

City of Oberlin, Ohio

ORDINANCE No. 13-62 AC CMS

AN ORDINANCE APPROVING THE EXECUTION OF AN EFFICIENCY SMART 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 power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, American Municipal Power, Inc. (“AMP” and formerly known as AMP-Ohio) is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric power 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, as of the date hereof, political subdivisions that operate, or whose members operate, municipal electric utility systems in Delaware, Ohio, Kentucky, Michigan, Pennsylvania, Virginia and West Virginia; and

WHEREAS, AMP and Municipality have entered into a Master Services Agreement, AMP Contract No. C-11-2005-4444, pursuant to which AMP provides certain services to Municipality as set forth in various schedules to the Master Services Agreement (the “Schedules”); and

WHEREAS, AMP and the Vermont Energy Investment Corporation (“VEIC”) entered into an agreement effective June 4, 2010 (the “Initial Agreement”) for the implementation of an energy efficiency program for AMP known as Efficiency Smart (“ES”, and originally known as Efficiency Smart Power Plant); and

WHEREAS, AMP and Municipality entered into a Gorsuch Participating Subscribing Member Utility Schedule for Efficiency Smart Power Plant (the “Initial Schedule”) for services to be provided in connection with the Initial Agreement; and

WHEREAS, the term of the Initial Agreement will expire December 31, 2013 and AMP and VEIC have entered into a new ES agreement (“ES Agreement”) for AMP to pay VEIC to

continue to provide a comprehensive program of energy efficiency services (“ES Services”) designed to lower the total need for higher cost electric generation facilities or purchased power and thereby reduce Municipality’s customers’ bills, to be offered to AMP Members; and

WHEREAS, the initial term of the Initial Schedule will expire December 31, 2013, and Municipality desires to continue to receive ES Services; and

WHEREAS, AMP has provided the Municipality with a copy of the ES Agreement; and

WHEREAS, AMP and Municipality desire to enter into a Schedule (“ES Schedule”), under the MSA, which provides that AMP will obtain and sell to Municipality, and Municipality will agree to take and pay for, a share of the ES Services which AMP has contracted to acquire in the ES Agreement; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OBERLIN, LORAIN COUNTY, STATE OF OHIO, A MAJORITY OF ALL MEMBERS THERETO CONCURRING:

SECTION 1: That the ES Schedule between Municipality and AMP, substantially in the form attached hereto or on file with the Clerk, including Appendices thereto, are approved, and the City Manager of Municipality is hereby authorized to execute and deliver the ES 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 ES Schedule to be conclusive evidence of such approval.

SECTION 2. That the City Manager is hereby authorized to take any action necessary for Municipality to fulfill its obligations under the ES Schedule.

SECTION 3: That it is hereby found and determined that all formal actions of this Council concerning or relating to the passage of this Ordinance were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

SECTION 4: 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.

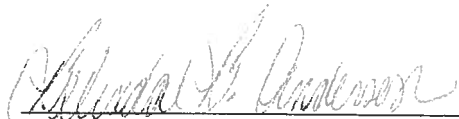
SECTION 5. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading: 10/21/2013

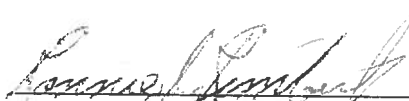
2nd Reading: 11/04/2013

3rd Reading: 11/18/2013 (Effective in 30 days)

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 11/19/2013

EFFECTIVE DATE: 12/18/2013

31-07-14411380 8000

AMP CONTRACT NO. C-8-2013-9786

THE CITY OF OBERLIN, OHIO

EFFICIENCY SMART

SUBSCRIBING MEMBER UTILITY SCHEDULE TO

AMERICAN MUNICIPAL POWER, INC.

AND

THE CITY OF OBERLIN, OHIO

MASTER SERVICES AGREEMENT

(AMP CONTRACT NO. C-11-2005-4444)

THE CITY OF OBERLIN, OHIO
EFFICIENCY SMART
SUBSCRIBING MEMBER UTILITY SCHEDULE TO
AMERICAN MUNICIPAL POWER, INC.
AND
THE CITY OF OBERLIN, OHIO
MASTER SERVICES AGREEMENT
(AMP CONTRACT NO. C-11-2005-4444)

WHEREAS, American Municipal Power, Inc. (“AMP” and formerly known as AMP-Ohio) and the above-named member of AMP (“Municipality”) have entered into a Master Services Agreement, described above, pursuant to which AMP provides certain services to Municipality as set forth in various schedules to the Master Services Agreement (the “Schedules”); and

WHEREAS, AMP and the Vermont Energy Investment Corporation (“VEIC”) entered into an agreement effective June 4, 2010 (the “Initial Agreement”) for the implementation of an energy efficiency program for AMP known as Efficiency Smart (“ES”, and originally known as Efficiency Smart Power Plant); and

WHEREAS, AMP and Municipality entered into a Gorsuch Participating Subscribing Member Utility Schedule for Efficiency Smart Power Plant (the “Initial Schedule”) for services to be provided in connection with the Initial Agreement; and

WHEREAS, the term of the Initial Agreement will expire December 31, 2013 and AMP and VEIC have entered into a new ES agreement (“ES Agreement”) for AMP to pay VEIC to continue to provide a comprehensive program of energy efficiency services (“ES Services”) designed to lower the total need for higher cost electric generation facilities or purchased power and thereby reduce Municipality’s customers’ bills, to be offered to AMP members (“Subscribing Member Utilities” or “SMUs”); and

WHEREAS, AMP has provided the Municipality with a copy of the ES Agreement; and

WHEREAS, AMP has offered to enter into this ES Schedule to provide that AMP will agree to obtain and sell to Municipality ES Services and Municipality will agree to be an SMU;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, it is agreed by and between Municipality and AMP as follows:

SECTION 1. DEFINITIONS AND EXPLANATIONS OF TERMS

Terms used but not defined herein shall have the meanings ascribed to them in Exhibit 1 to this Schedule or, if not defined herein or in Exhibit 1 to this Schedule, then in Appendix A of the Master Services Agreement.

SECTION 2. REPRESENTATIONS

Municipality represents to AMP that, as of the date this Schedule was executed by the Municipality:

- (i) Municipality has full legal right and authority to enter into this ES Schedule, to carry out its obligations hereunder and to furnish electric power and energy and related services to its customers; and
- (ii) this ES Schedule has been duly executed and delivered by the appropriate officer or officers of Municipality pursuant to legislative action authorizing or directing the same.

SECTION 3. TERM

A. This ES Schedule shall become effective upon the later to occur of (i) January 1, 2014 or (ii) its execution by Municipality and AMP ("Effective Date"). After the Effective Date, Municipality's entitlement to ES Resources shall be governed by this ES Schedule.

B. This ES Schedule shall remain in effect until December 31, 2016; *provided, however*, that Municipality shall remain obligated to pay to AMP any charges that shall have accrued hereunder and are unpaid as of such expiration date. The Term of this ES Schedule shall be extended for an additional three (3) year period ending December 31, 2019 unless written notice of termination is provided by either Party to the other not later than October 1, 2016.

SECTION 4. SELLER

AMP.

SECTION 5. PURCHASER

Municipality.

SECTION 6. TYPE OF TRANSACTION

A. AMP as Seller agrees for the term of this ES Schedule to provide to Municipality as Purchaser ES Services and Municipality agrees to take and pay for those ES Services for the term of this ES Schedule. AMP's obligations to provide ES Services hereunder are contingent upon, and subject to, the delivery to AMP of ES Services by VEIC in accordance with the ES Agreement or AMP's ability to secure replacement energy efficiency services in the event of a failure to deliver or default, or declaration of *Force Majeure*, by VEIC, and AMP shall not be liable to Municipality for any failure by AMP to deliver to Municipality its ES Services on account of *Force Majeure* or if an Uncontrollable Force shall have prevented AMP from making such delivery.

B. Municipality specifically agrees that, although the provision of ES Services pursuant to the ES Agreement are intended to be the exclusive source of ES Services, AMP shall, in the event of a failure to deliver or default, or declaration of *Force Majeure*, by VEIC or another contractor, and whether or not such failure or default leads to termination of the ES Agreement, use its best efforts to substitute for actual delivery replacement energy efficiency services.

SECTION 7. DELIVERY OF SERVICES

A. Municipality agrees to take and AMP agrees to use its best efforts to deliver to Municipality ES Services in accordance with the terms and conditions of the ES Agreement for the entire term of the Agreement Period, and in accordance with the provisions of this ES Schedule. Municipality's ES Services in each Year during which this ES Schedule is in effect are set forth in Appendix A, which may be modified from time to time by AMP. The ES Services to be made available shall be a range of similar levels of services designed to benefit each SMU's residential, commercial and industrial consumers, as well as that Municipality's facilities; provided, however that in some instances, at AMP's sole discretion and at no additional cost to Municipality, additional ES Services may be offered as well.

SECTION 8. RATES AND CHARGES

A. AMP shall establish and maintain rates or charges, or any combination thereof, for ES Services made available to Municipality under this ES Schedule. Such rates or charges, or any combination thereof, shall be set forth in the Charge Appendix, Appendix C hereto, and shall provide revenues which, taken together with the revenues received by AMP under the Related ES Schedules and any other ES related revenues under other agreements, grants, settlements or the like (“ES Related Revenues”), are sufficient, but only sufficient, to meet the Revenue Requirements.

B. Municipality’s charges in respect of any Month during which AMP has made available to Municipality any ES Services under this ES Schedule (whether or not Municipality actually accepts delivery thereof) shall be paid by Municipality through rates or charges, or the combination thereof, as set forth in the Charge Appendix and shall, unless Municipality otherwise notifies AMP in writing, be invoiced on Municipality’s regular monthly power supply invoice from AMP.

C. The initial Charge Appendix, set forth on Appendix C, reflects AMP’s estimates of the initial ES Charges to meet total ES Revenue Requirements. At such intervals as it shall determine appropriate, and subject to the limitations set forth in Section 8(A), AMP shall review and, if necessary, shall revise prospectively the Charge Appendix to ensure that the rates or charges, ES Related Revenues, or any combination thereof, as set forth therein and the like appendices in the Related ES Schedules, in the aggregate, continue to cover AMP’s estimate of all of the Revenue Requirements and recognize other factors as determined appropriate by AMP. AMP shall notify Municipality of each revision to the Charge Appendix and set forth the effective date thereof, which date shall not be less than thirty (30) days after such notice prior to such effective date.

D. Reserve and/or contingency accounts funded by collections made pursuant to the Initial Schedule and schedules between AMP and other SMU’s for services in connection with the Initial Agreement may have outstanding balances as of December 31, 2013 (collectively, the “Contingency Fund”). AMP may, in its discretion, utilize the Contingency Funds to make energy efficiency grants to SMU’s. Such grants, if any, will be distributed to Members pursuant to a plan of disbursement approved by the AMP Board of Trustees which will account for each SMU’s contribution to the Contingency Fund and such other factors as the Board of Trustees deems reasonable to consider.

E. AMP may, upon the approval of the AMP Board of Trustees, seek to bid or sell the MW savings from the ES program into any available capacity market during the term of this ES Schedule. Municipality acknowledges that in order for Municipality's MW savings to be included in such bid(s), its customers will be required to assign rights to the MW savings to AMP. In the event that AMP receives proceeds in excess of its administrative expenses incurred in connection with any such bid, such proceeds shall be returned to the Members pursuant to a plan of disbursement approved by the AMP Board of Trustees.

SECTION 9. ADDITIONAL COVENANTS OF MUNICIPALITY

A. Municipality covenants and agrees that it shall take no action the effect of which would be to prevent, hinder or delay AMP from the timely fulfillment of its obligations under this ES Schedule or Master Services Agreement; *provided, however*, that nothing contained herein shall be construed to prevent or restrict Municipality from asserting any rights which it may have against AMP.

B. As noted above, Municipality has been provided with copies of the ES Agreement between AMP and VEIC. Municipality covenants and agrees that Municipality shall use reasonable efforts to comply with all terms and conditions set forth in the ES Agreement, insofar as those terms and conditions apply to Municipality as an SMU. In furtherance of the foregoing, Municipality agrees to:

- (i) Provide electronic data for customer account and usage data on a regular basis to VEIC, including a regular quarterly transfer and occasional individual customer usage updates;
- (ii) Participate in ES public relations (PR) efforts (to extent possible);
- (iii) Facilitate the communication of ES materials within the community;
- (iv) Refer customer inquiries for ES services to VEIC;
- (v) Receive referrals from VEIC regarding customer issues that are not ES-related; and,
- (vi) Participate in AMP's Evaluation, Measurement & Verification efforts as needed.

C. Municipality covenants and agrees to use all reasonable efforts to take all lawful actions necessary or convenient to fulfill all of its obligations under this ES Schedule.

SECTION 10. RELATIONSHIP TO AND COMPLIANCE WITH OTHER INSTRUMENTS

It is recognized by Municipality that AMP, in undertaking or causing to be undertaken the financing and administration of ES, must comply with the requirements of the Related ES Schedules, the ES Agreement and other related agreements, decrees, licenses, permits, settlements, regulatory approvals, and the like; it is therefore agreed that this ES Schedule should be construed in a manner consistent with compliance with the provisions of all such agreements, decrees, licenses, permits, settlements, and regulatory approvals, and Municipality shall use reasonable efforts to assist AMP and VEIC in complying with same.

SECTION 11. MODIFICATION OR AMENDMENT OF THIS SCHEDULE

Except to the extent otherwise provided herein, with respect to supplements, amendments and modifications in the Appendices, this ES Schedule shall not be amended, modified or otherwise changed except by written instrument executed and delivered by each Party.

SECTION 12. APPLICABLE LAW; CONSTRUCTION

A. This ES Schedule is made under and shall be governed by the law of the State of Ohio; provided, however, that if Municipality is not domiciled in Ohio, the power and authority of Municipality to enter into this ES Schedule shall be construed in accordance with the laws of Municipality's domicile State or Commonwealth.

B. Headings herein are for convenience only and shall not influence the construction hereof.

SECTION 13. SEVERABILITY

If any Section, Subsection, Paragraph, Clause or provision or any part thereof of this ES Schedule shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ES Schedule shall be unaffected by such adjudication and all the remaining provisions of this ES Schedule 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 and the ES Schedule then interpreted to reflect the intention of the parties to the greatest extent permitted by law.

SECTION 14. SURVIVORSHIP OF OBLIGATIONS

The termination of this ES Schedule shall not discharge any Party hereto from any obligation that it owes to any other Party under this ES Schedule by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this ES Schedule or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this ES Schedule) shall survive the termination of this ES Schedule.

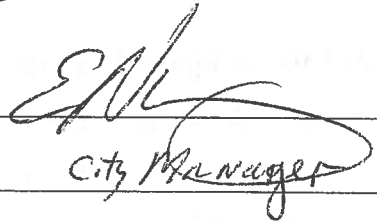
SECTION 15. TERMINATION OF INITIAL SCHEDULE

Upon the later to occur of (i) December 31, 2013 or (ii) full execution of this ES Schedule, the Initial Schedule shall terminate with no further action by either Party.

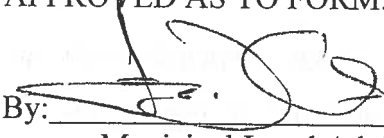
[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this ES Schedule to be executed by their proper, duly authorized representative.


CITY OF OBERLIN,
OHIO

By:  _____
Title: City Manager

APPROVED AS TO FORM:

By:  _____
Municipal Legal Advisor

AMERICAN MUNICIPAL POWER, INC.

By:  _____
Marc S. Gerken, P.E.
President/CEO

APPROVED AS TO FORM:

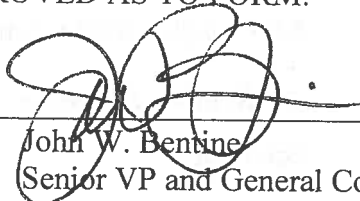
By:  _____
John W. Bentine
Senior VP and General Counsel

EXHIBIT 1
TO AMP/MUNICIPALITY EFFICIENCY SMART SCHEDULE

DEFINITIONS

In addition to the words or terms defined in the Efficiency Smart Schedule, the following words and terms, when used in the ES Schedule, shall have the meanings set forth below.

- A. *Appendix* shall mean any of the appendices attached to this ES Schedule.
- B. *Charge Appendix* shall mean the listing of charges, and the components thereof, designed to recover the Revenue Requirements associated with the ES Services. The Charge Appendix is attached hereto as Appendix C and may be revised from time to time in accordance with the provisions of Section 8 of this ES Schedule.
- C. *Effective Date* shall have the meaning set forth in Section 3 of this ES Schedule.
- D. *ES Charges* shall mean the prices set forth in the Charge Appendix.
- E. *ES Related Revenues* shall have the meaning set forth in Section 8(A) of this ES Schedule.
- E. *ES Schedule* shall mean this Schedule between Municipality and AMP that is a Schedule to the Master Services Agreement.
- F. *Force Majeure* shall mean any event of *Force Majeure* under a Contract.
- G. *Master Services Agreement* shall mean the contract document titled as such between Municipality and AMP referenced on the cover page of this ES Schedule.
- H. *Month or Monthly* refers to a calendar month.
- I. *Municipality* shall mean the AMP member executing this ES Schedule and is the Purchaser hereunder.
- J. *Operating Expenses* shall mean the sum of the following:
 - (i) the cost paid to VEIC under the ES Agreements and the cost to AMP of administration of ES, including contributions to any reserve or contingency fund, taxes, the cost of insurance, and costs of compliance with and renewals of all required licenses and permits, legal, engineering, accounting and financial advisory

- fees and expenses, including repayment of any prudently incurred sums advanced by AMP for such purposes, whether incurred prior to the Effective Date or otherwise;
- (ii) the cost, if any, to AMP to establish and maintain an allowance for working capital related to ES;
 - (iii) the cost of measurement, verification and forecasting incurred by AMP in furtherance of or related to ES, and all other costs not otherwise specified or recovered hereunder, but incurred by AMP in connection with the performance of its obligations under this ES Schedule;
 - (iv) the costs of defending, compromising, and settling any suits or claims against AMP relating to ES, the ES Schedule or Related ES Schedules or any service rendered from ES and the payment of any judgments or verdicts related thereto; and
 - (v) repayment of any prudently incurred sums for expenditures advanced by AMP in connection with any of the costs set forth above, whether incurred prior to the Effective Date or otherwise.
- K.** *Party or Parties* refers to either or both, respectively, Municipality and AMP.
- L.** *Related ES Schedules* shall mean the ES- related schedules between AMP and the other SMU's listed on Appendix B.
- M.** *Revenue Requirements* shall be the sum of all Operating Expenses, and the repayment with interest of any borrowings by AMP related to the ES program, less any ES Related Revenues, but only to the extent not appropriately allocated directly to individual SMUs.
- N.** *Uncontrollable Force* shall mean any cause beyond the control of a Party, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, pestilence, war, riot, civil disturbance, labor disturbance, sabotage, restraint or action by court or public authority, and failure of third parties to provide transmission, which by due diligence and foresight such Party, as the case may be, could not reasonably have been expected to avoid and shall include the failure of an

energy efficiency Contractor both to perform and to pay amounts due, if any, under the related Agreement.

- O. **Year** shall mean the twelve-month period commencing at 12:00 a.m. on January 1 of each calendar year; *provided, however*, that the first Year shall commence on the Effective Date set forth in Section 3 and shall expire at 12:00 a.m. on the next succeeding January 1.

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and words imparting persons shall include firms, associations, partnerships, public and private corporations, and any other legal entities.

Residential

Efficiency Smart's residential program is a comprehensive program that includes initiatives such as:

- Secondary appliance recycling
- New efficient products rebates
- Efficient lighting coupons, rebates, and online store
- New construction
- All electric homes
- Home performance and Energy Star programs
- Point-of-sale and coupons
- Home energy audits

Retail Account Managers support these initiatives by developing partnerships with local retailers and suppliers; providing literature and training to retail staff; conducting in store demonstrations, education, and special programs.

Commercial and Industrial

Business Energy Rebates

The Efficiency Smart Business Energy Rebates (BER) Program offers commercial and industrial businesses financial rebates for the implementation of improvements and technologies that reduce energy usage. Unlike typical prescriptive programs, the business energy rebates program offers dedicated relationship and program managers that provide on-site account management and technical assistance to help retail customers make informed decisions about qualifying products and energy efficient options.

All business customers in *SMUs* with an annual electric usage between 20,000 kWh and 500,000 kWh per year are eligible for this program.

Custom Program

The Custom Program offers a consultative and customized approach through the provision of

APPENDIX A DESCRIPTION OF ES SERVICES

expert technical assistance (i.e., through its Energy Consultation and Key Account Management functions) and financial incentives. Projects include equipment optimization, industrial process, new construction, emerging and existing technologies, modeling, and design/plan review that result in cost-effective and measurable electrical energy savings.

The Custom Program is available to all business customers in *SMUs* with an annual electric usage greater than 500,000 kWh per year.

Vendor Partner Ally Program

The Vendor & Contractor Outreach program is a partnership with manufacturers, suppliers, designers, and installers of energy efficiency equipment and systems that recognizes, promotes, and provides training to select contractors and vendors who have met the qualifications for the program.

Community and Smaller Business

The community and smaller business outreach program is designed to provide affordable and accessible energy efficiency options to those retail customers that may not be able to access such options easily. The program includes (but is not limited to) community outreach and development; low income services; door-to-door campaigns; senior center and retirement community initiatives; multi-family and multi-unit efforts; smaller business and residential direct install campaigns; smaller business product discounts and rebates; K-12 educational, and college student life and dormitory initiatives.

SUBSCRIBING MEMBER UTILITIES

[TO COME]

EFFECTIVE JANUARY 1, 2014
EFFICIENCY SMART
PRELIMINARY CHARGE INDEX

1. Rates and Charges.

Charges for each year shall be calculated by dividing an SMU's annual MWh sales for the last year for which such sales are available by twelve (12) (to arrive at an estimated monthly MWh sales amount) and multiplying that monthly MWh sales amount by a Base Service Charge as adopted from time to time in accordance with this ES Schedule. The Initial Base Service Charge for ES services for each billing period shall be One Dollar and Forty Cents (\$1.40) per MWh of estimated monthly sales.

2. Minimum Performance Guarantee.

VEIC will develop and execute a Minimum Performance Guarantee with each SMU. The following process will be used to establish the basis of the Minimum Performance Guarantee for each SMU and determine penalties associated with non-performance.

VEIC will develop an estimate of MWh for the Performance Period for each SMU pursuant to a savings target estimating process reviewed by AMP. The minimum performance will be established at 70% of the estimate of MWh savings for each SMU.

If at any time either VEIC or an SMU anticipates that the minimum performance will not be achieved due to an inability of VEIC to implement sufficient efficiency programs as a result of specific actions or inactions by the SMU, it shall notify AMP. Upon receipt of such notice, AMP will coordinate a meeting (the "Implementation Meeting") between AMP, VEIC and the SMU to discuss additional implementation opportunities and/or possible modifications to the Minimum Performance Guarantee. At least one (1) of Municipality's elected officials shall participate in the Implementation Meeting. Refusal of the SMU to participate in the Implementation Meeting will result in a termination of the Minimum Performance Guarantee, without further liability by VEIC or AMP.

Upon completion of savings verification for the Performance Period, AMP will determine if any SMU is eligible for a penalty payment due to failure of VEIC to meet the

conditions of the Minimum Performance Guarantee. Efforts of both VEIC and the SMU following any Implementation Meeting will be considered as part of the determination process.

Penalty payments will be determined by subtracting the actual MWh savings achieved during the Performance Period from the Minimum Performance Amount and multiplying the resulting value by the average cost per MWh for ES services during the Performance Period.

SMUs that qualify for penalty payments will have the following choice of how to receive the payment: the SMU may elect to roll the value of the penalty payment into the next contract period and receive the equivalent MWh savings at no additional cost or elect to receive a cash payment from VEIC in the amount of the penalty payment.

3. Billing Period. The Billing Period shall be monthly and be invoiced with the Municipality's monthly power invoice from AMP or as otherwise agreed by the Parties. Billings pursuant to this ES Schedule shall begin March 1, 2014.

Effective: January 1, 2014

