

CITY OF OBERLIN, OHIO

ORDINANCE NO. 22-63 AC CMS

AN ORDINANCE APPROVING THE EXECUTION OF AN EFFICIENCY SMART SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC. AS AN EMERGENCY MEASURE.

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 the above-named member of AMP (“Municipality”) have entered into a Master Services Agreement, designated as 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 January 1, 2017, as amended (collectively, the “ES Agreement”), for VEIC to provide a suite of energy efficiency services (the “Program 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 and Municipality entered into a Schedule for Efficiency Smart Services designated as AMP Contract No. 2020-005838-SCHED (the “Prior Schedule”); and

WHEREAS, the term of the Prior Schedule will expire December 31, 2022, and Municipality desires to continue to receive ES Services; and

WHEREAS, AMP has offered to enter into this ES Schedule to provide that AMP will agree to obtain and sell to Municipality the energy efficiency services selected by Municipality (the “ES Services”) and Municipality will agree to be an SMU; 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.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OBERLIN, LORAIN COUNTY, STATE OF OHIO:

SECTION 1. That the ES Schedule between Municipality and AMP, substantially in the form attached hereto as Exhibit A, including Appendices thereto, are approved, and the City Manager 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. 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 this 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 operation of a municipal department, to wit: to provide for the continuation of Efficiency Smart Services and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: October 17, 2022

2nd Reading: _____

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 10/18/2022

EFFECTIVE DATE: 10/17/2022

**THE CITY OF OBERLIN, OHIO
EFFICIENCY SMART SCHEDULE TO
MASTER SERVICES AGREEMENT**

WHEREAS, American Municipal Power, Inc. (“AMP”) and the above-named member of AMP (“Municipality”) have entered into a Master Services Agreement, designated as 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 January 1, 2017, as amended (collectively, the “ES Agreement”), for VEIC to provide a suite of energy efficiency services (the “Program 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 and Municipality entered into a Schedule for Efficiency Smart Services designated as AMP Contract No. 2020-005838-SCHED (the “Prior Schedule”); 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 the energy efficiency services selected by Municipality on Appendix A and described in Appendix B hereto (the “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 as of January 1, 2023 (“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 three (3) years following the Effective Date (the “Initial Term”); *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. If, as of the expiration of the Initial Term, the ES Services selected by Municipality in Appendix A hereto remain available, on a going-forward basis, as ES Services, then the Term of this ES Schedule shall be extended for an additional three (3) year period (the “Extended Term”) unless written notice of termination is provided by either Party to the other not later than ninety (90) days prior to the then-effective expiration date; *provided, however*, that the Charge Appendix for such Extended Term may be revised as set forth in Section 6.

SECTION 4. PROVISION OF ES SERVICES

A. AMP agrees for the term of this ES Schedule to provide to Municipality the 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 Program 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.

C. If, and only if, Municipality's selection of ES Services on Appendix A includes a Performance Based Service, the terms of Appendix D, Minimum Performance Guarantees, shall apply.

D. Municipality and AMP acknowledge that the provision of certain Program Services may require the execution of additional agreements between AMP and Municipality, as indicated on Appendix A.

SECTION 5. 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 written agreement of AMP and Municipality.

SECTION 6. 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. Billings pursuant to this ES Schedule shall begin in the second month after the Effective Date.

C. For any Extended Term, and subject to the limitations set forth in Section 6(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. AMP may 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 7. 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) If Municipality has subscribed to a Performance Based Service, 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.

D. AMP's liability for any injury or damage that is caused by the actions or omissions of AMP in the provision of any ES Services, is limited to the limits of applicable insurance, excluding umbrella coverage, maintained by AMP, irrespective of whether such damages arise out of negligence, gross negligence, recklessness, intentional acts or omissions, or strict liability, and irrespective of whether the theory of recovery of such damages sounds in tort, contract, or any other legal theory.

Notwithstanding the foregoing, in the event that AMP does not maintain insurance applicable to the aforementioned injury or damage, AMP's liability shall be limited to two times (2x) the amount paid for ES Services hereunder, or \$50,000, whichever is greater.

This Section 7.D shall survive the voluntary or involuntary termination of the Master Services Agreement, this Schedule, or any extension of either. This Section 7.D does not limit or

modify in any way Section 18 of the ES Agreement, which requires, among other things, VEIC to indemnify Municipality and its officers, trustees, agents and employees against all claims or suits arising in whole or in part from any act or omission of VEIC or any agent or subcontractor of VEIC in performing work under the ES Agreement, all as set forth more fully therein, except to the extent such claims, suits, or damages arise out of the negligent or wrongful acts or omissions of AMP, Municipality, or their officers, trustees, agents and employees.

SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. TERMINATION OF PRIOR SCHEDULE

As of the effective date of this ES Schedule, the Prior 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 duly authorized representative.

CITY OF OBERLIN, OHIO

By: *[Signature]*
Name: Robert H. Haid
Title: City Manager

APPROVED AS TO FORM:

By: *Jon D. Clark*
Jon D. Clark, Law Director

AMERICAN MUNICIPAL POWER, INC.

APPROVED AS TO FORM:

By: _____
Adam Ward
Senior Vice President Member Services
& External Affairs

By: _____
Rachel Gerrick
Senior Vice President & General Counsel for
Corporate Affairs

**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.

Appendix shall mean any of the appendices attached to this ES Schedule.

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 in accordance with the provisions of Section 6 of this ES Schedule.

Demand Focus shall mean the option provided under the High Performance service which focuses on enhanced MW savings.

ES Charges shall mean the prices set forth in the Charge Appendix.

ES Related Revenues shall have the meaning set forth in Section 6(A) of this ES Schedule.

ES Schedule shall mean this Schedule between Municipality and AMP that is a Schedule to the Master Services Agreement.

Energy Focus shall mean the option provided under the High Performance service which focuses on enhanced MWh savings.

Force Majeure shall mean any event of *Force Majeure* under the ES Agreement.

Master Services Agreement shall mean the contract document titled as such between Municipality and AMP referenced on the cover page of this ES Schedule.

Month or Monthly refers to a calendar month.

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.

Party or Parties refers to either or both, respectively, Municipality and AMP.

Performance-Based Services means those services designated as such in Appendices A and B hereto.

Related ES Schedules shall mean the ES-related schedules between AMP and other SMU's.

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.

Targeted Service means those services designated as such in Appendices A and B hereto.

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.

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.

**APPENDIX A
SELECTED ES SERVICES**

Each of the available Program Services is listed below. Municipality must elect its ES Services by initialing each requested service, completing date-related blanks, and signing below.

I. Performance-Based Comprehensive Services

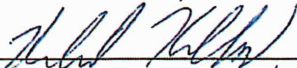
| Initial to Select | Program Service |
|-------------------|---|
| RH | Enhanced performance-based service @ \$1.65/MWh of annual retail sales for a 3-year term starting <u>January 1</u> , 2023 |
| _____ | High performance-based service @ \$1.40/MWh of annual retail sales for a 3-year term starting _____, 2023 <i>Select One:</i> _____ Demand Focus option _____ Energy Focus option |
| _____ | Basic performance-based service @ \$0.90/MWh of annual retail sales for a 3-year term starting _____, 2023 |

II. Performance-Based C&I Custom Targeted Service

| Initial to Select | Program Service |
|-------------------|---|
| _____ | Custom C&I performance-based service @ \$1.30/MWh of annual commercial and industrial retail sales for a 3-year term starting _____, 2023 |

Municipality selects each of the ES Services initialed above.

CITY OF OBERLIN, OHIO

By: 

Name: Robert H. Haid

Title: City Manager

APPENDIX B PROGRAM SERVICES

NOTE: The following is a description of available Program Services as of the Effective Date. Only those services selected by Municipality on Appendix A will be provided pursuant to this ES Schedule.

I. Performance-Based Comprehensive Service

General Description

Complete turnkey energy efficiency program services that serve all markets (residential, commercial, industrial, and municipal) with a 3-year contract. A 100% annual MWh savings target and/or a 100% MW savings target are established and guaranteed at 70% of the established target. Services include technical assistance, key account management, marketing, website, incentive processing, reporting, evaluation, measurement, and verification. Initiatives are subject to change but typically will include: large custom commercial and industrial services, business energy rebates, efficient appliance rebates, retail efficient lighting, community outreach services, community service organization partnerships, community-specific delivery strategies.

Service level designations

1) **Enhanced** - Savings targets set to reduce MWh 0.5% and reduce peak MW 0.6% annually. This service has a minimum requirement of a 10 MW peak (due to the need for sufficient C&I load).

2) **High** - Savings targets set to reduce MWh 0.4% and reduce peak MW 0.4% annually and one of the following options:

- **Energy Focus:** 0.1% additional MWh reduction
- OR -
- **Demand Focus:** 0.2% additional MW reduction

Demand Focus has a minimum requirement of a 10 MW peak (due to the need for sufficient C&I load). SMUs achieving 125% (or more) of their High Performance target are not eligible to select the Basic Performance option in a subsequent contract for a Comprehensive service.

3) **Basic** - Savings target set to reduce MWh by 0.25% annually. SMUs achieving 200% (or more) of their Basic Performance target must choose either the High Performance or Enhanced Performance service in a subsequent contract for a Comprehensive service.

Evaluation, Measurement and Verification (EM&V)

Efficiency Smart quality control and evaluation, measurement and verification savings protocols are included in the service. AMP also retains an independent, 3rd-party EM&V consultant to verify the program savings on an annual basis.

II. Targeted Service

Targeted service refers to Efficiency Smart Services that are limited to specific markets.

Performance-Based Commercial & Industrial (C&I) Targeted Service

General Description

This service is focused on all commercial and industrial customers and includes key account management, customized technical services, third-party proposal analysis and review, financial incentives, promotion, reporting, evaluation, measurement, and verification.

Service level designations

Reduce MWh sales of all commercial and industrial sectors by 0.5% annually. Includes a performance guarantee and requires a 3-year contract term, as well as annual C&I sales greater than, or equal to, 20,000 MWh.

Evaluation, Measurement and Verification (EM&V)

Efficiency Smart quality control and evaluation, measurement and verification savings protocols are included in the service. AMP also retains an independent, 3rd-party EM&V consultant to verify the program savings on an annual basis.

APPENDIX C
EFFICIENCY SMART CHARGE INDEX

1. **Comprehensive Performance Based Services**

Charges for each year will be calculated by dividing Municipality'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 the Base Service Charge listed below.

- **Enhanced Performance Comprehensive**: The Base Service Charge for each billing period is One Dollar and Sixty-Five Cents (\$1.65) per MWh of estimated monthly sales.
- **High Performance Comprehensive**: The Base Service Charge for each billing period is One Dollar and Forty Cents (\$1.40) per MWh of estimated monthly sales.
- **Basic Performance Comprehensive**: The Base Service Charge for each billing period is Ninety Cents (\$0.90) per MWh of estimated monthly sales.

1. **Targeted Service**

Performance-Based Custom Commercial and Industrial (C&I) Service. Charges for each year will be calculated by dividing Municipality's annual C&I 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 C&I MWh sales amount by the Base Service Charge of One Dollar and Thirty Cents (\$1.30) per MWh of estimated monthly C&I sales.

2. **Exceeding Performance-Based Targets**

The Performance-Based program costs are established at a level to cost-effectively achieve 100% of the targeted MWh and/or MW savings for the SMU within the subscribed Term. As a result, the allocated incentive funds available to the SMU in connection with the Performance-Based Service will be expended when the target is reached. Depending on market opportunities within an SMU, 100% of the Performance-Based Service target may be achieved before the end of a subscribed Term. Without additional funding, payment of

incentives and other offerings may need to be curtailed once savings targets are achieved.

APPENDIX D
MINIMUM PERFORMANCE GUARANTEE

NOTE: Minimum Performance Guarantee is applicable only if Municipality's ES Services selection in Appendix A includes a Performance-Based Service.

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

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

If at any time either VEIC or Municipality 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 Municipality, it shall notify AMP. Upon receipt of such notice, AMP will coordinate a meeting (the "Implementation Meeting") between AMP, VEIC and Municipality 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 Municipality 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 Municipality 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 Municipality following any Implementation Meeting will be considered as part of the determination process.

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

If Municipality qualifies for penalty payments it will have the following choice of how to receive the payment: Municipality may elect to roll the value of the penalty payment into the next contract period and receive the equivalent MWh and/or MW savings at no additional cost or elect to receive a cash payment from VEIC in the amount of the penalty payment.