

VILLAGE OF ALLOUEZ

Allouez Village Hall • 1900 Libal Street • Green Bay, Wisconsin 54301-2453
Phone No.: (920) 448-2800 • Fax No.: (920) 448-2850

Department of Public Works

12/12/2022

MANITOWOC PUBLIC UTILITIES FIRST RESPONDER SERVICE AGREEMENT

The Locator and First Responder Service Agreement signed with Manitowoc Public Utilities (MPU) on July 2nd, 2008 has been amended. The amended agreement has been edited removing the locating services previously included in the original agreement between Allouez and MPU.

For consistency and liability purposes the locating of the CBCWA water transmission line has been transferred to MPU's locating contractor.

Suggested Motion

A committee recommendation to the Village Board to approve the amended Manitowoc Public Utilities (MPU) First Responder Service Agreement.

First Responder Service Agreement

THIS SERVICE AGREEMENT (the “**Agreement**”) is made and entered into this ____ day of _____, 2022 (the “**Effective Date**”), by and between MANITOWOC PUBLIC UTILITIES COMMISSION, Manitowoc, Wisconsin (“**MPU**”), and the Village of Allouez, 1900 Libal Street, Green Bay, WI 54301, a Municipal Corporation (the “**Service Provider**”).

W I T N E S S E T H:

WHEREAS, MPU is a provider of electric, water and communication services to the inhabitants of the City of Manitowoc; and

WHEREAS, Service Provider is a Municipal Corporation, and recipient of water supplied by MPU under an agreement between MPU and the Central Brown County Water Authority (“**CBCWA**”) under which agreement MPU agrees to provide water to Central Brown County, including the Service Provider, and pursuant to which MPU is responsible for certain duties in the operation of transmission facilities to CBCWA and its members, of which the Service Provider is one; and

WHEREAS, it is administratively feasible and practical that certain services otherwise provided by MPU under its agreement with CBCWA be sub-contracted from the individual members of CBCWA as necessary;

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated below and with the intent to be legally bound, the parties to this Agreement (the “**Parties**”) hereby agree as follows:

1. Services

First Responder Services. Service Provider hereby agrees that it will provide responsive services, as dispatched by MPU in the event there is an alarm or other maintenance event relating to the facilities, as described in Exhibit A and as set forth below (the “**Services**”) within the boundaries set forth in Exhibit B (the “**Service Territory**”). The scope of the Services shall be defined by MPU. In response, the Service Provider will dispatch a properly trained and equipped crew who shall perform the Services and remain at the scene of the event until such time as MPU crews arrive. Service Provider shall not be required to make repair, but Services shall include securing the area of the event, mitigating damages as reasonably practical, securing the safety of those within the affected area and those served by the facilities, and advising MPU of the nature and extent of the event to facilitate further MPU’s actions.

- 2. Invoices, Payment, Hourly Rates and Fees.** Except as otherwise stated in this Agreement or any attachment hereto, Service Provider shall issue invoices on a monthly basis for the Services and shall mail the invoices to the Senior Manager of Business Services, c/o MPU at 1303 South 8th Street, Manitowoc, WI 54221-1090. Service Provider shall include the original of each invoice; an itemization of the Services with the cost of each service provided to MPU for which payment or partial payment is invoiced; and the Price. All expenses shall be billed at cost and without mark-up. All straight time labor of service provider employees shall be billed at one and one-half times (1.5x) scheduled rates as set forth on Exhibit C, and all overtime and Sunday/Holiday labor of service provider employees shall be billed at one and two-tenths times (1.2x) scheduled rates as set forth on Exhibit B, and can be revised on an annual basis. Any out-of-pocket expenses shall be billed at cost. In the event of any breach by Service Provider of any provision of this Agreement or any attachment hereto MPU shall have the right to retain out of any payments due or to become

due to Service Provider an amount sufficient to protect MPU completely from any and all claims, losses, damages or expenses to the extent of the negligence of Service Provider.

3. **Standards of Performance** Service Provider agrees that Services provided pursuant to this Agreement shall reflect the degree of skill, knowledge, judgment and care required by industry accepted practices and procedures. Upon receipt of oral or written notice from MPU of Services that are nonconforming with this Agreement, Service Provider shall, if required by MPU, at Service Provider's sole cost and expense, correct, repair, replace or re-perform (collectively, the "**Corrections**") any service necessary to cause the Services to become conforming with the requirements of this Agreement.
4. **Indemnity**. Each party agrees to indemnify, save harmless and defend the other, its affiliates and their respective directors, officers, agents and employees from and against any and all claims, actions, demands, damages, costs, losses, liabilities, expenses, and attorneys' fees including attorneys' fees through the appellate level, in any matter relating to, arising out of, resulting from, caused by or in connection with any negligence of the other including, but not limited to personal injury or death to persons and/or damage to property, facilities, fixtures or other personal property of either of the parties or CBCWA. Nothing herein shall constitute a waiver by MPU, Service Provider, or any insurer of any defense relating to the statutory limits per Wis. Stat. 8.15, 345.05, 893.80 and 895.52 or any other applicable limits on municipal liability.
5. **Insurance**
 - A. **Policies and Coverage**. Prior to the commencement of any Services, Service Provider shall obtain and maintain the following policies of insurance during the performance of the Services, with such endorsements as requested by MPU, providing certificates of coverage as requested by MPU, and listing MPU as an additional insured.
 1. Worker's compensation insurance as required by Wisconsin law and applicable employers' liability insurance.
 2. Commercial general liability insurance with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include, without limitation, specific coverage for contractual liability encompassing the indemnity provisions in this Agreement, personal injury liability, completed operations liability, and, where applicable, explosion, collapse and underground hazards coverage (protection and indemnity) liability.
 3. Automobile liability insurance with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence covering vehicles owned, rented, hired or non-owned.
 4. Umbrella or excess liability insurance with a single limit of Two Million Dollars (\$2,000,000) per occurrence in excess of the employer's liability, commercial general liability and automobile liability policies.
6. **Termination**. Either party may, without cause, terminate this Agreement at any time (the "**Termination**"), in whole or in part, by providing written notice of termination to the other party. A Termination shall be effective as of the date specified in the notice provided such a date is at

least 60 or more days after receipt of the notice (the “**Termination Date**”). Upon termination and payment by MPU of any amount due Service Provider as provided herein, neither party shall have any obligation to the other with respect to the contract.

7. **Compliance with Laws.** Service Provider shall comply with all federal, state and local laws, rules, and regulations applicable to the performance of the Services including, without limitation, any rules, regulations or recommendations of regulatory authorities established by such laws. Any fines or penalties incurred by Service Provider or assessed against MPU shall be the sole responsibility of Service Provider and not reimbursed by MPU.
8. **Permits and Licenses.** Service Provider agrees to obtain any licenses and permits which, under federal, state or local laws, rules or regulations, may be required to perform the Services under this Agreement or any attachment hereto. Service Provider shall hold and maintain such licenses and permits for so long as required to complete the Services.
9. **Notice.** Except for the dispatch of Services which shall be provided by telecommunication, notices to the Parties concerning this Agreement or any attachment hereto shall be effective only when in writing and delivered personally, by telephone facsimile (provided written confirmation copy follows), or mailed postage prepaid to the authorized representative of the other Party. The date of receipt of such notices sent by mail, except for confirmatory notices, shall be the date the notice shall be deemed to have been given. When speed of notice is essential, written notice shall be preceded by other appropriate communication. For purposes of this Agreement, all notices to the Parties shall be sent to the following addresses and/or facsimile numbers:

MPU

Manitowoc Public Utilities
Attn: General Manager
1303 South 8th Street
Manitowoc, WI 54221-1090
Phone: 920-683-4600

Service Provider

Village of Allouez
Attn: Administrator
1900 Libal Street
Green Bay, WI 54301
Phone: 920-448-2808

10. **Assignment and Subcontracting.** Unless MPU grants prior written consent, Service Provider shall not assign any rights or delegate any duties or obligations hereunder or transfer or otherwise dispose of this Agreement, any attachment hereto, or any part hereof or its rights, title and interest herein, nor assign any monies due or to become due hereunder. Any assignment or delegation made without the express written approval of MPU shall be null and void. Any assignment of this Agreement or any attachment hereto so consented to shall not, however, relieve Service Provider of responsibility for the due and full performance thereof. Service Provider shall be liable to MPU for all acts and omissions of its assignees or other transferees.
11. **Unemployment Insurance Taxes, Contributions and Assessments.** Service Provider shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, retirement benefits, life pensions, annuities and similar benefits which may now or hereafter be imposed by law, regulation or collective bargaining agreements with respect to persons employed by Service Provider for performance of the Services, whether measured by wages, salaries, remuneration paid or otherwise. Service Provider shall comply with all laws, rules and regulations applicable to compensation paid its employees.

12. **Miscellaneous**

- A. Governing Law. This Agreement and all attachments hereto and the rights of the Parties hereunder shall be governed by, construed by and enforced in accordance with the laws of the State of Wisconsin.
- B. Non-Waiver of Rights. The failure of MPU to demand strict performance of the terms of, or to exercise any right conferred in, this Agreement or any attachment hereto shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such term or right in the future, or a consent to any continuing or subsequent failure or breach.
- C. Severability. If any provision of this Agreement or any attachment hereto shall under any circumstances be deemed invalid, inoperative, be declared unlawful, or otherwise unenforceable, this Agreement and all attachments hereto shall be construed as if the invalid or inoperative provision has been deleted and all rights and obligations of the Parties shall be construed and enforced accordingly.
- D. Survival. Neither completion of the Services nor any termination or cancellation of this Agreement shall be deemed to relieve Service Provider of any obligations hereunder that by their nature survive completion of the Services, including but not limited to all promises of indemnity and confidentiality obligations.
- E. Independent Contractor. Service Provider is an independent contractor with respect to the performance of the Services. Neither this Agreement nor any attachment hereto is intended to be a contract of hiring under the provisions of any workers' compensation or other laws and shall not be so construed.
- F. Headings. Article and paragraph headings contained herein are inserted for convenience and shall have no effect on interpretation or construction of this Agreement or any attachment hereto.
- G. Successors and Assigns. Subject to the terms and conditions contained herein, this Agreement and all attachments hereto shall be binding on the Parties hereto and their directors, officers, employees, agents, successors and assigns.
- H. Conflicting Terms. Terms and conditions set forth in any attachment to this Agreement which are in conflict with any term or condition set forth in this Agreement shall be of no force or effect and the Parties agree that any conflict between such terms and conditions and the terms and conditions hereof shall be resolved in favor of this Agreement.
- I. Merger and Modification. This Agreement and any attachment hereto embody the entire agreement between MPU and Service Provider with respect to the Services and supersedes any prior or contemporaneous agreement or understanding between the Parties. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement or any attachment hereto, nor be deemed to effect any amendment. This Agreement and the attachments hereto may only be amended or modified by a written document duly executed by both Parties and attached as an amendment hereto

J. Non-Exclusive. At its sole discretion, MPU reserves the right to perform all Services using MPU personnel or other MPU contractors.

This Agreement, consisting of 5 pages and 3 exhibits, is executed by the persons signing below on the date first listed above, which persons warrant that they have the authority to execute the AGREEMENT.

VILLAGE OF ALLOUEZ

(signature)

(print name and title)

(signature)

(print name and title)

(signature)

(print name and title)

DATE: _____

WITNESS: _____

BY: _____

MANITOWOC PUBLIC UTILITIES

(signature)

Troy Adams, General Manager
(print name and title)

DATE: _____

WITNESS: _____

BY: _____

EXHIBIT A
FIRST RESPONDER SERVICES

The first responder services by the Service Provider shall include, in addition to the Services outlined in Paragraph 1 of the Agreement, the following:

1. Respond to an alarm or emergency condition on the CBCWA member facilities at Allouez-2 (141 E Vande Hei Road), and/or on the CBCWA transmission main (refer to attached map).
2. Provide debriefing to MPU on the alarm or emergency condition within 30 minutes of the dispatch.
3. Secure the area in the event of an emergency to avoid any further disruption or damage to the equipment or facilities or employees or general public until MPU arrives at the site.

A map of the Alouez area in Manitoba, Canada. The map shows the Alouez River flowing through the center, with the town of Alouez circled in blue. Surrounding municipalities include Howard, Green Bay, Hobart, Ashwaubenon, Bellevue, De Pere, Lawrence, Ledgeview, Glenmore, New Denmark, and Pine Grove. The map also shows the location of Langes Corners and the Green Bay area.

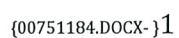


EXHIBIT C
SCHEDULE OF LABOR RATES
(To Be Revised Annually on February 1)

2022 Rates

<u>Classification</u>	<u>Straight Pay</u>	<u>Overtime</u>	<u>Sundays/Holidays</u>
Working Foreman			
Laborer			
Laborer Assistant			
Mechanic 1			
Mechanic 2			
<u>Equipment</u>	<u>Hourly Rate</u>		
Van			
Pickup			
Pickup with Plow			
Trailer			
6' Mower			
Locator			