

SETTLEMENT AGREEMENT

REALIGNMENT AND CONFIRMATION OF ELECTRIC SERVICE TERRITORY

THIS SETTLEMENT AGREEMENT is hereby entered into on this 7th day of March, 2017 by and between the City of East Grand Forks, a municipal corporation duly organized and existing under the laws of the State of Minnesota, acting by and through its Water, Light Power, and Building Commission under the 1977 City Charter ('City') and the P.K.M. Electric Cooperative, Inc., a rural electric utility association organized and existing under the laws of the State of Minnesota ('Cooperative').

OVERVIEW

This Agreement between the City and the Cooperative is for the purpose of continuing a method of orderly transference of and compensation for ownership of electric plant, customers receiving electric service from the Cooperative, and electric service territory from the Cooperative to the City under the provisions of applicable Minnesota State Law and such other provisions as are mutually agreed to by the City and the Cooperative.

The intention of the City and the Cooperative, in entering into this Agreement, is to provide a defined method for the transfer of electric plant, electric customers, and service territory to give both the City and the Cooperative the longest possible planning horizon by using this Agreement as an efficient method for planning for future change, planning for plant construction requirements, long range financial forecasting, future borrowing requirements, and customer relations.

The City and the Cooperative recognize that a good working relationship between the two utilities has a high value to both parties. This Agreement represents one method of maintaining that relationship through the changes that both utilities will experience in the future. Establishing a fair and workable Agreement regarding territory transfer and compensation is important to encourage and promote general growth and development within this region of Minnesota.

The City and the Cooperative acknowledge that this Agreement and its terms have been the result of negotiation, taking into consideration the costs of litigation and the risks of litigation otherwise required to settle the matters addressed in this Agreement and they do not necessarily reflect the position of the City or the Cooperative as to the appropriate application of the law determining rights and obligations of the parties or compensation and service territory matters and shall not be offered by the City or the Cooperative as evidence in any other proceeding related to service territory matters.

Article I

Transfer of Service Territory,

Customers, and

Facilities

1.1 On the effective date of this Agreement, the City shall acquire the following service territory from the Cooperative:

(a) That portion of Cooperative service territory located within the City Limits of the City of East Grand Forks as annexed into the City of East Grand Forks in ordinance # 302 – Third Series. This territory consists of the easterly 65

feet of the Northeast Quarter of the Southeast Quarter of Section 27, Township 152 North, Range 50 West of the 5th principal Meridian, Polk County, Minnesota, containing 1.97 acres or 85,955 square feet more or less. The annexed area consists exclusively of the West Half of the road right of way of Polk County Highway 64 which becomes part of the extension of River Road NW within the city limits. The said proposed territory acquisition is as described by the attached map and legal description identified and Exhibit A-1.

b) That portion of Cooperative service territory located within the City limits of the City of East Grand Forks as annexed into the City of East Grand Forks in Ordinance # 15 – Fourth Series as Amended and Corrected. The said proposed territory acquisition is a described in the attached map and legal description identified and Exhibit A-2.

1.2 Attached to the agreement and incorporated herein as Exhibit B is a map showing the service territories of the City and the Cooperative as they appeared upon the effective date of this Agreement together with a legal description of the territory boundary line(s), after adjustments for the acquisitions as provided in Section 1.1. In case of an inconsistency between the descriptions of the transferred service territory set forth in Section 1.1 and the map and legal

description identified as Exhibit B, the map and legal description identified as Exhibit B shall govern and establish the respective service territories of the parties. Where boundary lines are adjacent to streets, section lines or city limit boundaries, the actual street center line and/or section line or city limit boundary is the territory boundary.

1.3 The effective date of this Agreement shall be the date of the execution of the Agreement by the parties. Except as specifically provided in Articles II and III, each party shall have the exclusive right to provide electric service to every present and future customer located in its respective service territory from and after the effective date of this Agreement.

1.4 This Agreement shall be effective until December 31, 2027 and for such successive periods as the parties may agree upon after the initial term. The parties shall conduct negotiations for future service territory agreements beginning after the 8th anniversary of this Agreement.

Article II

Annexations

2.1 From time to time hereafter, areas may be added to the City boundaries by way of annexation, consolidation, merger or other lawful addition. If these additional areas include any of the service territory of the Cooperative, the

parties shall jointly file a petition with the Minnesota Public Utilities Commission (MPUC) requesting the transfer of the Cooperative's service territory to the City. While the petition is pending before the MPUC, the Cooperative shall not extend electric service to any new customers located in the area annexed, consolidated, merged or otherwise lawfully added, and the Cooperative consents

(1) to the City serving such customers; and

(2) to the entry of an order by the MPUC to permit the City's provision of interim service to any new customers during the pendency of the petition to transfer the Cooperative's annexed service territory to the City. A transfer of the service territory of the Cooperative shall become effective upon the date of the MPUC order in response to the joint petition of the parties.

2.2 The date of a City Annexation shall be the effective date of the Annexation as provided by law.

2.3 Each party may examine the other party's books and records, upon reasonable notice and during normal business hours, for the purpose of verifying any obligation under this Agreement.

Article III

Compensation for Existing Customers

and Facilities

The City shall pay compensation to the Cooperative as follows:

3.1 For existing Cooperative customers located in the Cooperative's service territory that will be transferred to the City, a lump sum payment of 2.5 times the annual gross revenue billed to those customers, based on an average of the preceding three year period. This compensation provision is commonly known as two and one half times average annual gross electric revenue.

The existing Cooperative retail customers for whom compensation is payable under this Agreement are set forth in Exhibit C.

3.2 For existing Cooperative utility facilities located in the Cooperative's service territory that will be transferred to the City, a lump sum payment of the original installed cost of such utility facilities less accumulated depreciation, as reflected on the books and records of the Cooperative at the most recent calendar year end, exclusive of any facilities which the Cooperative chooses to remove and salvage. The Cooperative shall coordinate with the City regarding removal of those items it chooses to salvage. The Cooperative shall deliver to the City a Bill of Sale for the facilities purchased, free and clear of all liens and encumbrances. The Cooperative shall also assign to the City all easements, permits, licenses and rights of way held by the Cooperative pursuant to the facilities sold to the City. The Cooperative shall disconnect its utility facilities at the point of transfer and

coordinate with the City to insure an orderly and prompt transfer of service to the customer.

3.3 The City will pay the Cooperative for all reasonable re-integration costs contemplated by this agreement including all necessary tie lines to provide a source of power or to maintain loops as determined to be necessary by P.K.M. and shall include the cost of all new easements and engineering. This includes such items as:

(a) New tie lines to provide a source of power or to maintain loops. The parties agree that the new tie lines may be of underground, overhead, or a combination of underground and overhead lines as appropriate to best meet the needs of the parties. For construction of new tie lines, the Cooperative will prepare a not-to-exceed cost estimate. Upon completion of the work the City will then be billed the lesser of the actual work order cost or the original not-to-exceed cost estimate.

(b) Minor work such as removing facilities, transferring jumpers, installing dead- ends and pole anchors, changing padlocks on equipment, final meter reading, and other similar activities. The Cooperative will bill the City actual cost for this type of work since it is more difficult to estimate and depends on coordination with the City's line crew.

Should a disagreement arise over the re-integration expenses or the reasonableness of the re-integration plan, the engineer for the City of East Grand Forks and the engineer for P.K.M. would meet to resolve the disagreement. If the agreement can not be resolved by the engineers then the issue would be submitted to a single arbitrator agreeable to both parties to resolve the dispute. Costs of said arbitration would be shared equally by the parties and will be controlled by the Minnesota Uniform Arbitration Act.

3.4 The lump sum payments provided for herein shall be made no later than 30 days after the work is completed and the bill presented to the City.

Article IV

Compensation for Acquisitions and Future Customers

4.1 The City agrees that it shall pay compensation to the Cooperative for acquisitions of the Cooperative's Service Territory which are annexed and transferred to the City. For each future customer locating in areas transferred to the City, the City will make a payment of \$0.00600 (6.00 mils) per KWH for all electricity sold to said customer for a ten year compensation period commencing with the first electricity sale to that customer no matter when that customer first receives service from the City.

For example, a lot within territory acquired under this agreement is not developed and served until forty (40) years after the date of the territory transfer. The City will pay compensation of \$0.00600 (6.00 mils) per KWH for ten (10) years for that specific customer.

4.2 For purposes of this Agreement, a "future customer" shall mean a person, firm, corporation, or other entity contracting for the purchase of electricity from the City after the effective date of this Agreement. A future customer shall also mean service to a separate structure of an existing City customer, located in the Cooperative's service territory which is transferred to the City, which separate structure is constructed after the effective date of this Agreement and which is provided electric service through a separate electric meter. If such a separate structure is constructed and electricity served through the existing meter of the customer, the City will pay compensation until a total of ten years compensation have been paid on the electricity metered and sold through the existing meter.

A customer locating in a re-platted or redeveloped portion of territory transferred by this agreement and upon which compensation has already been paid for a full ten years according to the agreed formula shall not be considered a "future customer" unless there had not been a structure previously constructed on the re-platted parcel.

In accordance with Minn. Stat. section 216 B.42, Subd. 2, the City may provide service to its own electric utility property and facilities.

4.3 The annual compensation from the City to the Cooperative shall be calculated as follows. For each future customer, the City shall calculate the product of \$0.00600 (6.00 mils) multiplied by the KWH amount used in the previous billing year for each customer's electrical consumption. Payments for any specific customer shall no longer be due and shall cease after the City has paid the Cooperative for a total of ten years compensation for that customer. The City shall calculate the sum of the annual amounts due for all future customers and shall make payment of that amount to the Cooperative on or before March 15th of each year.

4.4 For future acquisitions of the Cooperative's service territory which are annexed and transferred to the City as provided in Article II, the City shall pay compensation to the Cooperative in accordance with Article III and/or Article IV as the case may be.

Article V

Extension of Facilities

5.1 The parties acknowledge and agree that it is now and may be necessary in the future to extend transmission and distribution lines and other

facilities into the other party's service territory to provide adequate service to their respective customers. Such utility facilities shall be constructed and maintained only to serve customers in accordance with this Agreement, provided that nothing in this Agreement shall preclude the joint use of poles or the joint use of easements.

Article VI

Releases

6.1 Except for the obligations of the parties to perform the terms of this Agreement, the parties do hereby mutually release and waive any and all claims they may presently have or may have in the future, of whatever kind and nature, against each other, related to or arising from any action or omission to act in the provision of electric service to any customer, area, facility, or site occurring prior to the date of this Agreement.

6.2 The Cooperative shall secure a release from its generating and transmission power suppliers of any claims against the City resulting from transfers made under this Agreement.

6.3 The Cooperative shall secure the approval of the Rural Utility Services ('RUS') and the National Rural Utilities Cooperative Finance Corporation ('CFC') of this Agreement and indemnify the City against any claims of the RUS and CFC resulting from the transfers made under this Agreement.

Article VII

Limited Scope of Agreement

7.1 The parties acknowledge that this Agreement has been the result of negotiations. The terms of the Agreement do not reflect the positions of the parties as to the appropriate application of the law determining the electric service rights and obligations of the parties or compensation in such matters. The parties agree that the terms of this Agreement are not and shall not be offered or construed as precedent in support or opposition for any claims of electric service rights, including compensation in service territory matters, and shall not be offered by any of the parties as evidence in any other proceedings related to service territory or compensation matters.

Article VIII

Petition for Approval

8.1 As soon as possible after execution of this Agreement, the parties shall file it with the MPUC for approval. It is agreed that each provision of this Agreement shall be considered to be inseparable and not severable from all other provisions. In the event that any provision of this Agreement is not approved by the MPUC or is determined to be void, invalid, or otherwise not enforceable, by a

court of law or otherwise, in that event, the entire Agreement shall be rendered null and void, unless the parties agree otherwise.

8.2 If for any reason the MPUC refuses to approve this Agreement or the Service Territory Map and legal descriptions attached thereto, any settlement payments made by the City to the Cooperative shall be repaid by the Cooperative to the City, upon demand by the City.

Article IX

General Terms and Conditions

9.1 The parties acknowledge that the terms of this Agreement are unique in that neither party will have an adequate remedy at law, if the other party fails to perform any of its obligations hereunder. In such event either party shall have the right, in addition to any other rights it may have, to petition for and obtain specific performance of the terms of this Agreement in the courts.

9.2 Any notice permitted or required by this Agreement shall be made in writing and personally served or mailed (postage paid, return receipt requested) and shall be effective upon the date of personal service, or if by mail, upon the date of receipt.

9.3 This Agreement constitutes the full and entire agreement of the parties and incorporates all agreements and understandings, oral and written,

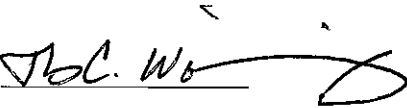
between the parties with respect to this Agreement. It applies to any and all service territory transferred from P.K.M. to the City occurring during the term of this agreement which is effective until December 31, 2027 unless successive periods are agreed upon by the parties after the initial term.

9.4 This Agreement shall inure to the benefit of the parties and shall be binding on them, their legal representatives, successors and assigns. Neither party may assign any of its rights herein to any person without the prior written consent of the other party.

The City and the Cooperative do hereby adopt the foregoing Agreement .


ATTEST:

PKM ELECTRIC COOPERATIVE, INC.

By: 

Tom Woinarowicz

President

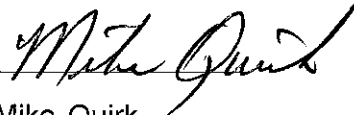
By: 

Gordon Bernstrom

Secretary/Treasurer

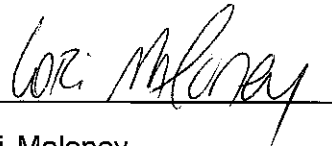
ATTEST:

WATER, LIGHT, POWER AND BUILDING COMMISSION
OF AND FOR THE CITY OF EAST GRAND FORKS, MINNESOTA
A Minnesota Municipal Corporation

By: 

Mike Quirk

President

By: 

Lori Maloney

Secretary to Commission