

BILL NO. 2002

SPECIAL ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF CUBA, MISSOURI, ON BEHALF OF SAID CITY, TO ENTER INTO AN AGREEMENT WITH MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION FOR AN ELECTRIC COST OF SERVICE AND RATE STUDY

WHEREAS, the Board of Aldermen of the City of Cuba, Missouri (City), has determined that it is in the best interests of the City to enter into an agreement with Missouri Joint Municipal Electric Utility Commission for an electric cost of service and rate study.

BE IT ORDAINED, by the Board of Aldermen of the City of Cuba, Missouri, as follows:

Section 1: The City of Cuba, Missouri, shall enter into agreement with Missouri Joint Municipal Electric Utility Commission for an electric cost of service and rate study. A copy of said Agreement is attached hereto as Exhibit "A".

Section 2: The Mayor of the City of Cuba, Missouri, is authorized to execute the Agreement on behalf of the City.

Section 3: This ordinance shall be in full force and effect from and after its passage and approval.

READ TWO TIMES AND PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF CUBA, MISSOURI, THIS ____ DAY OF _____, 2021.

CODY LEATHERS, MAYOR

Attest:

CHRISTINE NASH, CITY CLERK

(City Seal)

Approved this _____ day of _____, 2021.

CODY LEATHERS, MAYOR

Attest:

CHRISTINE NASH, CITY CLERK

(City Seal)

Approved as to the form.
WILLIAMS, ROBINSON, RIGLER & BUSCHJOST, P.C.

By: _____
Lance B. Thurman, #51214
901 North Pine Street, Fourth Floor
Post Office Box 47
Rolla, Missouri 65402
(573) 341-2266

ATTORNEYS FOR THE CITY OF CUBA, MISSOURI

Alderman	Vote on First Reading On _____, 2021	Vote on Second Reading On _____, 2021
Kevin Copling		
Sam Black		
Debbie Martin		
Warren Graddy		
Curtis Holt		
Jeff Bouse		



MPUA

Missouri Public Utility Alliance

PARTICIPATING CITIES' AUTHORIZATION AND CONSENT

Participating Cities' Agreement

This agreement ("Agreement") sets forth the terms and conditions under which the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), the broker, and the City of _____, Missouri, ("City") a participating Mid-Missouri Municipal Power Energy Pool ("MMMPEP") city, will coordinate the electric system cost of service and rate study ("Study") to be conducted by BMHG Engineering ("BMHG") on the behalf of the participating MMMPEP cities. The effective date of this Agreement is _____ ("Effective Date").

1. Parties.

City agrees that the parties to this Agreement will consist of MJMEUC and City. All obligations arising hereunder are joint and several and may be enforced by City or MJMEUC.

2. Consent and Authorization.

City authorizes and consents to MJMEUC, its affiliates, agents and employees to discuss, contract and to take all actions necessary for the completion of the Study, on the City's behalf, to be conducted by BMHG for a fixed rate of Thirteen Thousand Eight Hundred (\$13,800.00) dollars ("Fixed Rate") with reimbursable expenses not to exceed Four Thousand (\$4,000.00) dollars ("Reimbursable Expenses").

It is understood that in the event unusual problems or difficulties arise, a higher fee or additional reimbursable expenses may be necessitated. However, such additional costs will not be incurred without first obtaining the consent of both the City and MJMEUC. It is further mutually agreed to by City and MJMEUC that additional services ("Add-Ons") may be contracted for by the City. Except with MJMEUC's written consent, all such Add-Ons will require a separate agreement between City and BMHG.

3. Compensation.

City authorizes MJMEUC to make either a lump sum payment or monthly payments, at MJMEUC's discretion, to BMHG for labor and expenses at the Fixed Rate, plus Reimbursable Expenses, for the work to be conducted by BMHG on behalf of the City. City understands and

Serving Municipal Utilities

acknowledges the cost of these services will be passed through to the City in City's annual

4. Coordination and Cooperation.

City hereby agrees to provide to MJMEUC for disclosure to BMHG, and City further authorizes MJMEUC to share with BMHG, any and all information reasonably requested or otherwise required to be exchanged in connection with Study. It is understood that BMHG will execute a Non-Disclosure Agreement ("NDA") to protect the confidential information that may be provided by City or MJMEUC during the course of the Study. The intent of City and MJMEUC is to coordinate and cooperate in the provision of all needed information to insure the successful completion of the Study by BMHG. However, MJMEUC bears no responsibility or liability regarding the accuracy of the information provided by City or the ultimate accuracy of the Study by BMHG. City hereby indemnifies and forever holds harmless MJMEUC, its affiliates, agents and employees from all actions and causes of actions, suits, claims, attorneys fees, or demands against City which may result from the services of BMHG.

City further agrees, so as to avoid misunderstandings, that all communications with BMHG shall be through MJMEUC's designated representative. Except with MJMEUC's written consent, which will not be unreasonably withheld, City will not engage in separate communications regarding the Study or any additional services whatsoever with BMHG. In the event City should engage in separate communications with BMHG, City agrees that MJMEUC will not be bound by any representations, warranties or agreements made between City and BMHG. City further agrees to release and hold harmless MJMEUC from any costs or damages resulting from such separate and unauthorized communications.

5. Limitation of Liability and Warranties.

City and MJMEUC acknowledge and agree that BMHG's liability, for work related to the Study, for damages to either City or MJMEUC due to BMHG's negligent acts, errors or omissions, will be limited to a total aggregate amount not to exceed \$50,000.00 or BMHG's total fee for services rendered for the City, whichever is greater. However, this limitation of liability will not apply for damages to City or MJMEUC resulting from the negligent acts, errors or omissions resulting from work BMHG contracts or subcontracts unless such was consented to by City and MJMEUC.

City and MJMEUC agree that in no event will either party be liable to the other in contract, tort or otherwise for incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits, regardless of whether either party shall be advised or shall have other reason to know or in fact shall know of the possibility of such.

CITY ACKNOWLEDGES MJMEUC IS BROKERING THE SERVICES TO BE PROVIDED BY BMHG, BUT THE SERVICE IS PROVIDED "AS IS" AND MJMEUC MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES TO CITY REGARDING THE USABILITY, CONDITION, OR ACCURACY THEREOF. MJMEUC MAKES NO REPRESENTATION OR WARRANTIES REGARDING THE GOODS OR SERVICES PROVIDED BY BMHG. MJMEUC DOES NOT WARRANT THAT ACCESS TO OR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. MJMEUC EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY OR ACCURACY.

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL MJMEUC BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES, OR OUT OF ANY BREACH OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, THOSE FOR TIMELINESS, BUSINESS INTERRUPTION OR LOSS OF PROFITS. THIS EXCLUSION OR LIMITATION OF LIABILITY WILL NOT APPLY TO THE EXTENT THAT ANY APPLICABLE STATUTE PROHIBITS SUCH EXCLUSION OR LIMITATION OF LIABILITY. ANY LIABILITY ARISING OUT OF ANY ACTION OR OMISSION BY MJMEUC SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT OF CITY'S FEES PAID TO SPECIFICALLY TO MJMEUC BY CITY FOR ANY SERVICES PROVIDED RELATED TO THE SERVICES RENDERED BY BMHG.

CITY EXPRESSLY AGREES THAT THE CITY'S USE OF THE SERVICES BY BMHG IS AT THE CITY'S SOLE RISK. THE CITY ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM USE OF, OR MATERIALS OBTAINED THROUGH THE SERVICES PROVIDED BY BMHG. NEITHER MJMEUC NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AFFILIATES, THIRD PARTY VENDORS, FACILITIES, INFORMATION PROVIDERS, LICENSORS, OR OTHER SUPPLIERS PROVIDING DATA, INFORMATION OR SERVICES WARRANT THAT THE SERVICES PROVIDED BY BMHG WILL BE ERROR FREE, NOR DOES MJMEUC MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE TIMELINESS, SEQUENCE, ACCURACY, COMPLETENESS, RELIABILITY OR CONTENT OR ANY INFORMATION, OR SERVICE PROVIDED BY OR THROUGH BMHG.

6. Termination.

This agreement between City and MJMEUC may be terminated by either party upon written notice. Any termination shall only be for good cause, including but not limited to, legal default, unavailability of adequate financing, or major changes in the scope of the work being

done. In the event of any termination, City acknowledges and agrees to pay MJMEUC the cost MJMEUC will be required to pay BHMG for all services and expenses rendered to the date of termination on a basis of payroll cost times a multiplier of 2.5 (if not previously provided for) plus reimbursable expenses. In addition, if City or MJMEUC breach any provision of this Agreement, and if such breach is not cured within thirty (30) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately on receipt.

7. Reuse of BHMG Documents Prohibited.

All documents furnished by BHMG in connection with the Study are instruments of BHMG's services to City and MJMEUC. They are not intended or represented to be suitable for reuse by City or MJMEUC. Any reuse without specific written verification or adaptation by BHMG will be at City's or MJMEUC's sole risk and without liability to BHMG or the other non-reusing party. City and MJMEUC agree to indemnify and hold harmless BHMG and the non-reusing party from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any such unauthorized reuse of BHMG documents. Any verification or adaptation will entitle BHMG to additional compensation at rates to be agreed upon by BHMG and MJMEUC, but only with City's prior written consent.

8. Choice of Law.

This Agreement shall be governed by and construed in accordance with the laws of the State Missouri, without reference to any conflicts of law provisions. By Agreement, venue shall be in Boone County, Missouri.

9. Compliance with Laws.

City and MJMEUC will comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of both the City and MJMEUC and shall obtain any permits or licenses necessary for its operations. Neither City nor MJMEUC will take any action in violation of any applicable legal requirements that could result in liability being imposed on the other party or on BHMG.

10. Entire Agreement.

This Agreement sets forth and constitutes the entire agreement and understanding between City and BHMG with respect to the Study and any Add-On Services to be rendered by BHMG on behalf of the City. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, between City, MJMEUC or BHMG.

11. Amendment of Agreement.

The parties may amend the terms of this Agreement, but any such amendment shall be in writing.

12. Severability.

If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void, or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

13. Waiver.

Failure of either party to insist on strict compliance with any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of such terms, covenants, and conditions or of any similar right or power hereunder at any subsequent time.

ACCEPTANCE AND CONSENT:

The undersigned hereby state that they represent MJMEUC and City for the above-described services, and that the terms and conditions stated above are understood, accepted, consented to and agreed to. MJMEUC and BMHG are authorized and directed to proceed with the work outlined above.

Date _____

Signature _____

(Print Name and Title of City Representative)

Date _____

Signature _____

(Print Name and Title of MJMEUC Representative)