

TELECOMMUNICATION SERVICES AGREEMENT BETWEEN SOUTHWEST POWER POOL, INC. AND CITY OF GRAND ISLAND, NEBRASKA

This Telecommunication Services Agreement (the "Agreement") is entered into this 8th day of August 2023, (the "Effective Date") by and between City of Grand Island, Nebraska, a company with offices located at 100 East First Street, Grand Island, Nebraska, ("Customer"), and Southwest Power Pool, Inc., an Arkansas nonprofit corporation, with its principal office located at 201 Worthen Drive, Little Rock, AR 72223 ("SPP"). Customer and SPP may be individually referred to herein as a "Party" and collectively as the "Parties."

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1 – Scope of Services

1.1 SPP shall provide the following services to the Customer: telecommunications services, including access to the SPP telecommunications network ("SPPNet"), provision of dedicated circuits to provide the requested access as well as monitoring and maintenance of those circuits (hereinafter referred to as "Services").

1.2 The respective obligations of the Parties in relation to the Services are identified in **Attachment A**, which is attached hereto and incorporated herein.

Section 2 – Compensation, Billing and Payment

2.1 Customer agrees to pay to SPP all costs and expenses charged to SPP for the Services, including, but not limited to, any startup costs not directly paid by Customer (e.g., circuitry, hardware/software costs, and labor performed by SPP or a designated contractor), the monthly reoccurring cost required to maintain the Services, and all related taxes and early termination or other charges.

2.2 SPP shall render to Customer a monthly invoice by regular mail, facsimile, electronic mail or other acceptable means. Customer shall make payment of the amount shown by wire transfer to an account specified by SPP not later than the twentieth (20th) day after receipt of the statement, unless such day is not a business day, in which case the wire transfer shall be made on the next business day. All such payments shall be deemed made when said wire transfer is received by SPP. Interest on any unpaid amounts shall be calculated in accordance with the methodology specified for interest on refunds in the Federal Energy Regulatory Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the invoice to the

date of payment. When payments are made by mail, invoices shall be considered as having been paid on the date of receipt by SPP.

2.3 Upon Customer's failure to pay an invoice, SPP may declare a default and terminate this Agreement, if Customer does not cure default within thirty (30) calendar days of written notice of default. In the event of a billing dispute between the Parties, SPP will continue to perform its responsibilities under this Agreement so long as Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute.

Section 3 - Term and Termination

3.1 The term of this Agreement shall begin on the date that it has been executed by both Parties. The Agreement may be terminated by either Party upon ninety (90) calendar days prior written notice. SPP shall be compensated for all billable costs incurred prior to and as a result of such cancellation. The Parties may mutually agree to allow a shorter notice period, so long as SPP is compensated for any billable costs it may incur as a result of such earlier termination in accordance with the terms hereof. Notwithstanding the aforementioned, both Parties agree that, if Customer executes a SPP Membership Agreement ("MA"), this Agreement will terminate on the effective date of the executed MA.

3.2 It is the intent of the Parties to allow the full functionality of the Services to occur without any interruption in normal business. To this end, the Parties shall, and in a manner consistent with its respective obligations provided in Attachment A, cooperate to establish the necessary practices, routines, installation of equipment, establishment of communication links, and all other activities to allow SPP to begin performing the Services without any such interruption.

Section 4 – Standard of Performance

4.1 SPP shall perform the Services specified in this Agreement in accordance with Good Utility Practice and shall conform to applicable reliability criteria, policies, standards, rules, regulations and other requirements of SPP, the North American Electric Reliability Corporation ("NERC"), Customer's specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this paragraph), and all applicable requirements of federal and state regulatory authorities.

Section 5 – Data, Systems and Personnel

5.1 Customer shall supply to SPP, both initially and throughout the term of this Agreement, all data that SPP deems necessary to perform the Services under this Agreement. SPP shall inform Customer of the necessary data and the format and manner in which it shall be provided prior to the date of transfer.

5.2 Customer shall reimburse SPP in accordance with Section 2 for any and all equipment necessary to ensure accurate and reliable data connectivity including hardware, software, circuit upgrades, and maintenance or other charges associated with such equipment and software.

Section 6 – Confidentiality

6.1 The Parties affirm that all information (including data) designated by each party as “confidential,” “proprietary,” “Critical Energy Infrastructure Information” (“CEII”), or other such designation as indicates protection of the material (hereinafter “Confidential Information”) will be maintained in the strictest confidence and will not be disclosed to any person or third party other than its officers, directors, employees, agents, consultants, or attorneys (“Representatives”) who have a need to know, who have been advised of the confidentiality of the material, and who are under obligations of confidentiality to the recipient party that are at least as restrictive as those contained herein. The recipient party shall be responsible for any breach of this Agreement by any of its Representatives. Confidential Information includes, but is not limited to, all information accessed and/or provided through SPPNet pursuant to this Agreement. Each party that receives the other party’s Confidential Information (“Recipient”) shall take necessary precautions to prevent disclosure of Confidential Information to the public or any third party, except as otherwise permitted in this Section 6.1, and shall safeguard the Confidential Information of the other party with the same degree of care it safeguards its own information, and in all cases no less than reasonable care. The obligation with respect to handling and using Confidential Information as set forth in this Agreement is not applicable to information that: (a) is now or becomes public through no fault of either Party, or (b) such party already had knowledge of it from such party’s own work prior to the date of this Agreement without restriction on disclosure, or (c) such party received it from a third party, which third party was without known restriction on disclosure, on a non-confidential basis and not derived from the other party to this Agreement, or (d) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure, and (e) is disclosed in response to a valid order of a court or other governmental body of the United States or Canada, or any of their political subdivisions, but only to the extent of and for the purposes of such order; provided, however, that disclosing party will, to the extent not prohibited by law, first notify the other party of the order and permit the party to seek an appropriate protective order.

6.2 No patent, copyright, trademark or other proprietary right or manufacturing or software license under any patents or copyrights of any party is granted by this Agreement or by any disclosure of Confidential Information.

6.3 Confidential Information will be deemed the property of the disclosing party. Recipient will, within ten (10) business days of a written request by disclosing party, return all Confidential Information or, if so directed, destroy all such Confidential Information. Recipient will also within ten (10) business days of a written request by disclosing party certify in writing that it has satisfied the obligations of such request.

6.4 The Parties will remain bound by the terms and conditions of this Agreement with respect to Confidential Information subject to this Agreement until that Confidential Information no longer qualifies as Confidential Information.

6.5 Recipient agrees that an impending or existing violation of any term of confidentiality contained hereunder would cause the disclosing party irreparable injury for which there would be no adequate remedy at law, and that the disclosing party will be entitled immediate injunctive relief prohibiting such violation without the posting of bond or other security, in addition to any other rights and remedies available.

Section 7 – Indemnification, Waiver of Liability and Waiver of Warranty

7.1 SPP, its directors, officers, agents and employees, shall not be liable to Customer for damages, and Customer hereby agrees to indemnify and hold harmless SPP against and from any and all claims, demands, causes of action, losses and liabilities arising out of or related to performance of SPP's obligations under this Agreement; provided, however, that this section shall not apply to actions which are unlawful, undertaken in bad faith, or are the result of gross negligence or willful misconduct.

7.2 Notwithstanding any term to the contrary, neither Party shall be liable to the other Party for, nor will the measure of damages include, any indirect, incidental, special or consequential damages arising out of or relating to its performance or failure to perform under this Agreement, whether based on contract, tort, strict liability or otherwise.

7.3 SPP MAKES NO WARRANTY THAT THE CONNECTION WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DOES SPP MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF SPPNET. ANY INFORMATION OR HARDWARE IS PROVIDED "AS IS" AND SPP MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO SPPNET, THE CONNECTION, ANY MATERIAL, OR ANY HARDWARE PROVIDED BY SPP.

Section 8 - Dispute Resolution

8.1 Any dispute under this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in the SPP Bylaws.

Section 9 – Force Majeure

9.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, or happenings which are beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or a labor dispute.

9.2 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. If SPP fails to perform or is delayed in performing due to an act of Force Majeure, Customer shall be entitled to a refund of any advance payments made up to the date such Force Majeure event occurs and shall not be required to make further payments until such time as SPP resumes its full performance. Notwithstanding the foregoing, each Party shall use all reasonable endeavors to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

9.3 If either Party shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period during which it is estimated that such failure or delay shall continue.

9.4 If the event of Force Majeure prevents either Party from performing all or a substantial part of its obligations under this Agreement for a period of ninety (90) consecutive calendar days then the other Party may terminate this Agreement upon written notice, provided always that SPP shall be reimbursed by Customer for all direct costs incurred under this Agreement up to the effective date of such termination, provided always that such costs shall take account of:

9.4.1 Any recoveries made by SPP pursuant to its insurance policies; and

9.4.2 All charges paid by Customer hereunder.

Section 10 – Amendments to Agreement

10.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed to in writing signed by duly authorized representatives of the Parties.

Section 11 – Notices

11.1 Notices. Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other shall be in writing. It shall be personally delivered, transmitted by telecopy or facsimile equipment (with receipt verbally and electronically confirmed), sent by overnight courier, or mailed, postage prepaid, to the other Party at the address designated in this Section 11. Any such notice, demand or request so delivered or mailed shall be deemed given when so delivered or three (3) calendar days after mailed.

11.2 Addresses of the Parties. Notices and other communications shall be addressed to the Parties as set forth below:

If to Customer:

Travis Burdett
700 E Bischeld St.
Grand Island NE 68801

Phone: 308.385.5466

If to SPP:

Bruce Rew
Sr. Vice President, Operations
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223-4936
Phone: (501) 614-3200

All invoices to Customer shall be sent to:

Travis Burdett
700 E Bischeld St.
Grand Island NE 68801

Phone: 308.385.5466
Email: travis.burdett@giud.com

Section 12 - Miscellaneous Provisions

12.1 Governing Law. This Agreement shall be interpreted, construed, and governed by the laws of the State of Arkansas without reference to its choice of law principles, except to the extent preempted by the law and/or unless a court with jurisdiction rules otherwise, provided, however, that all matters relating to real property or any interest in realty shall be governed by the laws of the State wherein such real property or interest in realty is physically located.

12.2 Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon the Parties, their respective successors and assigns permitted hereunder, but shall not be assignable by a Party, by operation of law or otherwise, without the written approval of the other Party which approval shall not be unreasonably withheld, except that no such approval shall be required for a successor of either Party by reason of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, as a result of which substantially all such transmission facilities are acquired by such successor.

12.3 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement; rather the same shall be and remain in full force and effect.

12.4 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision shall be replaced with a suitable and equitable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, void, or unenforceable provision.

12.5 Renegotiation. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, then the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of each Party immediately prior to such holding, modification, or condition. If after sixty (60) calendar days such negotiations are unsuccessful, then either Party may terminate this Agreement upon ninety (90) calendar days' prior written notice.

12.6 Representations and Warranties. Each Party represents and warrants to other signatories that as of the date it executes this Agreement:

12.6.1 It is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized.

12.6.2 Subject to any necessary approvals by federal or state regulatory authorities, the execution and delivery by each Party, and the performance of its obligations hereunder have been duly and validly authorized by all requisite action on the part of the signatories. This Agreement has been duly executed and delivered by the Parties, and, subject to the conditions set forth in this Agreement, constitutes the legal, valid, and binding obligation on the part of each Party, enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

12.6.3 There are no actions at law, suits in equity, proceedings, or claims pending or, to the knowledge of each Party, threatened against such Party before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

12.7 Further Assurances. Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

12.8 Entire Agreement. This Agreement, including applicable attachments and their duly approved replacements, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and no previous oral or written representations, agreements, or understandings made by any officers, agent, or employee of any Party shall be binding on any such Party unless contained in this Agreement or applicable attachments.

12.9 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement, or approval shall not be unreasonably withheld, conditioned, or delayed. Where any Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions.

12.10 Counterparts.

This Agreement may be signed in counterparts and/or delivered via facsimile or in PDF format via email, each of which shall be deemed original and binding signatures and all of which shall constitute one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement:

CUSTOMER

Roger G. Steele
Name of Authorized Representative

Mayor
Title of Authorized Representative

Roger G. Steele
Signature of Authorized Representative

8-9-2023
Date of Execution

Stacy R. Nonhof
Stacy R. Nonhof
Assistant City Attorney

SOUTHWEST POWER POOL, INC.

Sam Ellis
Name of Authorized Representative

VP IT
Title of Authorized Representative

Sam Ellis
Signature of Authorized Representative

July 27, 2023
Date of Execution

APPROVED
TK
BY

ATTACHMENT A

This Attachment A is hereby incorporated into the TELECOMMUNICATION SERVICES AGREEMENT BETWEEN SOUTHWEST POWER POOL, INC. AND CITY OF GRAND ISLAND, NEBRASKA ("Agreement"). In the event of a conflict between the Agreement and this Attachment A, the terms of this Attachment A shall control. All other terms and conditions of the Agreement shall remain in full force and effect.

A. Responsibilities and Obligations

1. SPP Responsibility

SPP will be obligated to perform the following responsibilities during the planning, implementation and post implementation performance of the Services:

- a) SPP will determine the bandwidth of the circuits based on needs as defined within the "Request for SPPNet Connection," as may be amended and/or supplemented from time to time as mutually agreed and without the need for formal amendment of the Agreement.
- b) SPP will provide a "Turnkey System" for communications, a router that will connect to the circuits and then into the customer's firewall.
- c) SPP will manage the hardware, software, and configuration.
- d) SPP will facilitate maintenance as required.
- e) SPP will provide 24hour/dayx365days/year monitoring of the equipment and circuits in accordance with its internal practices and procedures.
- f) Notwithstanding any other provision of the Agreement, SPP will not be liable for any type of intrusion into the Customer's network.

2. Customer Responsibility

Customer will be obligated to perform the following responsibilities during the planning, implementation and post implementation performance of the Services:

- a) Customer will be responsible for any additional conduit necessary to patch the circuit into their facility.
- b) Customer will be responsible for extending the demarc and any cabling necessary to connect to their network infrastructure.
- c) Customer will be required to rack-mount the equipment.

- d) Customer will provide UPS powering to the provided equipment.
- e) Customer will coordinate with SPP and the local carrier to install any circuits.
- f) Customer will not be allowed login access to the equipment provided.
- g) Customer is responsible for the costs per Section 2.1 of the Agreement and for yearly maintenance costs incurred by SPP provided by Section A(1)(d) of this Attachment A.
- h) Customer will provide a firewall between the SPP equipment and the Customer's network.
- i) Customer will be responsible for any NATing to the SPP network.
- j) Customer will be responsible for its own compliance with any applicable law or regulation, including, but not limited to, compliance with NERC Reliability Standards.