



City of Bentonville
Bentonville Utility Board Meeting
Tuesday, April 13, 2021 – 11:00 am
Bentonville Community Center 1101 SW Citizens Circle
BCC Community Rooms

AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: March 23, 2021

New Business

1. Delivery Point Agreement - Substation E – Travis Matlock, PE (pages 2-28)
2. Delivery Point Agreement – POD #6 – Travis Matlock, PE (pages 29-56)
3. On-Call OH Electric Construction Services – Travis Matlock, PE (pages 57-75)
4. Position Reclassification – Travis Matlock, PE (pages 76-78)
5. BKD Agreement – Travis Matlock, PE (pages 79-87)
6. Adjournment



Agenda Item Form

Date of City Council Meeting	4/27/2021
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check All That Apply)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution authorizing the Mayor and City Clerk to enter into an agreement with SWEPCO to modify the Delivery Point Agreement for the Substation E expansion associated with the WMT Campus electric improvement.					

Estimated Cost	\$150,000.00
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
This is an engineering estimate and not actual costs. Bentonville will only be charged the actual construction costs. Also, there is no money due up front. Actual costs will be rolled into Bentonville's monthly metering charge with SWEPCO.	



MEMORANDUM

DATE: April 27, 2021

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: Revised Substation E DPA

Electric Dept. staff recommends entering into a revised Delivery Point Agreement (DPA) with SWEPCO for the expansion of Substation E, required for the WMT Campus electric improvements. The charges listed in the appendix of the DPA are engineering estimate and Bentonville will only be charged the actual costs of installations, with no money due up front.

With the expansion of Substation E, there will need to be changes to the metering infrastructure at the substation and changes to the month charges listed on the interconnection agreement. In order for SWEPCO to begin the engineering required for the upgrades, Bentonville and SWEPCO need to enter into this agreement.

Once the agreement is signed, BEUD's consultant (Ampirical) and SWEPCO will begin the coordination for the upgrades.

BENTONVILLE SUBSTATION E EXPANSION

DELIVERY POINT AGREEMENT

This **Delivery Point Agreement** (the “Agreement”) is entered into as of _____ (the “Execution Date”) between **Southwestern Electric Power Company**, a Delaware corporation (“SWEPCO”) and **American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas** (“Customer”). SWEPCO and Customer may be referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. SWEPCO and Customer are parties to that certain Interconnection and Local Delivery Service Agreement identified in Schedule 3.1 (as amended, the “ILDSA”).

B. The Parties desire to change, upgrade, retire, or replace Delivery Point facilities or establish a new Delivery Point, as described in Schedule 3.1 (such activity being herein called the “Project”). The Project will be undertaken within the control area of the independent system operator or regional transmission organization identified in Schedule 3.1 (the “ISO/RTO” with respect to this Project).

C. The Project has previously been the subject of certain requests by Customer; directives and approvals of the ISO/RTO or regulatory authority; and/or preliminary agreements and studies. All such requests, directives, approvals, agreements, and studies are herein referred to as the “Prior Project Documentation”.

D. This Agreement is a “Facilities Agreement,” as defined in, and entered into pursuant to, Section 2.3 of the ILDSA. This Agreement provides for the Parties to construct the Project. This Agreement does not provide for any other services and neither SWEPCO nor Customer agrees hereunder to provide any other services.

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used in this Agreement, terms defined in Exhibit 1.1 have the meanings set forth therein.

1.2. Rules of Construction. Unless the context of this Agreement requires otherwise, the plural includes the singular and the singular includes the plural. The words “include,” “includes” and “including” are not limiting and have the inclusive meaning of “including without limitation.” The words “hereof,” “herein,” “hereby,” “hereunder” and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred

to herein means such agreement or instrument or Applicable Law as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. A reference to a Party includes its successors and permitted assigns. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all Parties hereto, and no ambiguity shall be construed in favor of or against any Party.

2. EFFECTIVE DATE; COMMENCEMENT DATE; TERMINATION

2.1. Commencement of Work. The Parties shall become obligated to commence the Work hereunder when both the Effective Date has occurred in accordance with Section 2.2 and the Commencement Date has occurred in accordance with Section 2.3.

2.2. Effective Date. SWEPCO shall file this Agreement with the Commission after the Parties execute this Agreement, and Customer agrees to cooperate with SWEPCO and provide reasonable assistance to SWEPCO in such filing and the proceedings related thereto. This Agreement shall become effective on the date this Agreement has been accepted for filing and made effective by order of the Commission under the Federal Power Act, and the effective date of this Agreement shall be as specified in the said Commission order ("Effective Date"). However, if the Commission or any reviewing court, in such order or in any separate order, suspends this Agreement or any part thereof, institutes an investigation or proceeding under the provisions of the Federal Power Act with respect to the justness and reasonableness of the provisions of this Agreement or any other agreement referred to or contemplated by this Agreement, or imposes any condition, limitation or qualification under any of the provisions of the Federal Power Act which individually or in the aggregate are determined by SWEPCO or Customer to be adverse to it, then either SWEPCO or Customer may terminate this Agreement upon written notice to the other Party.

2.3. Commencement Date. The commencement date shall be the date on which the latest of the following events shall have occurred or been waived by the Parties ("Commencement Date"):

- 2.3.1. Receipt by both Parties of all necessary Governmental Approvals (in form and substance reasonably satisfactory to each of the Parties) in addition to the Governmental Approval specified in Section 2.2 hereof.
- 2.3.2. SWEPCO's receipt of any Security described in Section 4.2 and any replacements or increases thereto.

If, at the written request of Customer, SWEPCO waives one or more of the conditions specified in this Section 2.3 so that Work can proceed as soon as reasonably practicable after receipt of the request, SWEPCO shall be entitled to reimbursement of costs pursuant to this Agreement as if the Work had been performed only after satisfaction of the waived condition. SWEPCO shall be allowed to terminate the Work and this Agreement in the event any necessary Governmental Approvals are denied.

2.4. Term. The term of this Agreement shall commence on the Effective Date and unless earlier terminated, shall terminate sixty (60) Calendar Days following completion of all Work as provided for hereunder and satisfaction of all payment obligations of the Parties with respect to the Work.

2.5. Events of Termination. This Agreement may be terminated by the Parties as follows:

- 2.5.1. This Agreement may be terminated by mutual written agreement of the Parties.
- 2.5.2. Either Party may terminate this Agreement upon termination of the ILDSA, as provided in Section 2.7.
- 2.5.3. Customer may terminate this Agreement as provided in Section 3.6.1.
- 2.5.4. This Agreement shall terminate automatically following a suspension of the Work by Customer under the circumstances specified in Section 3.6.1.
- 2.5.5. Either Party may terminate this Agreement as provided in Section 2.2 and SWEPCO may terminate this Agreement as provided in Section 2.3.
- 2.5.6. Either Party may terminate this Agreement (a) if any Governmental Authority denies approval of any necessary or appropriate approvals for the Work; or (b) if any Governmental Authority shall have issued an order, decree, ruling, or other action restraining, enjoining, or otherwise prohibiting a Party's performance of this Agreement or its contemplated ownership or operation of the Project Facilities.
- 2.5.7. A Party may terminate this Agreement for default as provided in Section 7.2.

2.6. Regulatory Approval of Termination. Any termination of this Agreement as provided herein shall be subject to any necessary approval by the Commission, if applicable.

2.7. Termination of ILDSA. If the ILDSA is terminated, the Parties shall negotiate in good faith for thirty (30) Calendar Days, or such other period as the Parties may agree upon in writing, to revise this Agreement as necessary to reflect such termination. If the Parties are unable to reach agreement on such revisions by the end of such period, either Party may terminate this Agreement by written notice to the other Party.

2.8. Survival of Rights. Termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such termination, including, without limitation, payment obligations, remedies, indemnification obligations, confidentiality and any provisions of this Agreement that explicitly provide for survival after termination.

3. DEVELOPMENT OF THE PROJECT

3.1. Scope of Work. The "Work" with respect to the Project is described in Schedule 3.1 and any attachments referenced therein, and includes the provision of all design, engineering,

construction, site preparation, excavation, acquisition of land rights, labor, materials, supplies, equipment supervision, testing, acquisition of Governmental Approvals and other activities necessary or appropriate for the completion of the Project in accordance with this Agreement.

3.2. Obligations of the Parties.

3.2.1. Each Party will undertake, directly or through its Affiliates or contractors (or any combination thereof), the performance of its obligations with respect to the Work as indicated on Schedule 3.1. The Parties will exchange relevant information concerning the Project and the Work. The Project Facilities shall be designed so as to render them compatible with SWEPCO's existing transmission facilities in SWEPCO's reasonable judgment. SWEPCO shall have the right to review and approve Customer's plans and specifications and construction of the Project Facilities. No such review and approval will constitute either a waiver by SWEPCO of any provision of this Agreement or an endorsement by SWEPCO of the design or construction of the portion of the Project Facilities to be designed and constructed by Customer or a warranty or other assurance by SWEPCO of the safety, durability or reliability of such portion of the Project Facilities.

3.2.2. Each Party will perform its obligations with respect to the Work for which it is responsible consistent with the Connection Requirements, Applicable Law, applicable Governmental Approvals, Good Utility Practice, and applicable standards set out in the ILDSA. EACH PARTY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE.

3.3. Completion and Commissioning of the Project Facilities. The Parties will use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to have the Project Facilities ready for service by the "Projected In-Service Date" set out in Schedule 3.1 or any other date to which the Parties may subsequently agree in writing. The Projected In-Service Date will be extended to reflect any delays as a result of Force Majeure and extended to reflect any suspension of the Work as provided for and in accordance with the provisions of this Agreement. SWEPCO will control (i) timing and implementation of the final connection and energization of the circuitry for the Project Facilities, and (ii) the matters over which SWEPCO is given control in accordance with Sections 2.7 and 3.6 of the ILDSA, and in both cases Customer will reasonably cooperate with such activities.

3.4. Direct Assignment Facilities. Schedule 3.1 identifies those Project Facilities that will be considered "Direct Assignment Facilities" as defined in the AEP Tariff.

3.5. Access and Land Rights.

3.5.1. Subject to any necessary Governmental Approvals and to the superior real property rights and interests of third parties and the receipt of all necessary consents of third parties in form and substance reasonably satisfactory to each

of the Parties, a Party (the “Granting Party”) will furnish to the other Party (the “Access Party”) any rights of use, licenses, rights of way, and easements (including ingress and egress) with respect to lands owned or controlled by the Granting Party or any of its Affiliates to the extent necessary to enable the Access Party to perform its portion of the Work and to operate, repair, maintain, and demolish any of the Project Facilities, and to otherwise perform its obligations under this Agreement (and, with respect to the Project Facilities, the ILDSA). If any part of the Project Facilities is to be installed on property owned or under the control of third parties, Customer will at its own expense use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to procure from such third parties property rights in form and substance reasonably acceptable to SWEPCO necessary to enable SWEPCO to perform its obligations under this Agreement. If SWEPCO specifies that a fee interest for its Project Facilities is required, Customer shall grant or shall use commercially reasonable efforts to obtain from the appropriate third party, the necessary fee interest on terms acceptable to SWEPCO and in a form consistent with SWEPCO’s standard real estate purchase form.

- 3.5.2. Upon reasonable notice and with supervision (or, in the case of emergency, without notice or supervision but in accordance with the standards of performance set forth in Section 3.2.2), each Party is hereby given the right to enter upon the lands occupied by the other Party on a temporary basis as necessary to enable such Party to perform its obligations under this Agreement, provided that the Party making such entry shall (a) comply with safety and security procedures as specified by the Party that occupies the land and (b) shall not interfere with the operations of the Party that occupies the land.
- 3.5.3. Neither Party will directly or indirectly do or permit any act or omission that would give rise, with respect to any obligation of such Party or any of its Affiliates, subcontractors, or suppliers, to any lien or encumbrance on any real property interest or other property held by the other Party. A Party that becomes aware of any such lien or encumbrance on the property of the other Party shall promptly: (a) notify the other Party; and (b) at its own expense, take such action as may be necessary to duly discharge such lien or encumbrance.
- 3.5.4. Each Party shall be liable for any property damage and any injuries incurred by any of its employees, agents, contractors or other representatives while on property occupied by the other Party, except to the extent caused by the negligence or willful misconduct of the other Party, its Affiliates or members or its or their employees, agents, contractors or other representatives.
- 3.5.5. A Party shall notify the other Party immediately if that Party has knowledge that any Hazardous Materials are released on, about, under or in the immediate vicinity of the Project Facilities. A Party bringing any Hazardous Materials onto the other Party’s property agrees to indemnify the other Party

against all liability or expense in any way associated with or arising from such Hazardous Materials, except to the extent that the liability arises as a result of a negligent or intentionally wrongful act or omission of the other Party.

- 3.5.6. Both Parties shall retain access rights to the other Party's or third party's property in accordance with Sections 3.5.1 and 3.5.2 if necessary to carry on its operations following termination of this Agreement; provided, however, upon request of a Party, the Parties shall negotiate an easement to access such Party's property.
- 3.5.7. Sections 3.5.3 through 3.5.6 shall survive termination of this Agreement. To the extent referenced in Section 3.5.6, Sections 3.5.1 and 3.5.2 shall also survive termination of this Agreement.

3.6. Suspension and Termination of Project Development.

- 3.6.1. Customer may suspend the Work or terminate this Agreement on written notice to SWEPCO, provided that any suspension (and all suspensions in the aggregate) may not exceed one (1) year or such other period as may be agreed upon by the Parties in writing, after which this Agreement shall be deemed to terminate if the Work has not been resumed.
- 3.6.2. At any time during a suspension of the Work in accordance with Section 3.6.1, Customer may notify SWEPCO in writing to resume the Work, subject to: (a) agreement on a revised Projected In-Service Date; (b) agreement on any revisions to the Work requested by either Party; and (c) any adjustment to the Security requested by SWEPCO to accommodate the delay.
- 3.6.3. Customer will pay SWEPCO, in accordance with the billing provisions of Article 4, SWEPCO's incremental costs incurred as a result of any suspension or termination pursuant to Section 3.6.1, including demobilization and remobilization costs and suspension, termination, or cancellation costs payable to third parties. This Section 3.6.3 shall survive termination of this Agreement.
- 3.6.4. In the event of the termination of the Project, the provisions of Sections 2.4, 2.5 and 2.6 of the ILDSA shall apply to the recovery of costs by SWEPCO in connection with such termination.

4. COSTS

4.1. Responsibility for Costs.

- 4.1.1. Schedule 3.1 sets forth a good faith estimate of the total cost of SWEPCO's portion of the Work and the allocation of responsibility for such costs between the Parties. Such estimate does not constitute a fixed price for or cap on any amounts that may be payable by Customer. The costs of the Work, including all costs incurred by SWEPCO for which Customer is liable, shall

be calculated in accordance with Section 3.2 (Compensation for Local Delivery Services) of the ILDSA.

- 4.1.2. Upon completion of the Work or termination of this Agreement, SWEPCO shall determine the total actual installed cost of SWEPCO's portion of the Work and the Direct Assignment Facilities.
- 4.1.3. The total actual installed cost of the Direct Assignment Facilities will be recovered through the monthly facilities charges for Direct Assignment Facilities in the ILDSA. Also, SWEPCO will invoice and Customer agrees to pay a Contribution in Aid of Construction ("CIAC") equal to the cost of the Direct Assignment Facilities plus any necessary tax treatment as described in Section 4.4 of this Agreement. The CIAC payment will be included as a credit against the monthly charges in the ILDSA. The monthly facilities charge and the CIAC credit shall be effective beginning with the month following the date that SWEPCO completes installation of the Direct Assignment Facilities. If SWEPCO is not able to determine the total actual installed cost of the Direct Assignment Facilities at the time the monthly facilities charge and the CIAC credit are effective, then SWEPCO will use the estimated cost of the facilities as shown in Schedule 3.1. As soon as the total actual installed cost is known, SWEPCO will begin billing based on the actual values and SWEPCO will true-up the amount that was billed on the estimated cost.
- 4.1.4. If this Agreement, or the Work hereunder, is terminated before the Project Facilities are placed in service, then in addition to (but without duplication of) costs otherwise to be borne by Customer, Customer will bear all costs theretofore, thereby, or thereafter incurred by SWEPCO with respect to the Work to the extent that such costs are not included in SWEPCO's transmission rate base. In the case of such termination, Customer shall, at its cost, also be required to clean up, and at SWEPCO's request remove, any Work it has performed on SWEPCO's property. If the Project Facilities are placed in service, but any portion of such costs are expressly found to be not includible in SWEPCO's transmission rate base, Customer will bear all such disallowed costs, except to the extent that the Project Facilities are placed in service to serve customer other than Customer.
- 4.1.5. In accordance with Section 5.1 of the ILDSA, SWEPCO shall invoice Customer and Customer shall reimburse SWEPCO for costs to be paid by Customer hereunder in accordance with Section 7 (Billing and Payment) of the SPP Tariff. If Customer in good faith disputes any portion of an invoice, Customer will (i) explain the basis for the dispute in writing to SWEPCO within fifteen (15) Calendar Days of the date of the invoice and (ii) without prejudice to its claim for refund of any disputed amount, pay the entire portion of the invoiced amount on or before the due date stated on the invoice. Any such disputes as to such invoices shall be resolved pursuant to Section 12 (Dispute Resolution) of the SPP Tariff, as modified by the immediately preceding sentence. If the determination of such dispute resolution process

is that SWEPCO is required to refund any portion of the disputed amount, SWEPCO shall promptly refund such amount, with interest computed in accordance with 18 C.F.R. §35.19a(a)(2).

4.2. Security.

4.2.1. Subject to Section 2.3 of the ILDSA, if SWEPCO requires Customer to provide security (the “Security”) to secure Customer’s performance of its payment obligations under this Agreement and under Applicable Law, Customer will, at its own expense, provide to SWEPCO Security in the form, amount and at the times consistent with the requirements of the AEP Tariff Section 11. The amount of the Security is not an estimate of the amounts that may be invoiced by SWEPCO and does not constitute a fixed price for or cap on such amounts. SWEPCO may commingle any cash held by SWEPCO as a part of the Security with any other funds under its custody or control and will have no obligation to invest funds of Customer. SWEPCO may apply the Security to pay invoices rendered by it to Customer pursuant to this Agreement. To the extent permitted by AEP Tariff Section 11, SWEPCO may by written notice to Customer require Customer to increase, replenish, or replace the Security from time to time. Customer will tender any such increase, replenishment, or replacement to SWEPCO within thirty (30) Calendar Days of such notice. No forbearance or delay on the part of SWEPCO in requiring an increase, replenishment, or replacement of the Security will be a waiver of its right to do so.

4.2.2. SWEPCO will release or refund to Customer the Security on the earlier of (i) sixty (60) Calendar Days following the completion by SWEPCO of its final cost accounting for the Work following termination of this Agreement, and (ii) thirty (30) Calendar Days following the date on which SWEPCO receives written notice and has verified that the Project Facilities have been placed in service. Notwithstanding the foregoing, SWEPCO may retain such portions of the Security as necessary to pay any then unpaid invoices. Any refund of a cash deposit shall include interest at a rate applicable to customer deposits as established from time to time by the appropriate state utility regulatory authority.

4.3. Information Concerning Costs. Customer shall have the right to review and audit information concerning costs as provided pursuant to the last paragraph of Section 5.1 of the ILDSA, subject to the following three sentences. Any review or audit of SWEPCO accounts and records permitted by Section 5.1 of the ILDSA shall be conducted by Customer during regular business hours at the applicable SWEPCO office(s). Customer will have the right to examine the records upon reasonable advance written notice within twenty four (24) months after the final invoice is issued following completion of the Work and at mutually agreed times. Information obtained by Customer from SWEPCO pursuant to this section shall be considered Confidential Information of SWEPCO subject to the confidentiality provisions of Article 8 of this Agreement regardless of whether such information is marked as confidential.

4.4. Tax Treatment of Costs. The applicable provisions of the ILDSA will control the Parties' tax treatment of the costs of the Work under this Agreement. All amounts invoiced under this Agreement, except for the monthly facilities charge described in Section 4.1.3, will be treated when invoiced as a Contribution in Aid of Construction ("CIAC") for tax purposes. Any reimbursement for the tax effects of such CIAC to which SWEPCO may be entitled may be included in the invoice for such costs or separately invoiced.

4.5. Survival. The provisions of this Article 4 shall survive termination of this Agreement.

5. INDEMNIFICATION

5.1. Indemnification. Each Party (an "Indemnifying Party") will be liable to and will indemnify the other Party, its Affiliates and members, and its and their respective officers, employees, and agents (each an "Indemnified Person") for any claims for personal injuries suffered by third parties or damage to a third party's tangible property, reasonable attorney fees and other costs and expenses of defense, and (with the approval of the Indemnifying Party) costs and expenses of settlement, in each case incurred by the Indemnified Person, arising in connection with the performance by the Indemnifying Party of its obligations under this Agreement, to the extent such injuries or damage are caused by the negligence, gross negligence, strict liability in tort, or willful misconduct of the Indemnifying Party, its Affiliates or members, or its or their officers, directors, employees, agents, consultants or contractors. If such third party personal injury or property damage is caused by the joint or concurrent negligence, gross negligence, strict liability in tort, or willful misconduct of the Parties or their Affiliates or members or its or their respective officers, directors, employees, agents, consultants or contractors, each Party will bear the loss in proportion to the degree the negligence, gross negligence, strict liability in tort or willful misconduct of such Party or its Affiliates or members, or its or their respective officers, directors, employees, agents, consultants or contractors contributed to such third party personal injury or property damage, and will indemnify the other Party, its Affiliates and members and its or their respective officers, employees and agents, to such extent. If the third party is not entitled to recover damages under Indemnified Party's retail tariffs, customer agreements or other contractual arrangements, then the Indemnifying Party likewise shall not be liable for damages under such retail tariffs, customer agreements or contractual arrangements.

Each Indemnified Person must provide prompt notice of any claim for which it seeks indemnity under this provision and cooperate in the defense of such claim. Without the consent of the applicable Indemnified Person, an Indemnifying Party may not settle any such claim for any relief (other than monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a Governmental Authority.

5.2. Non-Exclusive. The indemnification provided by this Article 5 shall be in addition to any other rights to which an Indemnified Person may be entitled under any agreement, as a matter of law or otherwise, and shall continue as to an Indemnified Person who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

5.3. Survival. The provisions of this Article 5 shall survive the termination of this Agreement.

6. FORCE MAJEURE

6.1. Effect of Force Majeure. In the event that either Party is rendered unable by reason of an event of Force Majeure occurring or arising without the fault or negligence of such Party, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then the affected obligations of such Party (except for the obligation to pay sums of money owing hereunder for periods prior to the event of Force Majeure) shall be suspended to the extent of such Force Majeure condition, and such Party shall not be deemed to be in default of this Agreement, for the period of such Force Majeure condition, provided that (i) the suspension of the performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure event, and (ii) the affected Party shall use diligent efforts to remedy its inability to perform. A Party's lack of funds shall not be an event of Force Majeure. An adjustment shall be made to the Projected In-Service Date as the result of an event of Force Majeure in accordance with Section 3.3 hereof.

6.2. Notification. In the event of the occurrence of an event of Force Majeure, which prevents a Party from performing its obligations hereunder, such Party shall notify the other Party of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

6.3. Labor Disputes. Neither Party will be required by this Agreement to settle any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood that the settlement of strikes, walkouts, lockouts, or other labor disputes will be at the sole discretion of the Party having the difficulty.

7. DEFAULT AND REMEDIES

7.1. Events of Default. An "Event of Default" will exist:

- 7.1.1. As to Customer upon Customer's failure to promptly pay any amount due hereunder (including a payment to increase or replenish a cash deposit provided as Security) within ten (10) Calendar Days following written notice of delinquency;
- 7.1.2. As to a Party, if such Party ceases to maintain any Governmental Approval (including any Commission acceptance or approval) necessary for such Party's performance of this Agreement or the contemplated ownership or operation of the Project Facilities;
- 7.1.3. As to a Party, if such Party fails to fully cure its breach of any other obligation under this Agreement within twenty (20) Calendar Days following written notification of such breach or such longer period, not to exceed a total cure period of one hundred eighty (180) Calendar Days, as may be reasonably necessary to cure such breach, provided that such Party has commenced and is diligently pursuing such cure; or
- 7.1.4. As to a Party if it becomes Insolvent.

7.2. Termination. If an Event of Default in any material respect occurs as to a Party, the other Party will have the right to terminate this Agreement on ten (10) Calendar Days written notice to the defaulting Party, provided that this Agreement shall not be terminated if the Event of Default is cured within such ten (10) Calendar Day period.

7.3. Other remedies.

7.3.1. If an Event of Default in any material respect occurs and while it persists with respect to a Party, the other Party may suspend performance of its obligations with respect to the Work under this Agreement (other than its obligations to pay money) without prejudice to any other remedy that it may have under this Agreement or Applicable Law.

7.3.2. Whether or not a Party suspends performance of its obligations under, or terminates, this Agreement as a result of an Event of Default, such Party will have the right to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity due to such Event of Default, subject to the limitations of Section 7.4.

7.4. Exclusions and Limitations of Damages. Except to the extent such damages are included in any indemnification for third party damages, neither Party shall be liable under any provision of this Agreement for any special, indirect, incidental, consequential, punitive, or exemplary damages (including loss of profit or revenue, loss of use of equipment, cost of capital, or damage to reputation or relations) whether based in contract, tort, strict liability, statutory liability, or any other theory of liability. In no event shall a Party seek to enforce any claims against the directors, shareholders, members, officers, employees or agents of the other Party or its Affiliates under this Agreement by reason of their status as directors, shareholders, members, officers, employees or agents of a Party or its Affiliates, arising out of, or connected in any way with its performance or non-performance under this Agreement. Except for the indemnification obligations in Section 5, the aggregate liability of SWEPCO shall not exceed the total estimated cost of SWEPCO's portion of the Work as stated in Schedule 3.1.

8. CONFIDENTIALITY

8.1. Confidential Information. Each Party shall hold in strict confidence and shall not disclose or use any information obtained from the other Party hereunder that is marked confidential ("Confidential Information") for the period ending two (2) years after the date of termination of this Agreement.

8.2. Disclosure. Notwithstanding Section 8.1, a recipient shall be entitled to disclose Confidential Information to its Affiliates and members and its Affiliates' and members' officers, employees, agents, lenders, attorneys, and other advisors (collectively "Employees and Agents") for purposes of meeting its obligations and exercising its rights hereunder, provided that the Employees and Agents shall be informed of the confidentiality obligations provided herein. Each recipient agrees to be responsible for any breach of the confidentiality obligations under this Agreement by its Employees and Agents. Further, a recipient shall also be entitled to disclose

Confidential Information to the extent such disclosure: (a) is necessary or convenient as part of any regulatory proceeding in which it is a party, subject to a protective order or such other remedy as the disclosing Party may reasonably consider appropriate in the circumstances; (b) is required to be disclosed by stock exchange requirements applicable to the recipient or its Affiliates; (c) is necessary or otherwise reasonably deemed appropriate in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement; or (d) is disclosed to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed pursuant to a customary confidentiality agreement, and is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available.

8.3. Exclusions. Notwithstanding anything to the contrary in this Article 8, Confidential Information will not include information that: (a) has become part of the public domain other than by acts or omissions of the recipient or its Employees and Agents; (b) to the recipient's knowledge, has been furnished or made known to the recipient by a third party (other than those acting on behalf of the disclosing Party) as a matter of legal right and without relevant restriction on disclosure or use; (c) was in the recipient's possession prior to disclosure by the disclosing Party and was not previously acquired by the recipient or its Employees and Agents directly or indirectly from the disclosing Party; or (d) is independently developed by Employees and Agents of the recipient without access to Confidential Information.

8.4. Notification. Under circumstances other than those provided in Section 8.2, if a Party is required pursuant to Applicable Law or otherwise becomes legally compelled to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to it, such Party shall (unless prohibited by Applicable Law from doing so) promptly notify the disclosing Party in order that the disclosing Party may seek a protective order or such other remedy as the disclosing Party may consider appropriate in the circumstances. In any event, the compelled Party may disclose only that portion of the Confidential Information which such Party is legally required to disclose in the judgment of the Party's legal counsel without any liability to the disclosing Party hereunder and such disclosure shall not be a breach of this Section 8.4.

8.5. Survival. The provisions of this Article 8 shall survive a termination of this Agreement.

9. OTHER PROVISIONS

9.1. Construction with ILDSA. The rights and obligations of the Parties under this Agreement are subject to the ILDSA, provided that to the extent there is any conflict between the provisions of this Agreement and the ILDSA or any other tariff or agreement, the provisions of this Agreement shall control.

9.2. Notices. Any notice that is required or permitted under this Agreement may be given by personal delivery to the Party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or Registered Mail, return receipt requested, addressed to the Party entitled thereto, at:

If to Customer: American Electric Power Service Corporation
 Vice President Market Operations

1 Riverside Plaza
Columbus, OH 43215
e-mail: ejjames@aep.com

If to SWEPCO: Director, System Interconnections
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
e-mail: rlpennybaker@aep.com

with copy to: John W. Seidensticker, Senior Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
e-mail: jwseidensticker@aep.com

Either Party may change its address or email for notice by written notice to the other Party in accordance with this Section 9.2. Any notice given (a) by personal delivery shall be deemed to be given upon such delivery, (b) by email shall be deemed given upon receipt, (c) by overnight courier service shall be deemed given on the date noted on the courier's receipt for delivery, or (d) by U.S. Certified or Registered Mail, return receipt requested, shall be deemed given upon the date noted on such return receipt, provided, however, that if in any case delivery is made on a day other than a Business Day or after 5:00 p.m. local time on a Business Day, delivery shall be deemed to be given upon the next Business Day.

9.3. Interest on Overdue Amounts. Except as otherwise provided in Section 4.1.4, any amount due to a Party under this Agreement will earn interest accruing daily from the deadline for payment thereof until paid at the lesser of (i) an annual rate equal to the Prime Rate from time to time plus two (2) percentage points, or (ii) the maximum rate allowed by Applicable Law. This provision will not be interpreted to preclude SWEPCO from also including in its reimbursable costs an amount to compensate SWEPCO for the time value of advances made by it.

9.4. Amendment. No amendment to this Agreement will be valid or binding unless and until (a) reduced to writing and executed by each Party's authorized representative and (b) the requirements of Section 2.2 have been satisfied with respect to such amendment to the extent applicable. It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 130 S.Ct. 693 (2010).

9.5. Assignment. Except as otherwise provided in this Agreement, neither Party may assign any of its rights under this Agreement to any Person without the prior written consent of

the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Customer may assign its rights under this Agreement to its lenders for collateral security purposes without SWEPCO's prior consent; provided, however, Customer shall promptly provide written notice to SWEPCO of such assignment. No assignment of this Agreement shall relieve the assignor of any obligation, duty or liability arising hereunder prior to such assignment, and in the event of an assignment by Customer to its lender, an assignment shall not relieve Customer of any obligation, duty or liability arising before or after such assignment. Neither Party's obligations shall be enlarged, in whole or in part, by reason of an assignment of this Agreement.

9.6. Merger and Integration; Binding on Successors; No Third Party Beneficiaries. This Agreement and the ILDSA set out the entire understanding of the Parties with respect to the matters they purport to cover and supersede all prior communications, agreements, and understandings, whether written or oral, concerning such matters. Except as otherwise expressly provided in this Agreement, the descriptions of the Project and Project Facilities set forth in any Prior Project Documentation are superseded by the descriptions given in this Agreement. No Party will be liable or bound to any Party in any manner by any warranties, representations, or covenants other than those set forth in or incorporated into this Agreement. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.7. Forbearance and Waiver. Except where a specific time period is provided hereunder for the exercise of a right or remedy, any Party's forbearance in the exercise or enforcement of any right or remedy under this Agreement will not constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

9.8. Partial Invalidity. Any invalidity, illegality, or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

9.9. Governing Law. The interpretation, enforcement and performance of this Agreement shall be governed by federal law where applicable, and when not in conflict with or preempted by federal law, the laws of the state in which the Delivery Point is located as specified in Schedule 3.1, without regard to the laws of such jurisdiction applicable to conflict of laws.

9.10. Multiple Counterparts. This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof.

9.11. No Partnership. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

9.12. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

9.13. Sections. Unless otherwise specified, references in this Agreement to numbered Sections, Articles and Schedules shall be to Sections, Articles and Schedules of this Agreement.

**[The remainder of this page is intentionally left blank.
The next page of this document is S-1]**

Executed as of the Execution Date:

**Southwestern Electric Power
Company**

**City of Bentonville, Arkansas
by American Electric Power Service
Corporation as agent for Southwestern
Electric Power Company, as agent for
City of Bentonville, Arkansas**

By: _____

By: _____

Name: Robert W. Bradish

Name: _____

Title: Vice President

Title: _____

EXHIBIT 1.1

DEFINITIONS

Terms defined in this Exhibit 1.1 will have the meanings set forth in this Exhibit.

TERM	DEFINITION
1. Access Party	As defined in Section 3.5.1.
2. AEP Tariff	Open Access Transmission Service Tariff of the American Electric Power System, on file with and accepted by the Commission.
3. Affiliate	With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
4. Agreement	As defined in the first paragraph.
5. Applicable Law	Any statute, law, ordinance, executive order, rule, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but, pending final adoption, is in proposed or temporary form having force of law); guideline, or notice having force of law; or approval, permit, license, franchise, judgment, order, decree, injunction, or writ of any Governmental Authority applicable to a specified Person or specified property, as in effect from time to time. Applicable Law will include the requirements of NERC and the ISO/RTO.
6. Business Day	Any day other than a Saturday, a Sunday or a federal holiday.
7. Calendar Day	Any day whatsoever, including any weekday, Saturday, Sunday or holiday. However, should the last day of a period of time or number of Calendar Days computed as Calendar Days in accordance with this Agreement be a Saturday, Sunday or federal holiday, then the next day which is not a Saturday, Sunday or federal holiday is the last Calendar Day in such period.

8.	CIAC	As defined in Section 4.4.
9.	Commencement Date	As defined in Section 2.3.
10.	Commission	Federal Energy Regulatory Commission.
11.	Confidential Information	As defined in Section 8.1.
12.	Connection Requirements	American Electric Power document entitled “Requirements for Connection of New Facilities or Changes to Existing Facilities Connected to the AEP Transmission System” or its successor.
13.	Customer	As defined in the first paragraph.
14.	Delivery Point	The point at which Customer’s (or its members’) power delivery facilities connect to SWEPCO power delivery facilities.
15.	Effective Date	As defined in Section 2.2.
16.	Employees and Agents	As defined in Section 8.2.
17.	Event of Default	As defined in Section 7.1.
18.	Execution Date	As defined in the first paragraph.
19.	Federal Power Act	16 U.S.C. §791a <i>et. seq.</i>
20.	Force Majeure	As defined in the first sentence of Section 10.1 of the AEP Tariff.

21. Good Utility Practice Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.
22. Governmental Approvals Permits, consents, licenses, franchises, certificates, authorizations, registrations, or waivers, extensions, renewals, or variances relating thereto, in each case issued by any Governmental Authority, and filings with or notices to any Governmental Authority.
23. Governmental Authority Any federal, state, foreign, tribal, local, or municipal governmental body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal. Governmental Authority will include NERC and the ISO/RTO.
24. Granting Party As defined in Section 3.5.1.
25. Hazardous Material Any chemical, material or other substance defined or included in the definition of “hazardous materials,” “hazardous substances,” “hazardous waste,” or “toxic substance” under any federal, state and local laws and regulations as amended and applicable from time to time and shall also include asbestos in any form, urea formaldehyde foam insulation, equipment or fixtures containing polychlorinated biphenyl, petroleum hydrocarbons, ozone depleting refrigerants, fluorescent tubes, fluorescent magnetic core and coil ballasts and lead-based paint.
26. ILDSA As defined in Recital A.

27.	Indemnified Person	As defined in Section 5.1.
28.	Indemnifying Party	As defined in Section 5.1.
29.	Insolvent	A Person is “ <u>Insolvent</u> ” if such Person admits in writing its insolvency or bankruptcy, or commences a voluntary (or becomes subject to an involuntary) case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency, or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of such Person or of any substantial part of its property, or makes an assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes corporate action in furtherance of any of the foregoing.
30.	ISO/RTO	As defined in Recital B.
31.	NERC	North American Electric Reliability Corporation or its successor.
32.	Party or Parties	As defined in the first paragraph.
33.	Person	Any individual, corporation, partnership, limited liability company, other business organization of any kind, association, trust, or governmental entity, agency, or instrumentality.
34.	Prime Rate	A floating rate equal to the prime commercial lending rate from time to time as indicated in rates published in the <i>Wall Street Journal</i> or, if no such rate is published in the <i>Wall Street Journal</i> , in another public source reasonably designated by the creditor Party.
35.	Prior Project Documentation	As defined in Recital C.
36.	Project	As defined in Recital B.

- | | | |
|-----|---------------------------|---|
| 37. | Project Facilities | All items of equipment and facilities to be constructed, reconstructed, installed, replaced, or upgraded as part of the Work. |
| 38. | Projected In-Service Date | As defined in Section 3.3. |
| 39. | Security | As defined in Section 4.2. |
| 40. | SPP Tariff | Open Access Transmission Service Tariff of the Southwest Power Pool, on file with and accepted by the Commission. |
| 41. | SWEPCO | As defined in the first paragraph. |
| 42. | Work | As defined in Section 3.1. |

SCHEDULE 3.1

BENTONVILLE SUBSTATION E EXPANSION PROJECT

1. ISO/RTO

Southwest Power Pool (“SPP”)

2. ILDSA:

Interconnection and Local Delivery Service Agreement between American Electric Power Service Corporation and American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas dated as of June 20, 2014.

3. Description of the Project:

SWEPCO will install 12.47 kV meter transformers for both transformers in Substation E. SWEPCO will install meters and meter enclosure. SWEPCO will use structures provided by Customer to support the meter transformers and meter enclosure.

Customer will replace the existing transformer in Customer’s Substation E with a 24/32/40 MA 161/24.47 kV transformer. Customer will also install a second 24/32/40 MVA 161/12.47 kV transformer in Substation E. Customer will provide structures on the 12.47 kV side of both transformers in Substation E for SWEPCO’s meter transformers and meter enclosure.

A one-line diagram of Substation E is shown in Figure 3.1.

4. Delivery Point Location

The Delivery Point will be located in the State of Arkansas.

5. Projected In-Service Date

SWEPCO plans to place the Project in service eighteen months after the Effective Date.

6. Fee Interest for AEP Facilities (re: Section 3.5.1 of this Agreement)

Customer will not be required to provide fee interest described in Section 3.5.1 of this Agreement.

7. Point of Change of Ownership

The point of change of ownership will continue to be where Customer's jumpers attach to SWEPCO's switch in the 161 kV East Centerton to East Rogers transmission line.

8. Security (re: Sections 2.3.2 and 4.2 of this Agreement)

SWEPCO will not require Customer to provide Security in connection with this Agreement.

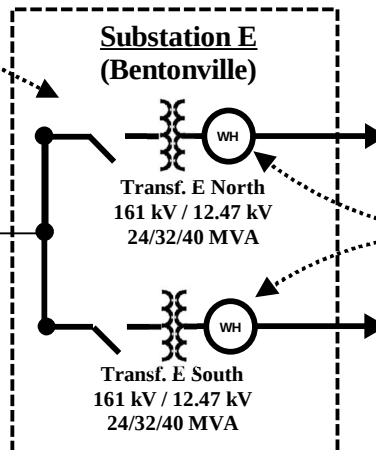
9. Scope of Work

Element of the Work	Party to Own Operate and Maintain the Project Facilities resulting from this Element	Party Responsible for Costs of this Element (subject to the provisions of Section 4.2)	Estimated Cost	Estimated Amount Directly Assigned to Customer
PROJECT FACILITIES CONSTRUCTED BY SWEPCO				
Install 12.47 kV meter transformers on Customer's structures for both transformers in Customer's Substation E.	SWEPCO	Customer	\$150,000	\$150,000
Install a meter(s) and an outdoor enclosure on structures provided by Customer in the Customer's Substation.	SWEPCO	Customer		
Total Cost			\$150,000	\$150,000

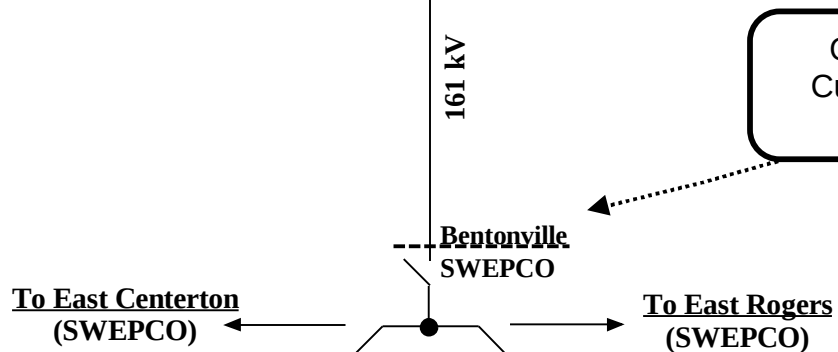
Element of the Work	Party to Own Operate and Maintain the Project Facilities resulting from this Element	Party Responsible for Costs of this Element (subject to the provisions of Section 4.2)
PROJECT FACILITIES CONSTRUCTED BY CUSTOMER		
Replace the existing transformer in Customer's Substation E with a 24/32/40 MVA 161/24.47 kV transformer	Customer	Customer
Install a second transformer in Substation E with a rating of /24/32/40 MVA 69/12.47 kV.	Customer	Customer
Provide structures in Substation E for SWEPCO's meter transformers and meter enclosures.	Customer	Customer

Bentonville Substation E

Customer to replace existing E South transformer and install new E North transformer. Customer to install stands for SWEPCO's metering.



SWEPCO to install new meter transformers, meters and enclosure on Customer's stands.



Ownership changes where Customer's jumpers attach to SWEPCO's switch.

Existing Facilities →

→ New Facilities

Drawing not to scale.



Agenda Item Form

Date of City Council Meeting	4/27/2021
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check All That Apply)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution authorizing the Mayor and City Clerk to enter into an agreement with SWEPCO to modify the Delivery Point Agreement for the Point of Delivery #6 (B Sub and H Sub) relocation associated with the WMT Campus electric improvement.					

Estimated Cost	\$350,000.00
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
This is an engineering estimate and not actual costs. Bentonville will only be charged the actual construction costs. Also, there is no money due up front. Actual costs will be rolled into Bentonville's monthly metering charge with SWEPCO.	



MEMORANDUM

DATE: April 27, 2021

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: Revised POD #6 DPA

Electric Dept. staff recommends entering into a revised Delivery Point Agreement (DPA) with SWEPCO for the revision of Point of Delivery (POD) #6 that will feed Substation B and Substation H, required for the WMT Campus electric improvements. The charges listed in the appendix of the DPA are engineering estimate and Bentonville will only be charged the actual costs of installations, with no money due up front.

With the relocation and upsizing of Substation B, there will need to be changes to the metering infrastructure at the substation and changes to the month charges listed on the interconnection agreement. In order for SWEPCO to begin the engineering required for the upgrades, Bentonville and SWEPCO need to enter into this agreement.

With the modification to POD #6, SWEPCO is planning on building a switching station on Moberly, just north of A-1 Storage located at 1202 SE Moberly. This switch will increase the reliability of SWEPCO's transmission line, which will increase the reliability of Bentonville's feed.

Substation H is fed from POD #6. When the switching station is constructed, it will modify the switch that currently feeds Substation H.

Once the agreement is signed, BEUD's consultant (Ampirical) and SWEPCO will begin the coordination for the upgrades.

BENTONVILLE POD #6

DELIVERY POINT AGREEMENT

This **Delivery Point Agreement** (the “Agreement”) is entered into as of _____, 2021 (the “Execution Date”) between **Southwestern Electric Power Company**, a Delaware corporation (“SWEPCO”) and **American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas**(“Customer”). SWEPCO and Customer may be referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. SWEPCO and Customer are parties to that certain Interconnection and Local Delivery Service Agreement identified in Schedule 3.1 (as amended, the “ILDSA”).

B. The Parties desire to change, upgrade, retire, or replace Delivery Point facilities or establish a new Delivery Point, as described in Schedule 3.1 (such activity being herein called the “Project”). The Project will be undertaken within the control area of the independent system operator or regional transmission organization identified in Schedule 3.1 (the “ISO/RTO” with respect to this Project).

C. The Project has previously been the subject of certain requests by Customer; directives and approvals of the ISO/RTO or regulatory authority; and/or preliminary agreements and studies. All such requests, directives, approvals, agreements, and studies are herein referred to as the “Prior Project Documentation”.

D. This Agreement is a “Facilities Agreement,” as defined in, and entered into pursuant to, Section 2.3 of the ILDSA. This Agreement provides for the Parties to construct the Project. This Agreement does not provide for any other services and neither SWEPCO nor Customer agrees hereunder to provide any other services.

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used in this Agreement, terms defined in Exhibit 1.1 have the meanings set forth therein.

1.2. Rules of Construction. Unless the context of this Agreement requires otherwise, the plural includes the singular and the singular includes the plural. The words “include,” “includes” and “including” are not limiting and have the inclusive meaning of “including without limitation.” The words “hereof,” “herein,” “hereby,” “hereunder” and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred

to herein means such agreement or instrument or Applicable Law as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. A reference to a Party includes its successors and permitted assigns. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all Parties hereto, and no ambiguity shall be construed in favor of or against any Party.

2. EFFECTIVE DATE; COMMENCEMENT DATE; TERMINATION

2.1. Commencement of Work. The Parties shall become obligated to commence the Work hereunder when both the Effective Date has occurred in accordance with Section 2.2 and the Commencement Date has occurred in accordance with Section 2.3.

2.2. Effective Date. SWEPCO shall file this Agreement with the Commission after the Parties execute this Agreement, and Customer agrees to cooperate with SWEPCO and provide reasonable assistance to SWEPCO in such filing and the proceedings related thereto. This Agreement shall become effective on the date this Agreement has been accepted for filing and made effective by order of the Commission under the Federal Power Act, and the effective date of this Agreement shall be as specified in the said Commission order ("Effective Date"). However, if the Commission or any reviewing court, in such order or in any separate order, suspends this Agreement or any part thereof, institutes an investigation or proceeding under the provisions of the Federal Power Act with respect to the justness and reasonableness of the provisions of this Agreement or any other agreement referred to or contemplated by this Agreement, or imposes any condition, limitation or qualification under any of the provisions of the Federal Power Act which individually or in the aggregate are determined by SWEPCO or Customer to be adverse to it, then either SWEPCO or Customer may terminate this Agreement upon written notice to the other Party.

2.3. Commencement Date. The commencement date shall be the date on which the latest of the following events shall have occurred or been waived by the Parties ("Commencement Date"):

- 2.3.1. Receipt by both Parties of all necessary Governmental Approvals (in form and substance reasonably satisfactory to each of the Parties) in addition to the Governmental Approval specified in Section 2.2 hereof.
- 2.3.2. SWEPCO's receipt of any Security described in Section 4.2 and any replacements or increases thereto.

If, at the written request of Customer, SWEPCO waives one or more of the conditions specified in this Section 2.3 so that Work can proceed as soon as reasonably practicable after receipt of the request, SWEPCO shall be entitled to reimbursement of costs pursuant to this Agreement as if the Work had been performed only after satisfaction of the waived condition. SWEPCO shall be allowed to terminate the Work and this Agreement in the event any necessary Governmental Approvals are denied.

2.4. Term. The term of this Agreement shall commence on the Effective Date and unless earlier terminated, shall terminate sixty (60) Calendar Days following completion of all Work as provided for hereunder and satisfaction of all payment obligations of the Parties with respect to the Work.

2.5. Events of Termination. This Agreement may be terminated by the Parties as follows:

- 2.5.1. This Agreement may be terminated by mutual written agreement of the Parties.
- 2.5.2. Either Party may terminate this Agreement upon termination of the ILDSA, as provided in Section 2.7.
- 2.5.3. Customer may terminate this Agreement as provided in Section 3.6.1.
- 2.5.4. This Agreement shall terminate automatically following a suspension of the Work by Customer under the circumstances specified in Section 3.6.1.
- 2.5.5. Either Party may terminate this Agreement as provided in Section 2.2 and SWEPCO may terminate this Agreement as provided in Section 2.3.
- 2.5.6. Either Party may terminate this Agreement (a) if any Governmental Authority denies approval of any necessary or appropriate approvals for the Work; or (b) if any Governmental Authority shall have issued an order, decree, ruling, or other action restraining, enjoining, or otherwise prohibiting a Party's performance of this Agreement or its contemplated ownership or operation of the Project Facilities.
- 2.5.7. A Party may terminate this Agreement for default as provided in Section 7.2.

2.6. Regulatory Approval of Termination. Any termination of this Agreement as provided herein shall be subject to any necessary approval by the Commission, if applicable.

2.7. Termination of ILDSA. If the ILDSA is terminated, the Parties shall negotiate in good faith for thirty (30) Calendar Days, or such other period as the Parties may agree upon in writing, to revise this Agreement as necessary to reflect such termination. If the Parties are unable to reach agreement on such revisions by the end of such period, either Party may terminate this Agreement by written notice to the other Party.

2.8. Survival of Rights. Termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such termination, including, without limitation, payment obligations, remedies, indemnification obligations, confidentiality and any provisions of this Agreement that explicitly provide for survival after termination.

3. DEVELOPMENT OF THE PROJECT

3.1. Scope of Work. The "Work" with respect to the Project is described in Schedule 3.1 and any attachments referenced therein, and includes the provision of all design, engineering,

construction, site preparation, excavation, acquisition of land rights, labor, materials, supplies, equipment supervision, testing, acquisition of Governmental Approvals and other activities necessary or appropriate for the completion of the Project in accordance with this Agreement.

3.2. Obligations of the Parties.

3.2.1. Each Party will undertake, directly or through its Affiliates or contractors (or any combination thereof), the performance of its obligations with respect to the Work as indicated on Schedule 3.1. The Parties will exchange relevant information concerning the Project and the Work. The Project Facilities shall be designed so as to render them compatible with SWEPCO's existing transmission facilities in SWEPCO's reasonable judgment. SWEPCO shall have the right to review and approve Customer's plans and specifications and construction of the Project Facilities. No such review and approval will constitute either a waiver by SWEPCO of any provision of this Agreement or an endorsement by SWEPCO of the design or construction of the portion of the Project Facilities to be designed and constructed by Customer or a warranty or other assurance by SWEPCO of the safety, durability or reliability of such portion of the Project Facilities.

3.2.2. Each Party will perform its obligations with respect to the Work for which it is responsible consistent with the Connection Requirements, Applicable Law, applicable Governmental Approvals, Good Utility Practice, and applicable standards set out in the ILDSA. EACH PARTY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE.

3.3. Completion and Commissioning of the Project Facilities. The Parties will use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to have the Project Facilities ready for service by the "Projected In-Service Date" set out in Schedule 3.1 or any other date to which the Parties may subsequently agree in writing. The Projected In-Service Date will be extended to reflect any delays as a result of Force Majeure and extended to reflect any suspension of the Work as provided for and in accordance with the provisions of this Agreement. SWEPCO will control (i) timing and implementation of the final connection and energization of the circuitry for the Project Facilities, and (ii) the matters over which SWEPCO is given control in accordance with Sections 2.7 and 3.6 of the ILDSA, and in both cases Customer will reasonably cooperate with such activities.

3.4. Direct Assignment Facilities. Schedule 3.1 identifies those Project Facilities that will be considered "Direct Assignment Facilities" as defined in the AEP Tariff.

3.5. Access and Land Rights.

3.5.1. Subject to any necessary Governmental Approvals and to the superior real property rights and interests of third parties and the receipt of all necessary consents of third parties in form and substance reasonably satisfactory to each

of the Parties, a Party (the “Granting Party”) will furnish to the other Party (the “Access Party”) any rights of use, licenses, rights of way, and easements (including ingress and egress) with respect to lands owned or controlled by the Granting Party or any of its Affiliates to the extent necessary to enable the Access Party to perform its portion of the Work and to operate, repair, maintain, and demolish any of the Project Facilities, and to otherwise perform its obligations under this Agreement (and, with respect to the Project Facilities, the ILDSA). If any part of the Project Facilities is to be installed on property owned or under the control of third parties, Customer will at its own expense use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to procure from such third parties property rights in form and substance reasonably acceptable to SWEPCO necessary to enable SWEPCO to perform its obligations under this Agreement. If SWEPCO specifies that a fee interest for its Project Facilities is required, Customer shall grant or shall use commercially reasonable efforts to obtain from the appropriate third party, the necessary fee interest on terms acceptable to SWEPCO and in a form consistent with SWEPCO’s standard real estate purchase form.

- 3.5.2. Upon reasonable notice and with supervision (or, in the case of emergency, without notice or supervision but in accordance with the standards of performance set forth in Section 3.2.2), each Party is hereby given the right to enter upon the lands occupied by the other Party on a temporary basis as necessary to enable such Party to perform its obligations under this Agreement, provided that the Party making such entry shall (a) comply with safety and security procedures as specified by the Party that occupies the land and (b) shall not interfere with the operations of the Party that occupies the land.
- 3.5.3. Neither Party will directly or indirectly do or permit any act or omission that would give rise, with respect to any obligation of such Party or any of its Affiliates, subcontractors, or suppliers, to any lien or encumbrance on any real property interest or other property held by the other Party. A Party that becomes aware of any such lien or encumbrance on the property of the other Party shall promptly: (a) notify the other Party; and (b) at its own expense, take such action as may be necessary to duly discharge such lien or encumbrance.
- 3.5.4. Each Party shall be liable for any property damage and any injuries incurred by any of its employees, agents, contractors or other representatives while on property occupied by the other Party, except to the extent caused by the negligence or willful misconduct of the other Party, its Affiliates or members or its or their employees, agents, contractors or other representatives.
- 3.5.5. A Party shall notify the other Party immediately if that Party has knowledge that any Hazardous Materials are released on, about, under or in the immediate vicinity of the Project Facilities. A Party bringing any Hazardous Materials onto the other Party’s property agrees to indemnify the other Party

against all liability or expense in any way associated with or arising from such Hazardous Materials, except to the extent that the liability arises as a result of a negligent or intentionally wrongful act or omission of the other Party.

- 3.5.6. Both Parties shall retain access rights to the other Party's or third party's property in accordance with Sections 3.5.1 and 3.5.2 if necessary to carry on its operations following termination of this Agreement; provided, however, upon request of a Party, the Parties shall negotiate an easement to access such Party's property.
- 3.5.7. Sections 3.5.3 through 3.5.6 shall survive termination of this Agreement. To the extent referenced in Section 3.5.6, Sections 3.5.1 and 3.5.2 shall also survive termination of this Agreement.

3.6. Suspension and Termination of Project Development.

- 3.6.1. Customer may suspend the Work or terminate this Agreement on written notice to SWEPCO, provided that any suspension (and all suspensions in the aggregate) may not exceed one (1) year or such other period as may be agreed upon by the Parties in writing, after which this Agreement shall be deemed to terminate if the Work has not been resumed.
- 3.6.2. At any time during a suspension of the Work in accordance with Section 3.6.1, Customer may notify SWEPCO in writing to resume the Work, subject to: (a) agreement on a revised Projected In-Service Date; (b) agreement on any revisions to the Work requested by either Party; and (c) any adjustment to the Security requested by SWEPCO to accommodate the delay.
- 3.6.3. Customer will pay SWEPCO, in accordance with the billing provisions of Article 4, SWEPCO's incremental costs incurred as a result of any suspension or termination pursuant to Section 3.6.1, including demobilization and remobilization costs and suspension, termination, or cancellation costs payable to third parties. This Section 3.6.3 shall survive termination of this Agreement.
- 3.6.4. In the event of the termination of the Project, the provisions of Sections 2.4, 2.5 and 2.6 of the ILDSA shall apply to the recovery of costs by SWEPCO in connection with such termination.

4. COSTS

4.1. Responsibility for Costs.

- 4.1.1. Schedule 3.1 sets forth a good faith estimate of the total cost of SWEPCO's portion of the Work and the allocation of responsibility for such costs between the Parties. Such estimate does not constitute a fixed price for or cap on any amounts that may be payable by Customer. The costs of the Work, including all costs incurred by SWEPCO for which Customer is liable, shall

be calculated in accordance with Section 3.2 (Compensation for Local Delivery Services) of the ILDSA.

- 4.1.2. Upon completion of the Work or termination of this Agreement, SWEPCO shall determine the total actual installed cost of SWEPCO's portion of the Work and the Direct Assignment Facilities.
- 4.1.3. The total actual installed cost of the Direct Assignment Facilities will be recovered through the monthly facilities charges for Direct Assignment Facilities in the ILDSA. Also, SWEPCO will invoice and Customer agrees to pay a Contribution in Aid of Construction ("CIAC") equal to the cost of the Direct Assignment Facilities plus any necessary tax treatment as described in Section 4.4 of this Agreement. The CIAC payment will be included as a credit against the monthly charges in the ILDSA. The monthly facilities charge and the CIAC credit shall be effective beginning with the month following the date that SWEPCO completes installation of the Direct Assignment Facilities. If SWEPCO is not able to determine the total actual installed cost of the Direct Assignment Facilities at the time the monthly facilities charge and the CIAC credit are effective, then SWEPCO will use the estimated cost of the facilities as shown in Schedule 3.1. As soon as the total actual installed cost is known, SWEPCO will begin billing based on the actual values and SWEPCO will true-up the amount that was billed on the estimated cost.
- 4.1.4. If this Agreement, or the Work hereunder, is terminated before the Project Facilities are placed in service, then in addition to (but without duplication of) costs otherwise to be borne by Customer, Customer will bear all costs theretofore, thereby, or thereafter incurred by SWEPCO with respect to the Work to the extent that such costs are not included in SWEPCO's transmission rate base. In the case of such termination, Customer shall, at its cost, also be required to clean up, and at SWEPCO's request remove, any Work it has performed on SWEPCO's property. If the Project Facilities are placed in service, but any portion of such costs are expressly found to be not includible in SWEPCO's transmission rate base, Customer will bear all such disallowed costs, except to the extent that the Project Facilities are placed in service to serve customer other than Customer.
- 4.1.5. In accordance with Section 5.1 of the ILDSA, SWEPCO shall invoice Customer and Customer shall reimburse SWEPCO for costs to be paid by Customer hereunder in accordance with Section 7 (Billing and Payment) of the SPP Tariff. If Customer in good faith disputes any portion of an invoice, Customer will (i) explain the basis for the dispute in writing to SWEPCO within fifteen (15) Calendar Days of the date of the invoice and (ii) without prejudice to its claim for refund of any disputed amount, pay the entire portion of the invoiced amount on or before the due date stated on the invoice. Any such disputes as to such invoices shall be resolved pursuant to Section 12 (Dispute Resolution) of the SPP Tariff, as modified by the immediately preceding sentence. If the determination of such dispute resolution process

is that SWEPCO is required to refund any portion of the disputed amount, SWEPCO shall promptly refund such amount, with interest computed in accordance with 18 C.F.R. §35.19a(a)(2).

4.2. Security.

4.2.1. Subject to Section 2.3 of the ILDSA, if SWEPCO requires Customer to provide security (the “Security”) to secure Customer’s performance of its payment obligations under this Agreement and under Applicable Law, Customer will, at its own expense, provide to SWEPCO Security in the form, amount and at the times consistent with the requirements of the AEP Tariff Section 11. The amount of the Security is not an estimate of the amounts that may be invoiced by SWEPCO and does not constitute a fixed price for or cap on such amounts. SWEPCO may commingle any cash held by SWEPCO as a part of the Security with any other funds under its custody or control and will have no obligation to invest funds of Customer. SWEPCO may apply the Security to pay invoices rendered by it to Customer pursuant to this Agreement. To the extent permitted by AEP Tariff Section 11, SWEPCO may by written notice to Customer require Customer to increase, replenish, or replace the Security from time to time. Customer will tender any such increase, replenishment, or replacement to SWEPCO within thirty (30) Calendar Days of such notice. No forbearance or delay on the part of SWEPCO in requiring an increase, replenishment, or replacement of the Security will be a waiver of its right to do so.

4.2.2. SWEPCO will release or refund to Customer the Security on the earlier of (i) sixty (60) Calendar Days following the completion by SWEPCO of its final cost accounting for the Work following termination of this Agreement, and (ii) thirty (30) Calendar Days following the date on which SWEPCO receives written notice and has verified that the Project Facilities have been placed in service. Notwithstanding the foregoing, SWEPCO may retain such portions of the Security as necessary to pay any then unpaid invoices. Any refund of a cash deposit shall include interest at a rate applicable to customer deposits as established from time to time by the appropriate state utility regulatory authority.

4.3. Information Concerning Costs. Customer shall have the right to review and audit information concerning costs as provided pursuant to the last paragraph of Section 5.1 of the ILDSA, subject to the following three sentences. Any review or audit of SWEPCO accounts and records permitted by Section 5.1 of the ILDSA shall be conducted by Customer during regular business hours at the applicable SWEPCO office(s). Customer will have the right to examine the records upon reasonable advance written notice within twenty four (24) months after the final invoice is issued following completion of the Work and at mutually agreed times. Information obtained by Customer from SWEPCO pursuant to this section shall be considered Confidential Information of SWEPCO subject to the confidentiality provisions of Article 8 of this Agreement regardless of whether such information is marked as confidential.

4.4. Tax Treatment of Costs. The applicable provisions of the ILDSA will control the Parties' tax treatment of the costs of the Work under this Agreement. All amounts invoiced under this Agreement, except for the monthly facilities charge described in Section 4.1.3, will be treated when invoiced as a Contribution in Aid of Construction ("CIAC") for tax purposes. Any reimbursement for the tax effects of such CIAC to which SWEPCO may be entitled may be included in the invoice for such costs or separately invoiced.

4.5. Survival. The provisions of this Article 4 shall survive termination of this Agreement.

5. INDEMNIFICATION

5.1. Indemnification. Each Party (an "Indemnifying Party") will be liable to and will indemnify the other Party, its Affiliates and members, and its and their respective officers, employees, and agents (each an "Indemnified Person") for any claims for personal injuries suffered by third parties or damage to a third party's tangible property, reasonable attorney fees and other costs and expenses of defense, and (with the approval of the Indemnifying Party) costs and expenses of settlement, in each case incurred by the Indemnified Person, arising in connection with the performance by the Indemnifying Party of its obligations under this Agreement, to the extent such injuries or damage are caused by the negligence, gross negligence, strict liability in tort, or willful misconduct of the Indemnifying Party, its Affiliates or members, or its or their officers, directors, employees, agents, consultants or contractors. If such third party personal injury or property damage is caused by the joint or concurrent negligence, gross negligence, strict liability in tort, or willful misconduct of the Parties or their Affiliates or members or its or their respective officers, directors, employees, agents, consultants or contractors, each Party will bear the loss in proportion to the degree the negligence, gross negligence, strict liability in tort or willful misconduct of such Party or its Affiliates or members, or its or their respective officers, directors, employees, agents, consultants or contractors contributed to such third party personal injury or property damage, and will indemnify the other Party, its Affiliates and members and its or their respective officers, employees and agents, to such extent. If the third party is not entitled to recover damages under Indemnified Party's retail tariffs, customer agreements or other contractual arrangements, then the Indemnifying Party likewise shall not be liable for damages under such retail tariffs, customer agreements or contractual arrangements.

Each Indemnified Person must provide prompt notice of any claim for which it seeks indemnity under this provision and cooperate in the defense of such claim. Without the consent of the applicable Indemnified Person, an Indemnifying Party may not settle any such claim for any relief (other than monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a Governmental Authority.

5.2. Non-Exclusive. The indemnification provided by this Article 5 shall be in addition to any other rights to which an Indemnified Person may be entitled under any agreement, as a matter of law or otherwise, and shall continue as to an Indemnified Person who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

5.3. Survival. The provisions of this Article 5 shall survive the termination of this Agreement.

6. FORCE MAJEURE

6.1. Effect of Force Majeure. In the event that either Party is rendered unable by reason of an event of Force Majeure occurring or arising without the fault or negligence of such Party, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then the affected obligations of such Party (except for the obligation to pay sums of money owing hereunder for periods prior to the event of Force Majeure) shall be suspended to the extent of such Force Majeure condition, and such Party shall not be deemed to be in default of this Agreement, for the period of such Force Majeure condition, provided that (i) the suspension of the performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure event, and (ii) the affected Party shall use diligent efforts to remedy its inability to perform. A Party's lack of funds shall not be an event of Force Majeure. An adjustment shall be made to the Projected In-Service Date as the result of an event of Force Majeure in accordance with Section 3.3 hereof.

6.2. Notification. In the event of the occurrence of an event of Force Majeure, which prevents a Party from performing its obligations hereunder, such Party shall notify the other Party of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

6.3. Labor Disputes. Neither Party will be required by this Agreement to settle any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood that the settlement of strikes, walkouts, lockouts, or other labor disputes will be at the sole discretion of the Party having the difficulty.

7. DEFAULT AND REMEDIES

7.1. Events of Default. An "Event of Default" will exist:

- 7.1.1. As to Customer upon Customer's failure to promptly pay any amount due hereunder (including a payment to increase or replenish a cash deposit provided as Security) within ten (10) Calendar Days following written notice of delinquency;
- 7.1.2. As to a Party, if such Party ceases to maintain any Governmental Approval (including any Commission acceptance or approval) necessary for such Party's performance of this Agreement or the contemplated ownership or operation of the Project Facilities;
- 7.1.3. As to a Party, if such Party fails to fully cure its breach of any other obligation under this Agreement within twenty (20) Calendar Days following written notification of such breach or such longer period, not to exceed a total cure period of one hundred eighty (180) Calendar Days, as may be reasonably necessary to cure such breach, provided that such Party has commenced and is diligently pursuing such cure; or
- 7.1.4. As to a Party if it becomes Insolvent.

7.2. Termination. If an Event of Default in any material respect occurs as to a Party, the other Party will have the right to terminate this Agreement on ten (10) Calendar Days written notice to the defaulting Party, provided that this Agreement shall not be terminated if the Event of Default is cured within such ten (10) Calendar Day period.

7.3. Other remedies.

7.3.1. If an Event of Default in any material respect occurs and while it persists with respect to a Party, the other Party may suspend performance of its obligations with respect to the Work under this Agreement (other than its obligations to pay money) without prejudice to any other remedy that it may have under this Agreement or Applicable Law.

7.3.2. Whether or not a Party suspends performance of its obligations under, or terminates, this Agreement as a result of an Event of Default, such Party will have the right to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity due to such Event of Default, subject to the limitations of Section 7.4.

7.4. Exclusions and Limitations of Damages. Except to the extent such damages are included in any indemnification for third party damages, neither Party shall be liable under any provision of this Agreement for any special, indirect, incidental, consequential, punitive, or exemplary damages (including loss of profit or revenue, loss of use of equipment, cost of capital, or damage to reputation or relations) whether based in contract, tort, strict liability, statutory liability, or any other theory of liability. In no event shall a Party seek to enforce any claims against the directors, shareholders, members, officers, employees or agents of the other Party or its Affiliates under this Agreement by reason of their status as directors, shareholders, members, officers, employees or agents of a Party or its Affiliates, arising out of, or connected in any way with its performance or non-performance under this Agreement. Except for the indemnification obligations in Section 5, the aggregate liability of SWEPCO shall not exceed the total estimated cost of SWEPCO's portion of the Work as stated in Schedule 3.1.

8. CONFIDENTIALITY

8.1. Confidential Information. Each Party shall hold in strict confidence and shall not disclose or use any information obtained from the other Party hereunder that is marked confidential ("Confidential Information") for the period ending two (2) years after the date of termination of this Agreement.

8.2. Disclosure. Notwithstanding Section 8.1, a recipient shall be entitled to disclose Confidential Information to its Affiliates and members and its Affiliates' and members' officers, employees, agents, lenders, attorneys, and other advisors (collectively "Employees and Agents") for purposes of meeting its obligations and exercising its rights hereunder, provided that the Employees and Agents shall be informed of the confidentiality obligations provided herein. Each recipient agrees to be responsible for any breach of the confidentiality obligations under this Agreement by its Employees and Agents. Further, a recipient shall also be entitled to disclose Confidential Information to the extent such disclosure: (a) is necessary or convenient as part of any regulatory proceeding in which it is a party, subject to a protective order or such other remedy

as the disclosing Party may reasonably consider appropriate in the circumstances; (b) is required to be disclosed by stock exchange requirements applicable to the recipient or its Affiliates; (c) is necessary or otherwise reasonably deemed appropriate in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement; or (d) is disclosed to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed pursuant to a customary confidentiality agreement, and is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available.

8.3. Exclusions. Notwithstanding anything to the contrary in this Article 8, Confidential Information will not include information that: (a) has become part of the public domain other than by acts or omissions of the recipient or its Employees and Agents; (b) to the recipient's knowledge, has been furnished or made known to the recipient by a third party (other than those acting on behalf of the disclosing Party) as a matter of legal right and without relevant restriction on disclosure or use; (c) was in the recipient's possession prior to disclosure by the disclosing Party and was not previously acquired by the recipient or its Employees and Agents directly or indirectly from the disclosing Party; or (d) is independently developed by Employees and Agents of the recipient without access to Confidential Information.

8.4. Notification. Under circumstances other than those provided in Section 8.2, if a Party is required pursuant to Applicable Law or otherwise becomes legally compelled to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to it, such Party shall (unless prohibited by Applicable Law from doing so) promptly notify the disclosing Party in order that the disclosing Party may seek a protective order or such other remedy as the disclosing Party may consider appropriate in the circumstances. In any event, the compelled Party may disclose only that portion of the Confidential Information which such Party is legally required to disclose in the judgment of the Party's legal counsel without any liability to the disclosing Party hereunder and such disclosure shall not be a breach of this Section 8.4.

8.5. Survival. The provisions of this Article 8 shall survive a termination of this Agreement.

9. OTHER PROVISIONS

9.1. Construction with ILDSA. The rights and obligations of the Parties under this Agreement are subject to the ILDSA, provided that to the extent there is any conflict between the provisions of this Agreement and the ILDSA or any other tariff or agreement, the provisions of this Agreement shall control.

9.2. Notices. Any notice that is required or permitted under this Agreement may be given by personal delivery to the Party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or Registered Mail, return receipt requested, addressed to the Party entitled thereto, at:

If to Customer: American Electric Power Service Corporation
 Vice President Market Operations
 1 Riverside Plaza
 Columbus, OH 43215

e-mail: ejjames@aep.com

If to SWEPCO: Director, System Interconnections
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
e-mail: rlpennybaker@aep.com

with copy to: John W. Seidensticker, Senior Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
e-mail: jwseidensticker@aep.com

Either Party may change its address or email for notice by written notice to the other Party in accordance with this Section 9.2. Any notice given (a) by personal delivery shall be deemed to be given upon such delivery, (b) by email shall be deemed given upon receipt, (c) by overnight courier service shall be deemed given on the date noted on the courier's receipt for delivery, or (d) by U.S. Certified or Registered Mail, return receipt requested, shall be deemed given upon the date noted on such return receipt, provided, however, that if in any case delivery is made on a day other than a Business Day or after 5:00 p.m. local time on a Business Day, delivery shall be deemed to be given upon the next Business Day.

9.3. Interest on Overdue Amounts. Except as otherwise provided in Section 4.1.4, any amount due to a Party under this Agreement will earn interest accruing daily from the deadline for payment thereof until paid at the lesser of (i) an annual rate equal to the Prime Rate from time to time plus two (2) percentage points, or (ii) the maximum rate allowed by Applicable Law. This provision will not be interpreted to preclude SWEPCO from also including in its reimbursable costs an amount to compensate SWEPCO for the time value of advances made by it.

9.4. Amendment. No amendment to this Agreement will be valid or binding unless and until (a) reduced to writing and executed by each Party's authorized representative and (b) the requirements of Section 2.2 have been satisfied with respect to such amendment to the extent applicable. It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 130 S.Ct. 693 (2010).

9.5. Assignment. Except as otherwise provided in this Agreement, neither Party may assign any of its rights under this Agreement to any Person without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Customer may assign its rights under this Agreement to its lenders for collateral security purposes

without SWEPCO's prior consent; provided, however, Customer shall promptly provide written notice to SWEPCO of such assignment. No assignment of this Agreement shall relieve the assignor of any obligation, duty or liability arising hereunder prior to such assignment, and in the event of an assignment by Customer to its lender, an assignment shall not relieve Customer of any obligation, duty or liability arising before or after such assignment. Neither Party's obligations shall be enlarged, in whole or in part, by reason of an assignment of this Agreement.

9.6. Merger and Integration; Binding on Successors; No Third Party Beneficiaries. This Agreement and the ILDSA set out the entire understanding of the Parties with respect to the matters they purport to cover and supersede all prior communications, agreements, and understandings, whether written or oral, concerning such matters. Except as otherwise expressly provided in this Agreement, the descriptions of the Project and Project Facilities set forth in any Prior Project Documentation are superseded by the descriptions given in this Agreement. No Party will be liable or bound to any Party in any manner by any warranties, representations, or covenants other than those set forth in or incorporated into this Agreement. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.7. Forbearance and Waiver. Except where a specific time period is provided hereunder for the exercise of a right or remedy, any Party's forbearance in the exercise or enforcement of any right or remedy under this Agreement will not constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

9.8. Partial Invalidity. Any invalidity, illegality, or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

9.9. Governing Law. The interpretation, enforcement and performance of this Agreement shall be governed by federal law where applicable, and when not in conflict with or preempted by federal law, the laws of the state in which the Delivery Point is located as specified in Schedule 3.1, without regard to the laws of such jurisdiction applicable to conflict of laws.

9.10. Multiple Counterparts. This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof.

9.11. No Partnership. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

9.12. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

9.13. Sections. Unless otherwise specified, references in this Agreement to numbered Sections, Articles and Schedules shall be to Sections, Articles and Schedules of this Agreement.

**[The remainder of this page is intentionally left blank.
The next page of this document is S-1]**

Executed as of the Execution Date:

**Southwestern Electric Power
Company**

**City of Bentonville, Arkansas
by American Electric Power Service
Corporation as agent for Southwestern
Electric Power Company, as agent for
City of Bentonville, Arkansas**

By: _____

Name: Robert W. Bradish

Title: Vice President

By: _____

Name: _____

Title: _____

EXHIBIT 1.1

DEFINITIONS

Terms defined in this Exhibit 1.1 will have the meanings set forth in this Exhibit.

TERM	DEFINITION
1. Access Party	As defined in Section 3.5.1.
2. AEP Tariff	Open Access Transmission Service Tariff of the American Electric Power System, on file with and accepted by the Commission.
3. Affiliate	With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
4. Agreement	As defined in the first paragraph.
5. Applicable Law	Any statute, law, ordinance, executive order, rule, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but, pending final adoption, is in proposed or temporary form having force of law); guideline, or notice having force of law; or approval, permit, license, franchise, judgment, order, decree, injunction, or writ of any Governmental Authority applicable to a specified Person or specified property, as in effect from time to time. Applicable Law will include the requirements of NERC and the ISO/RTO.
6. Business Day	Any day other than a Saturday, a Sunday or a federal holiday.
7. Calendar Day	Any day whatsoever, including any weekday, Saturday, Sunday or holiday. However, should the last day of a period of time or number of Calendar Days computed as Calendar Days in accordance with this Agreement be a Saturday, Sunday or federal holiday, then the next day which is not a Saturday, Sunday or federal holiday is the last Calendar Day in such period.

8.	CIAC	As defined in Section 4.4.
9.	Commencement Date	As defined in Section 2.3.
10.	Commission	Federal Energy Regulatory Commission.
11.	Confidential Information	As defined in Section 8.1.
12.	Connection Requirements	American Electric Power document entitled “Requirements for Connection of New Facilities or Changes to Existing Facilities Connected to the AEP Transmission System” or its successor.
13.	Customer	As defined in the first paragraph.
14.	Delivery Point	The point at which Customer’s (or its members’) power delivery facilities connect to SWEPCO power delivery facilities.
15.	Effective Date	As defined in Section 2.2.
16.	Employees and Agents	As defined in Section 8.2.
17.	Event of Default	As defined in Section 7.1.
18.	Execution Date	As defined in the first paragraph.
19.	Federal Power Act	16 U.S.C. §791a <i>et. seq.</i>
20.	Force Majeure	As defined in the first sentence of Section 10.1 of the AEP Tariff.

21. Good Utility Practice Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.
22. Governmental Approvals Permits, consents, licenses, franchises, certificates, authorizations, registrations, or waivers, extensions, renewals, or variances relating thereto, in each case issued by any Governmental Authority, and filings with or notices to any Governmental Authority.
23. Governmental Authority Any federal, state, foreign, tribal, local, or municipal governmental body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal. Governmental Authority will include NERC and the ISO/RTO.
24. Granting Party As defined in Section 3.5.1.
25. Hazardous Material Any chemical, material or other substance defined or included in the definition of “hazardous materials,” “hazardous substances,” “hazardous waste,” or “toxic substance” under any federal, state and local laws and regulations as amended and applicable from time to time and shall also include asbestos in any form, urea formaldehyde foam insulation, equipment or fixtures containing polychlorinated biphenyl, petroleum hydrocarbons, ozone depleting refrigerants, fluorescent tubes, fluorescent magnetic core and coil ballasts and lead-based paint.
26. ILDSA As defined in Recital A.

27.	Indemnified Person	As defined in Section 5.1.
28.	Indemnifying Party	As defined in Section 5.1.
29.	Insolvent	A Person is “ <u>Insolvent</u> ” if such Person admits in writing its insolvency or bankruptcy, or commences a voluntary (or becomes subject to an involuntary) case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency, or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of such Person or of any substantial part of its property, or makes an assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes corporate action in furtherance of any of the foregoing.
30.	ISO/RTO	As defined in Recital B.
31.	NERC	North American Electric Reliability Corporation or its successor.
32.	Party or Parties	As defined in the first paragraph.
33.	Person	Any individual, corporation, partnership, limited liability company, other business organization of any kind, association, trust, or governmental entity, agency, or instrumentality.
34.	Prime Rate	A floating rate equal to the prime commercial lending rate from time to time as indicated in rates published in the <i>Wall Street Journal</i> or, if no such rate is published in the <i>Wall Street Journal</i> , in another public source reasonably designated by the creditor Party.
35.	Prior Project Documentation	As defined in Recital C.
36.	Project	As defined in Recital B.

- | | | |
|-----|---------------------------|---|
| 37. | Project Facilities | All items of equipment and facilities to be constructed, reconstructed, installed, replaced, or upgraded as part of the Work. |
| 38. | Projected In-Service Date | As defined in Section 3.3. |
| 39. | Security | As defined in Section 4.2. |
| 40. | SPP Tariff | Open Access Transmission Service Tariff of the Southwest Power Pool, on file with and accepted by the Commission. |
| 41. | SWEPCO | As defined in the first paragraph. |
| 42. | Work | As defined in Section 3.1. |

SCHEDULE 3.1

BENTONVILLE POD #6: SUNSHINE STATION TO SUBSTATIONS B AND H

1. ISO/RTO

Southwest Power Pool (“SPP”)

2. ILDSA:

Interconnection and Local Delivery Service Agreement between American Electric Power Service Corporation and American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas dated as of June 20, 2014.

3. Description of the Project:

SWEPCO will replace the POD #6 - Moberly Lane tap structure and switches with the new Sunshine switching station with two circuit breakers. SWEPCO will install the Sunshine switching station on property in the vicinity of the existing POD #6 - Moberly Lane tap. SWEPCO will build ~1/4 mile double circuit to loop the East Centerton to East Rogers 161 kV line into the Sunshine station. SWEPCO will install 161 kV meter transformers in Substation B with a new meter and meter enclosure. SWEPCO will install a span and one structure outside the Sunshine station and will allow Customer to connect their line to Substations B and H to SWEPCO’s structure.

Customer will rebuild Substation B at 161 kV and will install two 24/32/40 MVA 161/12.47 kV transformers in Customer’s Substation B to served increased load. Customer will install a 36/48/60 MVA 161/69 kV auto-transformer in Substation B connected to Customer’s 69 kV line to Substation D. Customer will install a 161 kV switch and construct 161 kV transmission line from the connection with SWEPCO outside the Sunshine station fence to Customer’s line connecting to stations H and B. The line switch at Substation D will continue to be operated normally open. Customer will provide structures in Substation B for SWEPCO’s meter transformers and meter enclosure.

A one-line diagram of new POD #6 - Sunshine switching station connection to Substations B and H is shown in Figure 3.1.

4. Delivery Point Location

The Delivery Point will be located in the State of Arkansas.

5. Projected In-Service Date

SWEPCO plans to place the Project in service thirty six months after the Effective Date (twenty four months after the Effective Date if Arkansas Certificate of Convenience and

Necessity is not required). SWEPCO's 161 kV metering equipment will be installed in Customer's Substation B within twelve months of the Effective Date.

6. Fee Interest for SWEPCO Facilities (re: Section 3.5.1 of this Agreement)

Customer will not be required to provide fee interest for the real estate required for the Sunshine switching station as described in Section 3.5.1 of this Agreement.

7. Point of Change of Ownership

Ownership will change where Customer's 161 kV span from Substations B and H attaches to SWEPCO's structure outside the Sunshine switching station fence. SWEPCO will own the jumpers and Customer will own the hardware required to suspend the span.

8. Security (re: Sections 2.3.2 and 4.2 of this Agreement)

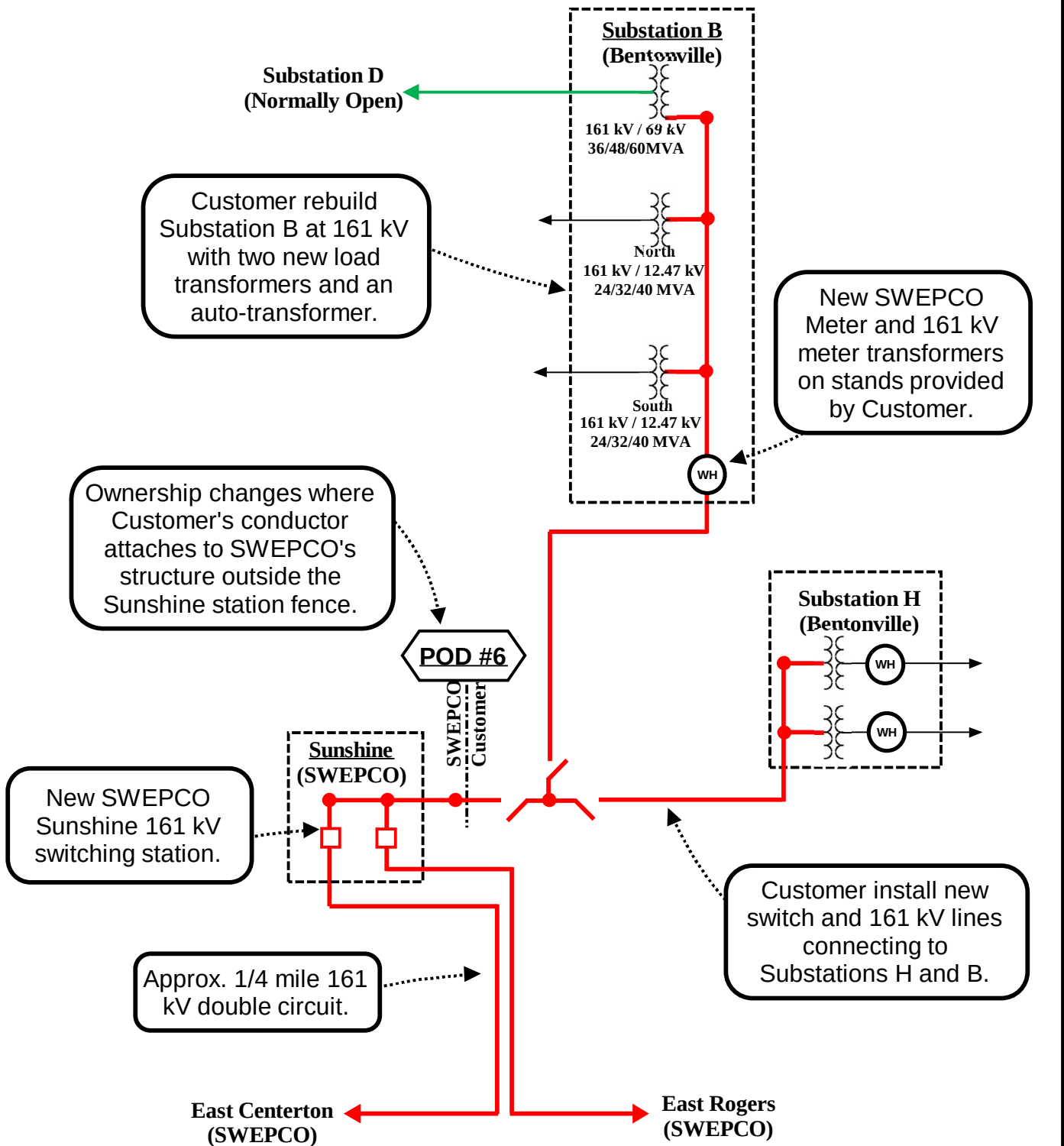
SWEPCO will not require Customer to provide Security in connection with this Agreement.

9. Scope of Work

PROJECT FACILITIES CONSTRUCTED BY SWEPCO				
Element of the Work	Party to Own Operate and Maintain the Project Facilities resulting from this Element	Party Responsible for Costs of this Element (subject to the provisions of Section 4.2)	Estimated Cost	Estimated Amount Directly Assigned to Customer
Install the Sunshine switching station with two 161 kV circuit breakers.	SWEPCO	SWEPCO	\$9,077,000	\$0
Build ~1/4 mile double circuit to loop the East Centerton - East Rogers 161 kV line into the new Sunshine switching station. Include ADSS (or OPGW) in the new line.				
Transmission line remote end upgrades.				
Switching station property	SWEPCO	SWEPCO	\$732,600	\$0
Install 161 kV meter transformers on Customer's structures in Customer's Substation B.	SWEPCO	Customer	\$350,000	\$350,000
Install a meter in an outdoor enclosure on structures provided by Customer in the Customer's Substation B.	SWEPCO	Customer		
Total Cost			\$10,159,600	\$350,000

PROJECT FACILITIES CONSTRUCTED BY CUSTOMER		
Element of the Work	Party to Own Operate and Maintain the Project Facilities resulting from this Element	Party Responsible for Costs of this Element (subject to the provisions of Section 4.2)
Rebuild Substation B at 161 kV with two 24/32/40 161/12.47 kV transformers and a 36/48/60MVA 161/69 kV auto-transformers.	Customer	Customer
Provide structures in Substation B for SWEPCO's meter transformers and meter enclosures.	Customer	Customer
Install a 3-way 161 kV switch on Customer's side of the connection to SWEPCO outside the Sunshine station fence and construct 161 kV lines connecting to substations H and B.	Customer	Customer

Bentonville POD #6 to Substations B and H



Drawing is not to scale.

69 kV
161 kV



Agenda Item Form

Date of City Council Meeting	4/27/2021
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check All That Apply)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☐ Resolution	☒ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Bid award for the On-Call overhead electric construction services to BBC Electrical Services, Inc. per the attached bid tab.					

Estimated Cost	n/a
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
BBC will be used as "on-call" contracting services and is not specically budgeted as a line item. The costs will be absorbed into other capital accounts (Overhead Primary/Underground Primary) that are used for electric infrastructure construction. BBC will be installing/maintaining electric infrastructure benefiting developments and/or Bentonville rate payers.	



MEMORANDUM

DATE: April 27, 2021

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: Bid Award – Outside Contracting Services

Electric Dept. staff recommends awarding the bid for outside contracting services for OH electric infrastructure to BBC Electric Services, Inc. per the attached bid tab.

As BEUD continues to see increase development, the OH extension/maintenance continues to increase and BEUD crews are stretched thin. The award of this contract will allow BEUD to outsource some of the OH work to try and reduce this queue. BBC will not be working every day, but will work in a couple of 2-3 month time frame on specific projects that BEUD has prepared.

This will be paid out of BEUD's capital account as the work progresses.

BBC was the only bidder to submit.



CITY OF BENTONVILLE

BID OPENING TABULATION SHEET

IFB-21-21 GENERAL OVERHEAD ELECTRIC CONSTRUCTION

TUESDAY, MARCH 30, 2021 @ 1:30 PM

[illegible]



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

EXECUTION OF BID PAGE (REQUIRED)

Upon signing this Bid, the Bidder certifies that he/she has read and agrees to the requirements set forth in this bid proposal including specifications, conditions and pertinent information regarding the articles being bid on, and agrees to furnish these articles at the prices stated. All information on this page must be completed.

Unsigned bids will be rejected - no exceptions.

Name of Firm: BBC Electrical Services, Inc Phone Number: 417-206-4047

Business Address (Full Street/City/State/Zip): 5467 Hwy 43, Joplin, MO 64804

Is this address able to accept mail deliveries (for the purpose of returning bid bonds etc.): ☒ Yes ☐ No

Name of Contact Person: Reed Miller Email: rmiller@bbcelectrical.com

Signature of Authorized Person:  Date: 3-30-21

Printed or Typed Name: Reed Miller Title: VP

Arkansas Contractors License Number: 0205440521 (Not required unless specified)

Sales or Use Tax ID Number: 71-0889613

Bid Bond Included: ☐ Yes ☒ No (only required if specified in this IFB Document)

[This space has been intentionally left blank]



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

!IMPORTANT! THE PURCHASING OFFICE HAS MOVED!

**The City of Bentonville Purchasing Office has
moved to:**

**City of Bentonville
Administrative Services Building
2nd Floor
1000 SW 14th Street
Bentonville, AR 72712**



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

INTENT

The intent of this Invitation for Bid (IFB) is to enter into a contract with a properly qualified, experienced, capable, applicably licensed and insured, professional contractor employing skilled craftsman that are knowledgeable and experienced in the construction, maintenance and servicing of underground and overhead electrical transmission and distribution systems, to perform general overhead electric construction services, on an as needed basis, for the City of Bentonville Electric Utilities Department (BEUD). The awarded Bidder shall provide services including, but no limited to the repair, replacement, upgrading and installation of overhead electric infrastructure. The awarded Contract will be for services as-needed for a one (1) year term, renewable annually upon mutual written consent for a total maximum term of three (3) years.

RESPONSE DOCUMENTS

The following documents must be complete to provide a complete bid response package:

- IFB document, all response fields complete.
- Proof that Bidder maintains, or is able to acquire the required insurance, as stated herein in the 'INSURANCE' section of this IFB document.
- Appendix A: Bidder Qualifications

All pricing must be entered on pricing sheet ("no bid" is an acceptable entry).

CONTRACT TERM:

The awarded bidder will be required to enter into a binding contract with the City of Bentonville, for the services listed herein on an as-needed basis for a one (1) year term, renewable annually upon mutual written consent for a total maximum term of three (3) years.

INSURANCE

Bidders are required to include proof of their ability to obtain the insurance, as described herein, after the Notice of Award has been issued and upon execution of the contract in their bid submission. Bid submittals that do not include proof of Bidder's ability to obtain the required insurance may be rejected. The awarded Bidder shall purchase and maintain, at minimum, such insurance as defined herein and furnish Certificates of Insurance to the City naming the City of Bentonville as additionally insured. The insurance shall be appropriate for the performance of the work, as described herein, and shall provide protection from damage occurring to City owned property and from, and any other claims which may arise out of or result from the awarded Bidder's performance of the work; whether it is to be performed by the awarded Bidder, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

INSURANCE (CONT)

The policies of insurance required are as follows:

- 1) Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal: Statutory
- 2) Comprehensive Automobile Liability and Property Damage Insurance on all vehicles performing the work described herein.
- 3) Comprehensive or Commercial General Liability: \$1,000,000.00 – Each Occurrence

SCOPE

The City of Bentonville, Arkansas is soliciting bids for a contractor to repair/replace/upgrade/install public overhead electric infrastructure for the Bentonville Electric Utility Department (BEUD).

The awarded Bidder will be responsible for working on and with overhead electric power lines per BEUD's standards and design. The awarded Contractor's crew would report to BEUD by 7:30am during normal work days to receive daily responsibilities.

All materials needed to accomplish the assigned tasks will be provided by BEUD. The awarded Bidder shall be responsible for providing all labor, tools and equipment necessary to perform the type of work described in this IFB document, including a four (4) man crew with two (2) 60' (sixty foot) bucket trucks, a digger truck, and a foreman truck to perform the work. The bucket truck shall be equipped with all necessary components to complete the work as specified, including but not limited to being equipped with a hydraulic impact wrench and hot line tools/rubber goods. The digger-derrick shall be single axle, equipped with a hydraulic tamper. The crew shall be composed of qualified journeyman lineman with the necessary training to work with the supply space; the qualified observer/apprentice shall have a minimum of four (4) years experience.

The awarded Bidder shall have the ability to provide bucket trucks large enough to work on 100' (one hundred foot) tall transmission poles with 477 wire upon request.

DELIVERY

The City of Bentonville requests that the services, as described herein, begin immediately after the date the Notice of Award is issued and the Contract is signed, according to BEUD's request. BEUD shall coordinate delivery/pick-up of the material with the awarded Bidder. If this schedule cannot be met, Bidder must specify the date that Bidder is available to begin service. Failure to state delivery time obligates the Bidder to complete delivery by the City's requested delivery date. Extended delivery dates may be considered when in the best interest of the City. All deliveries will be to the City of Bentonville, Arkansas.

Date available to begin services : 5-1-2021 after the Notice of Award is issued.



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

INVOICING

The awarded Bidder shall provide an invoice to the City's designated contact bi-weekly, upon the conclusion of the prior two weeks work completed, for approval.

City of Bentonville Administrative Services

ATTN: Accounts Payable

1000 SW 14th Street

Bentonville, AR 72712

The City will provide payment, by check, within fourteen (14) days of receipt of an approved invoices from the Department/designated contact. Failure to submit an invoice on time and to the correct address may result in a delay in payment.

PAYMENT TERMS



Net 30 days



Other: _____

INDEMNIFICATION

Due to the City statutory tort Immunity, the City does not carry liability insurance for such claims. Accordingly, any contract entered into with the awarded Bidder may not include a clause in which the City agrees that it or its' officials or employees will indemnify the other party.

The awarded Bidder agrees to indemnify the City and hold it harmless against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the service or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

DAMAGES

Any damage occurring to City(public) or private property within the worksite areas, including but not limited to turf damage, shall be corrected at the awarded Bidder's expense.

(This space has been intentionally left blank)



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

Contractor/Vendor Disclosure

Company Name: BBC Electrical Services, Inc.

Registered with the Secretary of State's Office to Conduct Business in the State of Arkansas:

☒ Yes ☐ No

Identify each employee of the City Of Bentonville to whom you, any of your Employees owning more that 5% interest in your Company, or are a Director/Executive/Decision Maker of your Company are immediately related.

Immediate Relation includes:

- Spouse/Domestic Partner
- Parents-Natural or Legal/Step/In Laws
- Children/Step, Siblings-Whole/Half/Step/ In Laws
- Grandchildren/Step, Great Grandchildren.

None

Failure to disclose shall be considered a material breach and grounds for immediate termination of this contract/agreement. **Note: Any change in circumstances resulting in a conflict or appearance of a conflict shall be reported in 30 days of change of circumstance.** RM Initials



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

**CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE**

INSTRUCTIONS TO BIDDERS

1. **SCOPE:** These instructions to bidders and general conditions apply to solicitations for material, equipment, supplies or services with an estimated single or combined cost of \$20,000 or more. These conditions shall be in force unless otherwise modified by the City in this bid document. Bidders shall be advised that the City of Bentonville is not responsible for the content of any bid package received through any 3rd party bid service. It is the sole responsibility of the vendor to ensure the completeness of the documents received from any 3rd party source other than hand delivered.
2. **DEFINITIONS (AS USED HEREIN):**
 - a. The term "Invitation For Bid" means a solicitation of formal sealed bids with a combined or single unit value \$20,000 and over. The acronym "IFB" means Invitation for Bid.
 - b. The term "bid" means the offer by the bidder.
 - c. The term "bidder" means the person or organization responding to the solicitation.
 - d. The term "contractor" means a person or organization who is the successful bidder and who enters into a contract with the City.
 - e. The term "change order" means a written order from the Purchasing department directing the contractor to make changes to a contract.
 - f. The term "City" means the City of Bentonville, Arkansas.
 - g. The term "City Council" means the governing body of the City of Bentonville, Arkansas.

3. **PREPARATION OF BIDS:** Bidders shall review the specifications, drawings, and all special and general conditions. Failure to do so will be at the bidder's risk.

Each bidder shall furnish the information required in the solicitation. The bidder shall provide their name, address, e-mail address, and telephone number where indicated in the solicitation documents. The affidavit must be signed by an officer or employee having the authority to bind the company or organization by his/her signature and included with the bid response.

Unit price for each unit offered must be provided. The unit price will be presumed correct.

The bidder must state a definite time for delivery of supplies or performance of services.

4. **SUBMITTING A BID:** Bids must be received by the City of Bentonville Purchasing Office **BEFORE** the time of opening indicated in the solicitation. All references to time shall be Bentonville, Arkansas time (Central time zone). Late bids will be rejected. Any exceptions or additional information required on a solicitation will be noted in the bid documents. Failure to provide any requested information or to follow these procedures may result in the rejection of your bid.
5. **BID DOCUMENT MISTAKES:** The bidder shall not be allowed to modify or correct mistakes in the bid document after the opening of the bid. Failure to complete the entire bid accurately may result in declaring the bid as non-responsive and the bid may be rejected.

Bids may not be withdrawn after the bid opening time and date if a bid mistake is based upon an error in judgment. If a nonjudgmental mistake, such as a math error, is suspected by the City or the bidder, the bidder shall respond within two (2) business days of the bid opening, or within two (2) business days from receiving notification from the City, with a request for the City to consider verification of the mistake. Once a bid has been verified, it shall be considered submitted, as verified. The City shall permit a bidder to withdraw its bid without penalty or forfeiture of bid security if: (a) a nonjudgmental mistake is evident on the face of the bid, or (b) the bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.

If multiple bids are received from the same vendor, the City will either consider only one of the bids from that vendor, or reject all bids from the vendor, at the sole discretion of the City.

6. **ACCEPTANCE OF OFFER:** The submitted bid is considered an offer on the part of the bidder; such offer is deemed accepted upon issuance by the City of a Purchase Order or other contractual document.
7. **FIRM PRICES:** By submitting the bid, bidder signifies that the prices, terms and conditions quoted in their bid will be firm for acceptance for a period of not less than ninety (90) days from the bid opening date unless otherwise specified in the solicitation. Prices quoted must remain firm for the period of performance of any resulting purchase order or contract to be performed over a specified period of time as indicated in the solicitation.



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

8. **CONTRACT RENEWAL:** The City reserves the right to renew any contract resulting from this solicitation at the same prices, specifications, terms and conditions, upon mutual agreement between the City and the contractor.
9. **ESTIMATED QUANTITIES:** Whenever a bid requests prices to be firm for a period of performance, the quantities or usages shown are estimated only with no guarantee made by the City. The quantities are for the bidder's information only, and the City will be bound only for actual quantities ordered.
10. **DISCOUNTS:** Cash discounts will be considered in determining the award. Unless otherwise indicated in the IFB, discounts offering 10 days or more will be taken by the City's Accounts Payable Division, with payment made on the nearest pay period after receipt, inspection and acceptance of articles, and receipt of correct invoice(s).
11. **SAMPLES:** Samples of items, when required, must be submitted within the time specified at no expense to the City. If not destroyed by testing, samples may be returned at the bidder's expense unless otherwise indicated in the solicitation.
12. **AWARD:** Award will be made to the lowest most responsive and responsible bidder, which will be judged on the basis of price, conformance to specifications, quality, delivery time, references, payment terms, and in the best interest of the City of Bentonville, all factors being considered.

The City reserves the right to accept or reject any or all bids or part of bids, to waive irregularities and technicalities, and to request rebids on the material described in the solicitation.

The City reserves the right to award the contract on a split-order basis, lump-sum or individual-item basis, or any other combination that is in the best interest of the City unless otherwise specified.

Conditional bids are subject to rejection in whole or in part at the sole discretion of the City.

In the event of two or more identical low bids, award will be made to the lowest and most responsible and responsive bidders as determined by the City through the bid evaluation process.

No order or contract resulting from this solicitation may be assigned, transferred, or delegated to another party without written approval of the Assistant Finance Director of the City.

13. **BRAND NAMES:** If brand names, make, name of any manufacturer, trade name, or vendor catalog number are specified in these bid documents, it is for the purpose of establishing a grade or quality of material only. When the City does not wish to rule out other brands or makes, the phrase OR EQUAL is added. However, if a product other than that specified is bid, it is the bidder's responsibility to identify such product in their bid and prove to the City that the product is equal to or better than the product specified. Unless otherwise indicated, evidence in the form of samples may be requested if the proposed brand is other than that specified by the City. Such samples are to be furnished as specified in the solicitation or upon request of the City. Any samples requested by the City must be received by the City no later than four (4) days after formal request is made.
14. **VARIATIONS OF SPECIFICATIONS:** For purposes of evaluation, bidder must indicate any variances from any provision, specification, or condition stated in this solicitation, no matter how slight. If bidder does not indicate any variations, it will be assumed that the product or service fully complies with the provisions, specifications, or conditions as stated. If satisfactory bids are not received, the City reserves the right to consider alternate bids containing deviations from stated specifications.
15. **QUALITY:** Unless otherwise identified in the solicitation, all materials used in the manufacture or construction of supplies, materials or equipment covered by this solicitation shall be new. The items bid must be the latest make or model in current production, as offered to commercial trade, and of the highest quality material and workmanship. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.
16. **ECO-FRIENDLY (GREEN) PRODUCTS:** The City of Bentonville supports the use of products that are ecologically friendly to the environment. Bidders are urged to include information with their bid submittal that describes the human health and environmental impact of products proposed. This eco-friendly approach takes into account, but is not limited to, waste production, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and packaging, and the presences of hazardous substances. Consideration may be given to these eco-friendly products when compared to mainstream products in cost and packaging.
17. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for a manufacturer, supplier, or distributor of hazardous material to supply an MSDS as required by 29CFR 1910.1200 with the first shipment. Any time the content of an MSDS is revised, the vendor is required to provide a new MSDS to the City.
18. **ACCEPTANCE OF MATERIAL:** The material delivered under this bid shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and is accepted by the City. It must comply with the terms of this IFB, and



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

fully comply with specifications, and be of the highest quality. In the event the material and/or services supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the contractor and return product to contractor at the contractor's expense.

19. **CODES AND REGULATIONS:** All products supplied and work performed within the scope of this request shall be supplied by the successful bidder to all applicable current prevailing City, State and Federal codes and regulations.
20. **DELIVERY:** Bidders must indicate the number of calendar days required to make delivery after receipt of a purchase order. Delivery time may be considered in making an award. The City reserves the right to cancel any order, or any part of that order, without obligation if delivery is not made within the time(s) specified on the bid form.

The City may grant additional time for delivery if the City is satisfied the delay is beyond the control of the vendor. Any request for time extension must be in writing and approved by the City's authorized representative.

All deliveries shall be FOB Destination to the location listed on the purchase order or price agreement unless otherwise specified. Bidders may be requested to provide separate pricing for delivery of all items in this solicitation.

21. **THIRD PARTY FREIGHT SERVICE:** The City of Bentonville may, at its discretion, use a third party freight service to arrange for delivery of the goods ordered as a result of this solicitation. In this case, the freight terms will be FOB Destination/Third Party Prepaid.
22. **PRICE CHANGES ON CONTRACTS:** If this solicitation is for an estimated quantity of supplies, consideration in awarding bid for yearly contracts will be given:
- First to bidder offering firm prices for full contract period; and
 - Second to bidder offering firm prices subject to market price adjustment.
23. **COPYRIGHT OR PATENT RIGHTS:** By submitting the bid, bidder signifies that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of the bid, and bidder agrees to hold the City harmless from any and all liability, loss, or expense caused by any such violation.
24. **CONFLICT OF INTEREST:** The contractor, by signing the bid form in the solicitation or by acceptance of any purchase order resulting from this solicitation, certifies that to the best of their knowledge or belief, no elected or appointed official of the City is financially interested, directly or indirectly, in the purchase of the goods or services specified on this order or in the contract.
25. **TAXES:** The City of Bentonville is not tax exempt from any taxes imposed by the State and/or Federal Government. Applicable taxes should be included on all vendor invoices.
26. **MANUFACTURER'S CERTIFICATION:** The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid. Failure to provide any requested certification may result in rejection of bid or termination of contract for which the bidder must bear full liability.
27. **TERMINATION:** Subject to the following provisions, any contract resulting from this solicitation may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service is in progress but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted. Types of termination include:
1. Termination for Convenience
In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.
 2. Termination for Cause
Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of termination for cause.
 3. Termination Due to Unavailability of Funds
When funds are not appropriated or otherwise made available to support continuation of performance, the contract shall be cancelled at the discretion of the City.
28. **W-9 REQUIREMENT:** The City of Bentonville requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Bentonville. The Form W-9 verifies the Tax Identification Number of the contractor so the City can correctly report to the IRS all funds paid to the contractor.



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

29. **DEFAULT OF CONTRACT:** In case of default by the contractor, the City may procure the items or services from other sources and hold the contractor responsible for any excess costs caused by such procurement. Failure of a bidder to furnish the equipment, supplies, material, and/or services as specified is cause for elimination of the bidder from the active bidder's list for the products or services concerned.
30. **BID BOND:** If required in this solicitation, bidders shall include a bid guarantee in the form of a bid bond, certified check, cashier's check in the amount of five percent (5%) of the base bid, payable without condition to the City of Bentonville. Personal or company checks are not acceptable. The bid bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Failure to include a bid bond or bid guarantee request with your bid submittal may be cause for rejection of your bid. Bid guarantees (submitted by certified or cashier's checks) will be returned to unsuccessful bidders when the successful bidder is determined and the contract is executed. **When noted, a certified check or bid bond in the amount of 5% of the total bid shall accompany bid if bid exceeds \$35,000.00 [pursuant to Arkansas Code Annotated Section 22-9-203].**
31. **PERFORMANCE BOND:** At the discretion of the City, a performance bond may be required under the contract resulting from this solicitation. Such bond must be of a type and amount suitable for the nature of the commodity or services purchased and the dollar amount of the contract as indicated in this solicitation. The performance bond shall be for the duration of the contract, guaranteeing the faithful performance of the contract, and otherwise conditioned as required by law. Performance bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Bond forms must be executed with a surety company licensed to do business in the State of Arkansas. The cost of the bond shall be included in the bidder's offer.
32. **MODIFICATIONS FOR CHANGES:** No agreement or understanding to modify this solicitation and resultant purchase orders or contract shall be binding upon the City unless made in writing by the Purchasing Department of the City of Bentonville.
33. **ORDER OF PRECEDENCE:** In the event of an inconsistency between provisions of the solicitation, the inconsistency will be resolved in the following order: (a) the schedule; (b) Instructions to Bidders and General Conditions; (c) special provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and, (e) the specifications.
34. **WARRANTY:** Supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this bid. The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid.
35. **PAYMENT:** Payment for materials or services received under this contract will be made upon completion of delivery for each purchase order and submission of invoice to the Accounts Payable Department, 117 West Central, Bentonville, AR 72712. Normal pay periods for the City are every Friday.
38. **GOVERNING LAW:** Any agreement resulting from this solicitation shall be interpreted under and governed by the laws of the State of Arkansas.
39. **ESCALATION/DE-ESCALATION CLAUSE:** In the event prevailing market conditions warrant an adjustment in contract pricing, the following escalation/de-escalation clause shall be the only clause acceptable to the City:
1. Contractor shall give written notice to the Purchasing Department of any proposed changes from contract prices not less than fifteen (15) calendar days prior to the effective date of price changes.
 2. Such notice must be accompanied by a copy of the supplier's notification to the contractor of a justifiable price change.
 3. No price escalation will be authorized in excess of the amount of the increase indicated on the supplier's notice.
 4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
 5. Approved price changes are not applicable to orders already issued and in process at time of price change.
 6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records, or invoice relating directly to the price increase after reasonable notice and during normal business hours.
 7. The Purchasing Department retains the right to determine whether or not such proposed price changes are in the best interests of the City.
 8. If in the opinion of the Procurement Department any proposed increase is found unacceptable, the Purchasing Department reserves the right to cancel the contract upon fifteen (15) calendar days' written notice.
 9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Contractor will put the Procurement Department on the mailing lists for such publications so the Purchasing Department can monitor said changes. Such membership will be at no cost to the City.



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

10. If parties to the contract cannot agree on renewal terms, it is understood that the contract will be cancelled and a new contract will be solicited.
40. **ADDITIONAL INFORMATION:** Additional information may be obtained from the Purchasing Office at (479) 271-3115.



CITY OF BENTONVILLE, ARKANSAS PURCHASING OFFICE

1000 SW 14TH STREET BENTONVILLE, AR 72712 – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM

ADDENDUM TO SOLICITATION

Solicitation ID:	IFB-21-21	Solicitation Title:	General Overhead Construction
Addendum Number:	1	Date of Issuance:	March 25, 2021

TO: Prospective Bidders

This Addendum modifies the original Bidding Document(s) dated March 14, 2021.

Bidders are required to acknowledge this Addendum by including it in their Bid Submission. Failure to acknowledge this Addendum may result in rejection of the Bid Submission.

Any Amended Bidding Documents contained herein shall replace those same documents in the original Bid Packet. In the event that an Amended Required Response document (such as a Bid Pricing Sheet) is included herein, Bidders must use only the Amended Form in their Bid Submission.

This Addendum Number 1 consists of 2 page(s).

Pricing Sheet:

1.0 Addition of Foreman/Crew Leader Pricing Line

1.1 The original Pricing Sheet did not contained a pricing line for the Foreman/Crew Leader per hour price.

1.2 The IFB-21-21 Pricing Sheet has been amended to include the Foreman/Crew Leader Pricing Line. The Amended Pricing Sheet is included in this Addendum Number 1 and shall replace the Pricing Sheet in the original Bidding Documents.

[AMENDED PRICING SHEET FOLLOWS]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/08/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CA#0H64724 1-913-982-3650

IMA, Inc. (NE Kansas Division)

51 Corporate Woods
9393 W. 110th Street, Suite 600
Overland Park, KS 66210

INSURED
BBC Electrical Services, Inc.

c/o Precision Communications, Inc.
506 Industrial Road
Grove, OK 74344

CONTACT NAME: Lynne Cox

PHONE (A/C, No, Ext):

FAX (A/C, No):

E-MAIL ADDRESS: lynne.cox@imacorp.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: ARCH INS CO

11150

INSURER B: STARR IND & LIAB CO

38318

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER: 60485330

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			ZAGKB9240300	10/09/20	09/01/21	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☒			ZACAT9266200	10/09/20	09/01/21	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			1000586593201	10/09/20	09/01/21	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	ZAWCI9442100	10/09/20	09/01/21	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Bentonville Arkansas
Electric Utility Department;
c/o City Hall;
117 West Central

Bentonville, AR 72712

USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CITY OF BENTONVILLE, ARKANSAS PURCHASING OFFICE

1000 SW 14TH STREET BENTONVILLE, AR 72712 – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM

ADDENDUM TO SOLICITATION

(AMENDED – ADDENDUM NUMBER 1) PRICING SHEET

BIDDERS – USE ONLY THIS FORM FOR BID PRICING

The Total Bid Price shall include all costs to the City, including but not limited to: tax, labor, fuel, equipment and the maintenance and repair of the equipment, tools, profit, insurance, delivery and all other costs to the City. The City of Bentonville tax rate is 9.5%. The City of Bentonville is NOT exempt from sales tax.

The Total Bid price is to be submitted as an hourly rates for each line item; all rates shall include all costs to the City. The Total Bid Price is used for the comparison of bids only, the awarded Bidder will be compensated only for hours worked at the quantity of hours worked.

All invoices to the City shall identify the Line Item of the hourly cost according to this Pricing Sheet.

The Bid Award will be based on the lowest and most responsible Total Bid Price, with all factors considered including, but not limited to evaluation of Bidder's references and equipment. There is no guarantee of minimum quantities of work to be performed; services will be performed as needed by the City throughout the contract term.

Line Item Number	Description	(A) Per Hour Charge Regular Weekday Work	(B) Per Hour Charge Overtime Weekday Work	(C) Per Hour Charge Saturday Work
1	Foreman/Crew Leader	\$ 114.74	\$ 164.72	\$ 164.72
2	Journeyman Lineman	\$ 105.11	\$ 150.56	\$ 150.56
3	Qualified Observer/Apprentice	\$ 90.67	\$ 129.29	\$ 129.29
4	Bucket Truck 60' with Hydraulic Impact Wrench and Hot Line Tools/Rubber Goods	\$ 40.00	\$ 40.00	\$ 40.00
5	Digger-Derrick Single Axle with Hydraulic Tamp	\$ 40.00	\$ 40.00	\$ 40.00
6	Foreman Pick-Up Truck	\$ 15.00	\$ 15.00	\$ 15.00
Totals:		(A) \$ 405.52	(B) \$ 539.57	(C) \$ 539.57
TOTAL BID PRICE: (The Sum of the Totals for Columns A, B, C)				\$ 1,484.66

[END OF ADDENDUM NUMBER 1]



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE – ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115

****BIDDERS: NOTE ADDRESS CHANGES LISTED IN THIS IFB DOCUMENT****

APPENDIX A: BIDDER QUALIFICATIONS REQUIRED RESPONSE DOCUMENT

Bidders must complete this information and include this document in their Bid Submission, failure to complete this document may result in rejection of the Bid Submission. The City reserves the right to contact references and utilize the information gained in the evaluation of bids for award.

Bidders shall use the space below to provide the contact information and work summary for at least five (5) clients for whom they have completed the same or similar work for within the past five (5) years.

Company Name	Primary Contact Name	Contact Phone Number	Contact Email	Summary of Work
see attached				



BBC Electrical Services, Inc.

5467 Hwy 43 South

Joplin, MO 64804

Phone: (417) 206-4047 | Fax: (417) 206-4336

www.bbcelectrical.com

DISTRIBUTION REFERENCES

Ameren

1901 Chouteau

St. Louis, MO. 63166-6149

- * Preferred Alliance Contractor – Distribution
- * Pole installation/replacement in energized circuits
- * Reconductor overhead lines in energized circuits
- * Secondary Service replacement/installation
- * Primary underground installation and replacement.
- * Primary underground riser and transformer terminations
- * Recloser and Fault Indicator installation – Smart Grid

Reference: James Route EMAIL: JRoute@ameren.com *

Evergy

1200 Main Street

Kansas City, MO. 64105

- * Pole installation/replacement in energized circuits
- * Secondary Service Replacement
- * Reconductor overhead lines in energized circuits

Reference: Jeff Hillman EMAIL: Jeff.hillman@evergy.com *

White River Valley Electric Coop

2449 State Hwy 76 East

Branson, MO. 65616

- * Pole replacement/installation in energized circuits
- * Secondary Service and Meter Pole replacement/installation
- * Reconductor overhead primary lines in energized circuits
- * Primary underground installation and replacement.
- * Primary underground riser and transformer terminations

Reference: Beau Jackson EMAIL: BJackson@WhiteRiver.org *

City Utilities of Springfield

10301 E Central Street

Springfield, MO. 65802

- * Pole replacement/installation in energized circuits
- * Secondary Service replacement/installation
- * Reconductor overhead primary lines in energized circuits
- * Primary underground installation and replacement.
- * Primary underground riser and transformer terminations

Reference: Jeffery Freeman EMAIL: jeff.freeman@cityutilities.net *

Osage Valley Electric Coop

PO Box 470

Butler, MO. 64730

- * Pole replacement/installation in energized circuits
- * Secondary Service and Meter Pole replacement/installation
- * Reconductor overhead primary lines in energized circuits
- * Primary underground installation and replacement.
- * Primary underground riser terminations on substation exits

Reference: Jarrod Campbell EMAIL: jcampbell@osagevalley.com *

* If a telephone number is needed, please request it from the individual at the email address shown.



Agenda Item Form

Date of City Council Meeting	4/27/2021
Department	Administration
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check All That Apply)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Request City Council approve the addition of two (2) new positions to the Electric Department Pay Plan - Assistant Electric Engineering Manager (Grade 96A and Electric Department Development Coordinator (Grade 95A) to support the growth of the Electric Department's Electric Engineering section. There is no additional headcount associated with this change.					

Estimated Cost	\$7,920.00
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
The \$7,920 is the additional impact for the remainder of the year. Funds will be moved from another O&M account to cover this cost.	





27 April, 2021

To: Bentonville City Council

From: Human Resources

Subject: Memo Concerning Adding Two (2) New Positions in the Electric Department Pay Plan

1. Staff recommends that the City Council approve the addition of two (2) new positions in Electric Department Pay Plan – an Assistant Electric Engineering Manager (Grade 96A) and an Electric Department Development Coordinator (Grade 95A).
2. With the continued growth of the City, the Bentonville Electric Utility Department (BEUD) has to change the way we are organized in our engineering section. In the past, BEUD only had two (2) Electric Engineering Technicians to cover all past, current, and future developments (both Large-Scale Developments and Preliminary Plats), in-house projects (extensions and maintenance), road widening, and any associated mapping. Over the last few years, three additional technicians have been hired to assist with everything going on in the department. The three technicians are basically the same skill level, so they need to be trained in all aspects of what the engineering section does. In addition to the training, there is increased project supervision and oversight. The current Electric Engineering Manager can no longer effectively manage the staff training, supervision, project oversight and monitor/maintain/troubleshoot all aspects of the City of Bentonville's electric system. The addition of an Assistant Electric Engineering Manager is needed to put together and oversee the training of the technicians and schedule their time with project design. In addition to the training, they will continue to do overhead/underground design, road projects, and mapping as needed.
3. Another new position needed is the Development Coordinator. With the continual growth in developments, the Development Coordinator will be the Electric department's a specific point of contact for the various Large-Scale Developments and Preliminary Plats that are submitted for BEUD to design, and coordinate with the Electric Inspector once the projects go to construction. The

DC will also contribute to the training of the three techs and teach them the different aspects of electrical design. These two new positions will work along with the Engineering Manager to ensure BEUD stays on top of all the developments, system improvements and expansions.

4. The actual staffing of these 2 new positions will be done by promoting existing qualified electric staff members from their current roles (as Electric Technicians) and will not require additional headcount.



Agenda Item Form

Date of City Council Meeting	4/13/2021
Department	Electric
Submitted by	Jake Harper/Travis Matlock
Phone	479-271-6781

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☒ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution authorizing the Mayor and City Clerk to enter into an agreement with BKD, LLC to provide Agreed-Upon Procedure Services related to the AEP bill for services during February 2021. This agreement will allow the City and BKD to begin the process of verifying the fuel charge passed through AEP to the Bentonville Electric Utility. The City will be working with Chad Moore of the BKD Oklahoma City office for these services since it requires a team with a specialty in electric transmission.					

Estimated Cost	\$15,000 - \$20,000
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below):	
We are some engineering professional funds to cover these costs.	



March 29, 2021

Members of the City Council
Honorable Stephanie Orman, Mayor
Mr. Jake Harper, Director of Finance
CITY OF BENTONVILLE, ARKANSAS
117 West Central
Bentonville, AR 72712

We appreciate your selection of **BKD, LLP** as your service provider and are pleased to confirm the arrangements of our engagement in this contract. Within the requirements of our professional standards and any duties owed to the public, regulatory, or other authorities, our goal is to provide you **Unmatched Client Service®**.

In addition to the terms set forth in this contract, including the detailed **Scope of Services**, our engagement is governed by the following, incorporated fully by this reference:

- Terms and Conditions Addendum

Summary Scope of Services

As described in the attached **Scope of Services**, our services will include the following: CITY OF BENTONVILLE, ARKANSAS

- Agreed-Upon Procedure Services related to the AEP bill for services during February 2021

Engagement Fees

We have estimated the time required by our engagement and expect our fee to range between \$15,000 and \$20,000. Included in these fees are travel costs and fees for services from other professionals, if any, as well as an administrative fee of four (4) percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as software licensing, user access, and research tools, and similar expense items.

Our pricing for this engagement and our fee structure are based upon the expectation that our invoices will be paid promptly. Payment of our invoices is due upon receipt.

Contract Agreement

Please sign and return this contract to indicate your acknowledgment of, and agreement with, the arrangements for our services including our respective responsibilities.

BKD, LLP

Handwritten signature of BKD, LLP in black ink.

Acknowledged and agreed to as it relates to the entire contract, including the **Scope of Services** and **Terms and Conditions Addendum**, on behalf of CITY OF BENTONVILLE, ARKANSAS.

BY _____
Stephanie Orman, Mayor

DATE _____

Scope of Services

The following apply for all services:

Assistance Our timely completion of services depends on the assistance you and AEP provides us in accumulating information and responding to our inquiries. Inaccuracies or delays in providing this information or the responses may result in untimely filings or inability to meet other deadlines.

Responsibility for Outcomes We may perform additional services for you that are not covered by this contract. You agree to assume full responsibility for the substantive outcomes of the contracted services and for any other services we may provide, including any findings that may result.

You also acknowledge these services are adequate for your purposes, and you will establish and monitor the performance of these services to ensure they meet management's objectives. All decisions involving management responsibilities related to these services will be made by you, and you accept full responsibility for such decisions.

We understand you have designated (or will) a management-level individual to be responsible and accountable for overseeing the performance of these services, and you have determined (or will) this individual is qualified to conduct such oversight.

Performance of Nonattest Services – SEC & PCAOB Our performance of certain nonattest services may not be permitted under the SEC and PCAOB independence rules, to which we are not currently subject. Accordingly, if we perform services that are not permitted under those rules, you would not be permitted to use our reports in a registration statement or other document requiring compliance with those rules.

You agree to inform us promptly if you are considering any future public offering of securities, use of our reports to comply with the Investment Advisers Act custody rule, or other action that would necessitate our future compliance with the independence rules of the SEC and PCAOB.

Agreed-Upon Procedure Services

We will apply procedures determined at a later date to the AEP bill for services during February 2021 of the CITY OF BENTONVILLE, ARKANSAS. The sufficiency of the requested procedures is solely the responsibility of the specified parties listed above. Consequently, we make no representation regarding the sufficiency of the procedures for the purpose for which the report has been requested or for any other purpose.

Because we have not been engaged to conduct an examination or review, we will not express an opinion or conclusion, respectively, on the AEP bill for services during February 2021. In addition, we have no obligation to perform any procedures beyond those listed in the attachment to this contract.

Chad Moore, Partner is responsible for supervising the engagement and authorizing the signing of the report.

We will issue a written report summarizing the procedures performed and the results of those procedures to the following:

Entity Name

CITY OF BENTONVILLE, ARKANSAS

The report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

The following apply for the agreed-upon procedure services described above:

**Our
Responsibilities**

We will conduct our agreed-upon procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants.

**Limitations &
Fraud**

Our engagement will not include a detailed examination of all transactions and cannot be relied upon to disclose misstatements that might exist due to error, fraud, and illegal acts. However, we will inform you of any such matters, if material, that come to our attention.

You accept that these procedures are not a substitute for management's responsibility to ensure controls are in place to prevent and detect theft and all other forms of fraud and illegal acts. Therefore, you agree we are not responsible for the cost of damages or any liability arising from errors or irregularities, fraud, defalcations, or any other form of noncompliance or theft, caused by current or former employees, directors, owners, or third parties.

Report

If, for any reason, we are unable to complete our procedures, we may decline to issue a report as a result of this engagement.

**Management
Responsibilities**

The management of CITY OF BENTONVILLE, ARKANSAS is responsible for the following:

- Proper recording of transactions and preparation of financial statements

- Establishing and maintaining effective internal control over financial reporting
- Setting the proper tone
- Creating and maintaining a culture of honesty and high ethical standards
- Establishing appropriate controls to prevent, deter, and detect fraud and illegal acts
- Identifying and ensuring compliance with laws and regulations applicable to its activities
- Establishing and maintaining effective internal control over compliance
- Implementing and monitoring controls

Written Assertions To facilitate our engagement, management is responsible for providing a written assertion about the measurement or evaluation of the subject matter against the criteria, supplying us with all necessary information, and for allowing us access to personnel to assist in performing our services. It should be understood that management is responsible for the accuracy and completeness of these items, for the subject matter and the written assertion(s) referred to above, and for selecting and determining the appropriateness of the criteria.

At the conclusion of our engagement, management will provide to us a letter confirming the availability of this information, the written assertion(s), certain representations made during the engagement, and acknowledging certain responsibilities outlined in this contract.

Written Assertions Management is responsible for selecting the criteria applied to the subject matter and for determining the appropriateness of the criteria. At the conclusion of our engagement, management will provide to us a letter confirming this responsibility, whether it is aware of any material misstatements in the subject matter or assertion, and that it has disclosed all known events subsequent to the period (or point in time) of the subject matter being reported on that would have a material effect on the subject matter or assertion.

CITY OF BENTONVILLE, ARKANSAS is responsible for providing a written assertion about the measurement or evaluation of the subject matter against the criteria, supplying us with all necessary information, and for allowing us access to personnel to assist in performing our services. It should be understood that CITY OF BENTONVILLE, ARKANSAS is responsible for the accuracy and completeness of these items, for the subject matter, and the written assertion(s) referred to above. At the conclusion of our engagement, CITY OF BENTONVILLE, ARKANSAS will provide to us a letter confirming the availability of this information, the written assertion(s), certain representations made during the engagement, and acknowledging certain responsibilities outlined in this contract.

BKD, LLP Terms and Conditions Addendum

GENERAL

1. **Overview.** This addendum describes **BKD, LLP's** standard terms and conditions ("Terms and Conditions") applicable to Our provision of services to the Client ("You"). The Terms and Conditions are a part of the contract between You and **BKD, LLP**. For the purposes of the Terms and Conditions, any reference to "Firm," "We," "Us," or "Our" is a reference to **BKD, LLP** ("BKD"), and any reference to "You" or "Your" is a reference to the party or parties that have engaged Us to provide services.

BILLING, PAYMENT, & TERMINATION

2. **Billing and Payment Terms.** We will bill You for Our professional fees and costs as outlined in Our contract. Interest will be charged on any unpaid balance after 30 days at the rate of 10 percent per annum, or as allowed by law at the earliest date thereafter, and highest applicable rate if less than 10 percent.

We reserve the right to suspend or terminate Our work for this engagement or any other engagement for nonpayment of fees. If Our work is suspended or terminated, You agree that We will not be responsible for Your failure to meet governmental and other deadlines, for any penalties or interest that may be assessed against You resulting from Your failure to meet such deadlines, and for any other damages (including but not limited to consequential, indirect, lost profits, or punitive damages) incurred as a result of the suspension or termination of Our services.

Our fees may increase if Our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. Our engagement fees do not include any time for post-engagement consultation with Your personnel or third parties, consent letters and related procedures for the use of Our reports in offering documents, inquiries from regulators, or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

3. **Billing Records.** If these services are determined to be within the scope and authority of Section 1861(v)(1)(I) of the Social Security Act, We agree to make available to the Secretary of Health and Human Services, or to the U.S. Comptroller General, or any of their duly authorized representatives, such of Our books, documents, and records that are necessary to certify the nature and extent of Our services, until the expiration of four (4) years after the furnishing of these services. This contract allows access to contracts of a similar nature between subcontractors and related organizations of the subcontractor, and to their books, documents, and records.
4. **Termination.** Either party may terminate these services in good faith at any time for any reason, including Your failure to comply with the terms of Our contract or as We determine professional standards require. Both parties must agree, in writing, to any future modifications or extensions. If services are terminated, You agree to pay BKD for time expended to date. In addition, You will be billed costs and fees for services from other professionals, if any, as well as an administrative fee of four (4) percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as software licensing, user access, and research tools, and similar expense items.

DISPUTES & DISCLAIMERS

5. **Mediation.** Any dispute arising out of or related to this engagement will, prior to resorting to litigation, be submitted for nonbinding mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. Unless the parties agree otherwise, the American Arbitration Association ("AAA") will administer any such mediation in accordance with its Commercial Mediation Rules. The mediator will be selected by agreement of the parties. If We cannot agree, a mediator shall be designated by the AAA. The mediation proceeding shall be confidential. Each party will bear its own costs in the mediation, but the fees and expenses of the mediator will be shared equally.
6. **Indemnification.** Unless disallowed by law or applicable professional standards, You agree to hold BKD harmless from any and all claims which arise from knowing misrepresentations to BKD, or the intentional withholding or concealment of information from BKD by Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. You also agree to indemnify BKD for any claims made against BKD by third parties, which arise from any wrongful actions of Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. The provisions of this paragraph shall apply regardless of the nature of the claim. The Parties agree and understand that the City has Statutory Tort Immunity and as such, nothing contained herein or otherwise under this Agreement shall waive any governmental immunity the City may be entitled to by law.
7. **Statute of Limitations.** You agree that any claim or legal action arising out of or related to this contract and the services provided hereunder shall be commenced no more than one (1) year from the date of delivery of the work product to You or the termination of the services described herein (whichever is earlier), regardless of any statute of limitations prescribing a longer period of time for commencing such a claim under law. This time limitation shall apply regardless of whether BKD performs other or subsequent services for You. A claim is understood to be a demand for money or services, demand for mediation, or the service of suit based on a breach of this contract or the acts or omissions of BKD in performing the services provided herein. This provision shall not apply if enforcement is disallowed by applicable law or professional standards.
8. **Limitation of Liability.** You agree that BKD's liability, if any, arising out of or related to this contract and the services provided hereunder, shall be limited to the amount of the fees paid by You for services rendered under this contract. This limitation shall not apply to the extent it is finally, judicially determined that the liability resulted from the intentional or willful misconduct of BKD or if enforcement of this provision is disallowed by applicable law or professional standards.
9. **Waiver of Certain Damages.** In no event shall BKD be liable to You or a third party for any indirect, special, consequential, punitive, or exemplary damages, including but not limited to lost profits, loss of revenue, interruption, loss of use, damage to goodwill or reputation, regardless of whether You were advised of the possibility of such damages, regardless of whether such damages were reasonably foreseeable, and regardless of whether such damages arise under a theory of contract, tort, strict liability, or otherwise.

10. **Severability.** If any portion of this contract is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of the terms set forth in this contract.
11. **Assignment.** You acknowledge and agree that the terms and conditions of this contract shall be binding upon and inure to the parties' successors and assigns, subject to applicable laws and regulations.
12. **Disclaimer of Legal or Investment Advice.** Our services do not constitute legal or investment advice.

RECORDS, WORKPAPERS, DELIVERABLES, & PROPRIETARY INFORMATION

13. **Maintenance of Records.** You agree to assume full responsibility for maintaining Your original data and records and that BKD has no responsibility to maintain this information. You agree You will not rely on BKD to provide hosting, electronic security, or backup services, *e.g.*, business continuity or disaster recovery services, to You unless separately engaged to do so. You understand that Your access to data, records, and information from BKD's servers, *i.e.*, BKDconnect, can be terminated at any time and You will not rely on using this to host Your data and records.
14. **BKD Workpapers.** Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, We may be requested by regulatory or enforcement bodies (including any State Board) to make certain workpapers available to them pursuant to authority granted by law or regulation. Unless We are prohibited from doing so by law or regulation, BKD will inform You of any such legal process or request. You agree We have no legal responsibility to You in the event We determine We are obligated to provide such documents or information. In addition, You agree to compensate or reimburse BKD for all costs and expenses, including reasonable attorney's fees, associated with BKD's compliance with requests or demands for its workpapers or other information related to this engagement, and for any testimony required by summons or subpoena.
15. **Use of Deliverables and Drafts.** You agree You will not modify any deliverables or drafts prepared by Us for internal use or for distribution to third parties. You also understand that We may on occasion send You documents marked as draft and understand that those are for Your review purpose only, should not be distributed in any way, and should be destroyed as soon as possible.

Our report on any financial statements must be associated only with the financial statements that were the subject of Our engagement. You may make copies of Our report, but only if the entire financial statements (exactly as attached to Our report, including related footnotes and supplementary information, as appropriate) are reproduced and distributed with Our report. You agree not to reproduce or associate Our report with any other financial statements, or portions thereof, that are not the subject of Our engagement.

16. **Proprietary Information.** You acknowledge that proprietary information, documents, materials, management techniques, and other intellectual property are a material source of the services We perform and were developed prior to Our association with You. Any new forms, software, documents, or intellectual property We develop during this engagement for Your use shall belong to Us, and You shall have the limited right to use them solely within Your business. All

reports, templates, manuals, forms, checklists, questionnaires, letters, agreements, and other documents which We make available to You are confidential and proprietary to Us. Neither You, nor any of Your agents, will copy, electronically store, reproduce, or make available to anyone other than Your personnel, any such documents. This provision will apply to all materials whether in digital, "hard copy" format, or other medium.

REGULATORY

17. **U.S. Securities and Exchange Commission ("SEC") and other Regulatory Bodies.** Where We are providing services either for (a) an entity that is registered with the SEC, (b) an affiliate of such registrant, or (c) an entity or affiliate that is subject to rules, regulations, or standards beyond those of the American Institute of Certified Public Accountants ("AICPA"), any term of this contract that would be prohibited by or impair Our independence under applicable law or regulation shall not apply to the extent necessary only to avoid such prohibition or impairment.
18. **Offering Document.** You may wish to include Our report(s) on financial statements in an exempt offering document. You agree that any report, including any auditor's report, or reference to Our firm, will not be included in any such offering document without notifying us. Any agreement to perform work in connection with an exempt offering document, including providing agreement for the use of the auditor's report in the exempt offering document, will be a separate engagement.

Any exempt offering document issued by You with which We are not involved will clearly indicate that We are not involved by including a disclosure such as, "**BKD, LLP**, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. **BKD, LLP** also has not performed any procedures relating to this offering document."

19. **BKD Not a Municipal Advisor.** BKD is not acting as Your municipal advisor under Section 15B of the *Securities Exchange Act of 1934*, as amended. As such, BKD is not recommending any action to You and does not owe You a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. You should discuss such matters with internal or external advisors and experts You deem appropriate before acting on any such information or material provided by BKD.

TECHNOLOGY

20. **Electronic Sites.** You agree to notify Us if You desire to place Our report(s), including any reports on Your financial statements, along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site. You recognize that We have no responsibility to review information contained in electronic sites.
21. **Electronic Signatures and Counterparts.** This contract and other documents to be delivered pursuant to this contract may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic

signatures, whether digital or encrypted, of the parties included in this contract are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this contract or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the internet), by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.

22. **Electronic Data Communication and Storage.** In the interest of facilitating Our services to You, We may send data over the internet, temporarily store electronic data via computer software applications hosted remotely on the internet, or utilize cloud-based storage. Your confidential electronic data may be transmitted or stored using these methods. In using these data communication and storage methods, We employ measures designed to maintain data security. We use reasonable efforts to keep such communications and electronic data secure in accordance with Our obligations under applicable laws, regulations, and professional standards.

You recognize and accept that We have no control over the unauthorized interception or breach of any communications or electronic data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us. You consent to Our use of these electronic devices and applications during this engagement.

OTHER MATTERS

23. **Third-Party Service Providers.** BKD may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about You to third-party service providers in serving Your account. BKD maintains, however, internal policies, procedures, and safeguards to protect the confidentiality and security of Your information. In addition, BKD will secure confidentiality agreements with all service providers to maintain the confidentiality of Your information. If We are unable to secure an appropriate confidentiality agreement, You will be asked to consent prior to BKD sharing Your confidential information with the third-party service provider.
24. **Independent Contractor.** When providing services to You, We will be functioning as an independent contractor; and in no event will We or any of Our employees be an officer of You, nor will Our relationship be that of joint venturers, partners, employer and employee, principal and agent, or any similar relationship giving rise to a fiduciary duty to You.
25. **Use of BKD Name.** Any time You intend to reference BKD's firm name in any manner in any published materials, including on an electronic site, You agree to provide Us with draft materials for review and approval before publishing or posting such information.
26. **Praxity.** BKD is an independent accounting firm allowed to use the name "Praxity" in relation to its practice. BKD is not connected, however, by ownership with any other firm using the name "Praxity." BKD will be solely responsible for all work carried out on Your behalf. In deciding to engage BKD, You acknowledge that We have not represented to You that any other firm using the name "Praxity" will in any way be responsible for Our work.

27. **BKD Status as LLP.** BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, for any debts, obligations, or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract, or otherwise.
28. **Entire Agreement.** The contract, including this *Terms and Conditions Addendum* and any other attachments or addenda, encompasses the entire agreement between You and BKD and supersedes all previous understandings and agreements between the parties, whether oral or written. Any modification to the terms of this contract must be made in writing and signed by both You and BKD.
29. **Force Majeure.** We shall not be held responsible for any failure to fulfill Our obligations if such failure was caused by circumstances beyond Our control.