

MUNICIPAL ORDER 3-2021

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OWENSBORO AND BIG RIVERS ELECTRIC CORPORATION, BY WHICH THE CORPORATION SHALL RELOCATE ITS HEADQUARTERS TO THE CITY OF OWENSBORO IN EXCHANGE FOR CERTAIN FINANCIAL INCENTIVES FROM THE CITY, INCLUDING A REBATE OF THE PURCHASE PRICE OF THE FOLLOWING REAL ESTATE; AND FURTHER AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT WITH THE DAVIESS COUNTY FISCAL COURT FOR ITS FIFTEEN PERCENT (15%) INTEREST IN REAL PROPERTY LOCATED AT 711 W. THIRD STREET; AND FURTHER DECLARING 700 AND 710 WEST SECOND STREET AND 711 W. THIRD STREET AS SURPLUS PROPERTIES; AND FURTHER AUTHORIZING THE MAYOR TO EXECUTE DEEDS TRANSFERRING THOSE PROPERTIES TO BIG RIVERS ELECTRIC CORPORATION IN ACCORDANCE WITH KRS 82.083.

WHEREAS, Big Rivers Electric Corporation desires to relocate its headquarters to the City of Owensboro, Kentucky which will create jobs and further stimulate local commerce; and

WHEREAS, the City of Owensboro recognizes the economic impact of the Corporation's move to Owensboro and hereby agrees to incentivize the Corporation for its relocation and job creation initiative in our community; and

WHEREAS, the Parties wish to enter into a Memorandum of Agreement that memorializes the benefits and specific obligations of each, a copy of which is attached hereto as Exhibit "A," and incorporated by reference; and

WHEREAS, the Daviess County Fiscal Court owns a fifteen percent (15%)

interest with the City in real property located at 711 W. Third Street and wishes to convey that interest to the City for transfer to Big Rivers Electric Corporation; and

WHEREAS, the City wishes to declare 700 and 710 W. Second Street and 711 W. Third Street as Surplus Properties and authorize the Mayor to execute deeds transferring those properties to Big Rivers Electric Corporation, in accordance with the provisions of KRS 82.083, with the City rebating the purchase price of these properties as a part of the incentive to transfer its headquarters to Owensboro.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is, authorized and directed to execute a Memorandum of Agreement between the City of Owensboro and the Big Rivers Electric Corporation for the purpose of establishing the benefits and obligations of each Party.

Section 2. That the Mayor be, and he hereby is, authorized and directed to execute a Real Estate Purchase Agreement and Deed with the Daviess County Fiscal Court for 711 W. Third Street.

Section 3. In accordance with KRS 82.083(3), the Board of Commissioners makes the following determination:

- (1) The surplus real properties owned by the City of Owensboro are located at:
 - (a) 700 W. Second Street, Owensboro, Kentucky.
 - (b) 710 W. Second Street, Owensboro, Kentucky; and
 - (c) 711 W. Third Street, Owensboro, Kentucky.

(2) The intended use for the properties listed above at the time of acquisition was for economic development purposes.

(3) It is in the public interest to dispose of the properties listed above in order that Big Rivers Electric Corporation can obtain and develop or utilize the properties in a positive manner for the economic benefit of the community.

(4) The properties listed in Sections 3(1) above shall be conveyed to Big Rivers Electric Corporation for their PVA assessed value, for economic development purposes, with the purchase price being rebated to Big Rivers Electric Corporation as a part of the incentive for it to relocate to downtown Owensboro.

Section 4. By and through the Board of Commissioners, all the properties listed in Section 3(1) above are hereby declared surplus property which may be transferred, sold, or otherwise conveyed for economic development purposes in accordance with the provisions of KRS 82.083(4)(b).

Section 5. That the Mayor, City Manager, and other appropriate staff members are hereby authorized and directed to execute any and all of the agreements, instruments, or documents necessary and appropriate to effectuate and implement the intentions of the City of Owensboro and Big Rivers Electric Corporation.

INTRODUCED, PUBLICLY READ, AND FINALLY APPROVED ON ONE READING, this the 2nd day of February, 2021.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

Exhibit A

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter "Agreement"), dated as of February ____, 2021, is made by and between the **CITY OF OWENSBORO**, a municipal corporation of the Home Rule Class created and existing under the laws of the Commonwealth of Kentucky, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003 (hereinafter the "City"), and **BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation, P.O. Box 24, Henderson, Kentucky 42419-0024 (hereinafter the "Corporation").

RECITALS

WHEREAS, the Corporation desires to relocate its headquarters to the City of Owensboro, Kentucky which will create jobs and further stimulate local commerce; and

WHEREAS, the City recognizes the economic impact of the Corporation's move to Owensboro and hereby agrees to incentivize the Corporation for its relocation and job creation initiative in our community.

NOW THEREFORE, in consideration of these premises and the terms and conditions hereinafter set forth, the parties to this Agreement hereby agree as follows:

Section 1. City Obligations. In consideration of the Corporation relocating its corporate headquarters to the City of Owensboro, the City agrees to provide the following incentives:

- (1) The City will convey the city block that includes parcels 700 and 710 W. Second Street and 711 W. Third Street for the construction of its headquarters building. The sale price shall be for the value of the property according to the Daviess County Property Valuation Administrator, currently Two Million Ninety-

One Thousand, Seven Hundred Eighty-Nine Dollars (\$2,091,789.00). However, the sale price of the real property shall be rebated to the Corporation as a part of the incentive to relocate its headquarters to the City of Owensboro.

(2) The rebate of fifty percent (50%) of the General Fund Occupational Fee on gross employee wages for a period of ten (10) years upon the relocation of Big Rivers Electric Corporation Headquarters within the City of Owensboro. The ten-year incentive period must be activated within thirty-six (36) months of the date of incentive approval by the Owensboro Board of Commissioners.

Section 2. Corporation Obligations. In consideration of the incentives provided by the City, and subject to satisfying the Conditions Precedents in Section 4, the Corporation agrees to:

(1) Retain its headquarters within the City of Owensboro on the property described in Section 1(1) for the entire incentive period as described in Section 1(2) above.

(2) Retain its headquarters within the downtown area of the City of Owensboro for a period of at least forty (40) years.

(3) Obtain and maintain an active City business license, as well as timely comply with all contractual and financial obligations to the City under this Memorandum of Agreement.

Section 3. RWRA Sewer Project. The Corporation acknowledges the current plans by the Regional Water Resource Agency (RWRA) to relocate a tunnel sewer that currently traverses the property on which it will construct its new headquarters building. Regional Water Resource Agency (RWRA) and the Corporation agree to work together

with the City to ensure both projects flow congruently in order to facilitate timely completion of both projects.

Section 4. Condition Precedent. The Parties understand and agree that the Corporation's relocation to the City of Owensboro is subject to the approval of the Kentucky Public Service Commission, the Rural Utilities Service, and its Members.

Section 5. Waiver. The failure on the part of either Party hereto to insist in any instance upon a strict observance by the other Party of any provision of this Agreement, shall not be construed as a waiver of that or any other provision of this Agreement and it shall not diminish the right of either Party to demand compliance therewith on any subsequent occasion.

Section 6. Entire Agreement; Binding Effect. This Agreement shall constitute the entire agreement between the Parties. Any prior understandings or representations, or any subsequent oral representations or modifications of any kind shall not be binding on either Party except to the extent incorporated herein, in writing, by agreement of the Parties.

Section 7. Governing Law. This Agreement shall be governed by and be construed in accordance with, the laws of the Commonwealth of Kentucky in all respects, including all matters of construction, validity and performance. Any dispute involving the terms of this Memorandum of Agreement shall be brought in the State or Federal Courts of Daviess County, Kentucky.

Section 8. Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant

or condition to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and such remaining terms, covenants or conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto on this the day and date first hereinabove written.

CITY OF OWENSBORO:

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

BIG RIVERS ELECTRIC CORPORATION:

Robert W. Berry, President

ATTEST:

Amanda Jackson, Executive Secretary

COMMONWEALTH OF KENTUCKY)
) Sct.
COUNTY OF DAVIESS)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Thomas H. Watson, as Mayor, and attested by Beth Davis, as City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the ____day of February, 2021.

Notary Public, State of Kentucky at Large
Notary ID# _____
My commission expires: _____

[illegible]

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Robert W. Berry, as President, and attested by Amanda Jackson, as Executive Secretary, for and on behalf of Big Rivers Electric Corporation, on this the ____day of January, 2021.

Notary Public, State of _____ at Large
Notary ID# _____
My commission expires: _____

REVIEWED AND APPROVED BY:

Nathaniel W. Pagan, City Manager