

City of Scottsbluff, Nebraska

Tuesday, January 17, 2017

Regular Meeting

Item Reports5

Council to consider Amendment No. 1 to the Professional Retail Operations Agreement between Nebraska Public Power District and the City, authorize the Mayor to execute the agreement and approve the Resolution.

Staff Contact: Nathan Johnson, City Manager

Execution Version

AMENDMENT NO. 1
to
PROFESSIONAL RETAIL OPERATIONS AGREEMENT
between
NEBRASKA PUBLIC POWER DISTRICT
and
CITY OF SCOTTSBLUFF, NEBRASKA

This Amendment No. 1 is made and entered into effective the 1st day of February, 2017, by and between the City of Scottsbluff, Nebraska, a municipal corporation of the State of Nebraska (City), and Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (NPPD).

WITNESSETH

WHEREAS, NPPD and City entered into a Professional Retail Operations Agreement that became effective July 1, 2004 (Agreement), and

WHEREAS, NPPD and City desire to modify the language in Article I of the Agreement to provide for an extension of the term of the Agreement and offer the City the option to enter into any new professional retail operations agreement offered to NPPD's other retail customers.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, NPPD and City agree to amend the Agreement as follows:

- 1. ARTICLE I, TERM AND EFFECTIVE DATE, is hereby deleted in its entirety and the following substituted therefor:**

This Agreement shall become effective on February 1, 2017, and shall continue in force for a term of not less than twenty (20) years, through January 31, 2037, subject to the following provisions:

Either party may terminate this Agreement (i) in accordance with the provisions of ARTICLE XIV herein, or (ii) on any anniversary date hereof by at least five (5) years' prior written notice given by either party to the other, with an effective termination date of no earlier than February 1, 2032. However, in the event either party elects to terminate this Agreement and such termination becomes effective at any time between February 1, 2032, and February 1, 2037, the parties agree that the City shall continue to take service from NPPD under NPPD's standard Wholesale Power Contract in effect at the time for other customers of NPPD under similar conditions of service and that such Wholesale Power Contract shall remain in effect through January 31, 2037.

In the event NPPD offers a new professional retail operations agreement with terms that are different from this Agreement to its retail customers that becomes effective

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during the term of this Agreement, NPPD shall offer to the City the option to enter into the new professional retail operations agreement or retain this Agreement. If the City enters into the new professional retail operations agreement prior to the end of the term of this Agreement, the parties agree that this Agreement shall terminate upon the effective date of the new professional retail operations agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment No. 1 to be executed and delivered by its duly authorized officers or representatives as of the dates indicated below.

CITY OF SCOTTSBLUFF, NEBRASKA

By _____

Title _____

Date _____

NEBRASKA PUBLIC POWER DISTRICT

By _____

Title _____

Date _____

RESOLUTION NO. _____
APPROVING EXTENSION OF PROFESSIONAL RETAIL OPERATIONS AGREEMENT

WHEREAS, the City owns its electric distribution system, and

WHEREAS, the amendment to extend the term of the Professional Retail Operations Agreement on file with the Council has been proposed by Nebraska Public Power District (NPPD) and fully discussed and explained, and

WHEREAS, it is determined that it would be desirable to enter into said amendment to the Professional Retail Operations Agreement.

NOW, THEREFORE, BE IT RESOLVED:

1. The said amendment to the Professional Retail Operations Agreement is approved and the Mayor is authorized to execute it, and the City Clerk to attest it on behalf of the City.
2. Notice of this transaction shall be given by publication once each week for three (3) successive weeks, of the following Notice:

NOTICE OF TRANSACTION

The Council has approved a Resolution authorizing execution on behalf of the City of an amendment to the Professional Retail Operations Agreement (Agreement) between Nebraska Public Power District and the City of Scottsbluff, Nebraska. The Agreement is on file with the City Clerk and available for inspection. It contains provisions summarized as follows:

1. The City will extend the lease of its electric distribution system to Nebraska Public Power District for a term of not less than twenty (20) years from the effective date of the amendment; provided, if either party terminates the Agreement at any time between year fifteen (15) and year twenty (20) of the term, the City will continue to take service from NPPD under NPPD's standard Wholesale Power Contract, and such Wholesale Power Contract shall remain in effect through the remainder of the twenty (20) year term.
2. During the term of the Agreement, NPPD will pay to the City an amount equal to twelve percent (12%) of the retail revenues from the electric distribution system, adjusted to eliminate revenues from tax-supported agencies, fuel cost, and similar adjustments. NPPD will maintain the electric distribution system, will make payments in lieu of taxes as required by law, and will provide insurance, as set out in the Agreement.

This Notice will be published once each week for three (3) successive weeks. If, within thirty (30) days after the last publication thereof, a referendum petition signed by qualified electors of the City equal in number to at least twenty percent (20%) of the votes cast at the last general municipal election shall be filed with the City Clerk, this transaction shall not become effective until it has been approved by a vote of the electors. If no such petitions are filed, the transaction shall become effective at the expiration of said thirty (30) day period.

CITY OF SCOTTSBLUFF, NEBRASKA

Date: _____

Mayor

Attest:

City Clerk
SEAL