

ORDINANCE RECORD

No. 728 ★ ★ ★ K-B PRINTING CO. ★ ★ ★ OMAHA

caused the Seal of the District to be affixed hereto, this Second day of February, 1944.

CATHERINE FRISCHHOLZ

Catherine Frischholz,
Assistant Secretary.

(Seal)

MEMORANDUM OF AGREEMENT

This agreement made and entered into this 1st day of February, 1944, by and between CONSUMERS PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, hereinafter referred to as "Consumers", and THE CITY OF LEXINGTON, NEBRASKA, a municipal corporation, hereinafter referred to as "City", WITNESSETH:

The City desires to purchase from Consumers, on the closing date hereinafter set forth, the electric distribution system of Consumers located in the City of Lexington, and partly within and partly without the said City, and Consumers are willing to sell, transfer and deliver the same to the said City in consideration of the payment of the purchase price and the execution of the power contract hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, to be performed by the parties hereto, it is hereby agreed by and between the parties as follows:

I.

Consumers represents and warrants:

(A) That it is a public corporation and political subdivision of the State of Nebraska, duly organized and existing under and by virtue of the provisions of Chapter 26, Laws of Nebraska, 1933, and amendments thereto now Chapter 70, Article 7, 1941 C. S. Supp., Nebraska, as amended, and as such is duly authorized and empowered to perform this contract according to its terms, and that its Board of Directors have, by resolution of record, authorized and empowered the officers thereof to execute this contract.

(B) That Consumers owns and operates electric facilities for the production, transmission, distribution and sale of electric energy and business incidental thereto within the State of Nebraska, and has been, and now is, engaged in the distribution and sale of electric energy and business incidental thereto in the City and adjacent territory.

(C) That Consumers is the owner of electric distribution facilities and properties located in and adjacent to the City of Lexington, Nebraska, which facilities and properties are referred to hereinafter as the "properties to be sold to said City", and the following is a description thereof:

1. Peal estate - Lots 9, 10, 11, 12 and 13, Block 61 in the original town of Plum Creek, now the City of Lexington, Nebraska.
2. The entire electric distribution system within the City of Lexington, together with all of the 2300 volt feeder lines starting at the take off structure in the Lexington substation of Consumers District, together with all poles (except transmission line poles), wire, cross arms, insulators, braces, distribution transformers, and all other equipment comprising said electric distribution system, except as hereinafter specifically described.
3. One and one-half (1½) miles of 2300 volt rural line extending from the take off structure at the Lexington substation of Consumers District, to a point approximately one and one-half miles west of the city limits of Lexington, together with all poles, conductors, insulators, cross arms and equipment comprising said line, except those poles upon which there is also located the 33 KV transmission line of the District.
4. A 13.2 KV transmission line extending from the 13.2 take off structure in the Lexington substation of Consumers and ending at the tap to the Cover Mill adjacent to the City of Cozad, Nebraska, and all 2300 volt and 6900 volt lines emanating from this line.
5. One 1941 Chevrolet Pick-Up, Motor No. Ad 66364.
6. All contracts and agreements for the service of all persons, firms and corporations other than the said City of Lexington which are held by Consumers and for which contracting parties receive electric energy from any of the facilities hereinbefore described to be sold to the said city.

This contract does not in any manner relate to the following described property owned by Consumers and located in and near the City of Lexington, which property is specifically exempted from all of the terms and conditions of this contract:

1. The power plant of Consumers located on the right-of-way of the Union Pacific Railroad within said City, together with all generating

and other equipment used and useful in operation thereof, and located therein.

2. The substation of Consumers District located adjacent to the said power plant, together with all equipment located therein and used and useful in connection with the operation thereof, except only the portions of specific lines emanating therefrom which are described as property to be sold.

3. The 13.2 KV Elm Creek line which is a double circuit line for approximately forty-five poles on the Cozad line, which said Cozad line, ~~which said Cozad line~~ is sold to the City. As to these forty-five poles of double circuit the conveyance to the City shall include only the conductor, insulators, cross arms and braces of said line so far as the Elm Creek line is located on the same poles, and the poles, cross arms, insulators, braces and conductor of the Elm Creek line are not to be conveyed to the City.

4. All unbilled revenue and accounts receivable of Consumers District, and all office equipment, tools, laboratory equipment, transportation equipment, and material and supplies of Consumers District.

(D) That Consumers owns the properties above described and has good title thereto and lawful authority to convey the same.

(E) Consumers now has a lease of an office building in the City which lease extends until October 1, 1946, but which contains a clause under which Consumers can cancel on six months' notice after ceasing to do retail business. As a part of this contract Consumers agrees to assign the said lease to the City and the City shall assume the rental and if the City so wishes, Consumers will serve the notice of cancellation terminating the lease at the end of the six months' period after the date of this contract.

II.

The City represents and warrants:

(A) That it is a duly organized and existing municipal corporation under the laws of the State of Nebraska, and a city of the second class, and that its Mayor and Council have, by resolution of record, authorized and empowered the Mayor and Clerk thereof to execute this agreement.

(B) That it has full power and authority to acquire the properties as hereinabove described in the manner hereinafter provided.

(C) That the City will submit to the qualified electors of the City of Lexington, as provided by law, under the provisions of Section 18-1601, C. S. Supp., Nebraska, 1941, at a special election to be held before the closing date hereof, the question of the issuance of the revenue bonds of the said city in an amount sufficient to pay the purchase price herof as hereinafter set forth and expenses incident thereto, and will further submit to said voters at said election the ratification and approval of the power contract hereinafter set forth as a part of the consideration of this agreement.

III.

The considerations for this agreement shall be as follows:

(A) That Consumers shall sell, convey, transfer and assign to the City the "properties to be sold" hereinbefore described, by good and sufficient instruments of conveyance and transfer, as shall be necessary to convey to and vest in the City good and merchantable title to the properties, free and clear of any and all liens and all other encumbrances.

(B) The City shall (1) Pay to Consumers the sum of \$382,920.00 in cash; (2) Shall enter into a power contract theretofore approved by a legal majority of those voting at the special election called for that purpose, which contract shall be in manner and form as set forth in Exhibit "A" attached to this contract, and hereby incorporated into and made a part hereof as fully as if set forth herein at length; (3) Shall continue to permit Consumers to operate, maintain and rebuild, from time to time, as may be necessary, its power plant, substation and transmission lines emanating therefrom within the said City.

IV.

On the closing date provided for in this agreement, the City shall deliver to Consumers the considerations set forth in Article III above, to be performed in its behalf, and Consumers shall deliver to the City the deeds and other instruments of conveyance hereinbefore described as the considerations on its behalf.

V.

The City shall, and by these presents does, hereby agree to indemnify and hold harmless Consumers against any and all liabilities,

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costs, damages or expenses of every kind and nature with respect to the following:

(A) Performance after transfer of the "properties to be sold" of or under all contracts, leases and agreements of the Consumers District which are assigned to the City as a part of the properties.

(B) Payments in lieu of taxes for the year 1944 and all subsequent years, as required under Section 70-712 C. S. Supp., Nebraska, 1941, as amended by Chapter 144, Laws of Nebraska, 1943, so far as such payments relate to the "properties to be sold," except that Consumers shall assume and pay to the City in trust for payments to the proper agencies who make such collections of payments in lieu of taxes such pro rated portion of the said payments as the number of days which Consumers continues in the possession of the properties during the calendar year 1944 bears to three hundred sixty-five (365.)

In the event that the payments in lieu of taxes for the "properties to be sold" are not segregated and separated upon the books of the tax collection agencies so that the amounts properly allocable to the "properties to be sold" can be determined, then not less than ten days prior to the closing date, the parties hereto, by their representatives, shall jointly determine a fair portion of said payments in lieu of taxes which shall be attributed to the "properties to be sold," and on the closing date both parties shall execute, jointly, a certificate to the tax collecting agency certifying to their joint agreement and understanding of the proportion of such payment in lieu of taxes that are attributable to the "properties to be sold."

VI.

It is recognized by both parties that Consumers will continue to be the owner of the power plant and substation located within the City of Lexington as hereinbefore described, and of certain high voltage transmission lines emanating from said substation in various directions for the service of other communities.

It is recognized by both parties that Consumers must continue to maintain, service, and perhaps rebuild, from time to time, all or parts of said power plant, substation and transmission lines, and that the privilege of so doing is one of the primary considerations for the execution of this agreement.

VII.

Consumers does hereby agree that it surrenders entirely all of its rights to do a retail business in the City of Lexington, or to sell electricity to any consumer or user thereof within the corporate limits of said city, or to any customer outside of the corporate limits of said city which are at the present time connected to and receiving service from the properties as herein conveyed, and does hereby surrender, assign and transfer to the City of Lexington all of its rights and privileges under its franchise ordinance dated January 5, 1906, under which it is conducting its business in the city retaining only, under said franchise, the following rights and privileges:

(1) To use the streets, alleys, lanes and public grounds of the said City for the following purposes:

(a) Of maintaining and servicing its power plant, generating equipment, substation and meters.

(b) Of erecting and maintaining poles, lines, wires, conductors and all appliances necessary or proper to connect its transmission lines located outside the corporate limits of said city with said substation.

(c) To use such connecting lines for the purpose of transmitting electric energy to and from said substation.

(d) To continue to use the present electric lines now used in conducting electric energy from substation to the property and the customers of Consumers outside of the City in the same way and to the same extent as now used.

VIII.

With reference to certain property owned by Consumers and located in the said City which is excluded from "properties to be sold" under this agreement, namely, office supplies and equipment, electrical merchandise and material and supplies on hand, Consumers will sell to the City such portions of office supplies and equipment, electrical merchandise and material and supplies as may be equitable as the City may desire to purchase. The price to be paid therefor shall be arranged upon some mutually satisfactory basis for a consideration in

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addition to this contract and the quantities of such office supplies and equipment and material and supplies as Consumers shall sell to the City shall be determined by Consumers with relation to the material and supplies available in its other divisional operations in that area.

It being recognized that the City of Lexington as a division headquarters has more material and supplies on hand than are properly attributable solely to the City of Lexington in view of the present shortages of such materials and supplies.

IX.

The parties hereto agree that the sale of the properties hereunder is pursuant to the provisions of Section 70-712, C. S. Supp., Nebraska, 1941, as amended by Chapter 144, Laws of Nebraska, 1943, and that said City expect to proceed to make available the purchase price by the holding of a special election as provided by Section 18-1601; C. S. Supp., 1941, Nebraska.

It is agreed between the parties that if either the said proposal to issue revenue bonds to make available the purchase price as herein contemplated, or the authorization and approval of the power contract, as herein provided for, shall fail at the said election to secure the necessary and legal majority of the voters to authorize the said City to proceed with both the issuance of the said revenue bonds and the execution of the power contract, then, and in that event, this contract shall be terminated and held for naught, without any further obligation upon either party hereto.

X.

Consumers agrees to cooperate with the City in all matters pertaining to the sale of the properties by Consumers to the City and to take no action in the premises interfering with the right of the City to proceed hereunder as and when authorized by the voters of said city.

XI.

The right of the said City to purchase the properties hereunder shall be exercised within ninety days from the date hereof and if not so exercised this agreement shall terminate and be of no force and effect unless it shall then be extended by mutual agreement in writing signed by the parties hereto.

XII.

Until the closing date Consumers shall continue to operate the said electric distribution system as a going concern and maintain the property in good order and operation in the ordinary course of business.

If, prior to the closing date, any substantial part of the property to be sold should be destroyed or materially adversely affected by fire, storm or other act of God, either Consumers or the City may elect to terminate this agreement without any claim of either party hereto against the other party in respect thereof.

XIII.

After the closing hereof, Consumers shall make available to the City for a period of not less than sixty days, all of its books and records relating to its retail business and retail accounts with its customers that are served from the properties to be sold as herein described, and within said period shall permit the City to make such duplicates of said records as the City shall deem advisable for its future purposes.

XIV.

The closing date of this transaction shall be the 31st day of March, 1944, and the place shall be at the office of The First Trust Company in Lincoln, Nebraska, at the hour of 1:00 o'clock P. M.

XV.

It is further agreed that the terms and provisions of this agreement shall extend to and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in their respective corporate names by their respective corporate seals to be hereunto affixed, and attested by their respective Clerk or Secretary, the day and year first above written.

CONSUMERS PUBLIC POWER DISTRICT.
By PHIL R. HACKENBERGER, President.

Attest:
W. A. BOETTCHER,
(Seal)

No. 728—THE K-B PRINTING CO., OMAHA. COMPILED BY MANN & WHITTEL, ATTORNEYS FOR NEBRASKA. ORDINANCE REFERENCE BUREAU, LINCOLN.

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CITY OF LEXINGTON, NEBRASKA

By E. A. COOK, JR. Mayor.

Attest:

W. R. ECENBERGER, City Clerk.

(Seal)

SECTION 2. That the Mayor and City Clerk of the City of Lexington are hereby authorized to execute such Memorandum of Agreement for and on behalf of said City of Lexington.

Passed and approved this 8th day of February, 1944.

E. A. COOK, JR.,
Mayor.

W. R. ECENBERGER,
City Clerk.