

**RESOLUTION NUMBER 7201**

**WHEREAS**, the Electric Rate Ordinance for the City of Beatrice allows for negotiated contracts for demand and energy with large electrical customers; and

**WHEREAS**, the estimated demand and energy needs of Radiant Tech, LLC (Radiant Tech) exceed the minimum requirements for a negotiated contract; and

**WHEREAS**, the City and Radiant Tech desire enter into an Agreement setting forth the amounts of electrical demand and energy to be provided to Radiant Tech, the rates at which the electrical demand and energy will be provided, and all other obligations of the parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

**SECTION 1.** That the Mayor and City Clerk are hereby authorized to execute any and all documents necessary to forth the amounts of electrical demand and energy to be provided to Radiant Tech, the rates at which the electrical demand and energy will be provided, and all other obligations of the parties, including but not limited to the Agreement, marked as Exhibit "A", attached hereto, and incorporated by reference.

**SECTION 2.** That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 2<sup>nd</sup> day of January, 2024.

Attest:

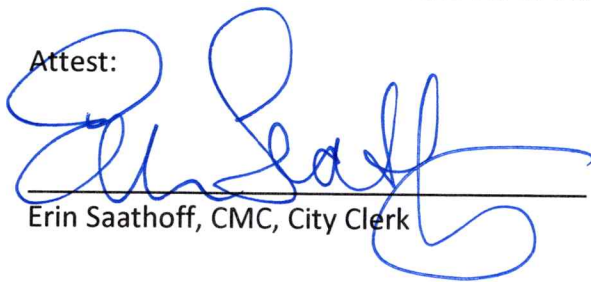

  
Erin Saathoff, CMC, City Clerk  
Robert Morgan, Mayor

Exhibit "A"

## AGREEMENT

This Agreement is made by and between the City of Beatrice, Nebraska (City) and Radiant Tech, LLC, a Nebraska Limited Liability Company, (Customer) on \_\_\_\_\_, 2023. This Agreement provides the terms and conditions for retail service under the City of Beatrice retail rate schedule for Large Power – Contract service.

**Seller:** City of Beatrice, Nebraska

**Customer:** Radiant Tech, LLC

**Product:**

Up to \_\_\_\_\_ of firm electric service, along with interruptible electrical power and energy AC, 60 hertz, three-phase, at 34,500 volts, delivered at the primary terminal of Customer-owned transformer in an amount equal to the Contract Energy Supply less \_\_\_\_\_ of firm service. City assumes no responsibility for operation, maintenance or replacement of Customer-owned transformer. The amount of firm load will be determined upon testing of equipment after installation and documented as an Exhibit to this Agreement within 15 days of the Date of Commencement.

Service for the interruptible portion of the production may be interrupted at the discretion of the City as follows:

- If it is anticipated the City's demand in a given hour is \_\_\_\_\_ the City may interrupt that portion of the Customer's interruptible load
- If the Southwest Power Pool (SPP) declares an Energy Emergency Alert (EEA) of any level, the City may interrupt 100% of the Customer's interruptible load.
- If the City experiences a facility outage or local system emergency affecting a facility that is directly necessary to serve the Customer, the City may interrupt 100% of the Customer's load.

**City's Settlement Location:**

All energy charges will be settled based on the locational marginal price (LMP) at the City's settlement location: NPPD\_BPWN\_NPPD

**Contract Energy Supply:**

To be staged as follows:

- As of Date of Commencement:
- Energy supply can be increased in increments of \_\_\_\_\_ upon 5 business days' written notice.
- Maximum: \_\_\_\_\_

**Interruptible Load:**

Interruptible Load shall be the then-current Contract Energy Supply less \_\_\_\_\_

**SPP Integrated Marketplace Ancillary Services Market:**

The City will work with the Customer and the City's SPP Market Participant, AEP Energy Services, to facilitate the Customer's participation in the SPP Integrated Marketplace Ancillary Services Market. Any necessary equipment costs, including communications equipment, metering costs beyond those required by the City to provide service, and load-interrupting equipment, will be at the sole expense of the Customer.

**Rates for Initial 36-Month Period:**

- Customer Charge: per month .....
- Transmission:
- Ancillary Services:
- Firm Capacity Charge:
- Facilities Cost:
- Energy Charge:
  - Component 1:
  - Component 2: plus
  - If the sum of Component 1 and Component 2 is , plus
- Energy Credit During Interruption:
  - If the City interrupts service,

**Day-Ahead Energy Award:**

**Settlement Interval:**

All Day-Ahead settlements are based on hourly interval settlements. All Real-Time settlements, including settlement of deviations between the Day-Ahead LMP and Real-Time LMP and calculation of net gain from Day-Ahead / Real-Time optimization, are based on 5-minute interval settlements.

**Metering Point:**

Customer bills will be based on demand and energy measured on the primary side (34,500 volts) of the distribution transformer. If metering is located on secondary side of the distribution transformer, loads will be adjusted by a loss factor to the high-side of the distribution transformer.

**Maximum Energy Usage:**

**Power Factor:**

Customer agrees to maintain a power factor of 95% or greater. If the power factor during the interval with the highest 15-minute integrated demand is less than 95%, the Customer's entire monthly bill will be adjusted by the ratio of  $(0.95 / \text{measured power factor at time of peak})$ . City reserves the right to install power factor correction equipment at the Customer's expense if the measured power factor at the time of the monthly peak remains less than 95% for more than three consecutive months.

**Notification of Interruptions:**

The City will provide no less than 60 minutes of notice prior to any scheduled interruption of service, except in the case of the issuance of an EEA. Such notification will occur by all of the following methods: e-mail, text message and website notification. In the case of the issuance of an EEA, the customer will be required to interrupt service within 5 minutes.

**Penalty if Customer Fails to Interrupt:**

If Customer fails to interrupt its service as agreed-upon, the following penalty rates would apply:

- Demand Charges:
  
  
  
  
  
  
  
- Transmission Demand Ratchet Charges:
  
  
  
  
  
  
  
- Energy Charges:

**Customer Deposit:**

Customer shall provide an initial cash deposit or irrevocable letter of credit based upon the following formula:

- Initial Deposit Within 10 Days of Contract Execution:
- 10 Days Prior to Initiation of Service or Date of Commencement, whichever is earlier, and upon notice of each Incremental Load Addition:

If the Customer fails to provide the required deposit, the City is under no obligation to provide service and, if the required deposit is not provided within 5 business days of the required posting date, the City reserves the right to terminate this Agreement. In addition, on an annual basis the City will adjust the required deposit to an amount equal to two times the average of the four highest monthly bills during the prior 12 months. Such calculation will be completed in November based on

the prior October through September billings and will go into effect the following January. Any increase in the deposit due shall be deposited by Customer with the City no later than January 1. Any refund of the deposit due shall be refunded to the Customer no later than January 1.

**Term:**

36-month period beginning as of the Date of Commencement of Large Power Service under this Agreement.

**Renewal Term:**

This Agreement will automatically renew for successive 36-month periods unless terminated by either Party with 12 months written notice. The City may not terminate this Agreement absent a change in its cost structure or a change in any relevant governing document issued by the Southwest Power Pool or Nebraska Public Power District (Tariff, Integrated Marketplace protocols or Operating Criteria). In the case of a change in any governing document, the City will engage in good faith negotiations to revise the terms and conditions to satisfy the requirements of the relevant governing documents or to recover the change in cost structure.

**Date of Commencement:**

The City will work to have its equipment in place for Customer to connect its service within 60 calendar days of receipt of the Initial Customer Deposit. City will notify the Customer when the equipment necessary to connect the service is in place. Parties will work together to schedule the initiation of service upon completion of work by Customer necessary to commence service, including completion of all requirements of the applicable Service Regulations of the City and its Board of Public Works. The Date of Commencement will be the earlier of the date on which the Customer begins taking service or 60 calendar days after the City notifies the Customer that it has completed installation of the City's equipment.

**Special Conditions:**

- Customer must comply with all applicable Service Regulations of the City and its Board of Public Works.
- Except during hours of interruption, City agrees to provide service that is comparable to service provided to the City's other retail customers. Customer acknowledges that service may be interrupted as a result of circumstances beyond the control of the City, as described in this Agreement. City will have no liability for direct or consequential damages to Customer for outages occurring for these reasons.

**Events of Default and Remedies:**

- Events of Default: An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:
  - Failure to make, when due, any payment required pursuant hereto if such failure is not remedied within 5 business days after written notice;
  - Failure to deliver or receive Product when due pursuant to this Agreement, unless caused by an event of Force Majeure;
  - Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when repeated;
  - Such Party becomes bankrupt; or
  - A Party's failure to perform any other material obligation set forth herein if such failure is not remedied within 20 business days after written notice.

- **Declaration of Early Termination Date and Calculation of Settlement Amounts:** If an Event of Default with respect to a Defaulting Party occurs and continues for more than five business days, the other Party (the "Non-Defaulting Party") will have the right to (a) upon 2 business days' written notice to the Defaulting Party to terminate this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties and to liquidate and terminate any transactions related to this Agreement, (b) withhold any payments due to the Defaulting Party under this Agreement, and (c) suspend performance. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a settlement amount as follows ("Settlement Amount"):
  - If Customer is in default and City elects Early Termination: Customer shall pay City all amounts owed and, if not paid within three calendar days, City shall use the Customer Deposit to paid said amount plus the unpaid portion of the City's facility costs. City shall retain any Customer Deposit in excess of the amounts owed as liquidated damages.
  - If City is in default and Customer elects Early Termination: Since Customer is purchasing energy at market prices, there will be no Early Termination payment from City to Customer. The Customer shall be entitled to a return of any Payment Deposit made by Customer, with interest if said Payment Deposit is made by cash deposit.
- **Limitation of Liability:** IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

#### **Assignment of Contract:**

Neither Party shall have the right to assign this Agreement or rights hereunder, except by the express written consent of the other Party. Permission shall not be unreasonably withheld.

#### **Waiver of Default:**

No waiver of any term, provision or condition of this Agreement, the breach or default thereof, by conduct or otherwise, in one or more instances shall be deemed to be either a continuing waiver or waiver of a subsequent breach or default of any such term, provision or condition of this Agreement.

#### **Force Majeure:**

The term "Force Majeure," as used herein, shall mean 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 by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), blockades, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, pandemics or epidemics, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions, arrests and restraints.

If an event defined as Force Majeure occurs, and the affected Party is unable to carry out any of its obligations under this Agreement, then upon the affected Party giving written notice to the other Party of such Force Majeure, the affected Party's obligations shall be suspended from and after the date of the Force Majeure specified in the notice to the extent made necessary by such Force Majeure and during its continuance. The notice shall specify in detail (to the extent known) the nature of the Force Majeure, the obligations which the affected Party is unable to perform or furnish due to Force Majeure, and the affected Party's best estimate of the probable duration of the Force



Majeure. The affected Party shall use Commercially Reasonable Efforts to eliminate and cure such Force Majeure insofar as possible and with a minimum of delay, and to resume full performance of its obligations.

**Choice of Law – Nebraska:**

This Agreement shall be governed by the laws of the State of Nebraska.

**Binding Contract:**

This Agreement shall be binding upon the Parties hereto, their successors, heirs, personal representatives, and assigns.

**Counterparts:**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Severability of Agreement:**

In the event that any of the terms of this Agreement shall be in conflict with and void as a result of the laws of the State of Nebraska, as the same may be from time to time amended, then the remainder of this Agreement shall remain in full force and effect.

**Enforceability:**

If any of the terms of this document are unenforceable, it shall in no way invalidate the balance of such Agreement.

**Entire Agreement:**

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

**Miscellaneous:**

The headings of the paragraphs of this agreement are inserted for convenience only and shall not constitute a part hereof. Wherever applicable the singular shall include the plural and the masculine the feminine.

**Amendment:**

This Agreement may not be amended except by written consent of both Parties.

**CITY OF BEATRICE, NEBRASKA**

By: 

Name: Robert Morgan

Title: Mayor

**RADIANT TECH, LLC**

By: 

Name: SHRENUJ MILAK

Title: OWNER