R-20-32

**RESOLUTION NO. ____**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT FOR ELECTRIC CUSTOMER ASSISTANCE WITH CENTRAL ARKANSAS DEVELOPMENT COUNCIL; AND FOR OTHER PURPOSES.**

WHEREAS, the City of North Little Rock ("the City") owns and operates a municipal electric utility providing electric service to customers in North Little Rock, Sherwood and surrounding Pulaski County; and

WHEREAS, the City desires to provide assistance to low income electric customers in paying their electric bills and reducing energy consumption through improvements in the energy efficiency of their homes; and

WHEREAS, Central Arkansas Development Council ("CADC") is engaged in the business of administering state and federal assistance programs for low income electric customers and providing home energy efficiency improvement services to customers located in Pulaski County; and

WHEREAS, the City wishes to retain CADC to administer an energy assistance program for the City's electric customers, and CADC is willing to administer a NLR energy assistance program in accordance with specific terms and conditions (see Exhibit A – summary of services provided by CADC for North Little Rock low income electric customers from 2011 to 2019); and

WHEREAS, it is in the best interests of the citizens and residents of North Little Rock that the City enter into an agreement with CADC to administer an energy assistance program for electric customers of the North Little Rock Electric Department.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into an Electric Customer Assistance Services Agreement with CADC (substantially similar to Exhibit B attached hereto) for administering an energy assistance program and energy efficiency improvements for customers of the North Little Rock Electric Department.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED: APPROVED:

_____ _____

Mayor Joe A. Smith

SPONSOR:

Mayor Joe A. Smith

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED 10:50 A.M. _____ P.M.
By Amy Fields CA
DATE 2-18-20
**Diane Whitbey, City Clerk & Collector**
**North Little Rock, Arkansas**
RECEIVED BY

EXHIBIT
tabbies
A.

# North Little Rock Utility Assistance Program

## CADC Summary:

| Year | Average Payments | Households Served |
|---|---|---|
| **2011** | $224.55 | 394 |
| **2012** | $249.09 | 527 |
| **2013** | $202.24 | 670 |
| **2014** | $200.62 | 566 |
| **2015** | $222.81 | 577 |
| **2016** | $184.66 | 371 |
| **2017** | $195.12 | 397 |
| **2018** | $200.95 | 406 |
| **2019** | $228.00 | 373 |

- NLR funds were not exhausted in 2019 due to the length of the State and Federal Li-Heap Programs, which ran longer than usual this year.

## CADC Program Overview:

CADC administers and provides for the delivery of Home Energy Assistance "financial aid" to qualified NLR low income electric customers in a manner consistent with guidelines below. NLR funds are the funds of last resort and coordinated with any other available funding to maximize availability to greatest number of NLRED customers possible.

NLR will make $150,000 available to support Home Energy Assistance for NLR low income customers during the 2020 calendar year.

**Service Fee:** is 15% of the Energy Assistance Budget approved by the City Council of NLR for the then current budget year.

## Location of Services:

CADC
Li-Leap and NLRED Funding Requests
5401 S. University Ave.
Little Rock, AR

501-603-0909
Monday through Friday 8am-4:30pm.

## Guidelines of Home Energy Assistance:

Eligibility: To become eligible for financial assistance under the Low Income Home Energy Assistance Program (LI-HEAP) and NLRED assistance program a person must:

- Be an electric customer of the NLR Electric Department for more than one (1) year
- Have an overdue Electric Department account greater than $100
- Have a household income of less than 150% of the federal Poverty Guidelines ($1,636 for a household size of 1 and $3,148 for a house hold of 4.)

**Assistance Amount:** Eligible NLR Electric Department customers shall receive up to $500 for assistance to be applied directly toward the payment of the customer's overdue NLR Electric account.

**Assistance Limitation:** Customers receiving Home Energy Assistance in the amount of up to $500 may not apply for Home Energy Assistance again for a period of one (1) year.

EXHIBIT

B.

**ELECTRIC CUSTOMER ASSISTANCE SERVICES AGREEMENT**

**by and between**

**CENTRAL ARKANSAS DEVELOPMENT COUNCIL**

and

**THE CITY OF NORTH LITTLE ROCK, ARKANSAS**

## BALANCING AUTHORITY SERVICES AGREEMENT

THIS ELECTRIC CUSTOMER ASSISTANCE SERVICES AGREEMENT (this "Agreement") is made and entered into as of this _1st__ day of January, 2020 (the "Effective Date") by and between CENTRAL ARKANSAS DEVELOPMENT COUNCIL, an Arkansas not for profit corporation ("CADC") and the CITY OF NORTH LITTLE ROCK, ARKANSAS, ("NLR"). Herein CADC and NLR are sometimes referred to individually as a "Party" and collectively as the "Parties".

## WITNESSETH

WHEREAS, NLR owns and operates a municipal electric utility providing electric service to customers located in the City of North Little Rock, the City of Sherwood, and surrounding areas within Pulaski County;

WHEREAS, NLR desires to provide assistance to low income electric customers to pay their electric bills and reduce their electric energy consumption through improvements in the energy efficiency of customer's homes;

WHEREAS, CADC is engaged in the business of administering state and federal assistance programs for low income electric customers and providing home energy efficiency improvement services to consumers located in Pulaski and other Arkansas Counties;

WHEREAS, NLR desires to retain CADC to administer an energy assistance program for its electric customers, and CADC is willing to administer a NLR energy assistance program in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE I. DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following defined terms shall have the respective meanings set forth below:

"Budget Year" means the calendar year for which the NLR City Council has approved the operating budget of the City

"Contract Term" shall have the meaning set forth in Section 2.1.

"Effective Date" means the date set forth in the Preamble to this Agreement.

"Energy Assistance Budget" means the budget approved by the NLR City Council in a particular Budget Year for support of Home Energy Assistance.

"Force Majeure" means an event that prevents a Party from performing any of its obligations under this Agreement that is not within the reasonable control of the Party, without the fault or negligence of the Party, and that by the exercise of due diligence the Party is unable and could not reasonably have been expected to avoid, cause to be avoided, or overcome. Events of Force Majeure may include, but are not restricted to, acts of God; acts of the public enemy, war, blockades, insurrections, sabotage, civil

disturbances and riots; epidemics; landslides, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts; fire; explosion; breakage; and strikes, lock-outs or other labor disputes.

"Home Energy Assistance" means financial aid supplied to NLR low income electric customers who are experiencing difficulty in paying their NLR electric bill and who meet the prerequisites established for financial assistance in Exhibit "A".

"Monthly Service Fee" means 1/12 of the Service Fee.

"Service Fee" means 15% of the Energy Assistance Budget approved by the City Council of NLR for the then current budget year.

"Services" means those services provided by CADC necessary for the delivery of Home Energy Assistance to NLR's low income electric customers.

## ARTICLE 2. TERM AND TERMINATION

Section 2.1. Contract Term. The term of this Agreement (the "Contract Term") shall begin on the Effective Date and, unless earlier terminated or renewed in accordance with the terms and conditions of this Article 2, shall terminate on December 31, 2020.

Section 2.2. Extension of Contract Term and Service Term. In the event that, not less than sixty (60) days prior to the expiration of the then-current Contract Term, NLR notifies CADC in writing that NLR wishes to extend the term of this Agreement. CADC shall negotiate in good faith with NLR regarding extension of the Contract Term for an additional period, as designated by NLR in such notice, of not less than one (1) year from and after the expiration of the then-current Contract Term, on the same terms and conditions as set forth herein, unless modifications are mutually agreed to by the Parties.

Section 2.3. Termination Rights. Neither Party shall have the right to terminate this Agreement except as follows:

(a) NLR Termination Option. NLR may terminate this Agreement in its sole discretion for any reason, or no reason at all, upon thirty (30) days' written notice to CADC; provided that, if NLR exercises its right to terminate pursuant to this Section 2.3(a) prior to the end of the Contract Term, NLR shall pay CADC a termination fee of two (2) months Monthly Service Fee for the then current Energy Assistance Budget (the "Termination Payment"). NLR may terminate this Agreement in its sole discretion for any reason upon ninety (90) days advance written notice to CADC without a termination fee.

(b) CADC Termination Option. CADC may terminate this Agreement in its sole discretion for any reason, or no reason at all, upon ninety (90) days' written notice to NLR.

Section 2.4. Survival. This Agreement shall continue in effect after expiration or termination to the extent necessary to preserve the rights and obligations of any Party accrued under this Agreement and no termination of this Agreement shall be effective as to any ongoing transaction(s) until all Parties have fulfilled all their obligations under this Agreement with respect to such transactions.

## ARTICLE 3. ELECTRIC CUSTOMER ASSISTANCE OBLIGATIONS

Section 3.1. Home Energy Assistance. CADC shall administer and provide for the delivery of Home Energy Assistance to qualified NLR low income electric customers in a manner consistent with guidelines established in Exhibit "A".

Section 3.2. Record-Keeping Obligations. CADC shall maintain such records as are required by this Agreement, and all data, documents, or other materials relating to or substantiating any charges, costs or expenses payable or reimbursable by NLR under and in accordance with the requirements of this Agreement, for a minimum period, in each instance, of three (3) years from and after the date on which the records are created.

Section 3.3. CADC Electric Customer Assistance Not Exclusive to NLR.

(a) NLR hereby expressly acknowledges that CADC is engaged by other governmental authorities to provide assistance to electric customers similar or identical to the assistance to be provided the electric customers of NLR. NLR acknowledges that the expertise and business plan of CADC requires it to be able to provide such services.

(b) Notwithstanding the nature of the assistance to be provided by CADC under the terms of this Agreement to NLR electric customers, NLR specifically acknowledges that CADC is not precluded from representing or performing similar or related services or providing similar assistance to electric customers other than NLR's electric customers.

(c) Notwithstanding this Section 3.3, CADC agrees that, in providing similar or related assistance sponsored by other governmental authorities, it shall do so in a non-discriminatory manner with respect to NLR's electric customers. Moreover CADC agrees that to the extent NLR has sponsored similar or related assistance, such assistance sponsored by NLR shall not be on a basis for otherwise withholding similar or related assistance sponsored by other governmental authorities from NLR electric customers.

## ARTICLE 4. SUBCONTRACTOR OBLIGATIONS AND INSURANCE

Section 4.1. Subcontractors.

(a) Nothing in this Agreement shall prevent CADC from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that CADC shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and CADC shall remain primarily liable to NLR for the performance of each subcontractor.

(b) The creation of any subcontract relationship shall not relieve CADC of any of its obligations under this Agreement. CADC shall be fully responsible to NLR for the acts or omissions of any subcontractor CADC hires as if no subcontract had been made. Likewise, any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

(c) The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

Section 4.2. Insurance

(a) Insurance. CADC agrees to furnish NLR a certificate evidencing compliance with the insurance requirements stipulated below which shall provide not less than thirty (30) days prior written notice to NLR of any cancellation or material reduction in the insurance.

**i.** Workers' compensation insurance in statutory limits covering all employees of CADC who shall perform any work pursuant to this Agreement, whether or not such insurance is required by statute.

**ii.** Public liability and property damage liability insurance covering all work of CADC; limits of bodily injury or death, not less than $1,000,000 for each occurrence; for property damage, not less than $1,000,000 for each occurrence, and $1,000,000 aggregate for each occurrences during the policy period. Liability coverage shall include completed operations coverage.

**iii.** Automobile liability insurance on all vehicles used in connection with CADC's work under this Agreement, whether owned, non-owned, or hired; shall meet state minimum liability limits.

(b) CADC agrees to notify NLR whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

## ARTICLE 5. ASSISTANCE PROGRAM FUNDING, FEES AND COSTS

Section 5.1. NLR Funding. Upon approval of the NLR budget by the NLR City Council for the upcoming calendar year 2020, NLR will make $150,000 available to support Home Energy Assistance for NLR low income customers during the 2020calendar year (Energy Assistance Budget).

Section 5.2. Monthly Service Fee. NLR shall compensate CADC for Services rendered under this Agreement monthly at a rate equivalent to 15% of the Energy Assistance Budget. The Energy Assistance Budget shall include CADC's Monthly Service Fee. The Monthly Service Fee shall be paid to CADC in monthly installments.

Section 5.3. Energy Assistance Budget Changes.

(a) Energy Assistance Budget Increase. NLR shall provide CADC with thirty (30) days' notice of any increase in the Energy Assistance Budget. The Parties agree the Monthly Service Fee shall increase pro rata on the beginning of the next calendar month following such notice.

(b) Energy Assistance Budget Decrease. NLR shall provide CADC with sixty (60) days' notice of any decrease in the Energy Assistance Budget. The Parties agree the Monthly Service Fee shall be reduced pro rata on the beginning of the first calendar month that occurs sixty (60) days after such notice. In no event shall CADC receive less than sixty (60) days notice of any reduction in the Energy Assistance Budget.

Section 5.4. Cost Reimbursement Consistent with the guidelines for providing Home Energy Assistance set forth in Exhibit A; NLR shall reimburse CADC its reasonable program costs for providing such assistance to NLR's electric customers.

## ARTICLE 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1. Representations and Warranties of the Parties. Each Party, with respect to itself, hereby represents and warrants to the other Party as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the State of Arkansas and is qualified to conduct the business necessary to perform this Agreement;

(b) the execution, delivery and performance of this Agreement are within its statutory and corporate powers, have been duly authorized by all necessary action and do not conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(c) this Agreement has been duly executed and delivered on its behalf by a duly authorized representative of such Party;

(d) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, voter referendum under Arkansas law or other Governmental Rules affecting creditors' rights generally, and with regard to equitable remedies, subject to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending;

(e) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated, or threatened against it; and

(f) there are no suits, proceedings, judgments, rulings or other orders by or before any Governmental Authority that materially adversely affect such Party's ability to perform this Agreement.

Section 6.2. No Other Representations and Warranties. Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

Section 6.3. Disclaimer of Warranties. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DENIES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILILTY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

## ARTICLE 7. EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. An "Event of Default" means any of the following:

(a) the failure by a Party (the "Defaulting Party") to make, when due, any payment for undisputed amounts required under this Agreement, if such failure is not cured within twenty (20) Business Days after written notice thereof from the Non-Defaulting Party; or

(b) any material representation or warranty made by a Party (the "Defaulting Party") in this Agreement shall prove to have been false or misleading in any material respect, or

(c) any failure by CADC to perform or comply with any covenant set forth in this Agreement if such failure is not excused by Force Majeure or cured within thirty (30) days after written notice thereof from NLR or, if such failure cannot be completely corrected or cured within thirty (30) days, and CADC fails to (1) commence within such thirty (30) day period, and sustain continuously thereafter, diligent efforts to correct or cure such failure, and (2) completely correct or cure such failure within ninety (90) days after written notice thereof from NLR, or

(d) any failure by NLR to perform or comply with any covenant set forth in this Agreement if such failure is not excused by Force Majeure or cured within thirty (30) days after written notice thereof from CADC or, if such failure cannot be completely corrected or cured within thirty (30) days, and NLR fails to (1) commence within such thirty (30) day period, and sustain continuously thereafter, diligent efforts to correct or cure such failure, and (2) completely correct or cure such failure within ninety (90) days after written notice thereof from CADC.

Section 7.2. Remedies Upon An Event Of Default by CADC. If an Event of Default with respect to CADC occurs and is continuing at any time, NLR may take whatever action at law or in equity, consistent with the provisions of this Agreement, as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement.

Section 7.3. Remedies Upon An Event Of Default by NLR. If an Event of Default with respect to NLR occurs and is continuing at any time, CADC may take whatever action at law or in equity, consistent with the provisions of this Agreement, as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement.

Section 7.4. Remedies Cumulative. Except as otherwise provided in Article 9, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be pursued separately or concurrently as the Party pursuing such remedy determines. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

## ARTICLE 8. INDEMNITY

Section 8.1 Mutual Indemnity.

(a) Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and its Affiliates, representatives and invitees (collectively, the "Indemnified Parties") from and against any and all suits, actions, liabilities, legal proceedings, claims, fines, penalties, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorney's fees and expenses (collectively, "Losses") to the extent that the same arises out of or results from (i) any failure of a Party to perform its obligations under this Agreement, (ii) any negligent acts or omissions by a Party or its subcontractors or their respective agents or employees, or (iii) any willful misconduct or breach of this Agreement on the part of a Party or its respective subcontractors or its respective agents or employees in the performance of its express obligations arising under this Agreement.

(b) NOTWITHSTANDING SECTIONS 8.1.(a)) ABOVE, WHEN ANY OBLIGATION FOR INDEMNIFICATION RESULTS FROM JOINT OR CONCURRENT NEGLIGENCE, WILLFUL MISCONDUCT, OR BAD FAITH OF BOTH PARTIES, SUCH PARTIES' DUTY OF INDEMNIFICATION SHALL BE IN PROPORTION TO EACH SUCH PARTY'S

ALLOCABLE SHARE OF JOINT OR CONCURRENT NEGLIGENCE, WILLFUL MISCONDUCT, OR BAD FAITH.

Section 8.2. Notice. An Indemnified Party must promptly, upon its discovery of facts or circumstances giving rise to a claim for indemnification, give written notice thereof to the Indemnifying Party. To the extent that the Indemnifying Party is or will be actually and materially prejudiced as a result of the failure of the Indemnified Party to provide timely notice, the Indemnifying Party's liability shall be reduced proportionate to such prejudice.

Section 8.3. Amount of Losses. The amount of Losses shall be computed net of any related recoveries to which the Indemnified Party is entitled under insurance policies, or other payments received or currently receivable from third parties.

Section 8.4. Workers' Compensation. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have under applicable workers' compensation laws. In claims against any Indemnified Party by any representative of the Indemnifying Party, the indemnification obligation under this Article 8 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Section 8.5. Not Exclusive; Survival. Neither Party's indemnity obligations hereunder shall be construed to negate, abridge or reduce the other rights or obligations or indemnity, which would otherwise exist at law or in equity. The obligations contained herein shall survive any termination, cancellation or suspension of this Agreement.

## ARTICLE 9. LIMITATION OF LIABILITY; MITIGATION OR DAMAGES

Section 9.1. Limitation of Liability.

(a) NLR Limitations of Liability. EXCEPT AS SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, NLR WILL NOT BE LIABLE TO CADC FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BY STATUTE, IN TORT OR CONTRACT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY OF RECOVERY. WITHOUT LIMITING THE FOREGOING, THE MAXIMUM AMOUNT OF NLR'S LIABILITY, IF ANY, ARISING FROM ANY CLAIM, LAWSUIT, ACTION OTHER LEGAL PROCEEDING BY CADC, ANY CADC REPRESENTATIVE, OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH NLR'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE 100% OF THE MONTHLY SERVICE FEE PAYABLE IN ONE FULL CONTRACT YEAR.

(b) CADC Limitations of Liability. EXCEPT AS SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, CADC WILL NOT BE LIABLE TO NLR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BY STATUTE, IN TORT OR CONTRACT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY OF RECOVERY. WITHOUT LIMITING THE FOREGOING, THE MAXIMUM AMOUNT OF CADC'S LIABILITY, IF ANY, ARISING FROM ANY CLAIM, LAWSUIT, ACTION OTHER LEGAL PROCEEDING BY NLR, ANY NLR

REPRESENTATIVE, OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH CADC'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE 100% OF THE MONTHLY SERVICE FEE PAYABLE IN ONE FULL CONTRACT YEAR.

(c) Limitations of Liability, Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement, provided however, that nothing in this Agreement shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

Section 9.2 Survival. The provisions of this Article 9 shall survive expiration or termination of this Agreement.

## ARTICLE 10. BILLING AND PAYMENT; AUDIT RIGHTS

Section 10.1. Billing And Payment. The accounting period for billings hereunder shall be one (1) calendar month. On or before the tenth (10th) Business Day of each calendar month, CADC shall render to NLR (by regular mail, facsimile or other reasonable means) an invoice setting forth the Monthly Services Fee, and an itemized accounting of other charges, if any, due to CADC under this Agreement for the immediately preceding calendar month. Payment of amounts contained in all such invoice shall be made by NLR to CADC in immediately available funds at the invoice address provided by CADC within twenty (20) days of receipt of the invoice; provided that, if such due date is not a Business Day, payment shall be due on the next Business Day following such date. Late payments shall accrue interest, for each day from the due date to the date of the payment, at a rate equal to the effective prime commercial lending rate for such day as published in the Wall Street Journal under "Money Rates"; provided, the interest rate shall never exceed the maximum lawful rate permitted by applicable governmental rule.

Section 10.2. Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to any invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

Section 10.3. Netting of Payments. The Parties hereby agree they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase of Services during the monthly billing period of this Agreement, including any related damages calculated pursuant to this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Section 10.4. Taxes. NLR shall be obligated to pay all present and future taxes, fees and levies which may be assessed by any entity upon the Services and or assistance provided NLR and its electric customers by CADC under this Agreement. If CADC is required by law to remit such taxes to the applicable government authority, NLR shall remit the payment as appropriate to CADC.

Section 10.5 Audits.

(a) CADC shall keep accounts and records of all activities carried out, and all costs and expenses incurred, in the performance of its obligations under this Agreement. NLR shall have the right, at its expense, to audit any costs, payments, or other supporting documentation pertaining to transactions under this Agreement to determine the accuracy of payments provided to the other Party under this Agreement; provided that (a) all costs billed pursuant to this Agreement only shall be subject to audit for a period of one (1) year following the issuance of an invoice therefore; (b) no adjustment for any invoice shall be made unless an objection was made to such invoice within one (1) year following the issuance of an invoice therefore; and (c) NLR may not conduct more than one (1) payment accuracy audit per calendar year, unless NLR, acting in good faith, believes there are irregularities meriting an audit. Audits shall take place during normal business hours and at the offices where such accounts and records are maintained, unless otherwise agreed upon by the Parties. NLR agrees to use commercially reasonable efforts and reasonably work with CADC on the timing and scheduling of any audits undertaken by NLR.

(b) All audits shall be performed in a manner intended to minimize disruption to CADC's business. All such audits and verifications may be conducted during the term of this Agreement and for a period of one (1) year after the termination or expiration of this Agreement.

(c) CADC shall assist NLR's auditors (including internal audit staff), regulators, consultants and other representatives as is reasonably required. CADC shall cooperate fully with NLR or its designees in connection with audit functions and with regard to examinations by regulatory authorities and shall, on a timely basis, furnish each with information requested.

(d) Audits and inspections shall be limited to information relating to the Services provided pursuant to this Agreement.

(e) In no event shall NLR while conducting audits and investigations interfere with CADC's ability to perform its obligations under this Agreement or conduct its other operations in the ordinary course of business.

## ARTICLE 11. ASSIGNMENT; BINDING EFFECT

Section 11.1. Assignment. Other than as set forth in this Section 11.1, neither Party shall assign this Agreement or any of its rights or obligations hereunder (whether by operation of law or otherwise) to any person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. CADC may assign this Agreement to an Affiliate of CADC or to any entity which succeeds to all or substantially all of CADC's assets or business. This Agreement shall be binding on and inure to the benefit of the Parties thereto, their successors and permitted assigns.

Section 11.2. Financing Assignments. Notwithstanding anything to the contrary in Section 11.1, either Party may, without the prior written consent of the other Party but with prior written notice assign its right to receive payment (but not its obligations) under this Agreement to any entity (ies) or institution(s) for the purposes of financing or refinancing the development, design, construction, or operation of the assigning Party's facilities.

Section 11.3. Party to Remain Responsible. No assignment permitted under this Article 11 shall relieve the assigning Party from its obligations, duties, liabilities, or financial responsibility hereunder unless and until (a) the assignee(s) agrees in writing to assume the obligations, duties, liabilities, and financial responsibilities of the assigning Party and in connection therewith cures any then existing payment defaults of the assigning Party and any then existing performance defaults that are capable of cure under this Agreement and (b) the non-assigning Party reasonably determines that the assignee(s) is no less technically and financially capable of performing its obligations and duties under this Agreement than was the assigning Party.

## ARTICLE 12. FORCE MAJEURE

Section 12.1. Notice of Claim of Force Majeure. If either Party is rendered unable by an event of Force Majeure to carry out, in whole or in part, its obligations under this Agreement (other than payment obligations), such Party, shall as soon as reasonably practicable after the occurrence of the event, give the other Party notice thereof, including full details of the Force Majeure event, the date of its commencement, the anticipated duration if ascertainable, the performance of the Party claiming Force Majeure that is prevented by the Force Majeure event, and the actions being taken to mitigate the effects of the Force Majeure event.

Section 12.2. Performance Excused. During the pendency of the Force Majeure event but for no longer period, the Party claiming Force Majeure shall be excused, to the extent provided for in this Agreement, from the obligations under this Agreement (other than payment obligations) that are prevented by the Force Majeure event.

Section 12.3. Mitigation. The Party claiming Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure event with all reasonable dispatch; provided, however, that neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such dispute.

Section 12.4. Notice of Ability to Resume Performance. As soon as the Party claiming Force Majeure is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

## ARTICLE 13. NOTICES

All notices, requests, statements or payments shall be made to the addresses and persons specified below. All notices, requests, statements or payments shall be made in writing except that notices of an immediate nature may be provided by telephone, facsimile, or e-mail; provided, that if any such notice is provided by facsimile or e-mail, it shall be confirmed immediately by telephone. Notices required to be in writing shall be delivered by U. S. Mail, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided promptly thereafter by U.S. Mail, overnight delivery, courier or facsimile). A Party may change its address or the persons specified herein by providing notice of the same. Notice information for NLR and CADC are as follows:
For NLR:

A. Correspondence Address

General Manager
North Little Rock Electric Department
8th and Main Streets
P. O. Box 159
North Little Rock, Arkansas 72115

B. Invoice Address

Accounts Payable
North Little Rock Electric Department
8th and Main Streets
P. O. Box 159
North Little Rock, Arkansas 72115

For CADC:

A. Correspondence Address

Executive Director
Central Arkansas Development Council
P. O. Box 580
321 Edison Street
Benton, Arkansas 72018

B. Payment Address

Finance Director
Central Arkansas Development Council
P. O. Box 580
321 Edison Street
Benton, Arkansas 72018

## ARTICLE 14. CONFIDENTIALITY OBLIGATIONS

Section 14.1. Confidential Information. Except as may be required by the Arkansas Freedom of Information Act or subject to the approval of NLR, CADC shall not disclose and shall keep confidential the customer information (including without limitation customer name, address, telephone number, account number, bill history, meter history, financial information) provided CADC by NLR. To the extent necessary to fulfill its obligations under this Agreement and to the NLR customers, CADC may disclose such customer information to a third party (other than CADC's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such information confidential) except in order to comply with any court proceeding; provided, however, to the extent practicable, CADC shall use reasonable efforts to prevent or limit the disclosure. NLR shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## ARTICLE 15. MISCELLANEOUS

Section 15.1. Entire Agreement; Amendments. This Agreement (including the exhibits, schedules and any written supplements hereto), constitute the entire agreement between the Parties relating to the subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except

to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

Section 15.2. Disputes/Governing Law. Any dispute between the Parties under this Agreement shall be referred to representatives of NLR and CADC designated by the Parties for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days, or such other period as the Parties may jointly agree upon, the Parties are free to exercise any and all rights and remedies. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. The Parties agree the venue for any dispute arising from this Agreement shall be Pulaski County, Arkansas.

Section 15.3. Non-Waiver. No waiver by either Party of (a) the performance of any provision of this Agreement by the other Party, (b) any one or more Event of Default by the other Party in the performance of any of the provisions of this Agreement, or (c) any such Party's rights under this Agreement shall be construed as a waiver of any other performance, Event of Default, or rights, whether of a like kind or different nature.

Section 15.4. Severability. Except as otherwise provided in this Agreement, any provision or article declared or rendered unlawful by a Governmental Authority with jurisdiction over the Parties, or deemed unlawful because of a change in Governmental Rule, shall not affect the validity, legality, and enforceability of the remaining provisions and articles of this Agreement.

Section 15.5. Headings. The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 15.6. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any Person, other than the Parties to this Agreement, any right or remedy of any nature whatsoever.

Section 15.7. Relationship Of The Parties. The Parties are independent contractors, and shall not be deemed to be partners or joint ventures of each other for any purpose, including for purposes of any taxes or for workers' compensation or liability purposes. Any designee of NLR shall be agreed to in writing by the Parties; provided that such designee must agree to conform to certain operating procedures developed by NLR, CADC and the designee. NLR, its designee and CADC shall participate in the Balancing Authority Services Committee to further modify such operating procedures throughout the Contract Term as appropriate.

Section 15.8. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

Section 15.9. Construction. This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Party who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable either to this Agreement or such other documents and instruments.

Section 15.10. Exhibits. The exhibits attached to this Agreement form an integral part of this Agreement, and any and all exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

Section 15.11. Tort Immunity. Nothing in this Agreement shall be interpreted as a waiver of the tort immunity granted NLR under the laws of the State of Arkansas.

Section 15.12. - Reform of Agreement. If any provision of this Agreement is, becomes or is deemed invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable; or if it cannot be so amended without materially altering the intention of the Parties, it shall be stricken, and the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on its behalf by its duly authorized representative, effective as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**Central Arkansas Development Council**

By: _____

Title: _____

**The City of North Little Rock**

By: _____
Joe Smith, Mayor

Attest:

_____
Diane Whitbey, City Clerk

## EXHIBIT A

## HOME ENERGY ASSISTANCE

A.1 Eligibility. To become eligible for financial assistance under the low income Home Energy Assistance program a person must:

i. Be an electric customer of the NLR Electric Department for more than one (1) year;
ii. Have received a shut off notice from the NLR Electric Department;
iii. Have an overdue Electric Department account greater than $100; and
iv. Have a household income of less than 150% of the federal Poverty Guidelines;

A.2. Assistance Amount. Eligible NLR Electric Department customers shall receive up to $500 assistance to be applied directly toward the payment of the customer's overdue NLR Electric account.

A.3. Assistance Limitation. Customers receiving Home Energy Assistance in the amount of up to $500 may not apply for Home Energy Assistance again for a period of one (1) year.