

## MUNICIPAL ORDER 31-2021

**A MUNICIPAL ORDER REPEALING MUNICIPAL ORDER 3-2021 IN PART AND 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 REBATES OF THE PURCHASE PRICE OF THE FOLLOWING REAL ESTATE, AND PROVIDING ALTERNATE PARKING FOR EMPLOYEES OF TEXAS GAS TRANSMISSION, LLC; AND FURTHER DECLARING 700 AND 710 WEST SECOND STREET AND 711 WEST 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 desires to provide alternate parking to employees of Texas Gas Transmission, LLC, who have been parking on property to be conveyed to Big Rivers Electric Corporation; 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 entered into a previous Memorandum of Agreement on February 8, 2021, authorized by Municipal Order 3-2021, which Municipal Order should now be repealed in part; and

**WHEREAS**, the Parties wish to enter into a new 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 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 KRS 82.083, with the City providing rebates of 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**Section 1.** That, except for Section 2 concerning the purchase of 711 W. Third Street, Municipal Order 3-2021 is repealed.

**Section 2.** That the Mayor be, and hereby is, authorized and directed to execute a Memorandum of Agreement between the City of Owensboro and Big Rivers Electric Corporation for the purpose of establishing the benefits and obligations of each Party, which agreement includes a payment to Big Rivers Electric Corporation for providing parking to employees of Texas Gas Transmission, LLC.

**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 located at 700 W. Second Street, 710 W. Second Street and 711 W. Third Street 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 its headquarters 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 10th day of August, 2021.

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Thomas H. Watson, Mayor

ATTEST:

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Kim Tignor, Acting City Clerk

## EXHIBIT "A"

### MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter "Agreement"), dated as of August \_\_\_\_, 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 located at 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.

(3) Payment of Three Million Dollars (\$3,000,000.00) to the Corporation to facilitate alternate parking for employees of Texas Gas Transmission, LLC, who are currently parking on the property to be conveyed to Corporation in Section 1(1).

**Section 2. Corporation Obligations.** In consideration of the incentives provided by the City, and subject to satisfying the Conditions Precedent in Section 5, the Corporation agrees to:

(1) Retain its headquarters and have its employees domiciled for tax purposes at 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 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. Conditions 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. The Corporation acknowledges that sale by the City of the properties called for herein is conditioned upon approval of the transaction by the Owensboro Board of Commissioners.

**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. This Agreement supersedes the Memorandum of Agreement entered into by the Parties in February 2021.

**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:**

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Thomas H. Watson, Mayor

ATTEST:

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Kim Tignor, Acting City Clerk

**BIG RIVERS ELECTRIC CORPORATION:**

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Robert W. Berry, President



