

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 50 - 2016

6
7 AN ORDINANCE AUTHORIZING THE DIRECTOR OF
8 PUBLIC SERVICE TO ENTER INTO AN ENERGY
9 PURCHASE AGREEMENT KNOWN AS THE "2023-
10 2025 FIXED VOLUME ENERGY SUPPLY SCHEDULE"
11 WITH AMERICAN MUNICIPAL POWER, INC., AND
12 DECLARING AN EMERGENCY.

13
14
15 WHEREAS, the City owns and operates an electric utility system for the sale
16 of electric power and associated energy for the benefit of its citizens and
17 taxpayers; and

18
19 WHEREAS, in order to satisfy the electric energy requirements of its electric
20 utility system, the City has purchased electric capacity and energy from American
21 Municipal Power, Inc. ("AMP"), of which the City is a Member; and

22
23 WHEREAS, pursuant to Ord. No. 127-2005, AMP and the City have entered
24 into a Master Services Agreement ("MSA"), which sets forth general terms and
25 conditions under which, among other things, AMP may sell and the City may
26 purchase electric capacity and energy and other services through Schedules to
27 the MSA; and

28
29 WHEREAS, in furtherance of this purpose, AMP has committed to and will
30 negotiate with one or more reputable and financially sound third party power
31 suppliers to enter into an agreement(s) to purchase electric power and/or energy
32 in various megawatt ("MW") or megawatt hour ("MWh") blocks for a term
33 beginning on January 1, 2023 and ending December 31, 2025, all of which will
34 provide an economical source of electric power and/or energy (herein "Long Term
35 Power Purchase(s)") for the City; and

36
37 WHEREAS, AMP, on behalf of the City, desires to purchase from third party
38 supplier(s) and then to resell the power and energy available from these Long
39 Term Power Purchase(s) on a long term basis to the City at contract cost
40 (excluding any taxes, transmission costs, replacement power, losses, congestion
41 costs, purchased power security costs, or AMP service fees) not to exceed \$39.00
42 per MWh for 7x24 purchases; and

43
44 WHEREAS, AMP, has prepared and delivered to the City the form of a 2023-
45 2025 Fixed Volume Energy Supply Schedule, pursuant to which the City may
46 purchase power and/or energy; and

47
48 WHEREAS, AMP has provided and will continue to provide appropriate
49 personnel and information regarding the Long Term Power Purchase(s) to the
50 City, as the Director of Public Service and/or his designees deem necessary or

51 appropriate, to enable the City to evaluate the benefits and risks of the Long Term
52 Power Purchase(s), to take actions contemplated by the terms hereinafter set
53 forth and to determine that the same are in the public interest,
54

55 NOW THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
56 Falls, County of Summit, State of Ohio, that:
57

58 Section 1. The Director of Public Service is authorized to enter into an
59 energy purchase agreement known as the “2023-2025 Fixed Volume Energy
60 Supply Schedule” between the City and AMP, substantially in the form attached
61 hereto as Exhibit 1, together with such revisions, additions or amendments as
62 are approve by the Director of Law as being consistent with the objectives and
63 requirements of this ordinance.
64

65 Section 2. The Director of Public Service is hereby authorized to (i) acquire
66 under the 2023-2025 Fixed Volume Energy Supply Schedule, authorized above,
67 power and energy from one or more Long Term Power Purchase(s), each with a
68 term beginning on January 1, 2023 and ending December 31, 2025, and with a
69 third party contract price (excluding any taxes, transmission costs, replacement
70 power, losses, congestion costs, purchased power security costs, or AMP service
71 fees) not to exceed \$39.00 per MWh for 7x24 purchases, from AMP. The Director
72 of Public Service is further authorized to execute and deliver any and all
73 documents necessary to participate in one or more Long Term Power Purchase(s),
74 pursuant to the conditions set forth herein for a term beginning on January 1,
75 2023 and ending December 31, 2025, as set forth in the 2023-2025 Fixed Volume
76 Energy Supply Schedule; provided, however, that the total MW for all such 7 x
77 24 purchases under the 2023-2025 Fixed Volume Energy Supply Schedule shall
78 not exceed 14 MW.
79

80
81 Section 3. Competitive bidding is not required on the City’s acquisition by
82 its right to secure energy under the 2023-2025 Fixed Volume Energy Supply
83 Schedule, and in the event any competitive bidding requirements are applicable
84 any such competitive bidding requirement that might otherwise be applicable,
85 are hereby waived.
86

87 Section 4. If any section, subsection, paragraph, clause or provision or any
88 part thereof of this ordinance shall be finally adjudicated by a court of competent
89 jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by
90 such adjudication and all the remaining provisions of this ordinance shall remain
91 in full force and effect as though such section, subsection, paragraph, clause or
92 provision or any part thereof so adjudicated to be invalid had not, to the extent
93 of such invalidity, been included herein.
94

95 Section 5. Any other ordinances and resolutions or portions of ordinances
96 and resolutions inconsistent herewith are hereby repealed, but any ordinances
97 and resolutions or portions of ordinances and resolutions not inconsistent
98 herewith and which have not previously been repealed are hereby ratified and
99 confirmed.
100

101 Section 6. It is found and determined that all formal actions of this Council
102 concerning and relating to the passage of this ordinance were taken in an open
103 meeting of this Council and that all deliberations of this Council and of any
104 committees that resulted in those formal actions were in meetings open to the
105 public, in compliance with all legal requirements including Chapter 107 of the
106 Codified Ordinances.

107
108 Section 7. This ordinance is hereby declared to be an emergency measure
109 necessary for the preservation of the public peace, health, safety, convenience
110 and welfare of the City of Cuyahoga Falls and the inhabitants thereof, and
111 provided it receives the affirmative vote of two-thirds of the members elected or
112 appointed to Council, it shall take effect and be in force immediately upon its
113 passage and approval by the Mayor; otherwise it shall take effect and be in force
114 at the earliest period allowed by law.

115
116
117 Passed: 7-11-16

Mary Ellen Pyke
President of Council

Donna Leonard
Clerk of Council

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123
124
125 Approved: 7-13-16

[Signature]
Mayor

CITY OF CUYAHOGA FALLS, OHIO
2023-2025 FIXED VOLUME ENERGY SUPPLY SCHEDULE
AMP Contract No. 2016-003031-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 (the "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; and

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 in various megawatt ("MW") or megawatt hour ("MWh") blocks for a term beginning on January 1, 2023 and ending no later than December 31, 2025, all of which will provide an economical source of electricity energy (herein "Long Term Energy Purchase(s)") for Municipality.

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

ARTICLE I
TERM

SECTION 101 – CONTRACT TERM: Subject to the conditions contained herein, this Schedule shall be for a term beginning on January 1, 2023 and ending no later than

December 31, 2025.

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, security costs, replacement energy, and taxes or other such costs incurred by AMP to deliver the energy to the Municipality's Delivery Point;
- 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.

The Long Term Energy Purchases anticipated to be executed as transaction confirmations between AMP and third party power suppliers for the benefit of Municipality are listed in the following table. The Municipality's Authorized Representative as designated in Section 402 (or his/her designee) shall be authorized to approve purchases (and execute necessary transaction confirmations) of energy with a term beginning on January 1, 2023 and ending no later than December 31, 2025 as set forth in the table below. Additionally, the third party power supply contract prices of all energy purchases made under this Schedule (excluding any taxes, transmission costs, replacement energy, losses, congestion costs, security costs, or AMP service fees) shall not exceed \$39.00 per MWh for 14 MW purchases.

Term	Total Planned Purchase	Description	Days/Week	Hours/Day	Supplier
1/1/2023 – 12/31/2025	14 MW	7X24	7	24	TBD via steps 1 – 4 below

SECTION 202 – PROCEDURES FOR AUTHORIZATION OF ENERGY 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 and the table set forth therein 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 Purchase is finalized and a supplier transaction confirmation executed, AMP will send an acknowledgement of the transaction via email to Municipality's Authorized Representative that contains the commercial terms for Municipality's review and records.

ARTICLE III **DELIVERY POINT**

SECTION 301 – DELIVERY POINTS: 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 energy 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 with whom AMP transacts on behalf of the Municipality or as otherwise agreed to by the Parties. In the event of default of a power supplier (hereinafter "Supplier Default"), 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 Supplier Default which may result in AMP's purchase of replacement energy for Municipality. 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 purchased pursuant to this Schedule 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 Director of Public Service or the Director of Public Service's designee until modified by written notice to AMP by the Municipality.

IN WITNESS HEREOF, each of the Parties has caused this Schedule to be duly executed.

CITY OF CUYAHOGA FALLS, OHIO

AMERICAN MUNICIPAL POWER, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Legal Counsel

John W. Bentine
Sr. Vice President and General Counsel