

**ORDINANCE NO. 08-62 AC CMS**

**AN ORDINANCE APPROVING AN AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION FOR INTERRUPTIBLE ELECTRIC SERVICE WITH OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM OF OBERLIN, OHIO.**

**BE IT ORDAINED** by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

**SECTION 1.** That the proposed agreement between the Federal Aviation Administration and the Oberlin Municipal Light and Power System for Interruptible Electric Service, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this ordinance shall take effect at the earliest date allowed by law.

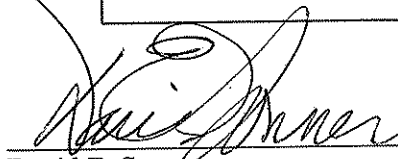
**PASSED:** 1<sup>st</sup> Reading – August 25, 2008  
2<sup>nd</sup> Reading – September 2, 2008 (E)  
3<sup>rd</sup> Reading –

Elevated to an emergency in order to approve an agreement with the FAA and OMLPS for interruptible electric service at the earliest date possible.

**ATTEST:**



Belinda B. Anderson  
**CLERK OF COUNCIL**



David E. Sonner  
**PRESIDENT OF COUNCIL**

**POSTED:** 09/03/2008

**EFFECTIVE DATE:** 09/02/2008

I hereby certify that the foregoing is an accurate account summary of the contents of the above entitled ordinance.

*Seal*



Belinda B. Anderson  
**CLERK OF COUNCIL**

Federal Aviation Administration  
U-R3771

Contract NO.: DTFAGL-03-

**UTILITY SERVICE BY APPLICATION**

Issuing Office:  
**October 1, 2008**

Date Service Required:

FAA, Real Estate and Utilities, AGL-55R  
2300 E. Devon Avenue  
Leased:  
Des Plaines, IL 60018

Type of Utility: **Electric**

Govt. Owned:   X  

Lessor:

Tel: (847) 294-7172

It is requested that:  
Oberlin Municipal Light and Power System

Vendor Name: OMLPS  
Address: 289 S. Professor Street  
Oberlin, OH 44074  
Tel: (440) 775-7260

**DESCRIPTION OF SERVICES:** In accordance with Energy Policy Act and Executive Order 12902 which provides the mandates for electric utility deregulation. Executive Order 12902 directs government agencies to participate in utility-sponsored programs which enhance reducing their energy consumption and associated utility resource cost.

Provide Interruptible Electric Service and Supplement Electric Service to the Federal Aviation Administration (FAA) Air Route Traffic Control Center (ARTCC), including Guard house, Facility and Equipment Building, Medical Trailer and Security Lights, located at 326 East Lorain, Oberlin, Ohio 44074.

This Contract shall be between Oberlin Municipal Light and Power System (OMLPS) City of Oberlin, Ohio, an Ohio Municipal Utility, hereafter called "OMLPS" and the Federal Aviation (FAA), Oberlin, Ohio, hereinafter called the "Government" for Interruptible Electric Service and Supplement Electric Service.

OMLPS currently provides Standard Electric service to the Government in the form of 3 phases, 4 wire alternating current at a nominal frequency of 60 hertz of 12470/7200. Standard Electric Service is provided by OMLPS under Ordinance No. 05-13 AC CMS hereto attached as "Attachment 1". In addition to providing Standard Electric Service under Ordinance No. 05-13 AC CMS, OMLPS shall provide Interruptible Electric Service and Supplemental Electric Service under the terms and conditions outlined in the Interruptible Electric Service and Supplemental Electric Service Rider Contract.

This Contract for Interruptible Electric Service and Supplemental Electric Service is only available to customer of Oberlin Municipal Light and Power System who are receiving Standard Electric Service under Ordinance No. 05-13 AC CMS.

**1. TERM:** The effective date of this Contract shall begin on October 1, 2008. The term of this Contract shall be October 1, 2008 to September 30, 2009. Continuation of this contract beyond September 30, 2009 shall.....

(1) At the end of the term, the Government shall have the right to continue thereafter from October 1, 2009 through September 30, 2013 unless terminated after by a written 30 day notice to OMLPS.

(2) The Government's continuation is contingent upon continued legislative appropriation of funds for the purpose of this Contract. If these funds are not appropriated, the FAA shall immediately notify OMLPS in writing and terminate the Contract 30 days from written notification. The FAA shall not be assessed a cancellation charge or other additional charges under this Contract if it is terminated due to lack of appropriations or any other contractual reasons. The Government shall not be charged installation and removal costs for any special equipment and facilities provided by Utility for the provision of Interruptible Electric Service, Supplemental Electric Service, and Standard Electric Service.

Nothing herein contained shall be construed as binding the FAA to expend, in any one Government fiscal year (October 1 through September 30), any sum in excess of the appropriation made by Congress for each fiscal year in furtherance of the subject matter of the Contract or to involve the FAA in an obligation for the future expenditure of monies before an appropriation is made in accordance with the Anti-Deficiency Act.

## **2. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit arising from it. However, this clause does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit. (10/96)

## **3. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of the contingent fee. (10/96)

## **4. ANTI-KICKBACK**

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting,

accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor. (10/96)

#### **5. PROTEST AND DISPUTES**

All Contract disputes arising under or related to this Contract or protests concerning awards of Contracts shall be resolved under this clause, and through the Federal Aviation Administration (FAA) Dispute Resolution System. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. The decision of the FAA shall be considered a final agency decision only after a contractor or officer has exhausted their administrative remedies for resolving a Contract dispute under the FAA Dispute Resolution System. Protests must be filed with the Office of Dispute Resolution within 5 calendar days of the date that the protester was aware, or should reasonably have been aware, of the agency action or inaction which forms the basis of the protest. Unless otherwise stated in this Contract dispute by the contractor against the Government shall be submitted to the Contracting Officer within 1 year after the accrual of the Contract dispute. Information relating to submitting a protest or dispute will be provided by the Contracting Officer, upon request. (10/96)

#### **6. ADVANCE PAYMENT:**

The Government cannot make payment for services not rendered. Therefore, payment for nonrecurring, construction costs will be made upon completion and inspection of the work performed by the Utility. (10/96)

#### **7. TARIFFS AND RATES:**

OMLPS has provided as part of this Contract (see Attachment 1) one copy of its current tariffs and rates, and future copies of modifications to those rates and tariffs which affect the Government.

#### **8. BILLING INFORMATION:**

Bills should show meter readings, dates, applicable charges, et cetera. (10/96)

All Construction invoices, updated tariffs and rates shall be mailed to the following address:

Federal Aviation Administration, 03UR3771  
Real Estate and Utilities, AGL-55R  
2300 E. Devon Avenue  
Des Plaines, IL 60018

All monthly recurring billing shall be mailed to the following address:

Federal Aviation Administration, 03UR3771  
Accounting, ACE-21B  
901 Locust Street

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Accounting and Appropriation Date  
C.301.0.211.823B.233T.480100

Recurring Charge: \$0.00  
Non-recurring Charge: \$0.00

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## **9. FACILITIES CHARGES:**

If OMLPS requires a facility charge be billed monthly, not related to actual monthly usage, then OMLPS Utility will provide the breakdown between monthly usage and facilities charges on the bill. (10/96)

## **10. WARRANTIES:**

OMLPS warrants that it will secure good and marketable title to the electricity to be provided under this Contract and such electricity is free from liens and adverse claims of any kind. It should be the OMLPS' obligation to hold the Government harmless from any and all third party claims against title to electricity delivered to the Government.

## **11. INDEMNIFICATION**

The Government shall in no event be liable or responsible for damage or injury to any person or property directly occasioned through OMLPS' use or operation of its facilities or through other actions of the OMLPS, its employees, or agents in performing under this Contract; provided however, that OMLPS shall not be liable or responsible for the negligent actions of the Government, its employees, or agents.

## **12. POSSESSION AND TITLE TO ELECTRICITY**

Possession of and title to electricity delivered by OMLPS shall pass from the OMLPS to the Government at the Delivery Point which is the meter. Until such delivery, OMLPS shall be deemed to be in control of, and have title to, and possession of, and be responsible for such electricity.

## **13. FORCE MAJEURE**

Neither the Government nor OMLPS shall be considered to be in default with respect to any obligations under this Contract by reason of uncontrollable forces. The terms "uncontrollable forces" being deemed, for the purposes of this Contract, to mean any cause beyond the control of the party affected, included but not limited to failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by a court of public authority, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either part rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

#### 14. INTERRUPTIBLE SERVICE

OMLPS agrees to provide and the Government agree to accept Interruptible Electrical Service in accordance with the following terms and conditions:

a. Notice of Interruption: OMLPS shall contact the FAA Environmental Service Support Center Manager at telephone # (440) 774-0354 on the day prior to an anticipated interruption, with at least sixty (60) minutes notice that electric service shall be interrupted.

b. Hours of Interruption: Government's standard electric service is subject to interruption between the hours of 9:00 a.m. and 10:00 p.m., Monday through Friday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and days observed in lieu of the actual holiday.

c. Maximum Hours of Interruption: Standard electric service shall not be interrupted for more than eight (8) hours per day or 40 hours per month or 240 hours per calendar year.

d. Capacity Credit for Interruptible Electric Service: OMLPS agrees to pay a monthly capacity credit equal to 50% of the Northeast Area Service Group pool demand charge per KW of coincident demand as measured by OMLPS. The monthly capacity credit for each month of a 12 month period shall be applied in equal amounts to the billing months of July and August for Standard Electric Service of each year. The coincident KW demand is the Government's load as measured at the hour of the monthly peak demand for the Northeast Area Service Group (NEASG).

#### 15. EMERGENCIES

The Government from time-to-time may be unable to generate electricity to meet all or part of the Government's load requirements, as determined by the Government, and will therefore be unable to have the electric service interrupted. Should such an event occur, Supplemental Electric Service shall be available to the Government, and service shall not be interrupted.

#### 16. SAVINGS

The monetary savings to the Government shall be approximately \$50,000 per year for the ARTCC. Any and all savings shall be credited to FAA Contract DTFAGL-03-U-R3771, and OMLPS Account 26.15144.1.

#### CERTIFICATION OF UTILITY COMPANY

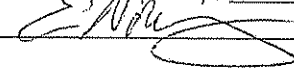
Utility shall certify in the space provided below that rates are fixed or adjusted by Federal, State or other regulatory body, and that this rate is the lowest applicable rate available to any customers under like conditions of service. Utility agrees to all

conditions of this application, and upon execution, shall provide services as described above.

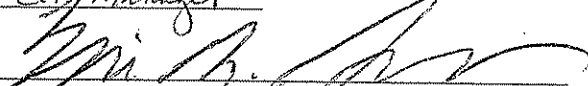
Company's Account No. : 26.15144.1 Meter No. \_\_\_\_\_

Applicable Rate Schedule: \_\_\_\_\_

Name of Company: \_\_\_\_\_

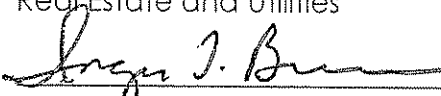
By:  (Signature) Date: 9/5/08

Title: City Manager

Approved as to form:   
Law Director

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FEDERAL AVIATION ADMINISTRATION  
Real Estate and Utilities



Inger T. Brown  
Real Estate Contracting Officer

Date: 7/16/08