

VILLAGE OF YELLOW SPRINGS, OHIO

ORDINANCE 2023-42

**APPROVING THE FORM AND
AUTHORIZING THE EXECUTION OF THE 2024-2028 LANDFILL ENERGY
SCHEDULE WITH
AMERICAN MUNICIPAL POWER, INC. AND TAKING OTHER ACTIONS IN
CONNECTION THEREWITH REGARDING LANDFILL GENERATED ENERGY
PURCHASES**

WHEREAS, the Village of Yellow Springs, 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; and

WHEREAS, Municipality, acting individually and through AMP with other political subdivisions of this and 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-10-2005-4379, 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, certain Members, including the Municipality have determined that they can utilize additional sources of landfill-generated electric capacity and energy and

have requested that AMP arrange for the same by purchasing from landfill energy facilities; and

WHEREAS, in furtherance of this purpose, AMP will enter into an agreement with Ohio Renewable Energy Services ("ORES") (the "2024-2028 Landfill Power Agreement") under the terms of which AMP will purchase approximately two megawatts of capacity, the associated energy and a share of Environmental Attributes (as defined therein) from the landfill generation project(s) located at the Erie County Landfill; and

WHEREAS, it is necessary and desirable for Municipality to enter into the 2024-2028 Landfill Energy Schedule to Municipality's Master Services Agreement with AMP to provide for an additional source of capacity, energy and Environmental Attributes; and

WHEREAS, after due consideration, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein below and requests and authorizes AMP to acquire capacity, energy and Environmental Attributes from the Landfill Project(s) upon those terms and conditions set forth in the 2024-2028 Landfill Energy Schedule.

NOW, THEREFORE, BE IT ORDAINED BY COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO:

SECTION 1. That the 2024-2028 Landfill Energy Schedule between Municipality and AMP, substantially in the form attached hereto as Exhibit 1, including Exhibits thereto, is approved, and the Interim Village Manager of Municipality is hereby authorized to execute and deliver the 2024-2028 Landfill Energy Schedule with such changes as the Village Manager may approve as neither inconsistent with this Ordinance nor materially detrimental to the Municipality, execution of the 2024-2028 Landfill Energy Schedule to be conclusive evidence of such approval.

SECTION 2. That the Interim Village Manager is hereby authorized to (i) acquire under the 2024-2028 Landfill Energy Schedule, authorized above, a Contract Amount as defined in that Schedule of up to 700 kilowatts with a price of \$65.00/MWh for energy, capacity and Environmental Attributes made available thereunder without bid, and (ii) make any determinations and approvals required thereunder, if any, as the Interim Village 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. That competitive bidding is not required on the Municipality's acquisition of its right to secure energy under the 2024-2028 Landfill Energy Schedule, and in the event any competitive bidding requirements are applicable, any such competitive bidding requirements that might otherwise be applicable, are hereby waived.

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

SECTION 6. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of a quorum of the Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were held in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.



Kevin Stokes, President of Council

Passed: 12-4-2023

Attest: 

Judy Kintner, Clerk of Council

ROLL CALL:

Kevin Stokes _Y__

Brian Housh _Y__

Marianne MacQueen __Y__

Carmen Brown _Y__

Gavin DeVore Leonard_Y__

EXHIBIT 1 to Ordinance 2023-42

**VILLAGE OF YELLOW SPRINGS, OHIO
2024-2028 LANDFILL ENERGY SCHEDULE
AMP Contract No. 2024-009363-ESS
A Schedule to
American Municipal Power, Inc. and
VILLAGE of YELLOW SPRINGS, OHIO
Master Service Agreement No. C-10-2005-4379**

WHEREAS, the Village of Yellow Springs, Ohio ("Municipality") and American Municipal Power, Inc., ("AMP") have entered into a Master Services Agreement ("MSA") under which certain services may be provided, pursuant to schedules entered into between Municipality and AMP; and

WHEREAS, AMP will enter into the Erie County Landfill Energy Power Purchase Agreement with Ohio Renewable Energy Services, LLC ("ORES") (the "Landfill Power Agreement") whereby AMP will purchase up to approximately two megawatts ("MW") of capacity and associated energy for a period of sixty (60) months, pursuant to the terms and conditions set forth therein; and

WHEREAS, the Landfill Power Agreement provides, among other things, an opportunity for the Municipality to receive from AMP landfill-generated capacity, energy and Environmental Attributes (as defined therein) from the landfill gas to electricity facility located at the Erie County Landfill through this schedule to the MSA (the "2024-2028 Landfill Energy Schedule").

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth in this Agreement, the Parties agree as follows.

SECTION 1 - TERM

The term of this 2024-2028 Landfill Energy Schedule shall be coterminous with the Landfill Power Agreement (January 1, 2024 – December 31, 2028) as defined therein, which is a sixty (60) month term; provided, however, that Municipality's obligation to purchase and AMP's obligation to deliver capacity, energy and Environmental Attributes pursuant to this 2024-2028 Landfill Energy Schedule are both contingent on the performance of ORES pursuant to the Landfill Power Agreement.

SECTION 2 - SERVICES

AMP agrees to procure as Seller, pursuant to (and its obligations hereunder are specifically dependent upon) the Landfill Power Agreement, output up to approximately 2.0 MW of capacity, associated energy in megawatt-hours ("MWh"), and one-half (50%) of the Environmental Attributes for the benefit of the Municipality (the "Contract Amount"). Municipality agrees to take and pay for such capacity, energy and Environmental Attributes on a *pro rata* basis where and as available pursuant to the Landfill Power

Agreement. Such *pro rata* amounts to be determined by multiplying the Municipality's percentage Contract Amount, as set forth on Exhibit B hereto, times the actual capacity and energy available from time to time under the Landfill Power Agreement.

SECTION 3 - DELIVERY POINT

The Delivery Point for this 2024-2028 Landfill Energy Schedule shall be the "Delivery Point" as defined in the Landfill Power Agreement, which is the point(s) where the facility connects with FirstEnergy's system at 69 kV on the high side of the ORES transformer at the Landfill, unless the same is modified in writing by the Parties. There may also be a Secondary Delivery Point, or Points of Delivery. Municipality may change the Secondary Delivery Point(s) set forth on Exhibit D with AMP's consent, such consent not to be unreasonably withheld, provided that transmission to any modified Secondary Delivery Point shall be pursuant to appropriate Federal Energy Regulatory Commission ("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 Secondary Delivery Point as set forth in Exhibit D.

B. Notwithstanding any other provision of this 2024-2028 Landfill Energy Schedule and the MSA, Municipality shall, when available, take and pay for the Landfill-generated capacity, energy and Environmental Attributes.

SECTION 5 - DEPENDENCE ON LANDFILL POWER AGREEMENT

Municipality recognizes that AMP's ability to supply landfill-generated capacity, energy and Environmental Attributes under this 2024-2028 Landfill Energy Schedule is dependent upon AMP's ability to arrange for the same pursuant to the Landfill Power Agreement. Additionally, Municipality recognizes that AMP entered into the Landfill Power Agreement primarily for the benefit of Municipality and the other Members of AMP and that AMP, pursuant to the Landfill Power Agreement, has certain rights as well as certain obligations. Accordingly, Municipality agrees 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 ORES's failure to perform.

SECTION 6 - RATES, CHARGES AND BILLING

A. Capacity, energy and Environmental Attributes made available pursuant to this 2024-2028 Landfill Energy Schedule shall be charged at the base rates specified in the Landfill Power Agreement for the term of the Landfill Power Agreement as shown on Exhibit A and the costs set forth in Sections 6 (B) and (C) hereof, and the Capacity and Energy Rate Schedules as the same may be modified by AMP from time to time and pursuant to the billing provisions herein and in the MSA;

B. The net of the following costs shall be included as a component of a uniform rate adjustment to be charged hereunder for energy delivered or made available to Municipality: any ancillary service, congestion and marginal loss charges by PJM Interconnection, L.L.C. ("PJM") or any other applicable Regional Transmission Organization ("RTO"), an appropriate allocation of AMP's energy control center, metering and other common costs of AMP reasonably allocable to the Landfill Power Agreement in the rates set forth on Exhibit A ("Rate Adjustment"). This creates a Project Energy Rate for the 2024-2028 Landfill Energy Schedule consisting of the charges in Exhibit A as adjusted as set forth in this Section 6 (see Exhibit E – Example Project Energy Rate Calculation). The Municipality shall also be responsible for any additional ancillary service, congestion or marginal loss charges to its Secondary Delivery Point.

C. In addition to the other compensation to be paid to AMP pursuant to this 2024-2028 Landfill Energy Schedule, Municipality shall also pay the AMP Energy Control Center Charge and the Service Fee B specified in the MSA (currently at a rate of \$0.00058/kWh for Service Fee B).

D. If AMP, pursuant to the Landfill Power Agreement, must pay any Capacity Performance penalties received by PJM that are attributed to the Landfill Gas Electric Facilities (as defined in the Landfill Power Agreement), AMP shall pass the cost of such penalty through to Municipality and Municipality shall pay such penalty on a *pro rata* basis. Municipality's *pro rata* amount due shall be determined by multiplying the Municipality's percentage Contract Amount times the actual penalty amount for which AMP is responsible.

If AMP, pursuant to the Landfill Power Agreement, receives any Capacity Performance bonuses received by PJM that are attributed to the Landfill Gas Electric Facilities, AMP shall pass the bonus through to Municipality on a *pro rata* basis. Municipality's *pro rata* share shall be determined by multiplying the Municipality's percentage Contract Amount times the actual bonus amount received by AMP.

SECTION 7 – INSTALLED CAPACITY CREDIT

Municipality will receive a pro-rata share of the net available Installed Capacity/RPM credits/charges (if any) from PJM.

SECTION 8 –ENVIRONMENTAL ATTRIBUTES

All Environmental Attributes available to AMP under the Landfill Power Agreement (50% of the total amount generated) may be monetized by AMP at Municipality's direction and credited *pro rata*, to the Municipality. Such *pro rata* amounts to be determined by multiplying the Municipality's percentage Contract Amount times the actual Environmental Attributes available to AMP from time to time under the Landfill Power Agreement. Alternatively, in the event that Municipality wishes to represent the energy supplied hereunder as "renewable," at the direction of Municipality, AMP may directly credit or retire the Environmental Attributes upon Municipality's direction.

Municipality's election of actions to be taken in regard to Municipality's pro rata share of the Environmental Attributes shall be shown on Exhibit C. Municipality may change its election at any point during the Term by providing written notice to AMP.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

VILLAGE OF YELLOW SPRINGS

TITLE: _____

DATE: _____

APPROVED AS TO FORM:

Law Director

**AMERICAN MUNICIPAL POWER,
INC.**

Jolene M. Thompson
President/CEO

DATE: _____

APPROVED AS TO FORM:

Lisa G. McAlister
SVP and General Counsel for
Regulatory
Affairs

EXHIBIT A to Exhibit 1 of Ordinance 2023-41
RATE SCHEDULE for LANDFILL ENERGY*

<u>Start Date</u>	<u>End Date</u>	<u>Price (\$/MWh)</u>
1/1/2024	12/31/2028	\$65.00

*Reflects only those amounts that AMP will pay to ORES. Service fees, or other applicable charges will have to be supplied and added.

EXHIBIT B to

Exhibit 1 of

Ordinance 2023-41
Capacity Schedule

	<u>kW</u>	<u>%</u>
Amount Of Total Capacity Under Landfill Agreement	2,000	100%
Contract Amount Of Municipality's Capacity	700	35%

EXHIBIT C to Exhibit 1 of Ordinance 2023-41

Environmental Attributes

For the years 2024 through 2028, Municipality elects the following actions be taken in regard of the Municipality's pro-rata share of Environmental Attributes available under the Landfill Power Agreement:

_____ Municipality requests that AMP sell Municipality's pro-rata share of Environmental Attributes and return proceeds of sale to Municipality.

___X___ Municipality requests that AMP credit Municipality's pro-rata share of Environmental Attributes to Municipality's PJM GATS account.

EXHIBIT D to Exhibit 1 of

Ordinance 2023-41

SECONDARY DELIVERY POINTS

[TO COME]

EXHIBIT E to Exhibit 1 of Ordinance 2023-41

EXAMPLE 2024 LANDFILL SCHEDULE RATE CALCULATION

2024 Example Rate

Base Energy, Capacity and Environmental Attributes Rate = \$65.00 / MWh

PJM Operating Reserves = \$0.10 / MWh (estimated)

AMP Energy Control Center charge = \$0.65 / MWh (estimated)

Final Project Energy Rate (example) - \$65.75 / MWh

Service Fee B = \$0.58 / MWh