain AMI Services, as more fully described therein; and

WHEREAS, the parties intend that the obligations of the Participating Member under the DEMEC – Member AMI Contract shall be payable solely from the revenues derived from the Participating Member’s Electric System (the “System”); and

WHEREAS, the Participating Member and DEMEC desire to enter into a Project Purchase Agreement (the “Project Purchase Agreement”), pursuant to which DEMEC will finance the up-front costs necessary to acquire and install the equipment for the AMI Program (the “AMI Capital Project”), and will convey the AMI Capital Project to the Participating Member in exchange for project payments to be made by the Participating Member to DEMEC pursuant to the Project Purchase Agreement; and

WHEREAS, the AMI Capital Project represents a “Project” as defined in the Act, and the Project Purchase Agreement represents a contract with respect to an interest in a Project within the meaning of Section 1307(a) of the Act, and thus is considered to be a “purchase agreement” providing for the “purchase of electric power and energy” within the meaning of Section 1307 of the Act; and

WHEREAS, the parties intend that the Project Purchase Agreement shall constitute a “purchase agreement” providing for the “purchase of electric power and energy” for all purposes of Section 1307 of the Act and the obligations of the Participating Member under the Project Purchase Agreement shall not constitute debt, but rather shall constitute special obligations of the Participating Member payable solely from the revenues derived from the Participating Member’s System and shall be treated as expenses of operating the System, all in accordance with Section 1307(b) of the Act; and

WHEREAS, seeking to bring projects at the lowest viable cost to their members, DEMEC and AMP have identified a funding opportunity in the Bipartisan Infrastructure Law that may serve to reduce a portion of the cost of the AMI Capital Project; and

WHEREAS, as part of the Bipartisan Infrastructure Law, the Grid Deployment Office as part of the United States Department of Energy (DOE) is administering a \$10.5 billion Grid Resilience and Innovation Partnerships (GRIP) Program to enhance grid flexibility and improve the resilience of the power system against growing threats of extreme weather and climate change; and

WHEREAS, this program will accelerate the deployment of transformative projects that will help to ensure the reliability of the power sector’s infrastructure, so all American communities have access to affordable, reliable, clean electricity anytime, anywhere; and

WHEREAS, American Municipal Power (AMP) has responded to the GRIP funding opportunity announcement by sending a concept paper to the DOE which includes AMI as a GRIP option for Bipartisan Infrastructure Law (BIL) funds; and

WHEREAS, AMP is preparing a Grid Resilience and Innovation Partnerships (“GRIP”) grant application for submission to the Department of Energy (“DOE”) for funding relating to AMP’s Smart Grid: Using Edge Computing to Build Grid Resiliency project (the “Project”); and

WHEREAS, in light of the benefits the Project can be expected to provide to Municipality and its utility customers, Municipality desires to confirm to the DOE its intended participation in the Project; and

WHEREAS, AMP’s application will be enhanced if it includes a Letters of Commitment from the Participating Member expressing their commitment to participating in AMP’s GRIP incentive option; and

WHEREAS, such a letter shall be duly authorized by resolution of the Participating Member’s local regulatory body; and

WHEREAS, by the adoption of this Resolution the Participating Member desires to authorize the execution of the DEMEC – Member AMI Contract and the Project Purchase Agreement and undertake the obligations described therein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Participating Member as follows:

Section 1. Approval of AMI Program and AMI Capital Project. The Participating Member hereby approves the AMI Program and the AMI Capital Project, as further described in the schedules to the DEMEC – Member AMI Contract and in the Project Purchase Agreement, and requests DEMEC to provide, or cause to be provided, for the benefit of the Participating Member, the AMI Program, the AMI Capital Project and the AMI Services.

Section 2. Authorization of DEMEC – Member AMI Contract. The Participating Member hereby authorizes the execution of the DEMEC – Member AMI Contract, and authorizes and directs the Board of Public Works President to execute and acknowledge the DEMEC – Member AMI Contract on behalf of the Participating Member. The DEMEC – Member AMI Contract shall be in substantially the form presented to this meeting, which is hereby approved, subject only to such changes and modifications as counsel may recommend and the Board of Public Works President may approve, such approval to be conclusively evidenced by his execution thereof.

The Participating Member acknowledges that under the terms of the DEMEC – Member AMI Contract, in the event the Participating Member terminates the DEMEC – Member AMI Contract for convenience during the Initial Term (as defined therein), any unpaid portion of the

Initial Services Fee and/or the On-going Services Fees (as such terms are defined therein) shall remain payable as if such services were provided throughout the Initial Term, and no portion shall be refunded. Notwithstanding the foregoing, to the extent that AMP is able, through commercially reasonable efforts, to mitigate its costs and expenses related to the expected provision of the aforementioned services, and the amounts payable by DEMEC to AMP in light of the early termination is reduced, DEMEC shall make a similar adjustment with respect to the amounts that remain payable from the Participating Member to DEMEC in such circumstances.

The obligations of the Participating Member under the DEMEC – Member AMI Contract shall be payable solely from the revenues and other available funds of the System.

Section 3. Authorization of Project Purchase Agreement. The Participating Member hereby authorizes the execution of the Project Purchase Agreement, and authorizes and directs the Board of Public Works President to execute and acknowledge the Project Purchase Agreement on behalf of the Participating Member. The Project Purchase Agreement shall be in substantially the form presented to this meeting, which is hereby approved, subject only to such changes and modifications as counsel may recommend and the Board of Public Works President may approve, such approval to be conclusively evidenced by his or her execution thereof.

The Participating Member acknowledges that under the terms of the Project Purchase Agreement, the Participating Member is obligated to make payments (the “Project Payments”) for all of DEMEC's Project Costs (including debt service, reserves for debt service, the requirements of any rate covenant with respect to debt service coverage, step-up payments as a result of defaults of other DEMEC members participating in common financing and other amounts as set forth in the Project Purchase Agreement) irrespective of whether the AMI Capital Project is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the operation of the AMI Capital Project, and shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance by DEMEC under the Project Purchase Agreement.

The obligation of the Participating Member to make Project Payments under the Project Purchase Agreement shall not constitute a debt of the Participating Member or a general obligation of or pledge of the full faith and credit of the Participating Member, and the Participating Member shall not be obligated or compelled to levy *ad valorem* taxes to make the Project Payments provided for in the Project Purchase Agreement. The obligation to make Project Payments shall constitute an operating expense of the Participating Member's System payable solely from the revenues and other available funds of the System.

Section 4. Authorization of Further Action. The Participating Member hereby authorizes the Board of Public Works President, the Vice-President, the Secretary, the Treasurer and any other appropriate officers or employees of the Participating Member to take all other actions and sign any other documents or agreements necessary or appropriate in connection with the AMI Program, the AMI Capital Project, the DEMEC – Member AMI Contract or the Project Purchase Agreement or otherwise in furtherance of the purposes of this Resolution.

Section 5. Authorization of Letter of Commitment. This resolution further authorizes the Board of Public Works President to prepare and submit a Letter of Commitment to AMP expressing the Participating Member's commitment to participating in AMP's GRIP option.

Section 6. Formal Action. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

Section 7. Adjudication. 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 8. Final Review. The Participating Member reserves the right after review of final pricing from AMP and prior to any binding commitment to AMP or DEMEC to either continue forward with participation by executing agreements with DEMEC or elect to decommit from the AMI Program and AMI Capital Project.

Section 9. Effective Date. This Resolution shall take effect immediately upon the passage hereof and the approval hereof by the Board of Public Works President.

Adopted by not less than a majority vote of Board of Public Works of the City of Lewes on \_\_\_\_\_ 2023.

APPROVED BY: \_\_\_\_\_  
Board of Public Works President