

1<sup>st</sup> Changes  
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3<sup>rd</sup> Changes  
4<sup>th</sup> Changes

RETAIL OPERATIONS  
AGREEMENT

between

VILLAGE OF \_\_\_\_\_, NEBRASKA

and

BUTLER ~~COUNTY RURAL~~ PUBLIC POWER  
DISTRICT

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**RETAIL OPERATIONS AGREEMENT**  
**between**  
**BUTLER COUNTY RURAL PUBLIC POWER DISTRICT**  
**and**  
**VILLAGE OF \_\_\_\_\_, NEBRASKA**

This Retail Operations Agreement (Agreement) is made and entered into by and between Butler ~~County Rural~~ Public Power District, a public corporation and political subdivision of the State of Nebraska (Butler PPD), and the Village of \_\_\_\_\_, Nebraska, a municipal corporation of the State of Nebraska (Village).

RECITALS

WHEREAS, Butler PPD operates an electric utility system, including facilities for transmission and distribution of electric power and energy and is engaged in the purchase, transmission, distribution, and sale of electric power and energy; and

WHEREAS, the Village owns an electric distribution system as hereinafter defined (Distribution System), which is directly or indirectly connected to Butler PPD's electric system; and

WHEREAS, the Village previously has been served by Butler PPD which has provided electric energy, and has operated the Village's Distribution System pursuant to the terms of a previous agreement; and

WHEREAS, Butler PPD and the Village desire to enter into a long-term agreement in order to provide for Butler PPD's lease and operation of the Village's Distribution System.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

**TWENTY YEAR** TERM AND EFFECTIVE DATE,

This Agreement shall become effective on \_\_\_\_\_, 2020, and shall continue in force until \_\_\_\_\_, 2040, and thereafter from year to year unless terminated on an anniversary thereafter by a least one (1) year's prior written notice given by either party to the other, which notice can be given at any time on or after \_\_\_\_\_, 2039.

## ARTICLE II

### LEASE OF DISTRIBUTION SYSTEM

During the term of this Agreement, the Village shall lease and deliver possession of the Distribution System to Butler PPD. Butler PPD accepts delivery of the Distribution System, but ownership remains with the Village. The term "Distribution System" shall, for the purposes of this Agreement, mean the electric distribution facilities consisting of wires, poles and appurtenant fixtures, substation, meters, services, distribution transformers, and street lighting owned by the Village as of the effective date of this Agreement. Ownership of facilities presently owned by Butler PPD, as shown on Exhibit "A", attached hereto, shall be retained by Butler PPD at the termination of this Agreement.

## ARTICLE III

### OPERATION AND USE OF FACILITIES

Butler PPD shall operate the Distribution System as an integrated part of its electric system and the Directors of Butler PPD shall fix rates and other terms and conditions as provided in Chapter 70, Article 6 of the Revised Statutes of Nebraska.

## ARTICLE IV

### LEASE PAYMENTS

For the purposes of calculating Lease Payments, the gross retail electric revenues during the term of this Agreement from sales to customers purchasing electricity from the Distribution System shall be adjusted to eliminate (i) any bad debt charge-offs associated with such sales, ~~(ii) revenues from tax-supported agencies on the municipal rate~~, and (ii) any revenues associated with application of a production cost adder, or similar cost adjustments.

Butler PPD shall collect and pay the Village an amount equal to twelve percent (12%) of the adjusted revenue for the first five (5) years of this Agreement. After the first five years, the lease payment shall be reduced to ten percent (10%) of the adjusted revenue. After ten years the rate shall be reduced to nine percent (9%). After the 15<sup>th</sup> year, the lease payment shall be reduced to eight percent (8%) of the adjusted revenue.

Butler PPD shall collect and pay the Village an amount equal to twelve percent (12%) of the adjusted revenue for the first two years of this Agreement. After two years the lease payment shall be reduced to eleven percent (11%) of the adjusted revenue. After four years the lease payment shall be reduced to ten percent (10%) of the adjusted revenue. After six years the lease payment shall be reduced to nine percent (9%) of the adjusted revenue. After the eighth year, the lease payment shall be reduced to eight percent (8%) of the adjusted revenue.

Butler PPD shall collect and pay the Village an amount equal to ten percent (10%) of the adjusted revenue for the first four years of this Agreement. After four years the lease payment shall be reduced to nine percent (9%) of the adjusted revenue. After the eighth year, the lease payment shall be reduced to eight percent (8%) of the adjusted revenue.

~~Butler PPD shall collect and pay the Village an amount equal to twelve [redacted] percent (12 [redacted]%) of the adjusted gross revenues (Lease Payment) for the first 15 years of this Agreement. Although Butler PPD will continue to collect twelve [redacted] percent (12 [redacted]%), the Lease Payment to the Village will decrease to six [redacted] percent (6 [redacted]%) of the adjusted gross revenues (Lease Payment) for the remaining five (5) years of this Agreement. The difference shall be referred to as the Lease Payment Adjustment, and any extensions thereof.~~ The payments will be determined by Butler PPD records, based upon sales during the preceding three (3) months from sales to customers purchasing electricity from the Distribution System located within the service area of the Village (within the Village limits) as shown on eExhibit "A B", attached hereto. Such payments shall be made quarterly to the Village on or near the 1st day of the months of March, June, September, and December for the previous quarter. Collection for payment to the Village shall be made by adding the same percentage as the "Lease Payment Adjustment" to the utility bills of those customers served, excluding tax supported agencies on the municipal rate.

~~In the event the Village would like to modify the lease payment percentage during the first 15 years of this agreement, the Village shall cause at least 3 months' notice before the calendar quarter in which the change is to take effect be given in writing to Butler PPD. In no event shall the lease payment exceed twelve percent (12%).~~

## ARTICLE V

### MAINTENANCE AND CONSTRUCTION OF FACILITIES

Butler PPD shall maintain the Distribution System and construct any additions necessary for service to retail customers to the extent such additions are within the established policies of Butler PPD. Such additions to the Distribution System which are within the corporate limits of the Village as shown on Exhibit "B" attached hereto which are rated at or below ~~25,000~~ 15,000 volts, shall become a part of the Distribution System and belong to the Village, but all additions and replacements are expressly subject to the terms and conditions of Article VI of this Agreement. All additions, improvements and maintenance will be subject to Butler PPD construction and maintenance standards. Any materials removed in connection with maintenance or construction shall become the property of Butler PPD.

## ARTICLE VI

### SURRENDER OF DISTRIBUTION SYSTEM

Upon termination of this Agreement, Butler PPD shall surrender the Distribution System to the Village in as good condition as it was at the start of this Agreement with reasonable wear and tear excepted. During the last five (5) years of this Agreement Butler PPD will retain **the greater of 50% of the Lease Payment Adjustment or the un-depreciated plant improvements incurred by Butler PPD while** ~~to cover un-depreciated plant improvements and any indebtedness incurred by Butler PPD while~~ operating the Distribution System. Any electric plant capital additions requested during the last five (5) years of this Agreement will be approved by both the Village and Butler PPD before construction and the Village will **pay for the cost of finance all approved capital additions.** ~~pay for all construction costs, including engineering fees, for all approved capital additions.~~

## ARTICLE VII

### TAXES

Butler PPD shall collect and make payments of taxes and in-lieu-of taxes as may be required by law from time to time and assessment for same shall be passed on to the Village's electric customers in the form of a utility tax, toll rent, or charge.

## ARTICLE VIII

### INSURANCE

To the extent it is obtainable at reasonable cost Butler PPD agrees during the existence of this Agreement to have in force with a company authorized to issue such insurance in the State of Nebraska, General Liability, including combined single limit bodily injury and property damage per occurrence with specific contractual coverage insuring the hereinafter assumed liability of Butler PPD. Butler PPD agrees to hold harmless the Village from loss (excluding liability of the Village to pay workmen's compensation benefits) as a result of legal liability to members of the public imposed upon the Village for bodily injury or death and for property damage arising out of Butler PPD's operation of the Distribution System and performance of this Agreement, subject to the availability, limits, and scope of the coverage of said general liability insurance with specific contractual coverage. Article IX, and the obtaining and maintaining of insurance coverage, is not intended to and it shall not be construed to create any liability to members of the public in excess of that provided by law.

**Village agrees to hold harmless Butler PPD from loss caused by the Village and Village's employees and agents in connection with the delivery of electric power and energy pursuant to this agreement.**

It is further agreed that the Village will consent to Butler PPD solely deciding whether or not to insure against physical damage to all or any part of the property leased by Butler PPD and in the care, custody or control of Butler PPD in the performance of this Agreement with the Village.

ARTICLE IX

LIMITATION OF BUTLER PPD LIABILITY

No Liability shall be attached to Butler PPD or Butler PPD's officers and directors, employees and agents for any failure to deliver electric power under this Agreement due to Acts of God or any other cause whatsoever except that failure which is caused by Butler PPD's gross negligence. ~~Butler's own voluntary act or any neglect to exercise reasonable care and diligence in the performance of this Agreement.~~ Butler PPD shall have the right to suspend temporarily the delivery of electric power under and pursuant to this Agreement for the purpose of making repairs or improvements to the Distribution System and/or Butler PPD's electric system.

ARTICLE X

NON-PCB AND/OR PCB CONTAMINATED TRANSFORMERS

In the event NON-PCB and/or PCB contaminated transformers are removed from service, those transformers shall be stored and disposed of pursuant to EPA regulations. The Village must immediately report any spills that occur to Butler PPD, so the appropriate action can be taken. During the term of this Agreement all disposal costs shall be paid by Butler PPD and maintenance of annual PCB documents as required by EPA will be the responsibility of Butler PPD.

ARTICLE XI

FORCE MAJEURE

In the event of any cause or causes not reasonably within the control and without the fault or negligence of the affected party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation acts of God, acts of the public enemy, acts of terrorism or threats thereof, blockades, strikes, civil disturbances, fires, explosions, storms, floods, landslides, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities, interruptions to supply, acts of military authorities, acts of local, state, federal agencies or regulatory bodies, court actions, such causes shall not give rise to any legal liability to the other party for the duration of the cause preventing performance of the obligation to the other party.

In the event of damage to a substantial portion of Village's electric distribution system, Butler PPD shall not be obligated to supply electric power and energy until the Village has completed repairs, at its expense to the damaged portion of the system.

ARTICLE XI XII

AMENDMENTS

Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

IN WITNESS WHEREOF, the parties hereto have caused this Retail Operation Agreement to be executed in duplicate by their duly authorized officers or representatives and their corporate seals to be hereunto affixed as of the dates indicated below.

ATTEST: VILLAGE OF \_\_\_\_\_

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

(SEAL) Title: \_\_\_\_\_

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

ATTEST: BUTLER COUNTY ~~RURAL~~ PUBLIC POWER

DISTRICT

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

(SEAL) Title: \_\_\_\_\_

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