

## **CITY OF OBERLIN, OHIO**

### **ORDINANCE NO. 12-13 AC CMS**

#### **AN ORDINANCE APPROVING A FIRST AMENDMENT TO THE INTERCONNECTION AGREEMENT WITH BIO ENERGY (OHIO II), LLC AND DECLARING AN EMERGENCY**

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, Municipality and Bio Energy (OHIO II ), LLC, entered into an interconnection agreement dated July 17, 2000 for the purpose of designing, constructing and operating interconnection facilities in order to allow delivery of power from Bio Energy landfill gas generating facilities via the interconnection onto the wholesale transmission system; and

WHEREAS, Bio Energy (OHIO II) is expanding landfill gas generating facilities requiring utility system upgrades/improvements on behalf of the Municipality; and

WHEREAS, it is necessary for Municipality and Bio Energy (Ohio II), LLC to amend the terms and conditions of the Interconnection Agreement.

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNCIL OF THE CITY OF OBERLIN, COUNTY OF LORAIN, STATE OF OHIO, FIVE-SEVENTHS (5/7THS) OF ALL MEMBERS ELECTED THERETO CONCURRING:

SECTION 1. That the proposed First Amendment to the Interconnection Agreement between the Municipality and Bio Energy (OHIO II), L.L.C., 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. 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 3. 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 4. That the ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operations of a municipal department, to wit:

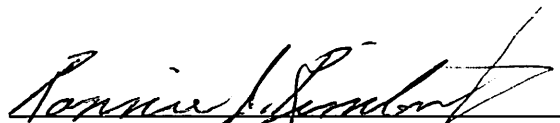
“to authorize the Interconnection Agreement Amendment to proceed with interconnection requirements and terms and conditions in order to meet the developer’s commercial operation date”

and shall take effect immediately upon passage.

PASSED: 1<sup>st</sup> Reading - March 5, 2012  
2<sup>nd</sup> Reading – March 19, 2012 (S, E)  
3<sup>rd</sup> Reading -

ATTEST:

  
\_\_\_\_\_  
BELINDA B. ANDERSON, CMC  
CLERK OF COUNCIL

  
\_\_\_\_\_  
RONNIE J. RIMBERT  
PRESIDENT OF COUNCIL

POSTED: 3/20/2012

EFFECTIVE DATE: 3/19/2012

**FIRST AMENDMENT TO INTERCONNECTION AGREEMENT**

This **First Amendment to Interconnection Agreement (“Amendment”)** is entered into as of this 20th day of March, 2012 (the “**Amendment Effective Date**”), between the City of Oberlin, Ohio, (“City”) acting by and through the Oberlin Municipal Light & Power System (“OMLPS”), a municipal electric utility system duly organized and existing under the law of the State of Ohio, and Bio Energy (Ohio II), LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware (“Generator”). (OMLPS and Generator may be referred to herein individually as a “**Party**”, and collectively as the “**Parties**”.)

**RECITALS**

A. **Whereas**, the Parties have entered into an interconnection agreement dated July 17, 2000 (the “**Interconnection Agreement**”) pursuant to which OMLPS designed and constructed certain Interconnection Facilities in order to enable Generator to deliver electric power through such interconnection from the Power Station to the FirstEnergy Open Access Transmission System in order to fulfill certain power purchase agreements;

B. **Whereas**, Generator has advised OMLPS of its intention to construct a new power station project (“Lorain 2”); and

C. **Whereas**, in order to effectuate that new construction and the operation of Lorain 1 and Lorain 2, the Parties have agreed to amend the Interconnection Agreement as set out in this Amendment by:

1. Revising the definition of certain terms within the Interconnection Agreement and adding certain additional defined terms;
2. Providing for the planning, construction and operation of additional Interconnection Facilities to accommodate the new Lorain 2 power station;
3. Changing the addresses to be used for delivery of Notices pursuant to Section 11; and
4. Providing secondary access to Power Station for Generator by the City.

**NOW, THEREFORE**, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AMENDMENTS**

**1 Amendments to Section 1.1 of the Interconnection Agreement; Global Replacement of Defined Term**

Section 1 of the Interconnection Agreement is hereby amended as follows:

- (a) The following terms and definitions contained in Section 1.1 of the Interconnection Agreement are deleted in their entirety and replaced with the following:

**“Interconnection Facilities”** means all of the electrical connection facilities which must be installed or modified for the purposes of interconnecting the electric power system of OMLPS to the Point of Interconnection *at the Power Station*. The Interconnection Facilities are more specifically described in Exhibit A attached hereto and incorporated herein for all purposes.

**“Point of Interconnection”** means the point of electrical connection to the Power Station side of the Power Isolating Switch, as shown on Exhibit B, the Power Station Single Line Diagram.

**“Power Purchase Agreement”** means that certain power purchase agreement dated April 6, 2011, by and between American Municipal Power, Inc. and Bio Energy (Ohio), LLC.

**“Power Station”** means, collectively, the two landfill gas fueled power generation facilities (the existing facility “Lorain 1” and the planned facility “Lorain 2”) situated upon the site leased to Generator and located at the Lorain County Landfill, 3502 Oberlin-Elyria Road, Oberlin, Ohio.

**“Power Station Isolating Switch”** means that certain 69kV gang operated air break switch identified as such on Exhibit B, the Power Station Single Line Diagram, attached hereto and incorporated herein for all purposes.

**“FirstEnergy Open Access Transmission System”** is deleted in its entirety and replaced with the following.

**“PJM Open Access Transmission System”** shall mean the electric transmission system operated and controlled by the PJM Interconnection, L.L.C., or its successor, under the PJM Interconnection, L.L.C.'s Open Access Transmission Tariff, or any succeeding Tariff, as accepted by the Federal Energy Regulatory Commission. The American Transmission Systems, Inc.'s facilities are currently part of the PJM Interconnection, L.L.C.'s system and service over the American Transmission System, Inc.'s facilities is granted and scheduled in accordance with the rules of the PJM Interconnection, L.L.C's Open Access Transmission Tariff.

- (b) Wherever the term **“FirstEnergy Open Access Transmission System”** appears in the Interconnection Agreement, it shall be deleted and replaced by the term **“PJM Open Access Transmission System,”** as the latter term is defined herein.

## **2. Amendments to Section 2 of the Interconnection Agreement**

- (a) Section 2 of the Interconnection Agreement is hereby amended by deleting Section 2.1 in its entirety and inserting in lieu thereof the following:

### **2.1 Authorization to Interconnect.**

Subject in all particulars to the terms and conditions of this Agreement, OMLPS hereby authorizes Generator to interconnect the Power Station to OMLPS's electric system and to use OMLPS's electric system to deliver capacity and energy to the PJM Open Access Transmission System.

Generator shall be solely responsible for obtaining, from PJM or others, such rights as are necessary for Generator to inject capacity and energy into, and to transmit capacity and energy over, the PJM Open Access Transmission System. Generator shall at all times comply with all applicable requirements for injection of power into and use of the PJM Open Access Transmission System.

- (b) Section 2 of the Interconnection Agreement is hereby further amended by deleting Section 2.2 in its entirety and inserting in lieu thereof the following:

**2.2 Power Delivery**

In compensation for the cost to OMLPS of providing 69kV line and associated facilities through which the Power Station Output is delivered to the PJM Open Access Transmission System, Generator agrees to pay OMLPS a fixed fee of One Hundred Nine Thousand (\$109,000) each calendar year during the term of this agreement, prorated for any partial year. By February 15<sup>th</sup> of each year during the term of this agreement, OMLPS shall invoice Generator for this fee annually for the previous year and Generator shall pay the fee within 30 days of receipt of invoice.

**3. Amendments to Section 3 of the Interconnection Agreement**

- (a) Section 3 of the Interconnection Agreement is hereby amended by inserting the following as a new Section 3.1(a):

**3.1(a) Additional Interconnection Facilities**

OMLPS shall design such additional Interconnection Facilities as may be required for operation of the Power Station in accordance with Good Industry Practice so as to assure that such additional facilities are sufficient to enable Generator to supply no less than an aggregate amount of 30 megawatts of power across the Point of Interconnection.

Upon Execution of this Amendment, OMLPS shall commence preparation of detailed plans and specifications for the design and installation of the additional Interconnection Facilities (the "Interconnection Plans"). OMLPS shall use its best efforts to finalize the Interconnection Plans within 60 days of the execution of this Amendment. Upon completion of the Interconnection Plans, OMLPS shall provide Generator with a detailed estimate of the costs of designing and installing the additional Interconnection Facilities ("Estimated Cost").

- (b) Section 3 of the Interconnection Agreement is hereby further amended by deleting Section 3.5 in its entirety and inserting in lieu thereof the following:

**3.5 Ownership, Maintenance and Repair**

Upon completion of the Additional Interconnection Facilities and through the term of this Agreement, OMLPS shall own, maintain, and keep in good

repair and operation the Interconnection Facilities such that they will operate as designed and in accordance with their intended purposes. During the term of this Agreement, Generator shall pay OMLPS a fixed fee of Thirty-One Thousand Three Hundred Ten (\$31,310) per calendar year as compensation to OMLPS for the cost of carrying out maintenance and repairs to the Interconnection Facilities as may be required from time to time, such fixed fee to be prorated for any partial year. By February 15<sup>th</sup> of each year during the term of this Agreement, OMLPS shall invoice Generator for this fixed fee for the previous year, and Generator shall pay the fee within 30 days of receipt of the invoice.

#### **4. Amendment of Section 4 of the Interconnection Agreement**

- (a) Section 4 of the Interconnection Agreement is hereby amended by deleting Section 4.3 in its entirety and inserting in lieu thereof, the following:

##### **4.3 Cooperation of OMLPS and Generator.**

(a) Each party will cooperate with the other to maintain the connection of the Power Station with OMLPS's system in accordance with good operating procedures and safety and subject to the other terms and conditions hereof. Generator recognizes that from time-to-time OMLPS may have reasonable cause to request that the Power Station generators be disconnected from OMLPS 's system in order to perform system maintenance or repairs, or in the case of an Emergency Condition. In such circumstances, OMLPS may request that Generator disconnect from its system, and Generator agrees to comply with such request as promptly as practicable. If Generator fails to disconnect from the OMLPS' system in a timely manner, OMLPS may disconnect the Power Station without further notice. Wherever possible, OMLPS shall give Generator at least 24 hours notice that it may be necessary for Generator to disconnect the Power Station.

OMLPS agrees that it will perform such maintenance or repairs, or take such steps as are within its capability to cure an Emergency Condition (as the case may be), and restore the system to a condition suitable for the Power Station to be reconnected, as expeditiously as practicable under the circumstances. OMLPS agrees to notify the Power Station operator as soon as reasonably practicable when the OMLPS' system is in a suitable condition for Generator to reconnect the Power Station. Upon receipt of such notification, Generator may reconnect the Power Station.

(b) In the event that the FirstEnergy interconnection to OMLPS should be subject to a temporary outage such that OMLPS would need to operate its generating capacity to serve its native load, Generator agrees to make the Power Station generating capacity available to OMLPS for such purpose as requested by the OMLPS Director or his designee, provided that such request can be granted in accordance with Good Industry Practice. The Power Station 69kV transformer shall remain in service to provide a ground reference for OMLPS' 69kV system, regardless of whether OMLPS requests that generators at the Power Station be on line.

- (c) Generator will make reasonable efforts to provide OMLPS with notice of scheduled maintenance or Emergency Conditions which would require that all generation from the Power Station be temporarily suspended.
- (b) Section 4 of the Interconnection Agreement is hereby further amended by deleting Section 4.4 in its entirety and inserting in lieu thereof, the following:

#### **4.4 Rights of Access**

Generator shall provide OMLPS and its designated agents access to the Power Station grounds and its facilities to the extent reasonably necessary for the purposes of operating, maintaining and testing the Interconnection Facilities. Unless prevented from doing so by an Emergency Condition, OMLPS shall give Generator reasonable advance notice prior to utilizing such right of access and Generator or its designated agents shall have the right to accompany OMLPS representatives during such access.

### **5. Amendment to Section 11 of the Interconnection Agreement**

- (a) Section 11 of the Interconnection Agreement is hereby amended by deleting Section 11.1 in its entirety and inserting in lieu thereof the following:

#### **11.1 Method of Delivery**

Any notice to be given by either party to this Agreement shall be given in writing and may be effected by personal delivery, facsimile transmission, or sent by registered or certified United States mail, postage prepaid, addressed as follows:

- (a) If to OMLPS:
  - 289 South Professor Street
  - Oberlin, Ohio 44074
  - Attention: OMLPS Director
  - Telephone: 440 775-7260
  - Facsimile: 440 775-1546
- (b) If to Generator:
  - Bio Energy (Ohio II), LLC
  - 3322 West End Avenue
  - Suite 115
  - Nashville, TN 37203
  - Attention: Company Secretary
  - Telephone: 615 574-7560
  - Facsimile: 615 383-8737

With a copy to:

Energy Developments Limited  
Building 17  
2404 Logan Road  
PO Box 4046  
Eight Mile Plains QLD 4113  
Australia  
Attention: Company Secretary  
Telephone: 61 7 3275 5555  
Facsimile: 61 7 3275 5513

**6. Provision of Secondary Access**

City shall provide secondary access to Power Station under the terms and conditions set forth in Exhibit C hereto.

**7. Effect on the Interconnection Agreement.**

Except as specifically modified by this Amendment, the terms and conditions of the Interconnection Agreement shall continue in full force and effect.

**8. Miscellaneous.**

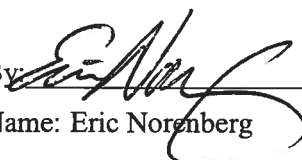
- (a) Unless otherwise defined in this Amendment, capitalized terms used herein will have the same meaning given those terms in the Interconnection Agreement.
- (b) The headings appearing in this Amendment are intended for convenience of reference only, do not modify the express terms hereof, and are not to be considered in construing this Amendment.
- (c) A reference in this Amendment to "includes" in any form is not a word of limitation.
- (d) This Amendment may be executed and delivered in two or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same agreement.
- (e) Nothing in this Amendment shall be deemed to be a waiver or release of any other right or remedy that a Party may have under the Agreement, nor shall it be deemed to be a waiver of any existing breach or default under the Interconnection Agreement.
- (f) This Amendment is intended to be solely for the benefit of the Parties hereto and their successors and permitted assignees and is not intended to and shall not confer any rights or benefits on any other third party not a signatory hereto, except as explicitly provided herein or in the Interconnection Agreement.
- (g) This Amendment, together with the Interconnection Agreement, is intended by the Parties as the expression of their agreement with respect to the subject matter




hereof and thereof, both written and oral, and supersedes all previous agreements. This Amendment may be modified only by a written amendment executed by both parties.

**IN WITNESS WHEREOF**, the Parties hereto, through their duly authorized representatives, have executed this Amendment as of the Amendment Effective Date.

**CITY OF OBERLIN**

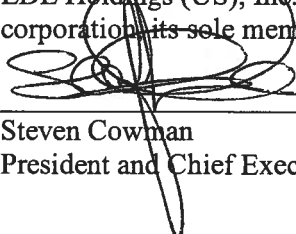
By:   
Name: Eric Norenberg  
Title: City Manager

Approved as to Form:

  
Name: Eric R. Severs  
Title: Law Director

**BIO ENERGY (OHIO II), LLC, a Delaware limited liability company,**

By: Bio Energy (I), LLC, a Delaware limited liability company, its sole member  
By: Bio Energy (US), LLC, a Delaware limited liability company, its sole member  
By: EDL Holdings (US), Inc., a Delaware corporation, its sole member

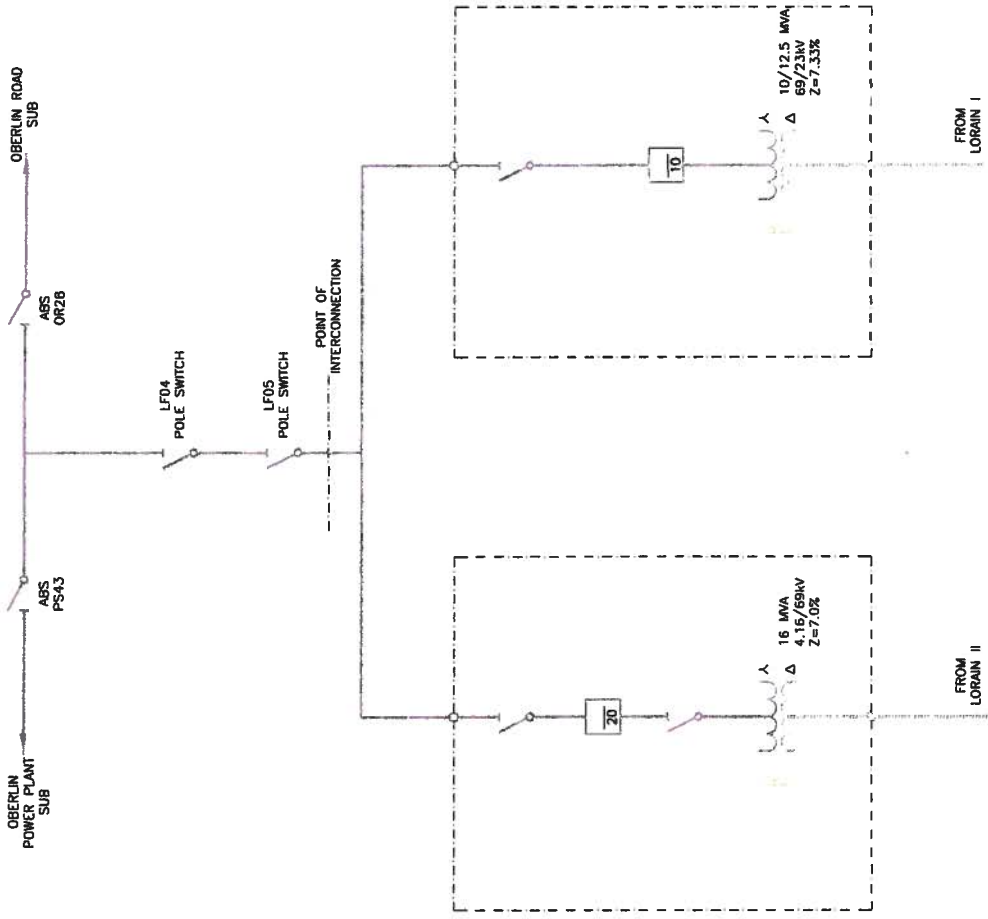
By:   
Name: Steven Cowman  
Title: President and Chief Executive Officer

## **Exhibit A - Description of Interconnection Facilities**

The Interconnection Facilities shall consist of the following equipment:

- A 69kV power line linking the Power Station with the 69kV "Oberlin Road - Power Plant" power line.
- A fiber optic link from the Power Station to the Oberlin Road Substation and associated interface equipment.
- A 69kV air break switch (LF05) at the Power Station, which is defined as the Power Station Isolating Switch.
- Three 69kV pole mounted isolating switches used to connect the power line from the Power Station to the Oberlin 69kV sub-transmission system.
- A set of protective relays providing both differential and distance protection for faults on the 69kV line.
- A Remote Terminal Unit ("RTU") used to provide an interface to the fiber optic link for operational information.
- Two tariff meters used to measure the generation output from both Lorain I and Lorain II power plants and to measure Ancillary Power provided to the Power Station by OMLPS.

Exhibit B



<p><b>Energy Development</b>          2000 W. 10th St.          Grand Rapids, MI 49508          616.781.1111</p>		<p>DATE: 02/17/2011</p>
<p>THIS DRAWING AND DESIGN IS THE PROPERTY OF THE COMPANY AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE COMPANY.</p>		<p>OPERATOR: P.T. / A.C.H. 05.8 5.05 917A</p>
<p>NO. 10000000</p>	<p>REV. 001</p>	<p>DATE: 02/17/2011</p>
<p>DATE: 02/17/2011</p>	<p>DATE: 02/17/2011</p>	<p>DATE: 02/17/2011</p>

## **Exhibit C - Provision of Secondary Access**

The Parties hereby agree that it is their intention that Generator be permitted to access its Power Station site through real property owned by the City of Oberlin.

### **1. Ability to Serve.**

The City of Oberlin owns, operates and maintains an access driveway from SR511 north to the westerly line of an easement granted by the City to Browning-Ferris Industries of Ohio, Inc., for the purposes of a private road and private utility extensions. The benefits of said easement have subsequently accrued to Generator.

### **2. Use.**

The access driveway shall be used by Generator as a secondary point of ingress/egress only. Use of the access driveway is at the Generator's sole risk. The City provides no guarantee that the access driveway will be passable. The Generator agrees to bear full responsibility for repair of any unusual wear and tear on the access driveway resulting from its use of said access driveway.

### **3. Non-Transferability.** This provision of this Agreement may not be modified or transferred without the express written consent of the City.