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# **City of Broken Bow**

**Monday, August 27, 2012**

**City Council Regular Session**

## **Modified NMPP Agreement for Financial Plan, Cost of Service and Rate Design Service Contract**

*Revisions to the August 28, 2008 Standard Contract between the City of Broken Bow and NMPP for a Financial Plan, Cost of Service and Rate Design Study for the City of Broken Bow*

Staff Contact: Electric Supr.

NEBRASKA MUNICIPAL POWER POOL  
AGREEMENT FOR FINANCIAL PLAN, COST OF SERVICE  
AND RATE DESIGN SERVICE  
SUMMARY OF REVISIONS TO AUGUST 28, 2008 STANDARD CONTRACT  
AS OF FEBRUARY 2, 2012

- Scope of services modified and expanded:
  - New: development of a five-year Financial Proforma model that includes:
    - Recommendations on net-operating income target and
    - Recommendations on general fund transfer
    - Minimum cash reserve policy and capital improvement program impacts
    - Debt Coverage ratio and other financial ratios necessary
  - Number of hours of telephone support that NMPP will provide per year increased from 8 to 10
- Water, wastewater, trash and natural gas studies now offered as standalone services within the body of the Agreement in lieu of using an Addendum that also requires an electric Cost of Service and Rate Design Study
- Reference to population categories (on which service fees were previously based) was removed. Fees are now negotiated based on number of rates, data availability and scope of work requested. Some fees have increased 2-10% due to added scope and increase in costs. This is the first fee increase since 2001.
- Reference to CompetitivEdge model was removed
- Option to pay fees on a monthly basis was removed
- Terrorism and regulatory action added to list of uncontrollable forces which may excuse performance
- Municipality's indemnification of NMPP and other parties now extends to NMPP's officers and agents
- Term of Agreement continues through four years after delivery of Preliminary Executive Summary, then automatically continues in similar renewal terms unless terminated by either party upon 60 days notice prior to the end of the then-current term
- Housekeeping changes necessary to incorporate the new structure in the Agreement

**AGREEMENT FOR  
FINANCIAL PLAN, COST OF SERVICE  
AND  
RATE DESIGN STUDY**

This Agreement for a Financial Plan, Cost of Service and Rate Design Study is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Nebraska Municipal Power Pool, a non-profit corporation of the State of Nebraska, hereinafter called "NMPP," and the City of Broken Bow, Nebraska hereinafter called "Municipality."

**RECITALS:**

NMPP, under the provisions of its Articles of Incorporation, has the authority to enter into and perform contracts with its members.

NMPP has initiated a Financial Plan, Cost of Service and Rate Design Study (Rate Study) designed to provide assistance in certain technical areas related to calculating rates for municipal utility systems for all customer classes and to provide ongoing rate support.

Municipality is a member of NMPP and recognizes the importance of completing a Rate Study.

In consideration of the mutual promises contained herein, NMPP and Municipality agree as follows:

**1. TERM**

1.1 This Agreement shall be legally binding upon execution. For purposes of services under this Agreement, the Initial Term of this Agreement shall begin on the later of (i) the date of execution or (ii) August 28, 2012 ("Effective Date") and continue four (4) years after the date of the delivery of the Preliminary Executive Summary of findings and recommendations referred to in Section 2.1.3.6. Not less than sixty (60) days prior to the end date of the Initial Term or the end date of any Renewal Period (as defined below), either Party may notify the other, in writing, that the Agreement shall not continue beyond the end date of the then-current term. In the absence of such notification, this Agreement will automatically renew for successive terms (each a "Renewal Period"), each of which will begin on the first day immediately succeeding the end date of the previous term and continue four (4) years after the date of the delivery of the Preliminary Executive Summary of findings and recommendations referred to in Section 2.1.3.6. for such Renewal Period.

## SCOPE OF SERVICES TO BE PROVIDED AND RESPONSIBILITIES OF THE PARTIES

### 2.1 Responsibilities of NMPP

- 2.1.1 NMPP will complete the Rate Study in a timely manner. A written Rate Study will be presented by NMPP to Municipality typically within sixty (60) days of the receipt of all requested data that is accurate and in a format easily usable by NMPP.
- 2.1.2 The Rate Study computer models shall be retained by and become the property of NMPP and Municipality. The Municipality may use the Rate Study findings and recommendations at Municipality's sole risk and without liability or legal exposure to NMPP.
- 2.1.3 The Rate Study will include completion by NMPP of the following tasks:
  - 1. Data Collection – NMPP will request data, including but not limited to, customer rate class usage by rate block and revenue billed, and audited and budgeted assets including financial and operating data for the utility as necessary to prepare the Rate Study. This data is to be in an easy to read and organized format. To the extent the requested data is not readily available, NMPP and Municipality will develop and agree upon estimates for the missing data.
  - 2. Develop a Financial Model – NMPP will develop a five-year Financial Proforma model that will provide net-income, target return on facilities investments, minimum cash reserve policy, capital improvements, borrowing, and recommend future rate increases to achieve financial targets.
  - 3. Calculate Revenue Requirements for Test Year to be used in Rate Study – NMPP will calculate Municipality's revenue requirements in a financial pro forma to determine COS rate elements to be used in future rate design.
  - 4. Functional Costs – NMPP will assign a function to each expense and each non-retail revenue including, but not limited to, generation, transmission and customer service, as applicable. The items will also be assigned to a sub-category of a function as necessary.

Expenses will be allocated to the various cost classifications based on methodologies that are generally applied to municipal utilities. These allocations will enable NMPP to separately identify and establish cost elements for each rate class provided by the Municipality, including,

but not limited to, commodity generation or treatment, transmission, distribution, and customer service and accounting, as applicable.

5. Rate Design – NMPP will design rates using cost elements determined for one or two years to recover adequate revenue for the system and move classes toward cost of service revenue recovery.

NMPP will work with Municipality to develop rates that maintain the financial integrity of each municipal utility system being studied. New rate schedules and ordinances will be drafted by NMPP for approval by Municipality.

6. Present Findings – (a) NMPP will provide a Preliminary Executive Summary, which will present the Financial Plan to the rate making authority and ask for direction in system level of rate increase and deviation for Classes. (b) NMPP will provide to the Municipality for presentation to Municipality's appropriate governing body a final Rate Study report incorporating comments and data provided in response to the Preliminary Executive Summary. An NMPP representative will attend one agreed upon meeting of Municipality's appropriate governing body to present the report(s) and answer questions from the public. If additional trips are necessary, the trips will be billed on a time and expense basis.
7. Ongoing Support – During the term of this Agreement, NMPP will provide to Municipality, upon request, the following ongoing support:
  - A. Review of up to five (5) large customer bills for accuracy.
  - B. After two (2) years, review the commodity supply or treatment costs, update the financial plan assumptions, and determine a 5-year rate track.
  - C. Up to ten (10) hours of telephone support per year to answer rate application questions from Municipality.

- 2.1.4 The Parties hereby agree that the Rate Study to be provided by NMPP to Municipality pursuant to this Agreement shall include only the following study(ies) as indicated below:

- ☒ Electric study
- ☐ Water study
- ☐ Wastewater study
- ☐ Water and Wastewater study
- ☐ Trash study
- ☐ Natural Gas study

## 2.2 Responsibilities of Municipality

- 2.2.1 Municipality shall furnish to NMPP, as requested by NMPP, available COS studies, audited financial reports and other data; obtain or authorize NMPP to obtain or provide additional reports and data as required; and furnish to NMPP any required services of outside third parties. NMPP shall be entitled to use and rely upon all information and services provided by or on behalf of Municipality as accurate without independent verification in the completion of the services provided hereunder.
- 2.2.2 Municipality shall designate, in writing, a person with authority to act on Municipality's behalf on all matters concerning the services provided by NMPP under this Agreement.
- 2.2.3 Municipality shall perform the responsibilities outlined in this Section 2 in a timely manner so as not to delay the services of NMPP.
- 2.2.4 Municipality shall bear all costs associated with the completion of all requirements under this Section 2.

## 3. LIMITATION OF LIABILITY AND INDEMNIFICATIONS

3.1 Notwithstanding any other provision of this Agreement, NMPP's total liability to Municipality for any loss or damage, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed the compensation received by NMPP from Municipality under this Agreement, and Municipality hereby releases and will hold harmless NMPP from any liability above such amount. Municipality further agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless NMPP and its officers, employees and agents from and against all claims, damages, losses and expenses, direct or indirect, or consequential damages including, but not limited to, attorney's fees arising out of or resulting from the performance of NMPP's services hereunder.

3.2 NMPP shall exercise the same degree of care, skill, and diligence in the performance of services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No warranty, expressed or implied, is included in this Agreement or in any drawing, specification, report or opinion produced pursuant to this Agreement.

3.3 All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

#### 4. PAYMENT

4.1 Municipality shall pay NMPP for performance of the described services a total amount due of:

  X   Four Annual Installments of \$3,340.00 each  
       Advance Total Payment of \$ \_\_\_\_\_  
(please indicate payment method)

4.2 The total amount due from Municipality was calculated as follows:

Study type	Fees
Electric	Four Annual Installments of \$3,340.00 each

4.3 Additional services not provided for in the scope of services set forth herein shall be provided only upon separate mutual written agreement between the Parties or upon modification of the scope of services in accordance with Section 4.6 of this Agreement. Expenses will be those incurred in completing the services at the cost or fee associated with the expense.

4.4 The fees established in this Section 4 may be reviewed and updated by NMPP from time to time in accordance with Section 4.6 of this Agreement.

4.5 Bills for services shall be rendered annually in advance by NMPP and paid within thirty (30) days after the date the bill is rendered. If any bill is not paid within thirty (30) days, it shall be deemed delinquent and interest shall accrue at the rate of 1.25% per month, or fraction thereof, on any unpaid amount from the date the bill becomes delinquent until the date on which payment is made. This Agreement may be terminated by NMPP for non-payment by Municipality.

4.6 Notwithstanding any provision to the contrary in this Agreement, NMPP shall have the right to modify any of the terms and conditions of this Agreement, including but not limited to the scope of services and fees for participation, at any time, by providing written notice to Municipality. Municipality shall have thirty (30) days from the issuance of such notice to inform NMPP in writing of Municipality's objection to modification of the terms and conditions. Upon receipt by NMPP of Municipality's sufficient notice of objection, NMPP shall cease providing services to Municipality under this Agreement and this Agreement shall automatically terminate; provided, however, that such termination shall not take effect unless and until Municipality has made complete payment for any outstanding amount due and for services provided pursuant to this Agreement prior to receipt of Municipality's notice of objection.

4.7 If at any time during the term of this Agreement Municipality's membership in NMPP is withdrawn or terminated for any reason, the fees for services provided to Municipality pursuant to this Agreement shall automatically convert to the non-member fee, where such a fee

is applicable, which fee may be modified from time to time by NMPP, and NMPP shall have the right to terminate this Agreement upon written notice at any time to Municipality.

## **5. USE OF ELECTRONIC MEDIA**

5.1 Copies of documents that may be relied upon by Municipality are limited to the printed copies, also known as hard copies, which are signed by NMPP. Files in electronic media format of text, data, graphics, or of other types that are furnished by NMPP to Municipality are only for the convenience of Municipality. Any conclusion or information obtained or derived from such electronic files will be used at Municipality's sole risk.

5.2 When transferring documents in electronic media format, NMPP makes no representations as to compatibility, usability, or readability of documents resulting from such transfer or from the use of software application packages, operating systems, or computer hardware differing from those used by NMPP at the beginning of services rendered.

5.3 If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

5.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Party receiving electronic files agrees that it will perform acceptance tests or procedures within thirty (30) days, after which the receiving Party shall be deemed to have accepted the data thus transferred. Any errors reported by receiving Party to delivering Party within the thirty (30)-day acceptance period will be corrected by the delivering Party within sixty (60) days of such notification. NMPP shall not be responsible to maintain documents stored in electronic media format after acceptance by Municipality.

## **6. GENERAL**

6.1 Neither Party shall have the right to assign this Agreement without the consent, in writing, of the other Party.

6.2 This Agreement shall be governed by the laws of the State of Nebraska.

6.3 This Agreement embodies all of the terms binding between the Parties hereto and replaces all provisions, representations or proposals not embodied herein and supersedes all prior written or oral understandings.

6.4 Any waiver in regard to the performance of this Agreement shall operate only if in writing and mutually agreed upon by each Party.

6.5 In the event any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

6.6 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than NMPP and Municipality.

6.7 Neither Party shall be liable to the other for any delay in the performance of its duties hereunder or for any loss or damage arising from uncontrollable forces including but not limited to fire, theft, storm, war, terrorism, power outage, regulatory action or any other force majeure that could not have been reasonably avoided by exercise of due diligence by the Parties. In the event of such a force majeure, the affected Party shall notify the other Party of the circumstances surrounding the force majeure and provide an estimate of delay time caused thereby. The affected Party shall use due diligence to remove such force majeure as soon as is reasonably practicable.

## 7. NOTICES

7.1 Any notice required under this Agreement will be in writing, addressed to the appropriate Party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by commercial courier service. All notices shall be effective upon the date of receipt.

[SIGNATURE PAGE FOLLOWING]

WHEREAS, NMPP and Municipality have caused this Agreement for a Financial Plan, Cost of Service and Rate Design Study to be duly executed by their authorized officers.

NEBRASKA MUNICIPAL POWER POOL

CITY OF BROKEN BOW, NEBRASKA

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: 1111 O Street, Suite 200  
P.O. Box 95124  
Lincoln, NE 68509

Address: \_\_\_\_\_  
\_\_\_\_\_  
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