

ORDINANCE NO. 96-101 AC CMS

AN ORDINANCE APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL JOINT VENTURE AGREEMENT (MESA) BY THE CITY OF OBERLIN, OHIO, WITH OTHER OHIO MUNICIPALITIES AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH AND DECLARING AN EMERGENCY

WHEREAS, the City of Oberlin, Ohio (the "Municipality"), owns and operates an electric utility system for the sale of electric power and energy for the benefit of its citizens and taxpayers; and

WHEREAS, the Municipality, acting individually and, along with other Ohio municipalities which own and operate electric utility systems jointly, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to consumers; and

WHEREAS, it is efficient and economical to act jointly in such regard and the same is contemplated and authorized by, *inter alia*, Article XVIII, Sections 3 and 4 of the Ohio Constitution and Ohio R.C. §715.02; and

WHEREAS, the Municipality and certain other municipalities (collectively "Participants"), have each determined that a need exists to provide, for the benefit of the Municipality and the other Participants and organizations of which the Participants are members, access to a pool of personnel experienced in the planning, management, engineering, construction, safety training and other technical aspects of the operation and maintenance of municipal electric and other utility systems; to provide those services on call, as needed and as available for the benefit of the Participants; and

WHEREAS, employment of such personnel by a municipal joint venture will contribute greatly to the same being available to the Participants, when and as needed, to render management, services at reasonable costs and will contribute to the safe and economic provision of utility services by each Participant to its citizens and taxpayers; and

WHEREAS, the Participants desire, and pursuant to the Intergovernmental Joint Venture Agreement attached hereto as Exhibit 1, to organize, staff and manage such a pool of personnel and make the same available to the Municipality, the other Participants and organizations of which the Participants are members on a contract basis for the benefit of the Participants; and

WHEREAS, pursuant to the Intergovernmental Joint Venture Agreement, the Municipality will incur no financial obligation to the joint venture or the other Participants unless and until it avails itself of the services of the Joint Venture; and

WHEREAS, the Participants have determined to exercise jointly their powers under the Ohio Constitution in the manner contemplated by Ohio R.C. § 715.02, to the extent applicable, and the attached Intergovernmental Joint Venture Agreement as an intergovernmental joint venture to be known as Municipal Energy Services Agency (MESA) in order to accomplish their goals in the manner set forth herein.

NOW, THEREFORE, BE IT ORDAINED, by the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1. That the form of Intergovernmental Joint Venture Agreement attached hereto as Exhibit 1, including Appendices thereto, among this Municipality and the municipalities listed on Appendix A thereof, hereby is approved, subject to and with any and all changes provided herein and therein.

SECTION 2. That the City Manager of this Municipality is authorized and directed to execute and deliver on behalf of this Municipality an agreement, with such changes therein if any, as said officer shall deem necessary and advisable, substantially in the form of the Intergovernmental Joint Venture Agreement attached as Exhibit 1, and that the Clerk of Council or other appropriate official is authorized and empowered to attest the Intergovernmental Joint Venture Agreement so executed and to take whatever other actions are necessary to make the same effective, legal and binding upon the Municipality.

SECTION 3. That the City Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative on the Board of Participants created pursuant to the Intergovernmental Joint Venture Agreement and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote for the Municipality with regard to the management of MESA as set forth in the Intergovernmental Joint Venture Agreement, and take such other actions as are required thereunder and hereunder in order to fulfill this Municipality's obligations under the Intergovernmental Joint Venture Agreement.

SECTION 4. That the City Manager is also authorized and directed to execute any consent or supplemental agreement necessary to assign the existing Circuit Rider Contract and T&D Schedule between OPPEI and AMP-Ohio, respectively, and the City of Oberlin to MESA.

SECTION 5. That the City Manager may from time to time, temporarily designate in writing another employee of the Municipality to act as the City Manager's alternate in the representation of the Municipality on such Board during such time as the City Manager may be unable to represent the Municipality.

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 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.


SECTION 7. That in taking the above stated action approving the form of the Intergovernmental Joint Venture Agreement, together with its execution and delivery, this Municipality shall be deemed to have acted pursuant to Article XVIII of the Constitution of the State of Ohio.

SECTION 8. 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 9. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - December 2, 1996
2nd Reading - December 16, 1996
3rd Reading - January 6, 1997

ATTEST:


CLERK OF COUNCIL

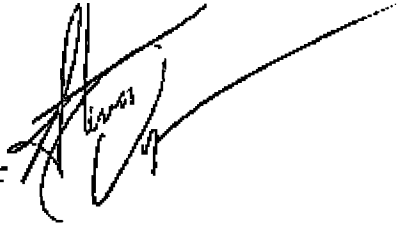

CHAIR OF COUNCIL

POSTED: January 7, 1997

EFFECTIVE DATE: February 7, 1997

MEMORANDUM

To: Gene Simon, City Clerk
From: Steve Dupee, Assistant to OMLPS Director
Date: May 28, 1997
Re: MESA Contract



Attached is a copy of the MESA contract authorized by City Ordinance #96-101 AC CMS for your files.

If you have any questions, please call.

/sd

cc: Robert Morse, Director, OMLPS

OBERLIN

**AMP-Ohio Contract #3C12-96-2106
EXECUTION COPY**

MUNICIPAL ENERGY SERVICES AGENCY

INTERGOVERNMENTAL JOINT VENTURE AGREEMENT

AMONG

**THE MUNICIPALITIES LISTED ON
APPENDIX A HERETO**

REGARDING

THE MUNICIPAL ENERGY SERVICES AGENCY

Dated as of December 1, 1996

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**MUNICIPAL ENERGY SERVICES AGENCY
INTERGOVERNMENTAL JOINT VENTURE AGREEMENT
AMONG
THE MUNICIPALITIES LISTED ON
APPENDIX A HERETO
REGARDING
THE MUNICIPAL ENERGY SERVICES AGENCY**

THIS Intergovernmental Joint Venture Agreement dated as of December 1, 1996, is made and entered into by and among the Participants.

WHEREAS, the Participants each own and operate municipal electric or other utility systems for the benefit of their respective citizens and consumers;

WHEREAS, the Participants, acting individually and, along with other Ohio municipalities which own and operate electric or other utility systems, jointly through AMP-Ohio or otherwise, endeavor to arrange for reliable, reasonably priced supplies of electric power and energy, or other utility services, for ultimate delivery to their respective consumers;

WHEREAS, it is efficient and economical to act jointly in such regard and the same is contemplated and authorized by, *inter alia*, Article XVIII, Sections 3 and 4 of the Ohio Constitution and Ohio R.C. §715.02;

WHEREAS, the Participants have determined that a need exists to provide, for the benefit of the Participants, other municipalities and organizations of which the Participants are members, access to a pool of personnel experienced in the planning, management, engineering, construction, safety training and other technical aspects of the operation and maintenance of municipal electric and other utility systems; to provide those services on call and as available for the benefit of the Participants;

WHEREAS, employment of such personnel by a municipal joint venture will contribute greatly to the same being available to the Participants, when and as needed, at reasonable costs and will contribute to the safe and economic provision of utility services by each Participant to its citizens and taxpayers;

WHEREAS, the Participants desire, and pursuant to this Joint Venture Agreement hereby agree, to organize, staff and manage such a pool of personnel and to make the same available on a contract basis for the benefit of the Participants;

WHEREAS, the Participants have determined to exercise jointly their powers under the Ohio Constitution in the manner contemplated by Ohio R.C. §715.02, to the extent applicable, and this Joint Venture Agreement as a joint venture to be known as MESA in order to accomplish their goals in the manner set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and among the Participants, on their own behalf and on behalf of Municipal Energy Services Agency, as follows:

SECTION 1. Definitions and Explanations of Terms.

As used herein:

(A) Agreement shall mean this Intergovernmental Joint Venture Agreement including, without limitation, all Appendices hereto together with all amendments and supplements thereto and hereto and additional Appendices hereto, as permitted by the provisions hereof, and all Related Agreements.

(B) AMP-Ohio shall mean American Municipal Power-Ohio, Inc., the nonprofit, Ohio corporation whose membership consists of Ohio municipalities which own and operate electric utility systems, including certain of the Participants.

(C) Appendix shall mean any of the appendices attached hereto, all of which are incorporated herein and made part hereof, as the same may be modified in accordance with the provisions hereof.

(D) Appendix of Participants shall mean the list of the Participants attached hereto as Appendix A, as the same may be revised from time to time to reflect any changes in Participants as established in accordance with the provisions hereof.

(E) Charge Appendix shall mean the listing of charges, and the components thereof, designed to recover the costs associated with the use of the services hereunder attached hereto as Appendix B, as the same may be revised from time to time in accordance with the provisions of Section 5 hereof.

(F) Council shall mean, as to any Participant, the governing body of that Participant.

(G) MESA shall mean Municipal Energy Services Agency.

(H) Month or Monthly refers to a calendar month.

(I) Municipal Energy Services Agency shall mean the Participants acting jointly pursuant to this Agreement through the board of Participants as the Municipal Energy Services Agency and any agents and assigns approved by the Participants.

(J) Operating Expenses shall mean the sum of the following:

- (i) the cost of operation of MESA, including, without limitation, the cost of taxes, payments in lieu of taxes, the cost of insurance (including directors and officers liability insurance) all costs to settle or compromise threatened or pending claims or litigation to the extent associated with MESA, reserves against losses established in connection with any program of self insurance, the costs of any related services and costs of compliance with and renewals of all required licenses and permits, legal, engineering, accounting and financial advisory fees and expenses;
- (ii) unless otherwise specified in the Agreement, all other costs incurred by or on behalf of MESA including those incurred under the Related Agreements; and
- (iii) the cost to establish and maintain an allowance for working capital and necessary reserves.

(K) Participants shall mean the municipal corporations which have executed this Agreement and which are listed on Appendix A.

(L) Party or Parties refers to one or more of the Participants and MESA.

(M) Regulations shall mean the terms which govern the manner in which the Participants shall transact business and make decisions concerning the joint exercise of their powers and obligations under this Agreement acting as the MESA, as the same may be amended or supplemented from time to time in accordance with such Regulations. The initial Regulations are attached hereto as Appendix E which shall be updated to reflect such amendments or supplements made in accordance herewith.

(N) Related Agreements shall mean: (i) the agreement(s) listed in Appendix F hereto, (ii) any future agreements entered into by MESA in accordance with Section 4(B) hereof; and (iii) any supplements, modifications, renewals or replacements to the agreements described in (i) and (ii) entered into in accordance with Section 4(B) hereof.

(O) Services shall mean those management, planning, technical, safety, training, engineering, construction or other services made available by MESA from time to time as MESA determines appropriate.

(P) Uncontrollable Forces shall mean any cause beyond the control of MESA or a Participant, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, pestilence, war, riot, civil disturbance, labor disturbance, sabotage, and restraint or action by court or public authority, which by due diligence and foresight Municipal Energy Services Agency or such Participant, as the case may be, could not reasonably have been expected to avoid.

(Q) 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 of this Agreement specified in Section 33(A) hereof and shall expire at 12:00 a.m. on the next succeeding January 1.

Except where the content otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, public and private corporations, and any other legal entities.

SECTION 2. Representations

Each Participant represents to the other Participants that:

- (i) the Participant is a municipal corporation, duly created and validly existing pursuant to the Constitution and statutes of the State of Ohio;
- (ii) the Participant has full legal right and authority to enter into this Agreement, to carry out its obligations hereunder;
- (iii) its Council duly approved this Agreement and authorized its execution and delivery on behalf of the Participant by legislative action duly and lawfully adopted and such legislative action constitutes an action pursuant to Article XVIII of the Constitution of the State of Ohio and became effective prior to the execution of this Agreement; and
- (iv) this Agreement has been duly executed and delivered by the appropriate officers of the Participant pursuant to legislative action authorizing or directing the same; and this Agreement constitutes the legal, valid, and binding obligation of the Participant enforceable in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by equitable principles.

SECTION 3. Joint Undertakings.

(A) The Participants hereby establish MESA and authorize, empower, and direct it to perform, in accordance with this Agreement, such undertakings for the benefit of the Participants as are specified herein, subject to such limitations and standards as are set forth herein; and the Participants individually and jointly, shall use their best efforts and hereby covenant as follows:

- (i) to undertake, or cause to be undertaken, as determined necessary or convenient by MESA from time to time (x) the recruitment and hiring of personnel experienced in the management, engineering, planning, construction, safety and operation of municipal electric and other utility systems and to make the same available to the Participants, organizations such as AMP-Ohio of which the Participants may be members, or other municipal corporations on a basis which will pay all of MESA's Operating Expenses;
- (ii) to undertake, or cause to be undertaken, such efforts and measures as may from time to time be required to comply and remain in compliance with all lawful orders of any governmental bodies or agencies with jurisdiction over MESA;
- (iii) to undertake, or cause to be undertaken, the acquisition of such personnel or contractual rights to the same and other operating arrangements as are necessary or desirable to perform the duties listed herein;
- (iv) to perform such billing, collection and accounting for any Participant's or other's use of MESA's services', as MESA shall determine appropriate;
- (v) to prohibit MESA from engaging in any business other than that set forth in this Agreement, unless reasonably incidental thereto;
- (vi) to operate MESA at all times on a not-for-profit basis for the mutual benefit of the Participants (provided that not-for-profit shall not be construed to mean that MESA may not provide services for compensation greater than cost); and
- (vii) to bring any and all legal actions relating to MESA, or defend the same, either in the name of the individual Participants jointly or in the name of MESA.

(B) As soon as practicable after the effective date of this Agreement, as specified in Section 24(A), there shall be an initial meeting of the Participants at a time and place to be determined by agreement of at least two (2) of the Participants. Notice for such meeting shall be in writing and mailed not less than seven (7) days, or hand delivered not less than two (2) business days, prior to such meeting. In addition to such other business that may properly be determined by the Participants at such meeting in accordance with the Regulations, the Participants shall confirm at such meeting the listing of the Participants. Such finalized list, as adopted, shall then be reflected on Appendix A.

(C) Other Participants may join MESA from time to time upon application to and the approval of MESA.

SECTION 4. Operation and Management.

(A) The Participants agree to jointly undertake, or cause to be undertaken, the provision of the Services contemplated herein in the manner and to the extent as determined necessary or convenient from time to time by MESA.

(B) To achieve the efficient management and operation of the MESA, the Participants hereby authorize the assumption or execution of the Related Agreements listed in Appendix C for the management of the business of MESA and such other agreements and any supplements, modifications, renewals or replacements to any of the same as MESA deems necessary or convenient to carry out the purposes of this Agreement. MESA may also employ, on such terms and conditions as it deems appropriate, employees and experts as may be necessary or convenient for the furtherance of the business of MESA. The organization and structure of MESA shall be as provided in the Regulations and as determined by the Participants from time to time under this Agreement.

SECTION 5. Allocation of Costs, Charges, Payment.

(A) MESA, acting on behalf of the Participants, shall establish and maintain, and each Participant severally and not jointly agrees to pay, charges reflecting the costs associated with Services requested from MESA as set forth herein and in the Charge Appendix. Such charges shall, in the aggregate, provide revenues which are sufficient to meet the estimated Operating Expenses.

(B) Each Participant shall have no financial obligation to MESA except to the extent such Participant shall, from time to time, procure services therefrom.

(C) The initial Charge Appendix is attached as Appendix B hereto. At such intervals as it shall determine appropriate, MESA shall review and, if necessary, shall

revise the Charge Appendix to ensure that the charges under this Agreement continue to (i) recover MESA's estimate of all of the Operating Expenses and, (ii) represent an appropriate allocation of the Operating Expenses among the Participants and other users of the Services.

(D) MESA may also enter into agreements with entities to which it provides services, as MESA deems appropriate from time to time, and such agreements may set forth the compensation for the Services to be rendered thereunder different from that contained in the Charge Appendix.

(E) In each Month following the Month in which this Agreement is effective and costs are incurred in connection with this Agreement, MESA shall render to each Participant or other user of Services a Monthly invoice showing the amount payable by such Participant pursuant to the Charge Appendix for the immediately preceding Month, and such Participant shall pay such amount to MESA at its principal office, or to such other person at such other address as shall be designated by MESA by written notice to each Participant, at such time and in such manner as determined by MESA and reflected in the Charge Appendix. In rendering such Monthly invoices MESA may utilize estimated data which shall be reconciled as soon as actual data becomes available. Upon request, MESA shall provide a detailed breakdown of the portion of the invoiced amount.

(F) MESA may impose a reasonable, non-discriminatory delayed-payment charge on any unpaid amounts due under this Agreement for each day overdue, in addition to any other remedy or penalty permitted by this Agreement or by law. Any such delayed payment charge shall be reflected in the Charge Appendix.

(G) In the event of any dispute by any Participant as to any portion of any Monthly invoice, such Participant shall nevertheless pay the full amount of the Monthly invoice, including the disputed charges, when due and shall give written notice of the dispute to MESA not later than ninety (90) days from the date such payment is due. Such notice shall identify the disputed invoice, state the amount in dispute and set forth a full explanation of the grounds on which such dispute is based. No adjustment need be considered or made for disputed charges unless notice is given as aforesaid. MESA shall give consideration to such dispute and shall advise such Participant with regard to its position relative thereto within sixty (60) days following receipt of such written notice. Upon final determination of the correct amount (whether by agreement, arbitration, adjudication or otherwise) any difference between such correct amount and such full amount, together with interest (from the date of the disputed payment to the due date of the Monthly invoice next submitted to the Participant after such determination) at the rate which would apply under this Agreement to overdue payments by such Participant pursuant to Section 5(F), shall be subtracted by MESA from the invoice next submitted to such Participant after such determination or paid by MESA to the Participant in funds available for use by the Participant on the due date of such next Monthly invoice.

(H) In the event that at any time MESA shall determine that it has rendered a Monthly invoice containing a billing error, MESA shall furnish promptly to each Participant whose Monthly invoice was in error a revised Monthly invoice with the error corrected which shall be subject to the same payment provisions of this Agreement as are applicable to the original Monthly invoice. The revised invoice shall establish a new payment date for the Monthly invoice and if the Participant has paid any incorrect amount in excess of the correct amount, such excess shall be promptly refunded. When estimated values are used to invoice hereunder, the resulting invoices shall not be construed as incorrect invoices. Adjustments without interest shall be made on the next Monthly invoice after actual data is available to account for the difference between estimated and actual values.

SECTION 6. Uncontrollable Forces.

Neither MESA nor any Participant shall be considered to be in default in respect to any obligation hereunder (other than the obligation of each Participant to make any payments required by this Agreement) if prevented from fulfilling such obligation by reason of Uncontrollable Forces. A Party rendered unable to fulfill any such obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such inability with all reasonable dispatch except in no case shall any Party be required by reason of this provision to settle any labor dispute.

SECTION 7. Insurance.

MESA shall maintain, or cause to be maintained, in force, insurance with responsible insurers against risk of direct physical loss, damage or destruction of any MESA property, and liability insurance, appropriate professional liability and employers' liability insurance, at least to the extent that similar insurance is usually carried by utilities to the extent available at a reasonable cost and subject to reasonable deductible provisions in accordance with Prudent Utility Practice. MESA may also maintain such other insurance as it deems reasonable for the benefit of MESA and the Participants. All such policies of insurance shall be made payable to MESA on behalf of the Participants. Notwithstanding the foregoing, MESA may self-insure or participate in a program of self-insurance or group insurance to the extent it receives a written opinion of a qualified insurance consultant that such self-insurance is reasonable, after consideration of any existing or required reserve deposits.

SECTION 8. Accounting.

(A) MESA shall keep accurate records and accounts relating to its operations pursuant to this Agreement substantially in accordance with the generally accepted accounting principles for municipal entities, separate and distinct from any other records and accounts. Said accounts shall be audited each Year, which shall be MESA's fiscal year, by a firm of independent certified public accountants, experienced in public finance and wastewater utility accounting and of favorable national reputation, to be employed by MESA and selected in accordance with R.C. §115.56, if applicable. Alternatively, in the event that the Auditor of the State of Ohio performs such an audit, then MESA may utilize such audit in lieu of that provided for above, to the extent allowed by law. A copy of each annual audit, including all written comments and recommendations of such auditor, along with an annual report of the operations of MESA, shall be furnished by MESA to each Participant and to the Auditor of the State of Ohio, and any other agency required by law, within a reasonable time after the end of each Year, or such other time as is required by law. All such audits shall conform to any applicable legal requirements.

(B) Each Participant shall have the right, at its sole expense, to conduct or to have conducted a separate independent audit of the books and records of MESA utilizing the information and access granted pursuant to Section 14.

SECTION 9. Information to be Made Available; Access.

(A) Upon written request to MESA:

- (i) copies of all operating and financial records and reports in the possession of MESA shall be made available at MESA's office for examination by each Participant; and
- (ii) copies of insurance policies (or certificates of insurance) carried pursuant to Section 7 hereof shall be provided to each Participant.

(B) MESA and each Participant will promptly furnish to each other such other information as may be reasonably requested from time to time in order to carry out the intent and purpose of the Agreement or as may be reasonably necessary and convenient in the conduct of the operations of the Party requesting such information.

SECTION 10. Separate Funds; Assignment of Interest.

All revenues and other funds of MESA shall be held separate and apart from all other funds. Neither MESA nor its agents shall pledge or assign any right, title or interest in such revenues and funds, or this Agreement or otherwise make available any of the foregoing, to secure or pay any indebtedness or obligation of MESA other than as necessary to carry out the purposes of this Agreement.

SECTION 11. Default.

In the event any payment due from any Participant under this Agreement remains unpaid subsequent to the due date thereof, such non-payment shall constitute a default hereunder and MESA may, upon ten (10) days' written notice to and at the cost and expense of such defaulting Participant, (i) cease rendering services hereunder, (ii) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to enforce any covenant, agreement or obligation against the defaulting Participant, or (iii) take any other action permitted by law to enforce this Agreement. MESA shall promptly notify all Participants in writing of any default by any other Participant which remains uncured for fifteen (15) days or more. MESA may utilize this procedure for default when other than a Participant is involved or it may adopt other procedures as appropriate.

SECTION 12. Waiver.

Any waiver at any time by any Party of its rights hereunder with respect to any default of any other Party thereto, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent default, right or matter.

SECTION 13. Modification or Amendment of this Agreement.

Except to the extent otherwise provided herein, this Agreement shall not be amended, modified or otherwise changed except by written instrument executed and delivered by each of the Participants.

SECTION 14. Municipal Operation.

(A) MESA, as a joint venture of municipal corporations, shall, from time to time as appropriate, adopt by resolution of its Board procedures requiring that, to the extent required by law and to the extent practicable, MESA shall conduct its business and operations in accordance with the following general provisions of Ohio law governing the operation of municipalities:

- (i) the provisions of R.C. Chapter 735 requiring competitive bidding in the acquisition of certain goods and services;
- (ii) the provisions of R.C. §731.55, *et seq.* and R.C. Chapter 135 regarding public funds; and
- (iii) such other provisions of Ohio law with which MESA may be required to conform or with which MESA deems it appropriate to comply.

(B) Notwithstanding any other provisions of this Agreement, upon a finding of emergency by MESA threatening the public, health, safety or welfare as it relates to a municipality's need for Services, waive competitive bidding in appropriate circumstances.

SECTION 15. Notices and Computation of Time.

Any notice or demand under this Agreement shall be by first class U.S. mail, postage prepaid, addressed to the Participant or MESA, as appropriate at the addresses set forth on Appendix D hereto. In computing any period of time from any such notice, such period shall commence at noon on the date mailed. The designations of the name and address to which any such notice or demand is directed may be changed at any time and from time to time by any Participant or by MESA giving notice to all other Parties, as above provided, at which time Appendix D shall be revised to reflect such change.

SECTION 16. Applicable Law; Construction.

This Agreement is made under and shall be governed by the law of the State of Ohio. Headings herein are for convenience only and shall not influence the construction hereof. In the event of any conflict between the provisions contained in Section 1 through 27, inclusive, of this Agreement and any of the Appendices, the appropriate portions of Sections 1 through 27 shall govern.

SECTION 17. Severability.

If any section, subsection, paragraph, clause or provision or any part thereof of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, including, without limitation, confirmation of any arbitration award rendered pursuant to Section 21, the remainder of this Agreement shall be unaffected by such adjudication and all the remaining provisions of this Agreement 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 18. Assignment of this Agreement.

This Agreement shall inure to the benefit of, and shall not be assigned without the written consent of, each of the Participants, which consent shall not unreasonably be withheld.

SECTION 19. Beneficiaries.

This Agreement shall constitute a binding agreement of each Participant with each other Participant and MESA, for the benefit of the Participants. Consequently, unless otherwise designated in a Related Agreement, no other person shall have any interest in, be a beneficiary of or be entitled to enforce the provisions of this Agreement.

SECTION 20. Survivorship of Obligations.

The termination of this Agreement shall not discharge any Party hereto from any obligation which it owes to any other Party under this Agreement 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 hereto that any such obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Agreement) shall survive the termination of this Agreement.

SECTION 21. Arbitration; Venue.

(A) If a dispute between or among any of the Parties should arise under this Agreement, any such Party may call for submission of the dispute to non-binding mediation or other alternative dispute resolution methods, or to arbitration. The Parties agree to make a good faith attempt to resolve any such disputes through informal means, mediation or other alternative dispute resolution methods. If such methods fail, and all Parties to the dispute agree in writing to have the dispute submitted to arbitration, such arbitration shall proceed under the terms set forth herein and shall be final and binding. In the absence of such an agreement, the dispute may be submitted to a court of competent jurisdiction.

(B) The Party calling for arbitration shall give written notice to all other Parties to this Agreement setting forth in such notice the nature of the dispute, the amount of money, if any, involved in such dispute, and the remedy sought by the Party calling for arbitration.

(C) Unless otherwise agreed, the arbitration shall be governed by R.C. §§2711.01 *et seq.*, and the procedural rules contained in the Compulsory Arbitration Rules of the Court of Common Pleas of Franklin County, Ohio, except that such arbitration shall be before an arbitrator agreed upon by the Parties to the arbitration, or, if they cannot agree, one appointed by such Court. Each Party to the arbitration shall pay a *pro rata* share of the costs and expenses of the arbitrator.

(D) In the event that any dispute arising under this Agreement shall result in litigation, the Parties agree that jurisdiction and venue for all litigation proceedings shall be proper in the Court of Common Pleas of Franklin County, Ohio. Each Party consents to such jurisdiction and venue and agrees not to raise the issues of lack of jurisdiction, improper venue or inconvenient forum in any such litigation.

SECTION 22. Liability and Allocation of Risk.

(A) Neither MESA nor the other Participants shall be responsible for the control or operation of any other Participant's utility system and shall not, in any event, be liable for damage or injury to any person or property whatsoever arising, accruing, or resulting from, in any manner, the operation of the respective Participants' utility systems. Nothing in this Agreement should be construed to prevent MESA from compromising or settling, on reasonable terms, any pending or threatened litigation or claim against it.

(B) In the absence of bad faith, no recourse shall be had against any individual member of the Council of any Participant or against any individual Participant or its representative on the board of MESA or any officer, employee or other agent of any Participant or MESA, past, present or future, either directly or indirectly, whether by virtue

of any penalty or otherwise, for any claim based upon or arising out of this Agreement or the obligations of the Parties hereunder, all such liability, if any, being by the execution and delivery of this Agreement specifically waived and released; *provided, however*, the foregoing shall not relieve any individual from the performance of any official duty provided by law.

(C) The Participants recognize the existence of risk of uninsured loss or damage to third parties arising out of, connected with, occasioned by, or resulting from this Agreement or any activities hereunder. It is the intention of the Participants that the expense of such claims, including the cost of defense and any and all uninsured loss or damage, be paid as a part of Operating Expenses and that each Participant's liability therefor shall be limited to a *pro rata* share based upon its use of MESA's services.

(D) Nothing in this Agreement shall be construed to waive any immunities which the Participants or MESA may have now or in the future.

(E) Except for malfeasance or willful misconduct, MESA shall indemnify each officer, including the Participants' board representatives serving as members of the Authority in accordance with the Regulations, and each employee and each former officer or employee and any person who is serving or has served in good faith at MESA's request as an officer, agent or employee of MESA against costs and expenses reasonably incurred by or imposed upon him or her, judgments, decrees, fines, penalties, or amounts paid in settlement or in connection with the defense of any pending or threatened action, suit, or proceeding, criminal, civil or otherwise, to which he or she is or may be made a party by reason of having been such officer, agent or employee to the fullest extent permitted by law. The above indemnification shall include legal fees, but representation may be furnished only by counsel authorized by MESA. The right of indemnification conferred upon such officers and employees of by this Section 22(E) shall not be exclusive of any other rights to which they may be lawfully entitled, and shall inure to the benefit of their heirs, successors, and administrators, and shall be specifically conditioned upon timely notice to MESA of any such pending or threatened action, suit or proceeding.

(F) No covenant, representation, obligation or agreement herein contained shall be deemed to be a covenant, representation, obligation or agreement of any member of the Council of any Participant or of any agent, officer or employee of any Participant in his or her individual capacity, and neither such members of the Council nor any agent, officer or employee of any Participant nor any official executing this Agreement shall incur any personal liability therefor arising in any way from the approval or execution this Agreement or the activities contemplated hereunder.

SECTION 23. Related Agreements; Enforcement and Amendment.

(A) MESA shall enforce the provisions of each Related Agreement, and duly perform its covenants and agreements thereunder. MESA will not consent or agree to or permit any rescission of or amendment to any Related Agreement set forth in Appendix F, which will materially adversely affect the rights or interests of MESA thereunder.

(B) It is recognized by the Participants that it is contemplated that MESA may rely on third parties, under, for example, the Related Agreement set forth as Appendix C-1, to fulfill all or a portion of its obligations under this Agreement. Each such agreement and any supplements, modifications, renewals and replacements thereof entered into pursuant to Section 4(B) hereof shall be effective according to its terms, without further approval by any Participant.

SECTION 24. Term of this Agreement.

(A) This Agreement shall become effective on the date upon which this Agreement shall have been executed and delivered by at least two Participants. Notwithstanding the foregoing and the representations of the Participants herein, in the event it is ultimately determined that any Participant failed duly and validly to authorize or execute and deliver this Agreement or that this Agreement, or any portion hereof, is invalid or unenforceable with respect to any Participant for any reason whatsoever, such determination shall in no way affect the commencement, term, validity or enforceability of this Agreement with respect to any other Participant.

(B) This Agreement shall remain in effect until December 31, 2000, and thereafter for successive terms of three (3) years so long as to least two (2) Participants have not given the notice set forth in Section 24(C).

(C) Any Participant may terminate its participation in MESA by giving not less than one (1) year's prior written notice of such termination at the end of the initial or any renewal term; provided that such Participant shall, as a condition of such termination, have fulfilled all of its obligations to MESA. Any Participant withdrawing shall not be entitled to any payment for any ownership interests in MESA.

SECTION 25. Ownership Interests.

All property, whether real, personal, tangible or intangible jointly owned by the Participants shall be owned by the Participants as tenants in common in undivided shares in proportion to each such Participant's patronage. In recognition of the indivisible nature of the Facilities, each Participant hereby irrevocably waives any and all rights to partition, or sale in lieu of partition, of the property constituting all or any part of the Facilities.

SECTION 26. No Partnership.

The Participants expressly agree that no partnership is created by the provisions of this Agreement and no Participant or MESA may act as agent for or bind any other Participant except to the extent contemplated by this Agreement.

SECTION 27. Counterparts.

This Agreement may be executed and delivered in counterparts, each of which shall for all purposes be treated as the original hereof and all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers respectively, being thereunto duly authorized, and their respective corporate seals, if any, to be hereto affixed.


THE City OF Oberlin, OHIO

BY: 

TITLE: City Manager

DATE: 1/29/97

APPROVED AS TO FORM:

BY: 
Law Director

DATE: 1-29-97

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**APPENDIX A
JOINT VENTURE AGREEMENT
DATED DECEMBER 1, 1996
MUNICIPAL ENERGY SERVICES AGENCY**

APPENDIX OF PARTICIPANTS

MUNICIPAL ENERGY SERVICES AGENCY JOINT VENTURE

MUNICIPALITY (12/30/96)

Village of Arcanum
Village of Beach City
Village of Bradner
Village of Brewster
Village of Carey
Village of Edgerton
Village of Elmore
City of Galion
Village of Genoa
Village of Grafton
Village of Lakeview
Village of Lucas
Village of Mendon
Village of Milan
Village of Montpelier
Village of New Bremen
Village of New Knoxville
Village of Oak Harbor
City of Orrville
Village of Plymouth
Village of Prospect
Village of Republic
Village of South Vienna
City of St. Marys
Village of Versailles
City of Wadsworth
Village of Wellington

**APPENDIX B
JOINT VENTURE AGREEMENT
DATED DECEMBER 1, 1996
MUNICIPAL ENERGY SERVICES AGENCY**

CHARGE APPENDIX

Invoices for services to Participants, AMP-Ohio and others will be in accordance with agreements in place at the time that the services are rendered. Services to others and municipalities that are non-participants shall be in accordance with policy and rates as approved by the Participants.

C-12-96-2123

APPENDIX C
JOINT VENTURE AGREEMENT
DATED DECEMBER 1, 1996
MUNICIPAL ENERGY SERVICES AGENCY

Approved by Resolution
96-12-001-MESA

RELATED AGREEMENTS

APPENDIX C-1: MESA/AMP-Ohio Agreement dated January 1, 1997 for
the provision of certain services.

**AMERICAN MUNICIPAL POWER-OHIO, INC.
AND
MUNICIPAL ENERGY SERVICES AGENCY
AGREEMENT
FOR
CERTAIN SERVICES**

DATED JANUARY 1, 1997

This agreement is between AMP-Ohio and MESA.

WITNESSETH

WHEREAS, MESA has been created for the purposes set forth in the Joint Venture Agreement of which this Services Agreement is a part:

WHEREAS, the certain of the Participants are also members of AMP-Ohio:

WHEREAS, MESA desires AMP-Ohio to provide office space, accounting and other services to MESA;

WHEREAS, AMP-Ohio desires MESA to provide personnel for management, engineering, safety and other technical services for the benefit of their respective members:

WHEREAS, AMP-Ohio desires to perform such services for the benefit of its members who are Participants and MESA desires to provide such personnel.

ARTICLE I

As used herein, terms shall have the same meaning as set forth in the Joint Venture Agreement, in addition to the following:

- A. Services Agreement shall mean this Agreement For Certain Services Dated January 1, 1997 between AMP-Ohio and MESA.

ARTICLE II
RESPONSIBILITIES AND AUTHORITY

- A. AMP-Ohio agrees to provide office space and equipment, accounting and billing, personnel and support services as required by MESA. In performing such obligations, AMP-Ohio shall act in accordance with the general direction of MESA in a professional manner in accordance with the Joint Venture Agreement, and the procedures and budget adopted by MESA.
- B. AMP-Ohio shall provide periodic reports to each Participant on the operations hereunder and financial status of MESA, at such times and in such detail as MESA shall reasonably require.
- C. MESA shall, effective January 1, 1997, offer positions to and thereafter provide the personnel listed in Exhibit 1 hereto for the benefit of AMP-Ohio. Such personnel shall provide their remaining time to AMP-Ohio in accordance with the AMP-Ohio work plan and budget after provision of time for services in accordance with contracts with Participants and AMP-Ohio members.
- D. MESA hereby accepts and AMP-Ohio hereby assigns to MESA the Circuit Rider and Technical Services Contracts listed in Exhibit 2.

ARTICLE III
TERM

This Services Agreement shall be effective January 1, 1997 until December 31, 1998 and thereafter for successive periods of two Years unless either party shall give the other not less than twelve (12) months written notice of non-renewal prior to the end of the initial or any successive term.

ARTICLE IV
COMPENSATION

- A. AMP-Ohio shall be compensated for its services to MESA hereunder by payment of a reasonable allocation of the cost to AMP-Ohio for direct expenses, personnel and overhead related to AMP-Ohio's performance of its obligations hereunder.
- B. MESA shall be compensated for its services to AMP-Ohio hereunder by payment of a reasonable allocation of the cost to MESA for direct expenses, personnel and overhead related to MESA's performance of its obligations hereunder.

- C. AMP-Ohio shall render MESA a net monthly invoice for such services which invoice shall be due and payable by the party owing not less than ten days after the date of invoice, but not before the 25th day of the month in which the invoice is rendered.

ARTICLE V
GENERAL

- A. All notices given by MESA shall be directed to:

American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219
ATTN: President

- B. All notices given by AMP-Ohio shall be directed to:

Chairman
Municipal Energy Services Agency
2600 Airport Drive
Columbus, OH 43219

- C. It is understood by both parties that changes in this Services Agreement, including Exhibits 1, 2 and 3 may, from time to time, be necessary. In the event that either party believes such changes are required, AMP-Ohio and MESA agree that the terms and conditions of this Services Agreement shall be subject to renegotiation and that both parties shall negotiate in good faith to achieve a mutually beneficial relationship for the good of the Participants and AMP-Ohio members.

IN WITNESS WHEREOF, each of the parties has caused this Services Agreement to be executed.

MUNICIPAL ENERGY SERVICES AGENCY

BY: Charles B. Art DATE: 12-30-96

APPROVED AS TO FORM:

BY: [Signature] DATE: 12/30/96

AMERICAN MUNICIPAL POWER - OHIO, INC.

BY: [Signature] DATE: 12/30/96

APPROVED AS TO FORM:

BY: [Signature] DATE: 12/30/96

Exhibit 1

MESA/AMP-OHIO Agreement Dated January 1, 1997 For the Provision of Certain Services

<u>Number of Positions</u>	<u>Positions</u>
1	General Manager (President of AMP-OHIO)
1	Manager of Technical Services
1	Marketer of Energy Services
1	Safety Coordinator
2	Energy Services Consultant
1	Manager Environmental Affairs
1	Senior Distribution Design Engineer
1	Transmission & Distribution Designer
1	Electrical Designer
1	Transmission & Distribution Specialist
1	Belleville Project Manager
1	Construction Engineer
1	Director Power Supply & Marketing

This Exhibit shall be modified to reflect any additions, deletions or other modifications requested in writing by either party with the written consent of the other, such consent not to be unreasonably withheld.

APPENDIX D
JOINT VENTURE AGREEMENT
DATED DECEMBER 1, 1996
MUNICIPAL ENERGY SERVICES AGENCY

NOTICES

NOTICES

For MESA:

Chairman
Municipal Energy Services Agency
c/o American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219

For Participants: [TO COME]

Vic Oeftering
Interim Director
Oberlin Municipal Light and Power System
289 South Professor Street
Oberlin, Ohio 44074

**APPENDIX E
JOINT VENTURE AGREEMENT
DATED DECEMBER 1, 1996
MUNICIPAL ENERGY SERVICES AGENCY**

**REGULATIONS OF THE
MUNICIPAL ENERGY SERVICES AGENCY**

REGULATIONS OF MESA

ARTICLE I - NAME, PURPOSE AND OFFICES

- Section One This joint venture, of the municipal corporations listed on Appendix A to the Joint Venture Agreement, is known as MESA.
- Section Two MESA is organized for the cooperative provision of planning, management, engineering, construction, safety, training and other technical services and personnel as further set forth in the Joint Venture Agreement.
- Section Three The principal office of MESA shall be located in the City of Columbus, County of Franklin, State of Ohio. As provided in the Joint Venture Agreement, MESA may, however, have such other offices, within or without the County of Franklin, State of Ohio as the Participants may determined.

ARTICLE II - DEFINITIONS

- Section One Unless otherwise defined herein, all terms shall have the meanings set forth in the Joint Venture Agreement.

ARTICLE III - MEETINGS, BOARD OF PARTICIPANTS

- Section One The affairs of MESA shall be managed by, and all actions obligations and rights pursuant to the Joint Venture Agreement (unless otherwise specifically set forth therein or herein) shall be exercised by the Participants acting as a board of trustees comprised of the representatives of the Participants. On all matters to be determined by the Participants in any meeting, each Participant not in any default of obligations under the Joint Venture Agreement shall be entitled to one vote. The Participants shall act by resolution and may authorize the Chairman or other appropriate officers or agents to execute any and all agreements, licenses, contracts, deeds, indentures, mortgages, bonds, trusts, bills of sale or other instruments and documents necessary or convenient to carry out the business of MESA.
- Section Two An annual meeting of the Participants shall be held each year in October (Annual Meeting), or at such other time as determined by the Participants. The time and place thereof shall be determined by the Chairman.
- Section Three Special meetings of the Participants other than the Annual Meeting (Special Meetings) may be called by the Chairman or any two other officers, or by resolution of Participants at any Annual or Special Meeting, or upon the written request of the Participants representing at least twenty-five percent (25%) of the Participants. Special Meetings may be held via communications equipment to the extent allowed by law.
- Section Four Written notice of the Annual Meeting, stating the time and place thereof, shall be mailed to each Participant not less than fifteen (15) days prior to the date of such meeting. Such notice shall be deemed to have been perfected by deposit in the United States mail by first class mail addressed to the Participant at its address as it appears on Appendix D at the time of the mailing of said notice. Written notice, telephone or teletype notices of Special Meetings shall be given not less than twenty-four hours prior to the time of said meeting, and said notice shall contain the time and place of such meeting and the purpose or purposes for which such meeting is held. No business

other than that referred to in such notice shall be conducted at any such Special Meeting.

- Section Five The attendance of Participants representing at least twenty-five percent (25%) of the Participants shall constitute a quorum for the transaction of business at any Annual or Special Meeting. A majority of the Participants represented in any meeting in which a quorum is in attendance may carry any matter in any Participants' meeting. Whether or not a quorum is present, Participants representing a majority of the Participants voting at an Annual or Special Meeting may adjourn such meeting.
- Section Six The Chairman shall determine the agenda for all meetings, which shall be included in the notice thereof. The agenda for the Annual Meeting may be modified by the Participants, upon motion, at such meeting, as they deem appropriate.
- Section Seven Each Participant shall designate, by ordinance or resolution, its Representative for purposes of exercising that Participant's rights and obligations as a member of MESA.
- Section Eight A Participant in good standing shall mean a Participant which is current in the payment of any dues, payments, assessments or other charges due to MESA and is not otherwise in default under the Joint Venture Agreement.
- Section Nine The initial Special Meeting may be called and noticed by any Participant and the Participant in attendance with the largest number of electric meters as shown in the 1996 AMP-Ohio Member Directory shall act as chairman until the Chairman is elected pursuant to these Regulations.

ARTICLE IV - OFFICERS

- Section One** The officers of MESA, shall be the Chairman, Vice-Chairman, Treasurer, Secretary, and such other officers as the Participants may deem necessary from time to time. Such officers, in addition to the duties and authorities contained herein, may have such authority and perform such duties as the Participants shall direct.
- Section Two** The Chairman, Vice-Chairman, Secretary and Treasurer shall be elected from among the Representatives of the Participants and shall serve for a period of one (1) year or until their successors are elected and qualified. Other officers need not be the Representative of a Participant and shall serve at the pleasure of the Participants, or pursuant to such terms and conditions as the Participants shall determine. Officers other than the Chairman and Vice-Chairman may hold more than one office.
- Section Three** The Chairman, Vice-Chairman, Treasurer and Secretary of MESA shall be elected in that order at the Annual Meeting. To be elected, a Representative must receive a majority vote of those present and voting in such election. If after tabulating the votes there is not a Representative receiving such a majority, then the two (or more should there be a tie) Representatives receiving the highest number of votes shall be candidates in subsequent elections until a Representative receives such a majority.
- Section Four** The Chairman shall preside at all Annual or Special Meetings. In addition, the Chairman shall appoint the Chairman and members of any committees that may be established from time to time. The Chairman shall also perform such other duties as may be directed or authorized by the Participants.
- Section Five** The Vice-Chairman of the Board shall perform the duties of the Chairman in the event of the latter's absence, resignation, inability or refusal to perform the duties of the office. The Vice-Chairman shall perform such other duties as authorized or as directed by the Participants. In the event of the Vice- Chairman's absence, resignation, inability or refusal to perform as Chairman, the Treasurer or Secretary shall, respectively, assume the duties of Chairman.

Section Six The Secretary or the Secretary's designate shall keep the minutes of all meetings of the Participants and shall perform all other duties imposed upon that office by law and these regulations and such other duties as authorized or as directed by the Participants.

Section Seven The Treasurer shall monitor and oversee the funds and securities of MESA in such a manner and as directed and authorized by the Participants in accordance with the Joint Venture Agreement. The Treasurer shall perform such other duties as authorized or as directed by the Participants.

ARTICLE V - FINANCES

Section One The budget of MESA for each forthcoming fiscal year, which shall be itemized and subtotaled into line items and which shall be in such form and detail as shall be approved by the Participants, is to be presented to and approved by the Participants at the Annual Meeting.

Section Two There shall be no expenditure by MESA for any item, or purchase or contract for services entered into which causes or will cause the budget line item which includes such expenditure to exceed the budgeted amount unless the budget shall have been amended or the Chairman finds that a contract has been executed providing for additional revenues at least equal to such expenditure. Notwithstanding the other provisions of this Section Two, if the Chairman, after consultation with the Vice-Chairman, Treasurer or Secretary believes that an emergency has arisen which threatens persons or the property of MESA or the Participants and which requires such an expenditure, purchase or contract to alleviate said emergency, the Chairman may, after consultation with such other officers as is appropriate and reasonable under the circumstances, authorize such expenditure. Such action shall be subject to the ratification of the Participants at the earliest possible time.

Section Three The Treasurer or Chairman, or such other person or persons as the Participants may designate, shall sign all checks to pay for all properly budgeted and approved expenditures of funds by MESA. All such persons shall be bonded or insured.

Section Four The Treasurer or such other officer designated by the Participants shall cause to be kept records which reflect each Participant's rights and interests in the assets of MESA.

ARTICLE VI - AMENDMENTS TO REGULATIONS

Section One Amendments to the Regulations of MESA, not inconsistent with the Joint Venture Agreement, may be proposed by any Participant in writing to the Chairman, at least thirty days prior to any vote thereon, and such proposed amendment shall be presented to the Participants at the next Annual Meeting, or Special Meeting called for such purpose.

Section Two Copies of proposed amendments shall be mailed by first class mail to all Participants at least fifteen (15) days prior to the meeting at which such amendments are to be voted upon. Participants representing a two-thirds majority of the Participants present and voting must vote in favor of the amendment for its adoption.

ARTICLE VIII - PUBLIC NOTICE OF MEETINGS AND RECORD

Section One

- (A) Authority: This rule is in compliance with Section 121.22(F) of the Ohio Revised Code.

- (B) Any person may determine the time and place of a regularly scheduled Annual Meeting and the time, place, and purpose of all Special Meetings by:

- (1) Writing to the following address:

Secretary, Municipal Energy Services Agency
c/o American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219

- (2) Calling the following telephone number during normal business hours: (614)337-6222.

- (C) Any representative of the news media may obtain notice of all Special Meetings by requesting in writing that such notice be provided. Such notice will only be given, however, to one representative of any particular publication or radio or television station. A request for such notification shall be addressed to:

Secretary, Municipal Energy Services Agency
c/o American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219

The request shall provide the name of the individual media representative to be contacted, that representative's mailing address and a maximum of two telephone numbers where such representative can be reached. The Secretary shall maintain a list of the representatives of the news media who have requested notice of Special Meetings pursuant to this section.

In the event of a Special Meeting not of an emergency nature, the Secretary shall notify all media representatives on the list of such Meeting by doing at least one of the following:

- (1) Send written notice, which must be mailed not later than four calendar days prior to the day of the Special Meeting;

- (2) Notifying such representatives by telephone no later than twenty-four hours prior to the Special Meeting; such telephone notice shall be complete if a message has been left for the representative, or if, after reasonable effort, the Secretary has been unable to provide such telephone notice;
- (3) Informing such representative personally not later than twenty-four hours prior to the special meeting.

In the event of a Special Meeting of an emergency nature, the Secretary shall notify all media representatives on the list of such meeting by providing either the notice described in paragraph (C)(2), *supra* or that described in (C)(3), *supra*. In such event, however, the notice need not be given twenty-four hours prior to the meeting, but shall be given as soon as possible.

In giving the notices required by this paragraph the Secretary may rely on assistance provided by a member of Municipal Energy Services Agency or assistance provided by American Municipal Power-Ohio, Inc., and any such notice is complete if given by either of such in the manner provided in this paragraph.

- (D) Municipal Energy Services Agency shall maintain a list of all persons who have requested, in writing, notice of all meetings at which specific subject matters designated by such persons are scheduled to be discussed. Any person may, upon payment of any annual fee in the amount of \$10.00, have his name placed on such list. Municipal Energy Services Agency shall, no later than five days prior to each meeting, send by first class mail an agenda of the meeting to such persons.
- (E) The minutes of all Meetings, upon approval of the Participants, shall constitute the official record of its proceedings. The minutes of all Annual and Special Meetings shall be promptly recorded as public records open to public inspection. Only the general subject matter of discussions in executive sessions shall be recorded in the minutes.
- (F) No person shall record or cause to be recorded by means of tape recording or other audio equipment any meeting of Municipal Energy Services Agency.
- (G) Persons may film or photograph Meetings of the Participants subject to the following conditions:

- (1) Consent to film or photograph at any such Meeting shall be obtained prior to the start of the Meeting; and,
- (2) The Participants may terminate such consent upon their determination that such filming or photographing is distracting or otherwise disruptive of the meeting process.

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