

ORDINANCE NO. 89-19 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT
WITH AMERICAN MUNICIPAL POWER-OHIO, INC., FOR THE SALE OF POWER
AND ENERGY BY THE OBERLIN MUNICIPAL LIGHT & POWER SYSTEM

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain,
State of Ohio, a majority of all members elected thereto concurring:


SECTION 1. That the City Manager is hereby authorized and directed
to enter into a contract with American Municipal Power-Ohio, Inc., a copy
of which is attached hereto as "Exhibit A", for the sale of power and
energy by the Oberlin Municipal Light & Power System.

SECTION 2. 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 the 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 3. That this ordinance shall take effect at the earliest
date allowed by law.

PASSED: 1st Reading- February 21, 1989
2nd Reading- March 6, 1989
3rd Reading- March 20, 1989

ATTEST:


Clerk of Council


Chairman of Council

POSTED: March 22, 1989

EFFECTIVE DATE: April 19, 1989

ORDINANCE NO. 89-19 AC CMS
Exhibit "A"

CITY OF OBERLIN - AMERICAN MUNICIPAL POWER - OHIO, INC.

AGREEMENT ON GENERATION TO SERVE OBERLIN'S NATIVE LOAD

This AGREEMENT, made and entered into this 1st day of October 1988, by and between the City of Oberlin, Ohio, a political subdivision existing under the Constitution and laws of the State of Ohio [hereinafter referred to as the "City"] and American Municipal Power - Ohio, Inc., an Ohio corporation not for profit [hereinafter referred to as "AMP-Ohio"].

WITNESSETH:

WHEREAS, AMP-Ohio is an Ohio corporation not for profit, organized to own and operate facilities, or to otherwise provide for the generation, transmission and/or distribution of electric power and energy and to furnish technical services on a cooperative, non-profit basis for the mutual benefit of its patrons, such patrons being, and to be, electric systems owned and operated by municipal corporations in the State of Ohio; and

WHEREAS, AMP-OHIO is taking delivery of power and energy from Ohio Edison Company under the terms and conditions of a Partial-Requirements tariff effective as of October 1, 1988, in order to coordinate and develop power supply and interchange arrangements and

to purchase electric power and energy for resale to a group of municipalities collectively referred to as the Northeast AMP-Ohio Service Group [hereinafter referred to as "NEASG"] and herein; and

WHEREAS, the City, itself a patron of AMP-Ohio and a member of NEASG, has the capability to generate electricity and desires to employ this capability to serve its native load in conjunction with AMP-Ohio's purchase of power and energy for the benefit of NEASG to the extent said capability can be usefully employed so as to reduce the cost of electric power and energy to the members of NEASG and, at the same time, provide benefits to the City; and

NOW THEREFORE, in consideration of the conditions, terms and covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I

TERM

SECTION A - TERM: Subject to the conditions contained herein, this Agreement shall commence on October 1, 1988 and continue in effect until September 30, 1989 or until the above mentioned arrangements between AMP-Ohio and Ohio Edison Company effective October 1, 1988 terminates, whichever event occurs first.

ARTICLE II

DEFINITIONS

SECTION A - DEDICATED CAPACITY: Shall mean electric generating capacity which the City makes available to AMP-Ohio pursuant to this Agreement. It is understood that 8150 kilowatts of said Dedicated Capacity shall be firm capacity (capacity which shall be available at all times unless specifically stated otherwise in this Agreement). It is also understood that electric generating capacity in excess of 8150 kilowatts (the firm portion) of the Dedicated Capacity may be supplied by the City pursuant to this Agreement provided that no reduction in payments by AMP-Ohio to the City shall be made as a result of the City's failure to make capacity available, for purposes of this Agreement, in an amount in excess of 8150 kilowatts (the firm portion).

SECTION B - SCHEDULED CAPACITY: That maximum amount of Dedicated Capacity which AMP-Ohio requires and schedules to be operated during each month.

SECTION C - DISPATCHED CAPACITY: That amount of Scheduled Capacity, expressed in kilowatthours, which the City actually provides during the monthly NEASG Coincident Peak.

SECTION D - FUEL COST ALLOWANCE: The difference between the City's Monthly Fuel Cost as defined in Article II, Section G and the Ohio Edison energy charge under the Partial-Requirements tariff, defined in Article II, Section K.

SECTION E - AMP-OHIO MONTHLY OPERATION, MAINTENANCE AND ADMINISTRATION COST: [hereinafter referred to as AMP-Ohio's OMA] The monthly cost allocated by AMP-Ohio to operate, maintain and administer the contracts, the supervisory and data acquisition systems and to provide schedules and data to the City and NEASG as required or contemplated by this Agreement.

SECTION F - CITY'S MONTHLY OPERATIONS, MAINTENANCE AND ADMINISTRATION COST: [hereinafter referred to as City's OMA] One twelfth (1/12) of non-fuel expenses classified as "Generation Costs-Operation", "Generation Costs-Maintenance" and "Generation Costs-Administration" and contained on Schedule C of each of the twelve (12) most recent "Monthly Statements of Revenue and Expense of the Oberlin Municipal Light and Power System". For the purpose of this Agreement the twelve (12) most recent "Monthly Statements of Revenue and Expense of the Oberlin Municipal Light and Power System" shall include such monthly statements for the twelve (12) consecutive months prior to the month in which operation, pursuant to this Agreement, occurs. The purpose of this provision is to provide a calculation of the City's OMA on the basis of rolling-twelve-month-average. City shall supply AMP-Ohio with a copy of each such Schedule C which is to be employed to calculate the current City's OMA. Said Schedule C line items shall

not be increased in number and all expenses listed on said Schedule C shall be available to AMP-Ohio for auditing. For the purposes of this Agreement repair or replacement costs in excess of \$10,000.00 for each individual repair or replacement project shall not be included in the calculation of City's OMA. Such cost in excess of said amount shall become part of City's OMA only in the event the City and AMP-Ohio mutually agree (in writing) and the City and AMP-Ohio agree to negotiate on such matters in good faith. It is understood that the allocation factors shown on Appendix I attached hereto and incorporated herein, shall, unless otherwise agreed by the City and AMP-Ohio in writing, remain constant during the term of this Agreement for the purpose of calculating the City's OMA. It is understood and agreed that the non-fuel expenses which will make up the City's OMA pursuant to this Agreement shall not include any cost beyond the 12470 Volt Bus in the Power Plant Substation. It is understood that any cost, which would otherwise be includable as part of City's OMA and for which the City is reimbursed by insurance, shall not be included as a cost for purposes of calculating City's OMA pursuant to this Agreement.

SECTION G - MONTHLY FUEL COST: The monthly cost of fuel burned in order to operate the Dedicated Capacity to meet the power and energy requirements of customers of the Oberlin Municipal Light and Power System for purposes of managing the combined power requirements of the members of NEASG. The "Monthly Fuel Cost" shall be based upon the City's current cost of natural gas and the current average price of fuel oil in inventory for the relevant monthly period. It shall be

determined by reference to the beginning and ending natural gas and fuel oil meter readings prior to and subsequent to the period or periods during said month when the Dedicated Capacity is operated pursuant to this Agreement. The difference between such readings shall be multiplied by the price of such fuel so determined; the product of each such multiplication, when summed, equals the monthly fuel cost. The intent of this provision is to define the fuel cost which AMP-Ohio shall be required to compensate the City for on the basis of only the fuel cost resulting from the operation of the Dedicated Capacity for the purpose of managing the combined power requirements of the members of NEASG pursuant to this Agreement.

SECTION H - AVOIDED COST [hereinafter referred to as "AC"]: The Dispatched Capacity in each month expressed on a kilowatt basis at the time of the NEASG Coincident Peaks multiplied by the relevant "Capacity Demand Charge" defined by the Partial-Requirements tariff with adjustment for gross receipts tax and losses. The sum of the products of these multiplications shall then be reduced by the sum of the City's OMA, AMP-Ohio's OMA, and the Monthly Fuel Cost Allowance as defined in Section D, Article II above. The difference of this calculation shall then be multiplied by .5 to determine the City's payment for services rendered under this Agreement, other reimbursements notwithstanding. For purposes of this Agreement, the following equation, is provided to illustrate the calculation of the AC:

$$\text{Monthly AC} = (\text{OE}_G \times \text{DC}_G) + (\text{OE}_T \times \text{DC}_T) \\ - \text{OMA} - \text{AOMA} - (\text{OF} - \text{OEE})$$

WHERE:

OE_G is the Ohio Edison "Generation Capacity Demand Charge" as defined in the Partial-Requirements tariff;

OE_T is the Ohio Edison "Transmission Capacity Demand Charge" as defined in the Partial-Requirements tariff;

DC_G is the Dispatched Capacity at the time of the generation coincident peak as defined herein;

DC_T is the dispatched capacity at the time of the transmission coincident peak;

OMA is the City's OMA as defined herein;

AOMA is AMP-Ohio's OMA as defined herein;

OEE is the Ohio Edison's monthly Energy Charge in the Partial-Requirements tariff, multiplied by the number of kilowatthours of City's generation (as may be limited by Section B, Article VI below) of the Dedicated Capacity pursuant to this Agreement; and

OF is the Monthly Fuel Cost defined herein except as limited by Section B, Article VI below.

SECTION I - MONTH OR MONTHLY: The period of time equal to a calendar month.

SECTION J - NEASG COINCIDENT PEAKS: The maximum generation and transmission demand expressed in kilowatts which is established by NEASG each month during the one hour demand intervals employed for billing purposes in the Partial-Requirements tariff.

SECTION K - PARTIAL-REQUIREMENTS TARIFF: "Rate Schedule for Full or Partial Requirements Service", filed before the Federal Energy Regulatory Commission (FERC) on August 1, 1988 by the Ohio Edison Company in Volume I, Letter of Submittal, Tariffs and Miscellaneous Documents, FERC Docket 88-329 as may be in effect from time to time.

ARTICLE III

SCHEDULING AND OPERATION OF DEDICATED CAPACITY

SECTION A - SCHEDULING: AMP-Ohio shall keep the City informed as to amount of capacity and energy which AMP-Ohio expects to have City generate from the Dedicated Capacity.

SECTION B - DAILY SCHEDULE: AMP-Ohio shall provide to the City adequate notice prior to time that desired operation of Dedicated Capacity is eminent. The actual scheduling of capacity shall be given

to the City as required to meet the capacity needs of the NEASG. AMP-Ohio shall use its best efforts to give the City as much time as reasonably possible between the time of scheduling and the time of operation.

SECTION C - NON-CONFLICTING USES: It is understood and agreed that the City shall be entitled to use the Dedicated Capacity as it sees fit so long as said use does not conflict with or interfere with AMP-Ohio's right to elect to have the city use said Dedicated Capacity for the purposes specified herein.

SECTION D - PRIORITY OF USE: It is understood and agreed that the City shall have the right to employ the Dedicated Capacity during emergency periods to meet the power and energy requirements of the customers of the Oberlin Municipal Light and Power System and shall not be held responsible or otherwise penalized for a failure to use said Dedicated Capacity as scheduled by AMP-Ohio so long as said emergency conditions exists. During other than such emergency conditions, the City shall be obligated, pursuant to this Agreement, to operate the firm portion (8150 kW) of the Dedicated Capacity as scheduled by AMP-Ohio.

SECTION E - CONTROL OF DEDICATED CAPACITY: It is understood and agreed that the City shall have physical control over the actual operation of the Dedicated Capacity.

ARTICLE IV

LOAD, CAPACITY AND COST DATA

SECTION A - LOAD DATA: AMP-Ohio shall communicate, in a timely fashion, available load data for the members of NEASG to the City during such times that the Dedicated Capacity is being employed pursuant to this Agreement.

SECTION B - CAPACITY DATA: AMP-Ohio shall monitor the capacity output of the Dedicated Capacity during such times that the Dedicated Capacity is being employed pursuant to this Agreement and upon request provide the City with a record of such output. The City shall, without charge to AMP-Ohio, provide any space required by AMP-Ohio in order to perform the monitoring function described herein. Any modifications to the City's existing metering or data gathering equipment which may be necessary to perform said monitoring function shall be paid for by AMP-Ohio provided that the City shall install any such modifications and treat the installation cost associated therewith as a capital expense of the Oberlin Municipal Light and Power System.

SECTION C - COST DATA: It is understood that the level of City's OMA Cost and Monthly Fuel Cost may be considered in the determination by AMP-Ohio of when to schedule the Dedicated Capacity. Accordingly, the City shall supply estimated monthly City's OMA and Fuel Cost charges associated with the most recent Schedule to AMP-Ohio upon AMP-Ohio's request.

ARTICLE V

BILLING AND COMPENSATION

SECTION A - BILLING PERIOD: Unless otherwise agreed upon, the calendar month shall be the standard period for all settlements under this Agreement. It is understood that, by the third day of each month, the City shall cause to be prepared and transmitted to AMP-Ohio a statement showing the transactions during such period in such detail as may be needed for settlement under this Agreement.

SECTION B - BILLING AND PAYMENT: Unless otherwise agreed upon, each calendar month bill for charges under this Agreement shall be rendered by City in the month following the calendar month in which the charges were incurred and (unless otherwise agreed) each bill shall be due, and payment of each bill shall be made to City by electronic transfer or such other means as shall cause payment to be available for the use of the City on the first banking day following the fourteenth (14th) day after which the bill was received by AMP-Ohio, but in no event shall payment be due before the twentieth (20th) day of the month in which the bill is rendered. Interest on unpaid amounts shall accrue daily at the then current prime interest rate per annum of Manufacturers Hanover Trust Company from the due date of such unpaid amount and until the date paid. Other than as required by law or regulatory action, bill adjustments must be made within six months of the rendition of the initial bill. The City's bill to AMP-Ohio shall

be equal to the sum of the City's monthly OMA and monthly Fuel Cost Allowance for the period covered by the bill. In addition, AMP-Ohio shall pay to Oberlin fifty percent (50%) of the AC as calculated herein and in accordance with Article VI.

SECTION C - FAILURE TO SUPPLY SCHEDULED CAPACITY: If at the time of the NEASG Coincident Peaks, the City fails to dispatch or provide the capacity scheduled by AMP-Ohio, the payment for the City's OMA shall be based on a percentage of the City's OMA as defined in Article II, Section F. Said percentage shall be calculated by dividing the actual Dispatched Capacity (kWh) by the actual Scheduled Capacity (kWh) during the NEASG Coincident Peak multiplied by 100. Notwithstanding the above language in this Section C (Article V), no percentage reduction in the City's OMA shall be made or applied in the event City dispatches an amount of 8150 kWh or more during the NEASG Coincident Peak. As indicated in Section A, Article II, it is the intention of the parties hereto that the payments to the City pursuant to this Agreement shall not be reduced and the City shall not be otherwise penalized, in the event the City is unable to run the Dedicated Capacity in an amount in excess of 8150 kilowatts for the duration of the NEASG Coincident Peak.

SECTION D - BILLING DISPUTES AND NOTICES: In the event that a bill is rendered by the City all or part of which AMP-Ohio disputes, AMP-Ohio, upon notice to the City prior to the due date of such bill as established in Section B of this Article may withhold payment of that part of the bill which is in good faith disputed and, pending

resolution of the dispute, shall deposit the disputed amount into an interest bearing joint escrow account in the name of the City and AMP-Ohio. The City may not terminate this Agreement pursuant to Section E (below) for non-payment of such disputed amount. AMP-Ohio shall pay in a timely manner any disputed amounts.

SECTION E - TERMINATION FOR NON-PAYMENT: In the event that a bill rendered pursuant to this Agreement by the City has not been paid in full including accrued interest within fifteen days of the due date of invoice, the City, at its election, may allow the unpaid amount to continue unpaid but accruing interest as provided in Section B above or the City may elect to forthwith terminate this Agreement.

ARTICLE VI

DISTRIBUTION OF AVOIDED COST

SECTION A - DISTRIBUTION PERIOD: Unless otherwise agreed upon, each calendar month shall be the standard period for all AC distributions performed under this Agreement. AC distributions, unless otherwise agreed, shall be made in the month following the month in which the AC, if any, was experienced. It is understood that by no later than the eighth day of each distribution period, AMP-Ohio shall cause to be prepared and transmitted to the City a statement showing the AC (as defined in Article II, Section D), if any, resulting from the operation of the Dedicated Capacity pursuant to this Agreement. It is

understood that AMP-Ohio's ability to provide the City with such a statement may depend upon the time when AMP-Ohio receives billing information providing billing units and the cost associated with meeting the power and energy requirements of the members of NEASG.

SECTION B - DISTRIBUTION: By the twentieth (20th) day of the month following the month in which the AC, if any, was experienced, AMP-Ohio's payment of fifty percent (50%) of the AC to the City shall be due, and payment of such AC shall be made to the City by electronic transfer or such other means as shall cause the AC payment to be available for use by the City on the twentieth (20th) day of the month in which the statement described in Section A of this Article VI is rendered. Interest on unpaid amounts shall accrue daily at the then current prime interest rate per annum of Manufacturers Hanover Trust Company from the due date of such unpaid amount until the date paid. Other than as required by law, or regulatory action, any adjustments must be made within six (6) months of the rendition of the statement of AC. For the purpose of determining the amount of the fifty percent (50%) of the AC to be paid to the City, the Dispatched Capacities (DC_G and DC_T) shall be construed to be the greater of the following:

- a) The actual amount of kilowatthours of power generated during the NEASG Coincident Peaks; or,

- b) 6000 kilowatthours of power if the City has at least 8150 kilowatts of capacity available and AMP-Ohio does not schedule at least 6000 kilowatthours during the NEASG Coincident Peaks.

Also for purpose of calculating the fifty percent (50%) of the AC to be paid to the City, the kilowatthours of generation by the City shall not be greater than the product of the Scheduled Capacity in kilowatts at the time of the NEASG Coincident Generation Peak multiplied by 40.

SECTION C - STATEMENT DISPUTES: Any dispute regarding a statement shall be subject to resolution pursuant to Article VIII, Section B herein.

SECTION D - TERMINATION FOR FAILURE TO DISTRIBUTE: In the event that AMP-Ohio fails to make payment in full, including accrued interest, within the time specified in Section A above, the City at its election may allow the unpaid amount to continue unpaid by accruing interest as provided in Section B above or the City may elect to forthwith terminate this Agreement.

ARTICLE VII

CONTINGENCY AND TERMINATION

SECTION A - EFFECTIVENESS CONTINGENT: Notwithstanding any other provision of this Agreement, the effectiveness of the terms and conditions specified therein shall be contingent upon the

effectiveness of Agreements between AMP-Ohio and each of the members of NEASG providing for the recovery of cost associated with the equipment, labor and other cost which AMP-Ohio shall incur in order to perform the tasks contemplated herein.

SECTION B - TERMINATION: Notwithstanding any other provision of this Agreement, either party may, after the first six (6) months of this contract, terminate this Agreement by providing the other party hereto with a written termination notice sixty (60) days prior to the date on which this Agreement is to be terminated. It is understood that this Section will permit a termination by either party no sooner than sixty (60) days after the first six (6) months during which this Agreement is effective.

ARTICLE VIII

GENERAL

SECTION A - EVENTS BEYOND CONTROL: No party shall be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of any cause beyond its reasonable control, including without limitation strikes and labor disputes. A party unable to fulfill any obligation by reason of any cause beyond its control shall use diligence to remove such disability with reasonable dispatch.

SECTION B - ARBITRATION: Except for non-payment of undisputed amounts, any controversy, claim, counterclaim, defense, dispute,

difference or misunderstanding arising out of or relating to this Agreement or breach thereof, shall be settled by arbitration before three arbitrators; one of whom shall be named by AMP-Ohio, one of whom shall be named by City and the third of whom shall be named by the two arbitrators appointed by AMP-Ohio and City, respectively, or the American Arbitration Association if they cannot agree. The arbitration shall be conducted in accordance with rules of the American Arbitration Association then in effect and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This provision shall survive the termination of this Agreement. The parties expressly agree that this provision shall constitute a condition precedent to the institution of any proceedings in any court relating to the subject matter thereof.

SECTION C - WAIVER: Any waiver at any time of any rights as to any default or other matter arising hereunder shall not be deemed a waiver as to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

SECTION D - NOTICES: It is understood and agreed that all notices given by the parties under this Agreement shall be made by Certified Mail. Notices to AMP-Ohio shall be directed to:

American Municipal Power - Ohio, Inc.

Attention: President

P. O. Box 549

Westerville, Ohio 43081-8978

Notices given by AMP-Ohio to City shall be directed to:

Oberlin Municipal Light and Power

Attention: Director

289 South Professor Street

Oberlin, Ohio 44074

SECTION E - ASSIGNMENT: This Agreement shall not be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld.

SECTION F - RECORDS: The parties hereto shall keep such records as may be needed to afford a clear history of all transactions under this Agreement. The originals of all such records shall be retained by the party keeping the records for a minimum of two (2) years plus the current year and copies shall be delivered to other parties of this Agreement upon request.

SECTION G - OPERATING PRACTICES: Each party shall have facilities or contractual arrangements adequate to perform under this Agreement and shall exercise reasonable care to design, construct, maintain and operate its facilities, in accordance with good utility operating practice.

SECTION H - EMPLOYEES: It is understood that City shall maintain all direction and control over its employees, representatives and agents and City shall conform to all applicable laws and regulations in the performance of its obligations under this Agreement and shall comply with all provisions of the worker compensation laws. The parties agree to indemnify, defend and save harmless the other from any loss, damage, claim, suit or liability arising in any way out of each party's performance of any obligations arising out of this Agreement.

SECTION I - APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

SECTION J - FUEL COST AGREEMENTS: It is understood that City shall have control over and responsibility for securing adequate fuel to operate the Dedicated Capacity pursuant to this Agreement. However, the City shall promptly advise AMP-Ohio of any negotiations, proposals, or agreements which may cause a change in the Monthly Fuel Cost.

SECTION K - INSURANCE: It is understood and agreed that the City shall maintain Boiler and Machinery Insurance as well as Fire and Extended Liability Insurance on its electric generating plant and associated facilities in amounts at least equal to the current insurance levels. AMP-Ohio shall not be responsible for any cost related to fire, flood, earthquake, acts of vandalism, labor disputes or other events which are beyond AMP-Ohio's control. It is understood and agreed that the deductible amount on the City's Boiler and Machinery Insurance shall not exceed \$10,000.00 per accident unless otherwise agreed. City agrees to provide copies of its Boiler and Machinery, Fire and Extended Liability Insurance policies and any amendments thereto upon request by AMP-Ohio.

SECTION L - MODIFICATIONS: It is understood by the parties hereto that changes or modifications in the Partial-Requirements tariff may necessitate modifications or changes in this Agreement. In the event that a modification in the above Partial-Requirements tariff occurs, the City and AMP-Ohio agree that the terms and conditions of this Agreement shall be subject to renegotiation and that both shall negotiate in good faith.

IN TESTIMONY WHEREOF, witness signature for AMP-Ohio in the presence of the undersigned competent witnesses as of the day and date first above mentioned.

WITNESSES:

AMERICAN MUNICIPAL POWER - OHIO, INC.

Barbara Johnson

By Kenneth L. Hegemann
Kenneth L. Hegemann, President

IN TESTIMONY WHEREOF, witness signature of the City in the presence of the undersigned competent witnesses as of the day and date first above mentioned as authorized by Ordinance No. 89-14 AC CMS enacted March 20, 1989 attached hereto and made a part hereof.

WITNESSES:

CITY OF OBERLIN

Michelle L. Smeator

By

J. Chris Vink
Interim City Manager, City of Oberlin

APPROVED AS TO FORM

Eric R. Severs
Eric R. Severs, City Solicitor

4:1:15