

VILLAGE OF YELLOW SPRINGS

ORDINANCE 2022-30

AUTHORIZING THE VILLAGE OF YELLOW SPRINGS TO EXECUTE A MUTUAL AID AGREEMENT WITH MUNICIPAL ENERGY SERVICES AGENCY (MESA) AND DECLARING AN EMERGENCY

WHEREAS, Section 735.051 of the Ohio Revised Code authorizes Ohio municipalities to enter into contracts in the case of real and present emergencies without formal bidding and advertising for work to be done and supplies to be purchased from municipal utilities; and;

WHEREAS, Municipal Energy Services Agency (“MESA”), a joint venture organized by participating municipalities, provides professional services to participating members and to members of American Municipal Power, Inc. (“AMP”); and

WHEREAS, the Village of Yellow Springs, Ohio (“Municipality”) operates a municipal electric utility and is a member of AMP; and

WHEREAS, Municipality, MESA and AMP are parties to a Master Services Agreement dated and designated as AMP Contract No. C-11-2005-4432 (the “Master Services Agreement”), which governs the provision of services by AMP and MESA to Municipality; and

WHEREAS, MESA can make available to Municipality, and to other similarly situated municipalities, qualified personnel (each, a “Consultant”) who can provide certain services, more particularly described below, related to Municipality’s electric utility system; and

WHEREAS, the Master Services Agreement contemplates the execution of Schedules for Services provided by MESA to Municipality; and

WHEREAS, Municipality desires to receive supplemental technical services regarding its electric distribution system (hereinafter “Circuit Rider Services”); and

WHEREAS, MESA has the expertise and ability to provide the necessary Circuit Rider Services requested to further Municipality’s reliability, security and operational efforts; and

WHEREAS, Yellow Springs Municipal Electric deems it prudent to enter into a Mutual Aid Agreement with MESA so that it can provide and receive aid and assistance in times of emergency; and

WHEREAS, A Mutual Aid Agreement to receive and provide assistance in times of emergency to preserve the public health, safety and welfare is a valid public purpose,

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

SECTION 1: The form of the Mutual Aid Agreement, substantially in the form of Appendixes A, B and C attached hereto, is approved.

SECTION 2: The Village Manager is authorized and directed to execute the Mutual Aid Agreement, substantially in the form of the mutual agreement attached hereto.

SECTION 3: Any and all competitive bidding requirements are hereby waived.

SECTION 4: This Ordinance shall be considered an emergency measure to ensure the safety, health and welfare of the public and shall be effective immediately upon its passage.

Brian K. Housh, President of Council

Passed: 8-15-2022

Judith O. Kintner, Clerk of Council

ROLL CALL:

Housh __Y__

MacQueen __Y__

Stokes __Y__

Brown_Y__

Devore Leonard __Y__

APPENDIX A

Rate Schedule

Annual Enrollment Fee	Comments
\$720	Fee includes eight hours of services (must be scheduled as a four hour block or more) at no additional charge; services to be scheduled individually with the member community

Annual Contracted Hours (per Appendix B)	Rate per Hour
1 through 192	\$90
193 through 256	\$85
257 and over	\$75

Additional Hours	Rate per Additional Hour
If Appendix B hours plus Additional Hours are 96 or less	\$100
If Appendix B hours plus Additional Hours are 97 through 192	\$90
If Appendix B hours plus Additional Hours are 193 through 256	\$85
If Appendix B hours plus Additional Hours are 257 or more	\$75

Notes: 96 hours equates to twelve 8 hour days (roughly one day per month).

192 hours equates to twenty-four 8 hour days (roughly two days per month).

The enrollment fee entitles the member to one 8 hour day of services (which can be included as part of the Appendix B hours).

Example: If Municipality contracts for 100 hours (per its Appendix B), but later determines that it will need, and arranges with MESA for, 100 Additional Hours, the total cost will be \$17,960, computed as follows:

- The first scheduled day will be covered by the annual enrollment fee and the next 92 hours will be charged at \$90 per hour, for a total of \$9,000.
- Additional hours 101 through 192 will be charged at \$90 per hour, for a total of \$8,280; and
- Hours 193 through 200 will be charged at \$85 per hour for a total of \$680.
-

In contrast, if Municipality contracts for 0 hours (per its Appendix B), and so is a “will call” participant, and determines that it needs, and arranges with MESA for, 200 hours, the total cost will be \$18,8400, computed as follows:

- The annual enrollment fee of \$720 will cover the first 8 hours, for a total of \$720

- The remaining 88 hours (first 96) will be charged at the “will call” rate of \$100 per hour for a total of \$8,800
- Hours 97 through 192 will be charged at \$90 per hours, for a total of \$8,640; and
- Hours 193 through 200 will be charged at \$85 per hour, for a total of \$680

APPENDIX B

MUNICIPAL ENERGY SERVICES AGENCY AND VILLAGE OF YELLOW SPRINGS, OHIO SCHEDULE TO MASTER SERVICES AGREEMENT FOR CIRCUIT RIDER SERVICES

WHEREAS, Municipal Energy Services Agency ("MESA"), a joint venture organized by participating municipalities, provides professional services to participating members and to members of American Municipal Power, Inc. ("AMP"); and

WHEREAS, the Village of Yellow Springs, Ohio ("Municipality") operates a municipal electric utility and is a member of AMP; and

WHEREAS, Municipality, MESA and AMP are parties to a Master Services Agreement dated and designated as AMP Contract No. C-11-2005-4432 (the "Master Services Agreement"), which governs the provision of services by AMP and MESA to Municipality; and

WHEREAS, MESA can make available to Municipality, and to other similarly situated municipalities, qualified personnel (each, a "Consultant") who can provide certain services, more particularly described below, related to Municipality's electric utility system; and

WHEREAS, the Master Services Agreement contemplates the execution of Schedules for Services provided by MESA to Municipality; and

WHEREAS, Municipality desires to receive supplemental technical services regarding its electric distribution system (hereinafter "Circuit Rider Services"); and

WHEREAS, MESA has the expertise and ability to provide the necessary Circuit Rider Services requested to further Municipality's reliability, security and operational efforts; and

NOW THEREFORE, this Schedule for Circuit Rider Services (this "Schedule") to the Master Services Agreement is hereby entered into as of this ____ day of _____, 2022 between Municipality and MESA (the "Effective Date").

ARTICLE I

TERM

A. This Schedule shall be effective as of the date written above and shall continue in effect for a term ending December 31, _____. Thereafter, unless notice of termination is given as set forth below, this Schedule shall continue in full force and effect for additional consecutive terms of one (1) year until such notice is given.

B. Either party may elect to terminate this Schedule at any time by providing the other party with ninety (90) day's written notice of its intent to terminate.

C. Notwithstanding the other provisions of this Schedule, MESA shall have the right to terminate this Schedule at any time in the event a Hazardous Condition Notice has been given to Municipality pursuant to Article VI herein and Municipality fails to correct, fails to allow to be corrected, or otherwise fails to remove said hazardous condition within thirty (30) days of said notice.

ARTICLE II DIRECTIONS FROM MUNICIPALITY

The Consultant furnished by MESA pursuant to this Schedule shall receive all instruction, direction and guidance with regard to the tasks to be undertaken by the Consultant on Municipality's behalf, as long as the same is not inconsistent with this Schedule, from the individual representing Municipality and holding the title or position of Public Works Director or, in the event the title of said position changes, the equivalent position following such a title change (the "Municipal Official").

ARTICLE III CONTROL BY CONSULTANT; INDEMNIFICATION

A. At the direction of the Municipal Official, the Consultant may advise employees of Municipality who are engaged in work related to the operation of Municipality's electric utility system. The instructions or advice provided by the Consultant shall be deemed to be advisory in nature and the Consultant shall have no right or duty to direct or control said employees.

B. MESA's liability for any injury or damage that is caused by the actions or omissions of MESA in the provision of Circuit Rider Services, is limited to the limits of MESA's insurance, excluding umbrella coverage, 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 MESA's insurance is not applicable to the aforementioned injury or damage, MESA's liability shall be limited to two times (2x) the amount paid for Circuit Rider Services hereunder, or \$50,000, whichever is greater.

C. To the extent permitted by law, Municipality shall hold harmless and waive any claims against MESA, including any of its agents, contractors or subcontractors, and the Consultant from all suits, claims, judgments or actions associated with or arising in any way from the management or operation of Municipality's electric utility system.

ARTICLE IV CIRCUIT RIDER SERVICES

It is understood and agreed that MESA shall provide, pursuant to this Schedule, one or more Consultants, as needed, to perform one or more of the following Circuit Rider Services, as requested by the Municipal Official: advise Municipality employees regarding tasks associated with maintaining and operating an electric utility system; assist with Municipality's electrical department organization or reorganization; assist in preparing budgets for an electric utility system; assist with electric system planning and improvements; make recommendations on areas where outside consultants may be required; assist in establishing or improving safety or other programs necessary to meet the requirements of the management and operation of an electric utility system; assist in establishing or improving record

keeping practices; assist in establishing or improving maps showing electrical facilities and equipment of Municipality; provide engineering assistance; provide construction assistance; provide assistance for other technical aspects of the operation and maintenance of municipal utility systems; assist with tracking of outages; and other similar functions to aid Municipality in the provision of safe, reliable, economical electric service to its consumers.

ARTICLE V COMMUNICATION AND COMMUNICATION EQUIPMENT

It is understood and agreed that a lack of communication equipment necessary to permit effective communication between the Consultant and the Municipal Official may constitute a Hazardous Condition, to be determined in MESA's sole discretion, as referred to in Article VI.

It is understood and agreed that it shall be the responsibility of Municipality to secure any licenses or other governmental authorizations necessary to operate communication equipment required and/or furnished pursuant to this Schedule.

Municipality and MESA will exchange emergency contact information for use at any time that Consultant is providing Circuit Rider Services to Municipality.

ARTICLE VI HAZARDOUS CONDITIONS

A. It is understood and agreed that the Consultant shall not be required to provide any Circuit Rider Services in any location where a Hazardous Condition exists or may exist. The determination of what conditions shall be regarded as Hazardous Conditions or potentially Hazardous Conditions for purposes of this Schedule shall be within the sole discretion of the Consultant and MESA.

B. Where it is determined that a Hazardous Condition exists or potentially exists, the Consultant or MESA shall provide Municipality with written notice of the existing or threatened Hazardous Condition and Municipality shall, without delay, remedy or eliminate the existing or potentially Hazardous Conditions or provide safety precautions for the same, if possible. The notice may be oral should emergency conditions warrant the same.

C. It is expressly understood by the parties that so long as a Hazardous Condition exists, nothing in this Schedule requires or should be construed to require the Consultant to perform tasks which the Consultant or MESA, in their sole discretion, deem to be unsafe.

D. It is also expressly understood that because of the presence or potential presence of polychlorinated biphenyls (PCBs) in certain areas of Municipality's electric apparatus, and the potential hazards of said materials, Municipality agrees that a lack of an effective PCB program, in conformance with all applicable Federal and State EPA and local requirements, constitutes a Hazardous Condition pursuant to this Schedule.

ARTICLE VII
SCHEDULING OF CIRCUIT RIDER SERVICES AND COMPENSATION

A. The Consultant shall be available to Municipality as requested by Municipality for the number of hours requested on Appendix B. Municipality acknowledges that hours must be requested in advance in order to allow for appropriate scheduling and staffing by MESA. The hours requested by Municipality each year shall, to the extent reasonably possible, be scheduled so as to be spread evenly throughout the four calendar quarters. The Consultant shall also be available to Municipality, as the Consultant's schedule permits, for emergency response.

B. As payment for the Circuit Rider Services, Municipality shall pay to MESA a sum equal to the number of hours requested on Appendix B at the hourly wage rate(s) and overhead factor(s) provided for in the attached rate schedule, Appendix A, for the employee(s) or consultant(s) performing the Circuit Rider Services, pursuant to the billing and payment provisions of this Schedule. For evening and nighttime (5:00 P.M. to 8:00 A.M.) and weekend daytime hours (8:00 A.M. to 5:00 P.M), hours will be charged at time and one half the applicable Appendix A hourly wage rate. For holidays and weekend evenings (5:00 P.M. to 8:00 A.M.), hours will be charged at double the applicable Appendix A hourly wage rate. Appendix A may be adjusted annually by MESA on January 1, and will be available to Municipality, upon request, no later than December 1 of the year preceding the year in which the new rates are effective. Appendix B shall be updated by Municipality prior to the beginning of each renewal term, indicating the number of hours requested by Municipality for each year of the upcoming term.

C. Municipality shall be invoiced, and Municipality shall pay, for all Requested Hours (including travel time) worked pursuant to this Schedule, as set forth on Appendix B, at the rates and charges set forth on Appendix A. If actual hours worked (including travel time) by Consultant are less than the Requested Hours during an applicable Schedule year, Municipality shall in no event pay for fewer hours than the Minimum Hours, as indicated on Appendix B, even if the Consultant works less than the number of Minimum Hours. The parties shall use reasonable, good-faith efforts to re-schedule, within the same calendar year, any scheduled hours that are cancelled due to inclement weather, illness of Consultant or other factors not within the reasonable control of Municipality.

D. It is understood and agreed that when the Consultant is requested to assist a municipal electric utility system experiencing an emergency condition, the Consultant shall be dispatched to first fulfill the needs of the municipal system experiencing the emergency condition.

E. For each Schedule year, Municipality requests the number of Requested Hours of Circuit Rider Services indicated on Appendix B for that Schedule year. Municipality may also be eligible to obtain additional Circuit Rider services hours ("Additional Hours") as available, at pricing as set forth in the then-current Appendix A, subject to overtime provisions as set forth in Section VII(B).

F. If no hours have been selected on Appendix B for any Schedule year, Municipality will be considered a "will call" community for Circuit Rider Services. Upon request, MESA will provide Circuit Rider Services to will call communities as time permits, but does not guarantee the availability of any Circuit Rider Services. All will call Circuit Rider Services provided will be billed to Municipality at the Additional Hours rates set forth in the then-current Appendix A, subject to overtime provisions as set forth in Section VII(B). If no hours of Circuit Rider Services are provided, no fee will be charged.

ARTICLE VIII
CONTINGENCY

A. Notwithstanding any other provision of this Schedule, any obligation under this Schedule of MESA is contingent upon the ability of MESA to enter into agreements or contracts satisfactory to MESA to provide Circuit Rider Services and to enter into a sufficient number of Schedules in order to make provision of the services described herein economically feasible in MESA's sole judgment and discretion.

B. All terms and conditions of the Master Services Agreement not in conflict with the terms and conditions of this Schedule, including definitions set forth therein, shall be applicable to provision of Services pursuant to this Schedule. To the extent there is a conflict between terms contained in this Schedule and the Master Services Agreement, the terms contained in this Schedule shall prevail.

ARTICLE IX
GENERAL

A. Except for payments hereunder, 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 causes beyond its control shall use diligence to remove such disability with reasonable dispatch.

B. It is understood that Municipality shall maintain all direction and control over its employees, representatives and agents and Municipality shall conform to all applicable laws and regulations in the performance of its obligations under this Schedule and shall comply with all provisions of applicable workers compensation laws.

C. This Schedule, when fully executed, will supersede any prior Schedule for circuit rider services, and any such Schedule is terminated as of the Effective Date.

[signature page follows]

APPENDIX C

The Village of ___Yellow Springs___ (“Municipality”) hereby requests _____ hours of Circuit Rider Services for the Schedule year **2022** (the “Requested Hours”), at the rate indicated on Appendix A for the applicable Schedule year. Municipality understands and agrees that Circuit Rider Services are to be provided subject to availability, and MESA is unable to guarantee provision of Circuit Rider Services to any particular Municipality at any particular time or date. Municipality shall be responsible for payment for a minimum of _____ hours for Schedule year **2022** (the “Minimum Hours”) at the rate indicated on Appendix A for the applicable Schedule year, even if Municipality fails to utilize all of the Minimum Hours.

MESA and Municipality shall attempt to provide the Requested Hours so as to be more or less evenly distributed each week of the year, unless an alternative distribution of hours is requested by Municipality and can be accommodated by MESA.

Village of Yellow Springs, Ohio

Municipal Energy Services Agency

By: _____

By: _____

Name: _____

Jolene Thompson

Title:

President & CEO of AMP (as agent for
Municipal Energy Services Agency)

Approved as to Form:

Approved as to Form:

Municipal Legal Advisor

Rachel Gerrick
AMP Senior Vice President & General
Counsel for Corporate Affairs