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3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 105 - 2014
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7
8 AN ORDINANCE AUTHORIZING THE EXECUTION OF
9 ENERGY PURCHASE POWER SUPPLY SCHEDULE WITH
10 AMERICAN MUNICIPAL POWER, INC., AND DECLARING
11 AN EMERGENCY.
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13

14 WHEREAS, the City of Cuyahoga Falls, Ohio (the "City") is a political
15 subdivision organized and existing pursuant to the laws of the state of Ohio which
16 owns and operates an electric utility system for the sale of electric power and
17 associated energy for the benefit of its citizens and customers; and
18

19 WHEREAS, in order to satisfy the electric energy requirements of its electric
20 utility system, the City has purchased economical and reliable energy from American
21 Municipal Power (AMP), an Ohio non-profit corporation, of which the City is a member,
22 or has purchased power arranged by AMP; and
23

24 WHEREAS, the City, acting individually and, along with other municipalities
25 which own and operate electric utility systems, jointly through AMP, endeavors to
26 arrange for reliable, reasonably priced supplies of electric energy for ultimate delivery
27 to its customers; and
28

29 WHEREAS, City has executed a Master Services Agreement with AMP which
30 sets forth the general terms and conditions for the provision of power supply and other
31 services by AMP to the City; and
32

33 WHEREAS, AMP will negotiate with one or more reputable and financially
34 sound third party power suppliers to enter into an agreement(s) to purchase electric
35 energy for a term of no longer than two years, which will provide an economical source
36 of electric energy (herein "Long Term Energy Purchase(s)") for City and other AMP
37 Members; and
38

39 WHEREAS, AMP, on behalf of the City, desires to purchase from third party
40 supplier(s) and then to resell the energy available from these Long Term Energy
41 Purchase(s) on a long term basis to City at contract cost (excluding any taxes,
42 transmission costs, replacement energy, losses, congestion costs, or AMP service fees)
43 not to exceed \$46.00 per MWh; and
44

45 WHEREAS, AMP, has prepared and delivered to the City the form of an Energy
46 Purchase Power Supply Schedule, pursuant to which the City may purchase electric
47 energy; and
48

49 WHEREAS, AMP has provided and will continue to provide appropriate
50 personnel and information regarding the Long Term Energy Purchase(s) to the City, as

51 such officers and representatives of the City deem necessary or appropriate, to enable
52 the City to evaluate the benefits and risks of the Long Term Energy Purchase(s), to
53 take actions contemplated by the Ordinance hereinafter set forth and to determine
54 that the same are in the public interest; and
55

56 WHEREAS, in recognition of the unique nature of the Purchases described
57 herein, competitive bidding is not required on the City's purchase of energy, through
58 the Energy Purchase Power Supply Schedule, however, any competitive bidding
59 requirement that might otherwise be applicable for the purchase of any energy
60 through the execution of the Energy Purchase Power Supply Schedule authorized by
61 this Ordinance, should be waived; and
62

63 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
64 Falls, County of Summit and State of Ohio, that:
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66 Section 1. The form of the Energy Purchase Power Supply Schedule between
67 the City of Cuyahoga Falls and AMP, substantially in the form attached hereto as
68 Exhibit 1, is approved, together with any necessary revisions, additions or
69 amendments as are agreed to by the parties and approved by the Director of Law as
70 being consistent with the objectives and requirement in this ordinance.
71

72 Section 2. The Electric Superintendent or the Electric Superintendent's
73 designee are hereby authorized to execute the Energy Purchase Power Supply
74 Schedule and to acquire the City's energy from Long Term Energy Purchase, with a
75 term of two years, and with a third party contract price (excluding any taxes,
76 transmission costs, replacement energy, losses, congestion costs, or AMP service fees)
77 not to exceed \$46.00 per MWh, and is further authorized to execute and deliver any
78 and all documents necessary to participate in Long Term Energy Purchase, pursuant
79 to the conditions set forth herein for a term of no more than two (2) years, as set forth
80 in the Energy Purchase Power Supply Schedule.
81

82 Section 3. Competitive bidding is not required on the City's acquisition of its
83 right to secure energy under the Energy Purchase Power Supply Schedule, and in the
84 event any competitive bidding requirements are applicable, any such competitive
85 bidding requirement that might otherwise be applicable, are hereby waived.
86

87 Section 4. Any other ordinances and resolutions or portions of ordinances
88 and resolutions inconsistent herewith are hereby repealed, but any ordinances and
89 resolutions or portions of ordinances and resolutions not inconsistent herewith and
90 which have not previously been repealed are hereby ratified and confirmed.
91

92 Section 5. It is found and determined that all formal actions of this Council
93 concerning and relating to the adoption of this ordinance were adopted in an open
94 meeting of this Council and that all deliberations of this Council and of any of its
95 committees that resulted in such formal action were in meetings open to the public, in
96 compliance with all legal requirements including Chapter 107 of the Codified
97 Ordinances.
98

99 Section 6. This ordinance is hereby declared to be an emergency measure
100 necessary for the preservation of the public peace, health, safety, convenience and

101 welfare of the City of Cuyahoga Falls and the inhabitants thereof, and provided it
102 receives the affirmative vote of two-thirds of the members elected or appointed to
103 Council, it shall take effect and be in force immediately upon its passage and approval
104 by the Mayor; otherwise it shall take effect and be in force at the earliest period
105 allowed by law.

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Passed: 12/22/2014

Mary Ellen Lyke
President of Council

David Quinn
Clerk of Council

Approved: 12-23-2014

[Signature]
Mayor

12/8/14

CITY OF CUYAHOGA FALLS
2021 – 2022 ENERGY PURCHASE POWER SUPPLY SCHEDULE
AMP Contract No. 2015-001321-SCHED
A Schedule to
American Municipal Power, Inc.
and
City of Cuyahoga Falls, Ohio
Master Service Agreement No. C-11-2005-4420

WHEREAS, the City of Cuyahoga Falls, Ohio (“Municipality”) and American Municipal Power, Inc. (“AMP”) collectively (“Parties”) have entered into a Master Service Agreement (“Agreement”) under which certain services may be provided under schedules thereto;

WHEREAS, in order to obtain economical electric energy the Municipality desires to purchase electric energy from AMP or have AMP arrange for the same on behalf of the Municipality;

WHEREAS, AMP will negotiate with one or more reputable and financially sound third party power suppliers to enter into an agreement(s) to purchase electric energy for a term beginning on January 1, 2021 and ending December 31, 2022, which will provide an economical source of electric energy (herein “Long Term Energy Purchase(s)”) for Municipality; and

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

ARTICLE I
TERM

Subject to the conditions contained herein, this Schedule shall be for a term beginning on January 1, 2021 and ending December 31, 2022.

ARTICLE II
CONTRACT QUANTITIES AND RATE

SECTION 201 - CONTRACT QUANTITIES: For the compensation hereinafter set forth, and pursuant to the terms and conditions contained herein, AMP shall arrange for the delivery of energy to the Municipality. The Municipality shall be invoiced and responsible for paying, and AMP is entitled to receive as compensation, the following:

- A. Actual monthly transmission fees, congestion charges, ancillary services, unforced capacity charges, losses, customer charges, replacement energy, and taxes or other such costs incurred by AMP to deliver the energy to the Municipality's Delivery Point; and
- B. AMP's Service Fee B, as defined in the Agreement, for all energy sold or arranged for and delivered pursuant to this Schedule, unless the same is paid for under another power supply schedule; and
- C. The contract rates or fees that AMP pays or incurs for each MW or MWh of energy supplied to the Municipality, as set forth in the transaction confirmation set forth in the Appendix A.

The long term energy purchases anticipated to be executed as a transaction confirmation between AMP and third party power suppliers for the benefit of Municipality is listed in the following table. The Municipality's Authorized Representative as designated in

~~Section 402 (or his/her designee) shall be a remaining requirements product (subject to final pricing upon execution). The Municipality authorizes AMP to approve purchases (and execute necessary power confirmations) of power and energy the remaining requirements energy on behalf of the Municipality with a term beginning on January 1, 2021 and ending December 31, 2022, so long as the third party energy supply contract price for energy purchased under this Schedule (excluding any taxes, transmission costs, replacement energy, losses, congestion costs, or AMP service fees) does not exceed \$46.00 per MWh.~~

<u>Total Planned Purchase</u>	<u>Description</u>	<u>Term</u>	<u>Days/Week</u>	<u>Hours/Day</u>	<u>Supplier</u>
<u>14 MWs</u>	<u>7x24</u>	<u>1/1/2021 – 12/31/2022</u>	<u>Sunday – Saturday</u>	<u>24</u>	<u>TBD Steps 1–4 in Section 202</u>

SECTION 202 – PROCEDURES FOR POWER SUPPLY ACQUISITION AND SALE:

It is understood and anticipated that AMP may throughout the term of this Schedule, enter into energy purchase transaction confirmations or other arrangements on behalf of the Municipality, subject to the approval of Municipality’s Authorized Representative, to implement the Long Term Energy Purchases contemplated in Section 201 of this Schedule. The steps that will be followed in securing such Long Term Energy Purchases are set forth below.

At the time that AMP recommends that a Long Term Energy Purchase should be finalized, the following shall take place:

1. Authorized personnel of AMP shall confer with the Municipality’s Authorized Representative (or his/her designee) on a recorded telephone line or through E-mail, regarding AMP’s recommended Long Term Energy Purchases that

meet the requirements of Section 201 prior to executing a transaction confirmation with a third party power supplier. AMP will provide power supply recommendations to Municipality's Authorized Representative based upon the best market information available to AMP at the time any conferring takes place.

2. If the Municipality's Authorized Representative approves AMP's recommendation and authorizes acquisition of the Long Term Energy Purchase over a recorded telephone line or through E-mail, then AMP shall acquire the Long Term Energy Purchase on behalf of the Municipality subject to the effective date and other terms and conditions approved by the Municipality's Authorized Representative.

3. AMP will enter into a transaction confirmation or other arrangement with the authorized and approved third party power supplier as soon as reasonably possible after approval is received as set forth above.

4. Once a Long Term Energy Purchase is finalized and transaction confirmation executed, a copy of the transaction confirmation between the supplier and AMP shall be added to Appendix A and become part of this Schedule.

5. Municipality's Authorized Representative shall execute a transaction confirmation with AMP. A copy of the Member transaction confirmation shall be added to Appendix A and become part of this Schedule.

ARTICLE III **DELIVERY POINT**

The delivery point(s) for electric energy to be delivered hereunder ("Point of Delivery" or "Delivery Point") shall be the Municipality's interconnections with PJM, or its

successor.

ARTICLE IV
GENERAL

SECTION 401 - FIRMNESS OF SUPPLY: Firmness of supply under this Schedule shall be equal to the firmness provided by the power supply schedules and transmission service arrangements executed by AMP, which are utilized to provide energy under this Schedule.

AMP's obligations hereunder are specifically dependent upon the performance of the suppliers listed in Appendix A or otherwise agreed to by the Parties. In the event of default of a power supplier, AMP shall provide replacement energy to Municipality and Municipality shall pay any cost difference (if any) of the replacement energy (or, if the cost of replacement energy is less, then Municipality shall pay that lower cost). Should a third party supplier default to such a degree that the agreement by and between that third party supplier and AMP is terminated, AMP shall use its best efforts to execute an alternate energy supply agreement, with another supplier unless otherwise agreed to in writing by Municipality.

Notwithstanding the foregoing, AMP agrees that it will notify Municipality promptly of any default by a supplier which may result in AMP's purchase of replacement energy for Municipality (hereinafter "Supplier Default"). AMP also agrees that in an event of a Supplier Default, AMP shall take all appropriate legal action to enforce the terms of AMP's contracts with the defaulting supplier and/or seek appropriate damages from supplier on Municipality's behalf. Municipality is, and shall be, third party beneficiary of such legal

action and will be reimbursed or credited by AMP a *pro rata* share of any net recoveries against the defaulting supplier or Municipality's increased costs occasioned by the Supplier Default, whichever is less.

Municipality specifically acknowledges that although energy made available from the supplies listed in Appendix A or otherwise agreed to by the Parties are intended to be the primary source of energy pursuant to this Schedule, AMP may, from time to time, substitute for actual delivery purposes, other energy; provided that such substitute energy be of a similar firmness and reliability as that made available under the third party power supplier transaction confirmation(s) and further provided that such substitution does not result in increased costs to Municipality.

When third parties providing firm transmission service interrupt deliveries from AMP to Municipality, AMP will use commercially reasonable efforts to deliver energy across other parties' transmission systems if interruptions occur from the primary firm transmission provider's system.

All other terms and conditions of the Agreement between AMP and the Municipality that are not consistent with the terms and conditions of this Schedule shall be applicable as if fully restated herein.

SECTION 402 – AUTHORIZED REPRESENTATIVE: The Municipality's Representative shall be the Electric Superintendent until modified by written notice to AMP by the Municipality.

**CITY OF CUYAHOGA FALLS,
OHIO**

AMERICAN MUNICIPAL POWER, INC.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Legal Counsel

APPROVED AS TO FORM:

John W. Bentine
Senior VP / General Counsel

APPENDIX A

4843-1247-3632, v. 3