

City of Oberlin, Ohio

ORDINANCE No. 11- 04 AC CMS

AN ORDINANCE APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A WMRE LANDFILL ENERGY SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC.

WHEREAS, the City of Oberlin, Ohio, (“Municipality”) owns and operates an electric utility system for the sale of electric capacity and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric capacity and energy requirements of its electric utility system, Municipality has heretofore purchased, or desires to purchase in the future, economical, reliable and environmentally sound capacity and energy and related services from, or arranged by, American Municipal Power, Inc. (“AMP”), of which Municipality is a member; and

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

WHEREAS, Municipality, acting individually and through AMP with other political subdivisions of other states that own and operate electric utility systems, jointly, endeavors to arrange for reliable, environmentally sound and reasonably priced supplies of electric capacity and energy and related services for ultimate delivery to its customers; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, Municipality has previously entered into a Master Services Agreement with AMP, AMP Contract No. C-11-2005-4444, which contemplates that Municipality shall enter into various Schedules for the provision of capacity and associated energy and related services from AMP to Municipality; and

WHEREAS, the Municipality has determined that it can utilize additional sources of reliable and environmentally sound “green” electric capacity and energy on a long term basis at reasonable costs, and have requested that AMP arrange for the same; and

WHEREAS, in furtherance of this purpose, AMP and WM Renewable Energy, LLC (“WMRE”), have entered into agreements under the terms of which AMP is to purchase and WMRE is to supply and

sell up to 8.1 MW of capacity and associated energy from Landfill Energy Systems (“Landfill”) from Landfill facilities to be constructed in Geneva and New Springfield, Ohio for a period of fifteen (15) years; and

WHEREAS, it is necessary and desirable for Municipality to enter into the WMRE Landfill Energy Schedule to Municipality’s Master Services Agreement with AMP to provide for an additional source of capacity and energy; and

WHEREAS, Municipality now has the right, but not the obligation, to acquire Landfill capacity and energy from Landfill Facilities by approval and execution of the WMRE Landfill Energy Schedule authorized below; and

WHEREAS, after due consideration, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein below.

NOW, THEREFORE, 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 WMRE Landfill Energy Schedule between Municipality and AMP, substantially in the form attached hereto or on file with the Clerk, including Exhibits thereto, are approved, and the City Manager of Municipality is hereby authorized to execute and deliver the WMRE Landfill Energy Schedule with such changes as the City Manager may approve as neither inconsistent with this Ordinance nor materially detrimental to the Municipality, his or her execution of the WMRE Landfill Energy Schedule to be conclusive evidence of such approval.

SECTION 2. That the City Manager is hereby authorized to (i) acquire under the WMRE Landfill Energy Schedule, authorized above, a Contract Amount of up to 8,100 kW, (ii) make any determinations and approvals required thereunder, if any, as the City Manager shall deem necessary and advisable.

SECTION 3. If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance 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.

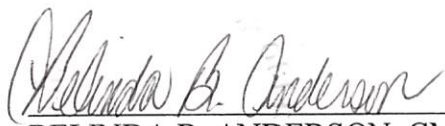
SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and of any committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading – January 18, 2011
2nd Reading – February 7, 2011
3rd Reading – February 22, 2011 (Amended, Emergency)

“ to meet the scheduled deadline for execution of a definitive binding agreement between AMP and Waste Management on March 1st.”

ATTEST:



BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL



KENNETH SLOANE
PRESIDENT OF COUNCIL

POSTED: 2/23/2011

EFFECTIVE DATE: 2/22/2011



American Municipal Power, Inc.

1111 Schrock Road • Suite 100
Columbus, OH 43229

LETTER OF TRANSMITTAL

TO: Steve Dupee
Director
Oberlin Municipal Light & Power System
289 South Professor Street
Oberlin, OH 44074
Telephone: 440-775-7260

DATE: March 18, 2011

WE ARE SENDING YOU THE FOLLOWING ITEMS:

- Prints
- Change Order
- Plans
- Other
- Attached
- Under separate cover
- Specifications
- Contract

COPIES	DATE	NUMBER	DESCRIPTION
1		C-12-2010-8146-R	WMRE Landfill Energy Schedule

THESE ARE TRANSMITTED (as checked below):

- For Approval
- For Your Use
- As Requested
- Return for corrections
- For Signature(s) and Return to AMP-Ohio

REMARKS:

Enclosed for your files please find a fully executed original of the WMRE Landfill Energy Schedule.

Thank you.

SIGNED: Marty Engelman

Marty Engelman
Manager of Contract Administration
American Municipal Power, Inc.
1111 Schrock Road - Suite 100
Columbus, OH 43229
Telephone: 614-540-1111
mengelman@amppartners.org

**CITY OF OBERLIN, OHIO
WMRE LANDFILL ENERGY SCHEDULE
TO
AMERICAN MUNICIPAL POWER, INC.
AND
CITY OF OBERLIN, OHIO**

**MASTER SERVICES AGREEMENT
AMP CONTRACT NO. C-11-2005-4444**

Dated as of _____

WHEREAS, the City of Oberlin, Ohio (“Municipality”) and American Municipal Power, Inc., formerly American Municipal Power-Ohio, Inc. (“AMP”) (individually a “Party” and collectively “Parties”) have entered into a Master Services Agreement (AMP Contract No. C-11-2005-4444 hereinafter, “MSA”) under which certain services may be provided, pursuant to Schedules entered into between Municipality and AMP; and

WHEREAS, AMP has negotiated and executed the Master Landfill Energy Power Purchase and Sale Agreement, dated November 1, 2010 between AMP and WM Renewable Energy, LLC (“WMRE”), for the purchase of up to 4.4 MW of landfill electric capacity and associated energy (the “Mahoning Contract”) from landfill electric facilities to be located in New Springfield, Ohio (“Mahoning Facility”) a copy of which has been made available to the Municipality; and

WHEREAS, AMP has negotiated and executed the Master Landfill Energy Power Purchase and Sale Agreement, dated November 2, 2010 between AMP and WM Renewable Energy, LLC (“WMRE”), for the purchase of up to 3.7 MW of landfill electric capacity and associated energy (the “Geneva Contract”) from landfill electric facilities to be located in Geneva, Ohio (“Geneva Facility”) a copy of which has been made available to the Municipality; and

WHEREAS, the Mahoning and Geneva Contracts provide, among other things, significant opportunities for the Municipality to receive from AMP reliable, economic, renewable “green energy” through this Schedule to the MSA (the “Landfill Schedule”).

SECTION 1 - TERM

The term of this Landfill Schedule shall be effective as of January 1, 2013 and shall thereafter be coterminous with the Mahoning and Geneva Contracts, ending no later than December 31, 2027; provided, however, that Municipality’s obligation to purchase and AMP’s obligation to deliver capacity and energy pursuant to this Schedule are both contingent on WMRE’s performance pursuant to the Mahoning and Geneva Contracts.

Municipality shall have the option to extend the term of this Landfill Schedule for an additional term by mutual written agreement of Municipality and AMP. The exercise of this option to extend the term is specifically and expressly conditioned upon AMP’s ability to mutually extend the term of the Mahoning and Geneva Contracts with WMRE for a term equal in length to the term for which Municipality seeks to extend the term of this Schedule with AMP.

SECTION 2 - SERVICES

AMP agrees to procure as Seller, pursuant to (and its obligations hereunder are specifically dependent upon) the Mahoning and Geneva Contracts, all output up to 8,100 kilowatts (“kW”) of capacity and associated energy (“kWh”) for the benefit of the Municipality (the “Contract Amount”). Municipality agrees to take and pay for all such capacity and energy where and as available from time to time, pursuant to the Mahoning and Geneva Contracts.

AMP may also procure, from time to time, excess landfill capacity from WMRE, over and above the specified amounts to be provided pursuant to the Mahoning and Geneva Contracts. Municipality shall have a right of first refusal to purchase such excess landfill capacity, if Municipality requires such capacity, upon such commercially reasonable terms to be determined between Municipality and AMP should such excess landfill capacity become available.

SECTION 3 - DELIVERY POINTS

The Delivery Point, pursuant to this Landfill Schedule shall be that set forth on Exhibit C unless the same is modified in writing by the Parties. Municipality may change the Delivery Point set forth on Exhibit C with AMP's consent, such consent not to be unreasonably withheld, provided that transmission to any modified or secondary delivery point shall be pursuant to appropriate FERC tariffs at Municipality's expense, including the costs of any/all required ancillary services.

SECTION 4 - SCHEDULING

A. AMP shall cooperate with the Municipality to schedule the capacity and energy to a Delivery Point as directed by the Municipality.

B. Notwithstanding any other provision of this Landfill Schedule and the MSA, Municipality shall, when available, take and pay for all landfill capacity and energy available pursuant to the Mahoning and Geneva Contracts.

SECTION 5 - DEPENDENCE ON LANDFILL CONTRACT

Municipality recognizes that AMP's ability to supply landfill capacity and energy under this Schedule is dependent upon AMP's ability to arrange for the same pursuant to the Mahoning and Geneva Contracts. Additionally, Municipality recognizes that AMP entered into the Mahoning and Geneva Contracts primarily for the benefit of Municipality and that AMP, pursuant to the Mahoning and Geneva Contracts, has certain rights as well as certain obligations. Accordingly, Municipality warrants to cooperate with AMP in such a manner as to facilitate AMP's performance of its obligations thereunder, and releases AMP from any liability due to WMRE Energy's failure to perform.

Further, as set forth in Section 1, any requested extension to the term of this Landfill Schedule shall be expressly conditioned and dependent upon AMP's ability to extend the terms of the Mahoning and Geneva Contracts for an equivalent period of time.

SECTION 6 - RATES, CHARGES AND BILLING

A. Capacity and energy made available pursuant to this Landfill Schedule shall be charged for at the base rates specified in the Mahoning and Geneva Contracts and shall include an adder for an appropriate allocation of all costs incurred hereunder and the costs set forth in Sections 6 B and C hereof, and shall be charged and billed pursuant to Exhibit A, Capacity and Energy Rate Schedule as the same may be modified by AMP from time to time and pursuant to the billing provisions herein and in the MSA;

B. All transmission costs including ancillary services, energy control center cost, taxes and other charges not otherwise recovered that are incurred to provide and deliver capacity and energy pursuant to this Landfill Schedule shall be charged and billed to Municipality; and

C. In addition to the other compensation to be paid to AMP pursuant to this Landfill Schedule, Municipality shall also pay AMP the Service Fee specified in the MSA.

SECTION 7 – INSTALLED CAPACITY CREDIT

Municipality will receive the net Installed Capacity/RPM credits/charges (if any) from the RTO where each of the Landfill Facilities are located.


SECTION 8 – RENEWABLE ENERGY CREDITS

All renewable energy credits or like Environmental Credits (Mahoning and Geneva Contracts, paragraph 3.6) available to AMP under the Mahoning and Geneva Contracts up to 8.1 MW in an hour shall be credited to the Municipality.

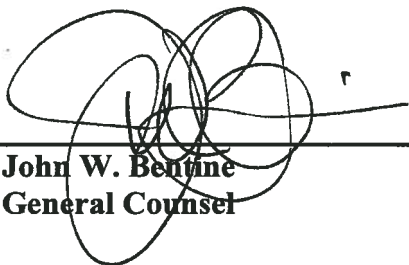
APPROVED AS TO FORM:


Municipality's Legal Counsel

CITY OF OBERLIN, OHIO

BY: 
TITLE: City Manager
DATE: 3/1/11

APPROVED AS TO FORM:


John W. Bentline
General Counsel

AMERICAN MUNICIPAL POWER, INC.


BY: 
Marc S. Gerken, P.E.
President/CEO
DATE: 2/17/11

EXHIBIT A

RATE SCHEDULE for MAHONING LANDFILL POWER

ENERGY PAYMENT.

- Energy –
 - On-Peak Energy Rate = \$ 80.00 / MWh
 - Off-Peak Energy Rate = \$ 45.85 / MWh
- On-Peak shall be the hours between Hour Ending (HE) 0800 Eastern Prevailing Time (EPT) and HE 2300 EPT Monday through Saturday (excluding Holidays).
- Off-Peak shall be all hours not included as On-Peak.

Holidays shall be the following days:

 - New Year's Day (January 1 or January 2 if January 1 is a Sunday)
 - Memorial Day
 - Independence Day (July 4 or July 5 if July 4 is a Sunday)
 - Labor Day
 - Thanksgiving Day
 - Friday after Thanksgiving
 - Christmas Day (December 25 or December 26 if December 25 is a Sunday)
- Capacity - \$1.00 per megawatt (MW) per year, invoiced annually in February, based upon the average MW per hour delivered hereunder for the previous calendar year.

Annual Rate Escalator: 2% beginning with the 2014 calendar. Rate will be adjusted on January 1 of each year.

No Change in Prices:

The prices stated in Exhibit A will not be increased or reduced in respect of the availability, lack of availability, extension of, institution of, or withdrawal of: (i) Section 45(k) Federal Non-conventional Fuel Source Credits, or (ii) regulations that permit the sale by Seller or Buyer of tradable emissions credits relating to the generation of electricity from the Landfill Electric Facility, including, but not limited to, renewable energy credits, mercury emissions credits, carbon/greenhouse gas emissions credits, Environmental Credits or other environmental attributes.

RATE SCHEDULE for GENEVA LANDFILL POWER

ENERGY PAYMENT.

- Energy –
 - On-Peak Energy Rate = \$ 83.00 / MWh
 - Off-Peak Energy Rate = \$ 48.85 / MWh
- On-Peak shall be the hours between Hour Ending (HE) 0800 Eastern Prevailing Time (EPT) and HE 2300 EPT Monday through Saturday (excluding Holidays).
- Off-Peak shall be all hours not included as On-Peak.

Holidays shall be the following days:

 - New Year's Day (January 1 or January 2 if January 1 is a Sunday)
 - Memorial Day
 - Independence Day (July 4 or July 5 if July 4 is a Sunday)
 - Labor Day
 - Thanksgiving Day
 - Friday after Thanksgiving
 - Christmas Day (December 25 or December 26 if December 25 is a Sunday)
- Capacity - \$1.00 per megawatt (MW) per year, invoiced annually in February, based upon the average MW per hour delivered hereunder for the previous calendar year.

Annual Rate Escalator: 2% beginning with the 2014 calendar. Rate will be adjusted on January 1 of each year.

No Change in Prices:

The prices stated in Exhibit A will not be increased or reduced in respect of the availability, lack of availability, extension of, institution of, or withdrawal of: (i) Section 45(k) Federal Non-conventional Fuel Source Credits, or (ii) regulations that permit the sale by Seller or Buyer of tradable emissions credits relating to the generation of electricity from the Landfill Electric Facility, including, but not limited to, renewable energy credits, mercury emissions credits, carbon/greenhouse gas emissions credits, Environmental Credits or other environmental attributes.

EXHIBIT B

SERVICES

	kW	%
Amount Of Total Capacity Under Mahoning and Geneva Contracts (up to)	8,100	100%
Contract Amount Of Municipality's Capacity (up to)	8,100	100%

EXHIBIT C

DELIVERY POINT

Participant	RTO/Zone	Delivery Point	Secondary Delivery Point (LMP)	Secondary Delivery Point Voltage
Oberlin, OH	PJM/FE	High side of transformer between WMRE facility and FirstEnergy system	FE Zone	69 kV

4812-7398-5288, v. 5