

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 104 - 2014

6
7 AN ORDINANCE AUTHORIZING PARTICIPATION IN
8 AMERICAN MUNICIPAL POWER'S RATE STABILIZATION
9 PROGRAM, THE EXECUTION OF A LOAN AGREEMENT,
10 EXECUTION AND DELIVERY OF A PROMISSORY NOTE,
11 AND DECLARING AN EMERGENCY.
12

13 WHEREAS, the City of Cuyahoga Falls, Ohio (the "City") and American Municipal
14 Power, Inc. ("AMP") have entered into a Master Services Agreement designated as AMP
15 Contract No. C-11-2005-4420 (the "MSA") pursuant to which certain services can be
16 provided pursuant to schedules thereto;
17

18 WHEREAS, due to fluctuations in the cost of power and energy, weather patterns
19 and usage by customers, the City and its customers experience variations in their
20 monthly power costs;
21

22 WHEREAS, such variations increase the difficulty of projecting cash flow needs
23 for the City's electric system (the "System") and can cause unpredictable and
24 undesirable variations in consumers' bills;
25

26 WHEREAS, AMP has established a Rate Stabilization Program (the "Program") to
27 assist its members to lessen their volatility in cash flow due to fluctuations in monthly
28 power supply costs and to smooth their customers' monthly bills; and
29

30 WHEREAS, the City wishes to participate in the Program;
31

32 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
33 Falls, County of Summit and State of Ohio, that:
34

35 Section 1. The City shall participate in the Program, upon the terms and
36 conditions as set forth in A Schedule to the MSA (the "Schedule"), in substantially the
37 form attached hereto as Exhibit 1 and made a part hereof.
38

39 Section 2. As set forth in the Schedule, in order to provide the City with a
40 leveled power supply cost during the power delivery period from June 1, 2015 through
41 December 31, 2015, AMP will loan the city up to \$5,000,000. Such loan will be on the
42 terms and conditions as set forth in a Draw to Term Loan Agreement (the "Loan
43 Agreement") and evidenced by a Promissory Note (the "Promissory Note"), each
44 substantially in the form attached hereto as Exhibit 2 and made a part hereof. The loan
45 shall be repayable solely from the net revenues of the System.
46

47 Section 3. The Mayor, Director of Public Service, Electric Superintendent,
48 Director of Finance, Director of Law and other necessary City Officials are authorized to
49 execute and deliver, on behalf of the City, the Schedule, the Loan Agreement and the
50 Promissory Note substantially in the form of the Schedule, the Loan Agreement and the

51 Promissory Note attached to this Ordinance together with such revisions, additions or
52 amendments as are approved by the Director of Law as being consistent with the
53 objectives and requirements of this ordinance.
54

55 Section 4. The Promissory Note is secured by the revenues of the System on a
56 parity basis with the City's current or future obligations to AMP.
57

58 Section 5. Any other ordinances and resolutions or portions of ordinances and
59 resolutions inconsistent herewith are hereby repealed, but any ordinances and
60 resolutions or portions of ordinances and resolutions not inconsistent herewith and
61 which have not previously been repealed are hereby ratified and confirmed.
62

63 Section 6. It is found and determined that all formal actions of this Council
64 concerning and relating to the adoption of this ordinance were adopted in an open
65 meeting of this Council and that all deliberations of this Council and of any of its
66 committees that resulted in such formal action were in meetings open to the public, in
67 compliance with all legal requirements including Chapter 107 of the Codified
68 Ordinances.
69

70 Section 7. This ordinance is hereby declared to be an emergency measure
71 necessary for the preservation of the public peace, health, safety, convenience and
72 welfare of the City of Cuyahoga Falls and the inhabitants thereof, and provided it
73 receives the affirmative vote of two-thirds of the members elected or appointed to
74 Council, it shall take effect and be in force immediately upon its passage and approval
75 by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed
76 by law.
77

78
79 Passed: 12/22/2014

Mary Ellen Pyke
President of Council

David Quinn
Clerk of Council

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81
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83
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85
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87 Approved: 12-23-2014

[Signature]
Mayor

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89
90 12/8/14

91 O:\2014ords\Rate Stabilization Ordinance 2015.docx

A-114 Exhibit 1

AMP/CITY OF CUYAHOGA FALLS
RATE STABILIZATION
POWER SCHEDULE

DATED JANUARY 1, 2015
A Schedule
to
American Municipal Power, Inc.,
and
City of Cuyahoga Falls, Ohio
Master Services Agreement No. C-11-2005-4420

WHEREAS, the City of Cuyahoga Falls, Ohio ("Municipality") and American Municipal Power, Inc. ("AMP" and together with Municipality, the "Parties") have entered into a Master Services Agreement designated as AMP Contract No. C-11-2005-4420 (the "Agreement") under which certain services may be provided under schedules thereto;

WHEREAS, because of fluctuations in the cost of power and energy, weather patterns, and usage by customers, AMP Member communities, including the Municipality and its customers, experience variations in their monthly power costs;

WHEREAS, such variations increase the difficulty of projecting cash flow needs for the Municipality's electric utility and can cause unpredictable and undesirable variations in consumers' bills, and are therefore undesirable from a management standpoint;

WHEREAS, the establishment of a rate stabilization fund would lessen the variations in cash flow for the Municipality and smooth its customers' bills, and AMP is willing to administer such a fund as a service to Municipality in accordance with the terms of this Rate Stabilization Schedule (this "Schedule");

WHEREAS, participation in a rate stabilization fund may also allow the Municipality to build up a balance to be utilized to pay its obligations owed to AMP or such other municipal electric system purpose as the Municipality may so direct; and

WHEREAS, words not defined herein shall be as defined in the Agreement.

NOW, THEREFORE, in consideration of the conditions, terms and covenants hereinafter contained, the Parties hereto do hereby mutually agree as follows:

ARTICLE I

TERM

SECTION 101 - TERM: Subject to the conditions contained herein, this Schedule shall be for a term beginning on January 1, 2015 (“Effective Date”) and ending December 31, 2022.

SECTION 102 – OPTIONAL TERMINATION: The Municipality may terminate this Schedule prior to December 31, 2022 upon ninety (90) days’ written notice to AMP. AMP may terminate this Schedule with no less than ninety (90) days’ written notice should AMP in good faith, determine it cannot continue to provide necessary funds to the Municipality hereunder to support the stabilization contemplated herein. In the event of early termination, (i) AMP shall cause the return to the Municipality of all funds held for the credit of the Municipality under this program no later than the termination date or (ii) any amount owed by the Municipality to AMP will be paid in full no later than the termination date.

SECTION 103 – REVISED TERM: The term of this Schedule may be revised upon mutual agreement of the parties hereto.

ARTICLE II

RATE STABILIZATION FUND

SECTION 201 - ESTABLISHMENT OF FUND: AMP has established the AMP Rate Stabilization Fund (the “Fund”). The Fund is held in trust for the benefit of AMP Members who choose to participate therein, pursuant to a Trust Agreement dated as of

September 1, 2012 (the "Trust Agreement") between AMP and U.S. Bank National Association, as trustee.

In order to provide a stabilized Power Supply Cost during the term hereof, the Municipality hereby agrees to participate in AMP's rate stabilization program by making deposits to the Fund on the terms and conditions contained in this Schedule.

Funds deposited by the Municipality hereunder are restricted to use for the benefit of the Municipality, as further specified herein and in the Trust Agreement.

The Municipality has reviewed the Trust Agreement and consents to its terms. AMP agrees that it will not make any changes to the Trust Agreement which have a material adverse effect on the Municipality without the Municipality's prior written consent.

SECTION 202 – CREDITS FROM FUND: During the power delivery period June 1, 2015 through December 31, 2015, as shown on Appendix A, AMP agrees to credit Municipality the amounts shown on Appendix A from the Fund. The monthly credit amount will be included in the AMP monthly power invoice to the Municipality.

SECTION 203 - DEPOSITS INTO FUND: During the power delivery period January 1, 2021 through December 31, 2022, the Municipality will make deposits to the Fund according to the deposit schedule shown on Appendix A. Each monthly payment set forth in Appendix A shall be a "Target Amount." The monthly deposit amount will be included in the AMP monthly power invoice to the Municipality. The first charge will be on the January 2021 power bill invoiced in February 2021.

Upon receipt of such amount(s) from the Municipality, AMP will deposit the same into the appropriate account under the Trust Agreement and will cause the same to be applied as provided in this Schedule. The Trust Agreement provides that the Municipality's funds on deposit in Trust Agreement accounts will be invested in compliance with the requirements for investment of the Municipality's funds contained in Chapter 135 of the Ohio Revised Code.

Interest on the Municipality's funds held in Trust Agreement accounts, if any, will accrue to the sole benefit of the Municipality.

Any final loan true-up payment needed to fully repay Municipality, or to repay AMP for any shortfall advanced by AMP, will be included in the invoice for December 2022 power delivery invoiced in January 2023.

An approximate loan schedule is included in Appendix A. In the event that any month is owed to AMP, AMP's interest plus associated carrying charges will be based on the actual cost of AMP's line of credit and will vary on a monthly basis.

ARTICLE III

ADMINISTRATIVE COSTS

SECTION 301 - ADMINISTRATIVE COSTS: AMP shall be compensated for its services hereunder for costs incurred in conjunction with the Rate Stabilization Fund Program as follows:

- A. A reimbursement of the cost to AMP for expenses and personnel related to AMP's performance of its obligations hereunder; plus,
- B. A reasonable allocation of the cost to AMP for overhead related to AMP's personnel's performance of its obligations hereunder.

AMP shall render an invoice for such services in the month of December each year to Members participating in the Rate Stabilization Fund Program. The invoice shall be due and payable not less than ten (10) days after the date of invoice but shall not be before the 25th day of the month in which the invoice is rendered.

ARTICLE IV

MISCELLANEOUS

SECTION 401 – AMENDMENTS OR MODIFICATIONS:

A. In addition to any amendments required by the Loan Agreement, Appendix A may be amended by mutual written agreement of the Parties to adjust the loan deposit, credit and repayment schedule based on updated power cost projections. In the event that Appendix A is amended, the loan balance shall still be fully paid to AMP by Municipality no later than December 31, 2022.

B. This Schedule may not be modified or amended orally, and may be modified or amended only as provided herein or with the written consents of both parties hereto. This Schedule inures to the benefit of each Party, its successors and assigns and it is binding upon each Party, its successors and assigns.

SECTION 402 – SUBACCOUNT STATEMENTS: AMP shall make, or shall cause the Trustee to make, a report of the balance in the Municipality’s subaccount under the Trust Agreement to the Municipality periodically, but in no event less than annually.

SECTION 403 – LOAN AGREEMENT: The Draw to Term Loan Agreement (“Loan Agreement”) between AMP and Municipality dated as of January 1, 2015 is incorporated by reference and is made a part hereof as if fully rewritten herein.

CITY OF CUYAHOGA FALLS, OHIO

APPROVED AS TO FORM:

By: _____

By: _____

Municipal Legal Advisor

Title: _____

Date: _____

Date: _____

AMERICAN MUNICIPAL POWER, INC.

APPROVED AS TO FORM:

By: _____

By: _____

Marc S. Gerken, PE

John W. Bentine

President/CEO
Counsel

Sr. Vice President / General

Date: _____

Date: _____

APPENDIX A

CITY OF CUYAHOGA FALLS RATE LEVELIZATION FUND
LOAN SCHEDULE

Estimated Annual Interest Rate:

1.50%

<u>Month (1)</u>	<u>Payment from AMP to Municipality (2)</u>	<u>Monthly Carrying Charge</u>	<u>Accumulated Loan Balance</u>
Jun-15	\$ 560,000.00	\$ -	\$ 560,000.00
Jul-15	\$ 560,000.00	\$ 700.00	\$ 1,120,700.00
Aug-15	\$ 560,000.00	\$ 1,400.88	\$ 1,682,100.88
Sep-15	\$ 560,000.00	\$ 2,102.63	\$ 2,244,203.50
Oct-15	\$ 560,000.00	\$ 2,805.25	\$ 2,807,008.76
Nov-15	\$ 560,000.00	\$ 3,508.76	\$ 3,370,517.52
Dec-15	\$ 560,000.00	\$ 4,213.15	\$ 3,934,730.66
Jan-16	\$ -	\$ 4,918.41	\$ 3,939,649.08
Feb-16	\$ -	\$ 4,924.56	\$ 3,944,573.64
Mar-16	\$ -	\$ 4,930.72	\$ 3,949,504.36
Apr-16	\$ -	\$ 4,936.88	\$ 3,954,441.24
May-16	\$ -	\$ 4,943.05	\$ 3,959,384.29
Jun-16	\$ -	\$ 4,949.23	\$ 3,964,333.52
Jul-16	\$ -	\$ 4,955.42	\$ 3,969,288.93
Aug-16	\$ -	\$ 4,961.61	\$ 3,974,250.55
Sep-16	\$ -	\$ 4,967.81	\$ 3,979,218.36
Oct-16	\$ -	\$ 4,974.02	\$ 3,984,192.38
Nov-16	\$ -	\$ 4,980.24	\$ 3,989,172.62
Dec-16	\$ -	\$ 4,986.47	\$ 3,994,159.09
Jan-17	\$ -	\$ 4,992.70	\$ 3,999,151.79
Feb-17	\$ -	\$ 4,998.94	\$ 4,004,150.73
Mar-17	\$ -	\$ 5,005.19	\$ 4,009,155.91
Apr-17	\$ -	\$ 5,011.44	\$ 4,014,167.36
May-17	\$ -	\$ 5,017.71	\$ 4,019,185.07
Jun-17	\$ -	\$ 5,023.98	\$ 4,024,209.05
Jul-17	\$ -	\$ 5,030.26	\$ 4,029,239.31
Aug-17	\$ -	\$ 5,036.55	\$ 4,034,275.86
Sep-17	\$ -	\$ 5,042.84	\$ 4,039,318.71
Oct-17	\$ -	\$ 5,049.15	\$ 4,044,367.85
Nov-17	\$ -	\$ 5,055.46	\$ 4,049,419.31
Dec-17	\$ -	\$ 5,061.78	\$ 4,054,476.09
Jan-18	\$ -	\$ 5,068.11	\$ 4,059,538.20

Feb-18	\$	-	\$	5,074.44	\$	4,064,627.64
Mar-18	\$	-	\$	5,080.78	\$	4,069,708.43
Apr-18	\$	-	\$	5,087.14	\$	4,074,795.56
May-18	\$	-	\$	5,093.49	\$	4,079,889.06
Jun-18	\$	-	\$	5,099.86	\$	4,084,988.92
Jul-18	\$	-	\$	5,106.24	\$	4,090,095.15
Aug-18	\$	-	\$	5,112.62	\$	4,095,207.77
Sep-18	\$	-	\$	5,119.01	\$	4,100,326.78
Oct-18	\$	-	\$	5,125.41	\$	4,105,452.19
Nov-18	\$	-	\$	5,131.82	\$	4,110,584.01
Dec-18	\$	-	\$	5,138.23	\$	4,115,722.24
Jan-19	\$	-	\$	5,144.65	\$	4,120,866.89
Feb-19	\$	-	\$	5,151.08	\$	4,126,017.97
Mar-19	\$	-	\$	5,157.52	\$	4,131,175.49
Apr-19	\$	-	\$	5,163.97	\$	4,136,339.46
May-19	\$	-	\$	5,170.42	\$	4,141,509.89
Jun-19	\$	-	\$	5,176.89	\$	4,146,686.78
Jul-19	\$	-	\$	5,183.36	\$	4,151,870.13
Aug-19	\$	-	\$	5,189.84	\$	4,157,059.97
Sep-19	\$	-	\$	5,196.32	\$	4,162,256.30
Oct-19	\$	-	\$	5,202.82	\$	4,167,459.12
Nov-19	\$	-	\$	5,209.32	\$	4,172,668.44
Dec-19	\$	-	\$	5,215.84	\$	4,177,884.28
Jan-20	\$	-	\$	5,222.36	\$	4,183,106.63
Feb-20	\$	-	\$	5,228.88	\$	4,188,335.51
Mar-20	\$	-	\$	5,235.42	\$	4,193,570.93
Apr-20	\$	-	\$	5,241.96	\$	4,198,812.90
May-20	\$	-	\$	5,248.52	\$	4,204,061.41
Jun-20	\$	-	\$	5,255.08	\$	4,209,316.49
Jul-20	\$	-	\$	5,261.65	\$	4,214,578.14
Aug-20	\$	-	\$	5,268.22	\$	4,219,846.36
Sep-20	\$	-	\$	5,274.81	\$	4,225,121.17
Oct-20	\$	-	\$	5,281.40	\$	4,230,402.57
Nov-20	\$	-	\$	5,288.00	\$	4,235,690.57
Dec-20	\$	-	\$	5,294.61	\$	4,240,985.18
Jan-21	\$	(185,000.00)	\$	5,301.23	\$	4,061,286.42
Feb-21	\$	(185,000.00)	\$	5,076.61	\$	3,881,363.02
Mar-21	\$	(185,000.00)	\$	4,851.70	\$	3,701,214.73
Apr-21	\$	(185,000.00)	\$	4,626.52	\$	3,520,841.25
May-21	\$	(185,000.00)	\$	4,401.05	\$	3,340,242.30
Jun-21	\$	(185,000.00)	\$	4,175.30	\$	3,159,417.60

Jul-21	\$	(185,000.00)	\$	3,949.27	\$	2,978,366.87
Aug-21	\$	(185,000.00)	\$	3,722.96	\$	2,797,089.83
Sep-21	\$	(185,000.00)	\$	3,496.36	\$	2,615,586.19
Oct-21	\$	(185,000.00)	\$	3,269.48	\$	2,433,855.68
Nov-21	\$	(185,000.00)	\$	3,042.32	\$	2,251,898.00
Dec-21	\$	(185,000.00)	\$	2,814.87	\$	2,069,712.87
Jan-22	\$	(185,000.00)	\$	2,587.14	\$	1,887,300.01
Feb-22	\$	(185,000.00)	\$	2,359.13	\$	1,704,659.13
Mar-22	\$	(185,000.00)	\$	2,130.82	\$	1,521,789.96
Apr-22	\$	(185,000.00)	\$	1,902.24	\$	1,338,692.20
May-22	\$	(185,000.00)	\$	1,673.37	\$	1,155,365.56
Jun-22	\$	(185,000.00)	\$	1,444.21	\$	971,809.77
Jul-22	\$	(185,000.00)	\$	1,214.76	\$	788,024.53
Aug-22	\$	(185,000.00)	\$	985.03	\$	604,009.56
Sep-22	\$	(185,000.00)	\$	755.01	\$	419,764.57
Oct-22	\$	(185,000.00)	\$	524.71	\$	235,289.28
Nov-22	\$	(185,000.00)	\$	294.11	\$	50,583.39
Dec-22	\$	(50,646.62)	\$	63.23	\$	0.00

(1) Month means month of power delivery.

(2) Negative means payment from Municipality to AMP

December 2022 payment is estimated. Actual payment will include final loan true-up payment needed to fully repay Municipality.

A-114 Exhibit 2

**\$5,000,000 MAXIMUM PRINCIPAL AMOUNT
DRAW TO TERM LOAN AGREEMENT**

Between

CITY OF CUYAHOGA FALLS, OHIO

and

AMERICAN MUNICIPAL POWER, INC.

Dated as of January 1, 2015

DRAW TO TERM LOAN AGREEMENT

This Draw to Term Loan Agreement (the "Agreement") for a maximum principal amount of \$5,000,000, is between the City of Cuyahoga Falls, Ohio ("Cuyahoga Falls" or the "City"), a city and political subdivision of the State of Ohio, whose address is 2310 Second Street, Cuyahoga Falls, Ohio 43221 and American Municipal Power, Inc. ("AMP"), a corporation not for profit organized and existing under the laws of the State of Ohio, whose address is 1111 Schrock Road, Suite 100, Columbus, Ohio 43229. It is dated as of the 1st day of January, 2015.

I. RECITALS

A. Cuyahoga Falls has the power to enter into this transaction pursuant to the provisions of Article XVIII, Sections 3 and 4 of the Ohio Constitution, and the applicable provisions of the Ohio Revised Code. AMP has the power to enter into this transaction pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.

B. Cuyahoga Falls wishes to participate in the AMP Rate Stabilization Program (the "Program") in order to lessen the City's variation in cash flow due to fluctuations in its monthly power supply costs and to smooth its customers' bills.

C. Cuyahoga Falls and AMP have entered into a Master Services Agreement designated as AMP Contract No. C-11-2005-4420 and dated as of December 12, 2005 (the "MSA") pursuant to which certain services can be provided pursuant to schedules thereto.

D. Cuyahoga Falls and AMP have entered into a schedule to the MSA (the "Schedule") for a term beginning on January 1, 2015 through December 31, 2022, which

sets forth the terms of the City's participation in the Program. The Schedule is attached hereto as Exhibit B.

E. As set forth in Article II of the Schedule, in order to provide the City with a stabilized power supply cost during the power delivery period set forth in the Schedule, AMP will loan Cuyahoga Falls up to the principal amount of \$5,000,000. This Agreement contains the terms and conditions by which such loan will be provided.

II. TERMS OF LOAN

A. AMP will, upon the terms and conditions of this Agreement, lend to Cuyahoga Falls the principal amount of not to exceed \$5,000,000. The loan shall be made over time in installments on a monthly basis, via credit to the City's monthly power bill, commencing on the date and in the amounts as set forth in Appendix A to the Schedule.

The loan principal amount shall not at any point exceed \$5,000,000 and will be repaid by the City as shown in the table set forth in Appendix A to the Schedule, with the last payment to be made no later than December 31, 2022. Interest and carrying charge costs will continue to accrue on any remaining loan balance during the repayment period until such time as the balance remaining is paid in full. The final loan true-up payment needed to fully repay AMP will be included in the final invoice hereunder. The monthly loan repayment amount (including interest and carrying charges) will be included in the AMP monthly power invoice to the City.

The interest rate on the loan and the associated carrying charges will be based on AMP's actual cost of borrowing the funds. The monthly carrying charges set forth in Appendix A to the Schedule are based upon estimates of the interest rate and costs

associated with AMP utilizing its line of credit (the "Credit Line") to provide the loan to the City and are for illustration purposes only. The City's monthly repayment amounts will be based upon the actual interest rate and carrying charges incurred by AMP, which will be adjusted on a periodic basis. While it is assumed by the parties that AMP will utilize its Credit Line to provide the loan to Cuyahoga Falls, AMP, in its sole discretion, may utilize revenue bonds, bond anticipation notes, bank loans or other evidences of indebtedness, to finance the loan to the City on the most economically favorable terms available given the prevailing market conditions at the time.

If AMP is unable through its best efforts to access its Credit Line or other methods of financing the loan, AMP may immediately withhold further disbursements of loan funds and, upon ninety (90) days written notice to the City, declare all amounts due under this Agreement, the Schedule and/or the Promissory Note, to be immediately due and payable to AMP.

Appendix A to the Schedule shall be amended from time to time upon the mutual written agreement of the City and AMP to adjust the loan and repayment schedule based on updated power cost projections and to reflect the actual interest rate and carrying charges incurred. In the event that Appendix A to the Schedule is amended, the loan balance shall still be fully paid to AMP by Cuyahoga Falls no later than December 31, 2022.

In further evidence of its obligation to pay the principal amount of the loan, plus all interest accrued and associated carrying costs, Cuyahoga Falls will execute and deliver a promissory note in substantially the form attached hereto as Exhibit A (the "Promissory Note").

The loan shall be repayable by the City as an operating and maintenance expense ("O&M Expense") of the City's electric system (the "System") payable solely from the revenues of the System.

B. Upon sixty (60) days written notice to AMP, the City may request that AMP use its best efforts to refinance the outstanding amount of the loan through the issuance of long-term fixed rate bonds or notes issued in anticipation of such bonds on behalf of the City. If AMP is unable to obtain a commitment from a lender or lenders to purchase or place the bonds or notes, the loan shall remain outstanding and the City shall continue to be obligated to make payments as set forth in Appendix C to the Schedule.

C. The obligation of Cuyahoga Falls to make payments on the Promissory Note as an O&M Expense of the System from the revenues of the System shall be absolute and unconditional without defense or set-off by reason of any default by AMP under this Agreement or under any other agreement between Cuyahoga Falls and AMP for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the System, commercial impracticability or frustration of purpose, or failure of AMP to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the Schedule, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever, but solely from the revenues of the System. Nothing herein or in the Promissory Note contained shall obligate the City to make payment from any other sources and neither the general resources nor credit of the City is pledged for the payment of the City's obligation hereunder or as evidenced by the Promissory Note.

III. REPRESENTATIONS AND WARRANTIES

Each of the parties to this Agreement represents to the other that:

1. it has full power and authority to enter into the transactions described herein;
2. it has full power and authority to execute and deliver this Agreement and the Schedule, and to perform the obligations as contemplated in each;
3. it has duly authorized the execution of this Agreement and the Schedule;
4. each of this Agreement, the Schedule and, in the case of Cuyahoga Falls, the Promissory Note, is a valid and binding obligation of each of the parties thereto and enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the enforceability of creditors' rights generally or by general principles of equity; and
5. there are no pending or threatened legal proceedings which would affect its ability to enter into this Agreement, the Schedule or perform the obligations described in each.
6. In accounting for the loan and its repayment, the City shall comply with the generally accepted accounting principles as adopted by the Governmental Accounting Standards Board or other applicable authority.

IV. COVENANTS

A. Future Debt Issuances. If Cuyahoga Falls issues or incurs additional debt which is secured by the revenues of its System, it will take such steps as are necessary in structuring such future issues to assure that no lien on such revenues is superior to AMP's rights under this Agreement or such previous agreements evidencing the City's

obligations to AMP as set forth in Section II A hereof. Nothing in this paragraph is intended to prevent the issuance of debt which has a parity or subordinate claim on System revenues.

B. Insurance; Casualty; Eminent Domain. Cuyahoga Falls will keep or cause to be kept, the System insured by a hazard insurance policy in an amount not less than \$5,000,000 with AMP named as loss payee. In the event of failure to obtain such insurance by Cuyahoga Falls, AMP may obtain such insurance and the costs thereof shall be due and payable immediately, or on demand, at the option of AMP, and shall be secured by this Agreement. If the System or any part thereof is condemned under any power of eminent domain, or if the System or any part thereof is damaged or destroyed, the damages, proceeds and consideration for the acquisition, damage or destruction shall be applied by Cuyahoga Falls in payment of any sums secured by this Agreement, or to the restoration or replacement of any damaged property, without in any way affecting the obligation of Cuyahoga Falls for payment of any sums now or hereafter secured hereby.

C. Maintenance and Repair. Cuyahoga Falls shall keep and maintain or cause to be kept and maintained in good repair and condition the System and shall not permit or commit waste of the System.

D. Protection of the System. Cuyahoga Falls shall pay or cause to be paid on demand such expenses and fees as may be incurred by AMP in the protection of the System and the maintenance of the lien of this Agreement. Such expenses and fees shall be secured by this Agreement.

E. Special Covenants. Cuyahoga Falls represents and agrees that:

1. It will provide to AMP its quarterly Electric Fund financial statements no later than 45 days following the last day of each calendar quarter.
2. It will provide to AMP its annual Electric Fund financial statements (which shall be audited statements in years in which an audit is performed) no later than 270 days following December 31 of each year.
3. It will set and maintain rates and power clause adjustment factors, and will regulate expenses, for the System such that for each year the excess of revenues over operating and maintenance expenses is at least 110% of principal and interest cost on all of its debt (including the debt evidenced by this Agreement) relating to the System. Notwithstanding the foregoing, if Cuyahoga Falls is obliged by any trust indentures to maintain a coverage ratio greater than 110%, it shall comply with the provisions of such indentures so long as they remain in effect. In the event of a failure to meet the requirements set forth above for any fiscal year, the City shall notify AMP and shall immediately employ an engineer knowledgeable in the operation of municipal electric systems and rate studies applicable thereto, and having a good repute for skill and experience in such work, to prepare and submit a written report and recommendations with respect to the rates and charges of the System and with respect to improvements or changes in the operations of the System, stating also the extent to which prior recommendations of consultants or engineers may not have been complied with by the City. A copy of such report and recommendations shall be filed with AMP. The City shall, within ninety (90) days after receipt of such report, revise its rates and charges in conformity with such recommendations and otherwise follow such recommendations. If the City

takes the actions described in the previous sentence, its failure to meet the coverage ratio set forth above shall not constitute the basis for a declaration of an Event of Default hereunder. If it does not take such actions, such failure shall constitute the basis for a declaration of an Event of Default hereunder.

4. It will maintain at all times, beginning January 1, 2015, as working capital for its electric operating fund, cash in the amount of at least one-half (1/2) of the previous year's System operating and maintenance expenses less the cost of generation plus purchased power and depreciation, as shown on the System's financial statements (which shall be audited statements in years in which an audit is performed). If in any year working capital falls below the amount required by this paragraph, Cuyahoga Falls shall restore its working capital to the level required by this paragraph by the end of the calendar year in which noncompliance occurs. Cuyahoga Falls will recover all purchased power expenses either through base rates or its Purchased Power Cost Adjustment Factor.
5. It will pay all invoices due to AMP within the terms and conditions of payment of such invoices.

V. DEFAULT; REMEDIES

A. Default; Remedies. In the event of default in the payment of any of the sum or sums now or hereafter secured hereby, or in the performance of any of the covenants and conditions of this Agreement or the Schedule; or in the event Cuyahoga Falls shall for any reason be rendered incapable of fulfilling its obligations hereunder; or final judgment for the payment of money shall be rendered against Cuyahoga Falls which adversely affects its ownership, control or operation of the System, and any such

judgment shall not be discharged within sixty (60) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which, or pursuant to which, such judgment shall have been granted, or entered, in such manner as to stay the execution of or levy under, such judgment, order, decree, or process or the enforcement thereof; or any proceeding shall be instituted with the consent or acquiescence of Cuyahoga Falls for the purpose of effecting a composition between Cuyahoga Falls and its creditors, or for the purpose of adjusting the claims of such creditors pursuant to any Federal or State statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the System; or if (a) Cuyahoga Falls is adjudged insolvent by a court of competent jurisdiction which assumes jurisdiction of the System, or (b) an order, judgment or decree be entered by any court of competent jurisdiction appointing, without the consent of Cuyahoga Falls, a receiver or trustee of Cuyahoga Falls or of the whole or any part of the System and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or if Cuyahoga Falls shall file a petition or answer seeking reorganization or any arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, which would place jurisdiction of the System in other than Cuyahoga Falls; then at the sole option of AMP, by a notice in writing to Cuyahoga Falls, and in addition to any other right or remedy which AMP may now or hereafter have by law, AMP shall have the right and power to (i) withhold further disbursements of loan funds, (ii) upon ninety (90) days written notice to the City accelerate the final payment date and demand payment in full of all sums due and owing this Agreement, the Schedule and/or the

Promissory Note, and/or (iii) apply for the appointment of a receiver of rents, income and profits of the System received or receivable by Cuyahoga Falls as a matter of right and as security for the amounts due AMP without consideration of the value of the System, or the solvency of any person or persons liable for the payment of such amounts, the rents, income and profits of the System received or receivable by Cuyahoga Falls being hereby assigned by Cuyahoga Falls to AMP as security for payment of the sum or sums now or hereafter secured hereby.

Anything in the foregoing to the contrary notwithstanding, if at any time before the entry of final judgment or decree in any suit, action or proceeding instituted by AMP on account of default as defined above, or before the completion of the enforcement of any other remedy under this Agreement, Cuyahoga Falls shall pay the principal of all sum or sums now or hereafter secured hereby, then payable by their stated terms, whether by maturity or prior redemption, and all arrears of interest, if any, upon said sums then outstanding and the charges, compensation, expenses, disbursements, advances and liabilities of AMP, and all other amounts then payable by Cuyahoga Falls hereunder, and every other default of which AMP has notice shall have been remedied to the satisfaction of AMP, then and in every such case AMP shall rescind and annul the declaration of default and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

B. Indulgence or Waiver. In the event AMP grants an extension of time on any payments of the sums secured by this Agreement; takes other or additional security for the payment thereof; or waives or fails to exercise any right granted herein, said act or omission shall not release Cuyahoga Falls, its successors or assigns, under any covenant

of this Agreement, nor preclude AMP from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

VI. MISCELLANEOUS

A. Severability. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect other provisions or clauses of this Agreement which can be given effect without the conflicting provision or clause, and to this end the provisions and clauses of this Agreement are declared to be severable.

B. Notice. All notices, demands and requests hereunder shall be in writing and shall be deemed to have been properly given if sent by United States first class, certified or registered mail, an overnight delivery service or by personal service to the addresses for Cuyahoga Falls and AMP set forth at the beginning of this Agreement, or at such other addresses as the parties shall from time to time designate by written notice as required herein.

C. Miscellaneous. This Agreement may not be modified, amended or terminated orally, and may be modified, amended or terminated only as provided herein or with the written consents of both parties hereto. This Agreement inures to the benefit of AMP, its successors and assigns and it is binding upon Cuyahoga Falls, its successors and assigns.

Now if Cuyahoga Falls shall perform the foregoing covenants and conditions, this Agreement shall become void and shall be released by AMP, at the cost and expense of Cuyahoga Falls; otherwise this Agreement is to be in full force and effect.

IN WITNESS WHEREOF, this Agreement has been duly executed by AMP and Cuyahoga Falls, by their duly authorized officers, as of this 1st day of January, 2014.

AMERICAN MUNICIPAL POWER

By: _____
Title: Senior Vice President of Finance and
Chief Financial Officer

CITY OF CUYAHOGA FALLS

By: _____
Title: Mayor

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Before me, a Notary Public in and for said County, personally appeared the above named Robert W. Trippe, known to me to be the Senior Vice President of Finance and Chief Financial Officer of American Municipal Power, Inc., a corporation not for profit, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer, and the free act and deed of said corporation as authorized by the Board of Trustees of the Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Columbus, Ohio this _____ day of _____, 2014.

Notary Public

My commission expires:

[NOTARY SEAL]

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said County, personally appeared the above named _____, known to me to be the Mayor of the City of Cuyahoga Falls, a municipal corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer, and the free act and deed of said municipal corporation as authorized by the Council of the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cuyahoga Falls, Ohio this _____ day of _____, 2014.

Notary Public

My commission expires:

[NOTARY SEAL]

EXHIBIT A

[FORM OF PROMISSORY NOTE]
CITY OF CUYAHOGA FALLS
PROMISSORY NOTE
(Special Obligation)

_____, 2014

The **City of Cuyahoga Falls** (the "City"), a municipal corporation, for value received, promises to pay to **American Municipal Power, Inc.** ("AMP"), an Ohio non-profit corporation, but solely from the net revenues of the City's electric system (the "System") under this Promissory Note (as the same may be renewed or amended from time to time, the "Note"), and as further described in the Draw to Term Loan Agreement, dated as of January 1, 2015 (the "Agreement") between the City and AMP, amounts equal to the amounts payable by the City to AMP from time to time under the Agreement, at such times and as any such amounts are payable thereunder, up the principal amount of not to exceed \$5,000,000. Capitalized terms used herein but not defined herein have the meaning given to them in the Agreement.

The loan from AMP to the City as set forth in the Agreement shall be made over time in installments on a monthly basis, via credit to the City's monthly power bill, commencing June 2015, in the amounts as set forth in Appendix A to the Schedule. Appendix A to the Schedule is attached hereto and made a part hereof.

The loan principal amount shall not at any point exceed \$5,000,000 and will be repaid by the City as shown in the table set forth in Appendix A to the Schedule, with the last payment to be made no later than December 31, 2022. Interest and carrying charge costs will continue to accrue on any remaining loan balance during the repayment period until such time as the balance remaining is paid in full. The final loan true-up payment

needed to fully repay AMP will be included in the final invoice hereunder. The monthly loan repayment amount (including interest and carrying charges) will be included in the AMP monthly power invoice to the City.

The interest rate on the loan and the associated carrying charges will be based on AMP's actual cost of borrowing the funds. The monthly carrying charges set forth in Appendix A to the Schedule attached hereto are based upon estimates of the interest rate and costs associated with AMP utilizing its line of credit (the "Credit Line") to provide the loan to the City and are for illustration purposes only. The City's monthly repayment amounts will be based upon the actual interest rate and carrying charges incurred by AMP, which will be adjusted on a periodic basis. While it is assumed by the parties that AMP will utilize its Credit Line to provide the loan to the City, AMP, in its sole discretion, may utilize revenue bonds, bond anticipation notes, bank loans or other evidences of indebtedness, to finance the loan to the City on the most economically favorable terms available given the prevailing market conditions at the time.

If AMP is unable through its best efforts to access its Credit Line or other methods of financing the loan, AMP may immediately withhold further disbursements of loan funds and, upon ninety (90) days written notice to the City, declare all amounts due under this Agreement, the Schedule and/or the Promissory Note, to be immediately due and payable to AMP.

Appendix A to the Schedule shall be amended from time to time upon the mutual written agreement of the City and AMP to adjust the loan and repayment schedule to reflect the actual interest rate and carrying charges incurred, taking into account any updated power cost projections. In the event that Appendix A to the Schedule is

amended, the loan balance shall still be fully paid to AMP by Cuyahoga Falls no later than December 31, 2022.

The loan shall be repayable by the City as an operating and maintenance expense ("O&M Expense") of the City's electric system (the "System") payable solely from the revenues of the System.

Interest hereon shall be calculated on a 360 day per year, 30-day month basis.

This Note is secured by the Agreement. The obligation of the City to make payments on this Note, payable as an O&M Expense of the System from the revenues of its System, shall be absolute and unconditional without defense or set-off by reason of any default by AMP under the Agreement or under any other agreement between the City and AMP for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the System, commercial impracticability or frustration of purpose, or failure of AMP to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Agreement, it being the intention of the parties that the payments required hereunder will be paid in full when due from the revenues of the System without any delay or diminution whatsoever.

Reference is made to the Agreement for provisions regarding events of default and remedies.

IN WITNESS WHEREOF, the City has executed this Promissory Note as of the date first above written.

CITY OF CUYAHOGA FALLS, OHIO

By: _____
Title: _____

[Appendix A to Schedule to be Attached to Promissory Note]

EXHIBIT B

CITY OF CUYAHOGA FALLS

POWER SALES SCHEDULE

A Schedule

to

American Municipal Power, Inc.,

and

City of Cuyahoga Falls, Ohio

Master Services Agreement No. C-11-2005-4420

[To Be Attached]