

RESOLUTION NO. 2015 - 17

A RESOLUTION AUTHORIZING AWARD OF A CONTRACT TO AMERICAN POWERNET MANAGEMENT, L.P., WYOMISSING, PA, IN AN AMOUNT NOT TO EXCEED \$18,000.00 AND AUTHORIZING THE EXECUTION OF A MASTER ENERGY SERVICES AGREEMENT FOR AUCTION REVENUE RIGHTS (ARR)/FINANCIAL TRANSMISSION RIGHTS (FTR) MANAGEMENT SERVICES.

WHEREAS, the Vineland Municipal Electric Utility has a need for Auction Revenue Rights (ARR)/Financial Transmission Rights (FTR), Reliability Pricing Model (RPM) Transaction, Billing & Settlement Management Services and Senior Personnel advice and assistance; and

WHEREAS, the City of Vineland has a need to acquire such service as a Non-Fair and Open Contract pursuant to N.J.S.A. 19:44A-20.5; and

WHEREAS, the Director of Municipal Utilities has recommended that a contract be awarded to American PowerNet Management, L.P., Wyomissing, PA, in an amount not to exceed \$18,000.00, for a period beginning January 13, 2015 through January 12, 2016; and

WHEREAS, American PowerNet Management, L.P. has completed and submitted a Business Entity Disclosure Certification and the Political Contribution Disclosure Form for Non-Fair and Open Contract which certifies that American PowerNet Management, L.P. has not made any reportable contributions to a political or candidate committee in the City of Vineland in the previous one year and that the contract will prohibit American PowerNet Management, L.P. from making any reportable contributions through the term of the contract to a political or candidate committee in the City of Vineland; and

WHEREAS, the availability of funds for said contract to be awarded herein have been certified by the City Comptroller; and

WHEREAS, the City of Vineland has certified that this meets the statute and regulations governing the award of said contracts.

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Vineland that:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Master Energy Services Agreement with American PowerNet Management, L.P., Wyomissing, PA, for Auction Revenue Rights (ARR)/Financial Transmission Rights (FTR) Management Services, in an amount not to exceed \$18,000.00, for a period beginning January 13, 2015 through January 12, 2016.
2. The Purchasing Agent be and the same is hereby authorized to issue contract to American PowerNet Management, L.P., Wyomissing, PA, for Auction Revenue Rights (ARR)/Financial Transmission Rights (FTR) Management Services.
3. The Business Disclosure Entity Certification and the Political Contribution Disclosure Form be placed on file with this Resolution.
4. A Notice of this action shall be printed once in the Daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk



REQUEST FOR RESOLUTION FOR CONTRACT AWARDS UNDER 40A:11-5 EXCEPTIONS (PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)

December 22, 2014

(DATE)

1. Service (detailed description): Master Energy Services Agreement- To provide ARR/FTR, RPM transaction, Billing + Settlement management services and Senior personnel advice and assistance.

2. Amount to be Awarded: \$ 18,000

- Encumber Total Award
Encumber by Supplemental Release

3. Amount Budgeted: \$ 35,000

4. Budgeted: By Ordinance No. Or Grant: Title & Year

5. **Account Number to be Charged: 002-0-54-90-9006-2-5023044, E930

6. Contract Period: January 13, 2015 to January 12, 2016

7. Date To Be Awarded: 1/13/2015

8. Recommended Vendor and Address: American PowerNet Management, L.P. 45 Commerce Drive, Wyomissing, PA 19610

9. Justification for Vendor Recommendation:(attach additional information for Council review) This organization performs this service for American Public Power Assoc. here in New Jersey and is recommended as a leader in this field with resonable pricing,

- Non-Fair & Open (Pay-to-Play documents required)
Fair & Open: How was RFP advertised?

10. Evaluation Performed by: Steve August/J. P. Miller SMA 12/22/14

11. Approved by: [Signature]

12. Attachments:

- Awarding Proposal
Other: Contract

Send copies to: Purchasing Division Business Administration

** If more than one account #, provide break down

American PowerNet Management, L.P.
And
Vineland Municipal Utilities (VMU)
Master Energy Services Agreement

American PowerNet Management, L.P. (“APN”), a Pennsylvania Limited Partnership, and VMU (“Customer”), by their representatives’ signatures below, enter into this Master Energy Services Agreement “**Agreement**”. APN and Customer may hereinafter be referred to individually as “**Party**” or collectively as “**Parties**”. This Agreement is not valid until executed by all Parties hereto and the date last signed is the “**Effective Date**”. In consideration of the promises and representation made herein, the Parties agree as follows:

1. Scope:

- a. Customer hereby engages APN to provide ARR/FTR management services. APN agrees to help Customer develop a strategy to: (1) Determine the best location, type, and amounts of Auction Revenue Rights (“ARRs”) and/or Financial Transmission Rights (“FTRs”) (obligations or options) for Customer to buy and/or sell; (2) Determine where congestion may occur, estimate how long it may last and its effect on LMP’s. (3) Prepare and submit Annual and/or Monthly FTR auction bids and/or offers into the eFTR application. (4) Prepare and submit ARR requests for the Annual ARR Allocation into the eFTR application. eFTR is a tool used by PJM members and other transmission customers to manage their ARR/FTRs. APN will present these results to Customer so that Customer can elect its ARR/FTR allocations/paths/purchases.
- b. Customer hereby engages APN to provide Reliability Pricing Model (“RPM”) transaction management services. APN agrees to help Customer manage its capacity resources in the eRPM application and submit transactions into the RPM Base Residual Auctions and/or Incremental Auctions. The PJM eRPM system is a tool used by market participants to submit resource-specific sell offers or buy bids into RPM auctions and to create capacity transactions. Transactions include but are not limited to (as defined by PJM): Capacity Modifications, Bilateral Capacity Transactions, Auction Specific MW Transactions, Buy Bid Transactions, Resource Offer Transactions.

- c. Customer hereby engages APN to provide PJM billing and settlement management services. APN agrees to reconcile and audit all PJM billing statements. APN will provide reports to Customer that detail PJM settlement reports from the MSRS system. The Market Settlements Reporting System ("MSRS") is a tool used by PJM market participants to retrieve market settlements reports and PJM billing statements. Settlement Reports will include details of all Customer information ("PJM Report Catalog") as provided by PJM in the MSRS system, including but not limited to PJM billing statements and PJM detail reports. With each PJM invoice, APN will provide the billing statements and PJM detail reports to Customer. APN will reconcile and audit PJM Invoices for completeness and accuracy. If a discrepancy is found, APN will notify Customer in a timely manner. APN will represent Customer at PJM for any billing disputes on the PJM billing statements.

- d. APN will make senior personnel at the same level as either David Butsack and/or Brian Vayda available to Customer for at least five hours per month at a mutually convenient time to answer questions and provide advice and assistance.

2. Term: Once fully executed, this Agreement will become effective on _____ ("Effective Date") and continue until 12/31/15. Upon the expiration of the term, this agreement will be automatically extended for successive six-month periods ("Extension Period"), unless canceled in writing by either Party by delivering written notice to the other Party not less than ninety (90) days prior to expiration of then-applicable term hereof. The Initial Term and all applicable Extension Periods created hereunder are collectively hereinafter called the "Term." Further, after termination, cancellation, or expiration of this Agreement made a part hereof, the relationship of the Parties will continue to be governed by the applicable terms of this agreement, which the Parties agree will survive such early termination, cancellation or expiration.

3. Invoicing and Payment Terms: Customer, as a PJM Member, shall remain liable to PJM directly for the payment of all PJM billing statements.

4. Payment: Commencing upon the Effective Date, Customer shall be liable to APN for a Monthly Management Fee as defined in Schedule A Confirmation. The

Monthly Management Fee will be invoiced by the tenth business day of the subsequent month and will be due and payable by the twentieth day of the subsequent month. All invoices for Services shall be in such reasonable detail and accompanied by such supporting documentation, to allow Customer to determine the accuracy and correctness of any such invoice. After Customer pays any invoice in dispute, the Parties shall endeavor to resolve such disputes as promptly as possible. Any payments owing to APN that are not paid when due could result in termination of the contract upon five (5) days' notice by APN and shall be subject to interest at a rate equal to the lesser of 1.0% or the maximum rate allowed by law per month of the unpaid balance.

5. Representations and Warranties of Customer: Customer warrants and represents that to the best of its knowledge:

(1) it understands that if it operates its accounts inconsistent with its usual and customary manner its pricing may change accordingly;

(2) the information provided concerning its accounts is believed to be true and correct. If any of these Representations or Warranties turns out to be false in any manner, APN may immediately terminate the contract.

6. Assignment: Neither Party may assign this Agreement to any other party or entity without the prior, express written consent of the non-assigning Party, which consent will not be unreasonably withheld or denied, except that either Party may assign this Agreement to an affiliate or affiliated entity and such affiliate or affiliated entity agrees in writing to assume and be bound by the terms of this Agreement, or either Party may assign this Agreement to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such Party, if such entity agrees in writing to assume and be bound by the all of the obligations of such Party under this Agreement.

7. Definitions: Terms not otherwise defined in this Agreement shall have the meaning generally given to them in the electric power industry provided, however, that terms used in the Agreement which are defined by the PJM Interconnection, LLC, in the PJM Operating Manuals, the Restated PJM Agreement, or the PJM Open Access Transmission Tariff shall have the meaning assigned therein.

8. Force Majeure: Neither Party will be obligated to perform under this Agreement (except for the obligation to make payments when due) or be liable

in damages for any act or event that is beyond the Party's control and which could not reasonably be anticipated or prevented through the use of reasonable measures, including, but not limited to:

- (a) acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; Force Majeure events claimed by PJM or the Customer electric utility, such as curtailment, disruption or interruption of supply due to facility or equipment failure, declaration of emergency, regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or
- (b) in the case of APN, any change in any applicable law, rule, regulation or protocol which makes performance under this Agreement illegal or causes APN or its activities hereunder to become subject to regulation of any kind whatsoever to a greater extent than on the Effective Date of this Agreement. Any Party so affected, however, must notify the other in writing within seven (7) days of the event, or as soon as circumstances allow. The notice should specify details of the event and the expected time for suspension. The Party whose performance is subject to the Force Majeure will, if practicable, use commercially reasonable efforts to remediate the effects of any Force Majeure so as to be able to resume performance hereunder. If an event of Force Majeure prevents a Party from performing hereunder for a period of thirty (30) consecutive days, the non-affected Party shall have the right to elect an Early Termination of this Agreement immediately upon written notice.

9. Events of Default: An event of default means any one of the following:

- (a) Failure by Customer to make, when due, any payment required under this Agreement; or
- (b) any representation or warranty made by a Party proves to be false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement if not cured within five (5) business days after receipt of written notice from the other Party; or
- (c) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in the Agreement (other than the events that are specifically covered as a separate Events of Default hereunder) and such failure is not cured within five (5) business days after receipt of written notice from the other Party; or

- (d) Customer fails to provide additional security or credit arrangements as provided for herein; or
- (e) any unauthorized assignment of a Party's rights or obligations hereunder; or
- (f) any breach of the confidentiality provisions of this Agreement; or
- (g) a Party makes an assignment or any general arrangement for the benefit of creditors.

10. Remedies upon an Event of Default or Early Termination: If Customer defaults and it fails to cure within 5 days of written notice (which cure period does not apply to default for non-payment or failure to post Credit Deposit); then APN may, in its discretion, terminate this Agreement. If APN defaults and it fails to cure within 5 days of written notice, Customer may terminate this Agreement. Thereafter, the non-defaulting Party may in good faith calculate the amounts due (as noted in Schedule A) and the defaulting Party will pay those amounts within ten (10) days from the date of invoice.

11. Complete Default or Early Termination by Customer: If APN terminates any applicable Schedule A Confirmation as a result of any uncured Customer default, or if Customer elects Early Termination, Customer will owe and promptly pay to APN, any costs associated with any Fixed Price Positions taken on behalf of any or all of Customer's Accounts had it not been terminated early ("Remaining Usage").

12. Limitation on Liability & Damages: Any billing disputes are waived unless Customer presents them to APN in writing within 90 days after the invoice date. All other claims are waived if Customer or APN does not notify the other within 90 days after termination of this Agreement. In no event shall APN or Customer be liable for (i) any act or omission of any third-party provider of service or facilities, (ii) interruptions, errors, failures to transmit, delays or defects in our service, whether caused by acts of God, fire, war, riots, governmental authorities or any other cause beyond our reasonable control, or (iii) any incidental, indirect, consequential, special, punitive, or exemplary damages of any kind, including without limitation loss of business, revenue or profits, or exit, stranded cost or similar fees imposed by Customer's EDC, even if APN or Customer has been advised of the possibility of such damages. Notwithstanding any other provisions hereof, the Parties' indemnification and liability obligations hereunder with respect to any matter or cause of action

arising out of, under or in connection with this Agreement shall not exceed in the aggregate the total value of sum of the Management Fees paid to APN hereunder over a one-year term. Neither APN nor Customer make any representations or warranties, express or implied (including warranty of merchantability or of fitness for a particular purpose) with respect to the provision of electric generation services hereunder.

- 13. Tax Exemption:** If Customer is exempt from state and local sales tax, it will provide APN with all required exemption certificates. Until Customer does so, APN is not required to recognize any exemption and it will not be required to refund or credit previously paid Taxes, unless the taxing entity sends the refund to APN for payment to Customer. Customer will defend, indemnify and hold harmless APN for all Tax obligations relating to its retail Energy service.
- 14. Governing Law:** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Jersey, without giving effect to the principals of conflicts of laws.
- 15. Notices:** All notices relating to this Agreement will be in writing and they will be deemed given when received. Notices to APN may be sent to:

American PowerNet Management, LP
45 Commerce Drive,
Wyomissing, PA 19610
Attn: Legal Department.

Notices to Customer may be sent to the "Billing and Notice Address" listed on the Master Energy Supply Agreement. Notices may be delivered in the following manner only, unless otherwise stated herein: in person; by third party messenger; by certified mail, return receipt requested; or by overnight carrier (e.g., FedEx). The day notice is received; provided it is prior to 5 p.m. EST, will be counted as the first day of any applicable notice period. If notice is received after 5 p.m. EST, the notice will be deemed received the following business day.

- 16. Miscellaneous:** (a) A waiver of any provision in this Agreement, or of any default by either Party, will not be construed as a waiver of any other (or like) provision or default in the future. (b) The headings used are for reference purposes

only and will in no way affect the meaning of the provisions of this Agreement. (c) No amendment hereto will be enforceable unless in writing and validly executed by all Parties hereto. (d) Any provision herein deemed unenforceable or illegal will be ineffective to the extent of such unenforceability or unlawfulness without invalidating the remaining provisions hereof. (e) Facsimile copies and photocopies of this Agreement are to be treated as originals in the event an original is not available.

By Customer's signature below, it acknowledges and agrees to be bound by these Terms & Conditions as they relate to the APN - Master Energy Services Agreement.

Customer: _____

American PowerNet Management, L.P.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule A Confirmation

Date:	
Contract Date:	

	American PowerNet Management, L.P.
	45 Commerce Drive
	Wyomissing, PA 19610
	Phone: 610/372-8500
	Facsimile: 610/372-9100
	Duns: 141081468
	Federal Tax ID Number: 23-3021771

3. APN Monthly Management Fee: For Services described in the Master Energy Services Agreement Section 1 including:

- a. ARR/FTR management services;
- b. RPM transaction management services;
- c. Billing and settlement management services;
- d. Senior personnel advice and assistance

Term: On the Effective Date, the fee shall be calculated using a base rate of \$1,500.00 per month, escalated each subsequent delivery year by multiplying the base rate by the change in the Consumer Price Index from the prior year.

Special Provisions:

This Schedule A Confirmation is being made pursuant to and in accordance with the APN Master Energy Services Agreement executed on the _____ day of _____, 20__, between APN and Customer, and constitutes part of and is subject to all of its provisions, terms, and conditions. Notwithstanding anything to the contrary, any conflict between this Schedule A and said Master Agreement will be resolved in favor of this Schedule A. Please return an executed copy of this letter by facsimile to APN at 610-372-9100. A fully executed copy will be returned for your file.

Customer:	American PowerNet
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: