

**SHAKOPEE PUBLIC UTILITIES COMMISSION  
NOTICE OF SPECIAL MEETING  
September 3, 2020 5:00 PM**

The President of the Shakopee Public Utilities Commission (the "Commission") has called a special meeting. The agenda is below.

**Following the March 13, 2020 Declaration of Peacetime Emergency by Governor Walz (as amended), the Commission is holding its special meeting on September 3, 2020 at 5:00pm by telephone or other electronic means (WebEx) according to Minnesota Statutes, Section 13D.021. The Commission President has concluded that an in-person meeting is not practical or prudent because of the health pandemic. The Commission President will be at the regular meeting location. The public may monitor the meeting by calling:**

**Dial – 1-408-418-9388**

**Enter Access Code: 126 611 2191**

**When Prompted for Password enter #**

**AGENDA**

- 1. Call to Order**
- 2. Approve the Agenda**
- 3. Update on independent third-party auditor, training**
- 4. Review Term Sheet for Repayment Plan and Separation Agreement with Utilities Manager John Crooks**
- 5. Discussion of interim leadership**
- 6. Upcoming Regular Meetings**

**September 8**

- 7. Adjourn**



# Agreement for Financial Services

THIS AGREEMENT, is made and entered into on August 21, 2020 by and between the Shakopee Public Utilities, Minnesota (hereinafter referred to as the "PUC"), and AEM Financial Solutions LLC (hereinafter referred to as the "Contractor").

## Articles of Agreement & Recitals

WHEREAS, the PUC is authorized and empowered to secure from time to time certain professional services through contracts with qualified consultants; and

WHEREAS, the Contractor understands and agrees that:

1. The Contractor will act as an Independent Contractor in the performance of all duties under this Agreement. Accordingly, the Contractor shall be responsible for payment of all taxes, including federal, state and local taxes and professional/business license fees arising out of the Contractor's activities;
2. The Contractor shall have no authority to bind the PUC for the performance of any services or to obligate the PUC. The Contractor is not an agent, servant, or employee of the PUC and shall not make any such representations or hold himself/herself out as such;
3. The Contractor shall be the exclusive outsourced accounting service provider for the PUC during the term of this Agreement;
4. The Contractor shall perform all professional services in a competent and professional manner, acting in the best interests of the PUC at all times.
5. The Contractor shall not accrue any continuing contract rights for the services performed under this contract.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, it is agreed as follows:

### ARTICLE I

#### INCORPORATION OF RECITALS

The recitals and agreement set forth above are hereby incorporated into this Agreement.

### ARTICLE II

#### LIABILITY INSURANCE

Section 1 Liability Insurance: The Contractor shall obtain professional liability insurance, at their expense with liability insurance coverage minimums in the amount of \$2,000,000, which Contractor must secure and maintain during the term of this Agreement. Contractor will provide PUC with proof of liability insurance coverage under this Agreement in writing upon request by the PUC.

## **AGREEMENT FOR FINANCIAL SERVICES - CONTINUED**

### **ARTICLE III**

#### **DURATION OF THE AGREEMENT**

Section 1 Duration: This Agreement shall commence upon date of execution by all parties and will remain in effect until October 31, 2020 unless earlier terminated as provided in Sections 2 and 3.

Section 2 PUC's Termination Rights: PUC may terminate this Agreement upon sixty (60) days written notice in the event the PUC determines in its sole discretion that it is not in the PUC's best interest to continue using Contractor's services. The PUC may terminate on ten (10) days written notice of the Contractor fails to perform its obligations under this Agreement.

Section 3 Contractor's Termination Rights: Contractor may terminate this Agreement upon thirty (30) days written notice to PUC in the event PUC does not pay Contractor compensation as required under Article 5, Section 9 within fifteen (15) days after invoice is received by PUC. In the event of non-payment within thirty (30) days, Contractor shall give PUC an opportunity to cure the default by giving a notice of such non-payment and an additional five (5) days after the PUC receipt of the notice to remit such payment, prior to giving a notice of termination. Contractor can also terminate the Agreement with one hundred twenty (120) days written notice if the Contractor believes it is in its best interests to terminate the Agreement.

### **ARTICLE IV**

#### **RENEWAL OF THE AGREEMENT**

Section 1 Renewal Period: Not less than ninety (90) days prior to the expiration of this Agreement, the PUC may provide written notice of intent to renew this Agreement for an additional term of up to three years upon terms and conditions agreed upon by both parties to the Agreement. If no such renewal agreement is executed by the parties, the Agreement terminates without further action of either party on October 31, 2020.

### **ARTICLE V**

#### **GENERAL**

Section 1 Authorized PUC Agent: The PUC's authorized agent for the purpose of administration of this Agreement is the PUC Attorney. Said agent shall have final authority for approval and acceptance of the Contractor's services performed under this Agreement and shall further have responsibility for administration of the terms and conditions of this Agreement. All notices under this Agreement shall be sent to the person and address indicated below on the signature lines.

Section 2 Amendments: No amendments or variations of the terms and conditions of this Agreement shall be valid unless in writing and signed by the parties.

Section 3 Assignability: The Contractor's rights and obligations under this Agreement are not assignable or transferable.

## **AGREEMENT FOR FINANCIAL SERVICES - CONTINUED**

### **ARTICLE V - CONTINUED**

#### **GENERAL - CONTINUED**

Section 4 Data: Any data or materials, including, but not limited to, reports, studies, photographs, negatives, or any and all other documents prepared by the Contractor or its outside consultants in the performance of the Contractor's obligations under this Agreement shall be the exclusive property of the PUC, and any such data and materials shall be remitted to the PUC by the Contractor upon completion, expiration, or termination of this Agreement. Further, any such data and materials shall be treated and maintained by the Contractor and its outside consultants in accordance with applicable federal, state and local laws. Further, Contractor will have access to data collected or maintained by the PUC to the extent necessary to perform Contractor's obligations under this Agreement. Contractor agrees to maintain all data obtained from the PUC in the same manner as the PUC is required under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 or other applicable law (hereinafter referred to as the "Act"). Contractor will not release or disclose the contents of data classified as not public to any person except at the written direction of the PUC. Upon receipt of a request to obtain and/or review data as defined in the Act, Contractor will immediately notify the PUC. The PUC shall provide written direction to Contractor regarding the request within a reasonable time, not to exceed fifteen (15) days. The PUC agrees to indemnify, hold harmless and defend Contractor for any liability, expense, cost, damages, claim, and action, including attorneys' fees, arising out of or related to Contractor's complying with the PUC's direction, as to data requests or release of data under the Act. Subject to the aforementioned, Contractor agrees to defend and indemnify the PUC from any claim, liability, damage or loss asserted against the PUC as a result of Contractor's failure to comply with the requirements of the Act. Upon termination and/or completion of this Agreement, Contractor agrees to return all data to the PUC, as requested by the PUC.

Section 5 Entire Agreement: This Agreement is the entire agreement between the PUC and the Contractor and it supersedes all prior written or oral agreements. There are no other covenants, promises, undertakings, or understandings outside of this Agreement other than those specifically set forth. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, or agreement purporting to modify, vary, supplement, or explain any provision of this Agreement is null and void and of no effect unless in writing and signed by representatives of both parties authorized to amend this Agreement.

Section 6 Severability: All terms and covenants contained in this Agreement are severable. In the event any provision of this Agreement shall be held invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid terms or covenants were not contained herein and such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7 Contractor Fiscal Decision Waiver: Contractor is responsible for providing the PUC with timely and accurate financial recommendations and information that allows PUC Board the ability to make final financial decisions. Contractor will provide final financial recommendations, but is not responsible for the final decisions made regarding financial matters.

Section 8 PUC Employment of Contractor's Employees; Should the PUC desire to employ the Contractor's employee that is assigned to the PUC during the term of this Agreement, it must have the written consent of the Contractor to enter into a PUC employee contract with the Contractor's employee. Should the Contractor agree to such arrangement, the agreement will include a payment equal to 150% of the annual contracted cost, in addition to the annual contracted cost already paid to the Contractor. This restriction on employment applies during the term of this agreement and for six months thereafter.

**AGREEMENT FOR FINANCIAL SERVICES - CONTINUED**

**ARTICLE V - CONTINUED**

**GENERAL - CONTINUED**

Section 9 Compensation: The parties agree that the Contractor shall be paid compensation for the services provided hereunder, payable for work performed in accordance with this Agreement, based on the fees indicated in Table 1 and under the attached scope of services. Additional fees will not be incurred without prior approval of the PUC.

**Table 1**

**Services Period: September 1, 2020 – October 31, 2020**

	Hourly Rate
Partner	\$ 375
Senior Accountant	\$ 185
Staff Accountant	\$ 160

The estimated investment by the PUC is \$1,900 - \$3,000. Services will be invoiced at the hourly rates indicated above.

Section 10 Additional Services: Should the PUC request additional services in addition to the Contracted Services, the Contractor will provide the PUC with proposed fees for the services to be provided. The PUC shall provide a written or electronic confirmation prior to the proposed services implementation.

Section 11 Outside Contractors: It shall be the responsibility of Contractor to compensate any other outside consultants retained or hired by Contractor to fulfill their obligations under this Agreement and shall be responsible for their work and Contractor, by using outside contractors, shall not be relieved of its obligations under this Agreement.



## Agreement for the Provision of Professional Services

WHEREFORE, this Agreement was entered into on the date set forth below and the undersigned, by execution hereof, represent that they are authorized to enter into this Agreement on behalf of the respective parties and state that this Agreement has been read by them and that the undersigned understand and fully agree to each, all and every provision hereof, and hereby, acknowledge receipt of a copy hereof.

Shakopee Public Utilities  
255 Sarazin Street  
Shakopee, Minnesota 55379

Name *Kelra Amundson*  
Title *President - Shakopee Public Utilities*

Name \_\_\_\_\_  
Title \_\_\_\_\_

Date *August 24, 2020*

AEM Financial Solutions, LLC  
5201 Eden Ave. Suite 250  
Edina, Minnesota 55436

Name *Jean D. Madann*  
Title *President and Partner*  
Date *August 21, 2020*

ABDO  
EICK &  
MEYERS LLP

**Term Sheet – Repayment Plan and Separation Agreement  
Shakopee Public Utilities Commission and John Crooks**

1. Approval Process. The term sheet and final agreement must be approved by the Shakopee Public Utilities Commission, by and through its Commissioners (the “Commission”) and Mr. Crooks. Upon approval of the term sheet by the Commission and Mr. Crooks, a draft full agreement that is based upon the approved term sheet (the “Agreement”) shall be prepared by the Commission’s counsel and furnished to Mr. Crooks’ counsel without delay after such approval of the Term Sheet. Unless specifically and expressly incorporated into the Agreement, the provisions within the existing Utilities Manager Employment Contract shall be superseded by the Agreement.
2. Execution of the Agreement. To be valid and enforceable, the Agreement shall be executed by Mr. Crooks and all five of the Commissioners (President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer). The term sheet and the Agreement may be executed in counterparts, with an electronic signature, each of which will be deemed an original, but all of which taken together constitutes but one and the same instrument.
3. Separation of Employment. Mr. Crooks’ resignation will be effective on the date of execution of the Agreement (as provided in Section 2), which the parties anticipate to be on or about September 8, 2020 (the “Separation Date”). Mr. Crooks shall remain employed by the Commission with full salary and benefits until the Separation Date, and he remains available to assist the Commission, upon request, to respond to the reasonable inquiries and requests for information from the Commission through the Separation Date.
4. Payment of Benefits. The Commission shall pay accrued but unused vacation and sick leave benefits and salary through the Separation Date, subject to the maximum compensation cap under Minnesota Statutes, Section 43A.17, and less income tax and any legally required withholding and any deductions that Mr. Crooks voluntarily authorizes in writing. Payment shall be made on the next regular payroll date after the expiration of the Rescission Period (described below).
5. Repayment of Excess Compensation. The Commission is engaging a third-party, independent auditor to determine the specific amount of compensation to Mr. Crooks in excess of Minnesota Statutes, Section 43A.17 for the years 2017-2019, and any adjustments for 2020. The parties agree to cooperate fully with the third-party auditor. The third-party auditor shall provide its determinations in writing to the Commission, and the Commission shall provide a copy of such written determinations to Mr. Crooks of the amount of excess compensation so

determined (the "Excess Compensation"). Mr. Crooks shall repay the Excess Compensation in three equal monthly installments due on the 30th of the month beginning on October 30, 2020 through December 30, 2020. To memorialize the payment by installments, Mr. Crooks will execute a promissory note and confession of judgment for the amount determined by the auditor to be owing.

6. PERA. The parties will cooperate fully with PERA in making potential adjustments to Mr. Crooks' retirement contributions and related Commission contributions for the period 2017-2020.
7. COBRA Health Insurance Premiums. Mr. Crooks plans to elect health insurance coverage on a COBRA basis. The Commission will pay the monthly COBRA premiums on his behalf through March 31, 2021.
8. Non-Disparagement. All signatories of the Agreement (Mr. Crooks, on the one hand, and, President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer, on the other) agree not to disparage the other party, encourage or assist others to disparage the other party, or cause the other party to be held in disrepute by the public.
9. Mutual Release and Waiver of Claims. All signatories of the Agreement (Mr. Crooks, on the one hand, and, President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer, on the other) agree to release the other party to the maximum extent permitted by applicable law and waive all legal and equitable claims against the other party. The release by Mr. Crooks will not apply to (a) rights he may have to defense and indemnification relating to third party claims brought against Mr. Crooks in his capacity as Utilities Manager or in his official capacity as agent and employee of the Commission, provided the incident arose while he was acting within the scope of his employment and excluding criminal litigation and such liability coverage is within the authority of the Commission to provide under state law, including Minnesota Statutes Section 466.07, or (b) any claim that controlling law clearly states may not be released, including by settlement.
10. Investigative Report Public. The investigative report prepared by Special Counsel Kori Land shall be public on or after the Separation Date.
11. Rescission Period. As provided under law, Mr. Crooks has up to 21 days from the date of the Agreement to consider the Agreement, including his waiver of rights and claims of age discrimination, harassment, and retaliation under the ADEA as amended by the OWBPA. If he signs the Agreement, then for a period of seven days following the day on which he signed it, he may revoke the Agreement, and the Agreement will not become effective or enforceable until the seven-day period



has expired. In addition, Mr. Crooks has the right to rescind the waiver of discrimination, harassment, and retaliation claims under the MHRA within 15 calendar days after the date on which he signs the Agreement. To rescind that waiver, Mr. Crooks must put the rescission in writing and deliver the rescission to the Commission within the 15-day period.

12. Press release. The parties shall agree upon statements to be provided to the media and the public upon signature of the Agreement. The parties will refer to the conclusion of Mr. Crooks' employment as his retirement. Mr. Crooks will provide an initial press release for the Commission's consideration.
13. Dispute Resolution Process. In the event of a dispute concerning this Term Sheet or the Agreement, representative(s) of each party with settlement authority will meet and confer in a good faith effort to resolve the dispute. If the parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods.
14. Return of SPU Property. Within 24 hours of the Separation Date, Mr. Crooks will return to SPU its equipment and all SPU property, including, but not limited to: cellular telephones; computers; SPU data and back-up data stored on any computers used by Mr. Crooks; program documents; strategic plans; financial information; credit cards; card key passes; door and file keys; computer access codes; computer disks and/or instruction manuals.
15. Breach of Agreement. In the event of a material breach of the Agreement, as finally determined by a court of competent jurisdiction, the court may award to the prevailing party the party's reasonable attorneys' fees and costs.

By signatures below, the parties hereby approve this Term Sheet:

\_\_\_\_\_ Date: \_\_\_\_\_  
John Crooks

**Shakopee Public Utilities Commission, by and through its Commissioners**

\_\_\_\_\_ Date: \_\_\_\_\_  
President Debra Amundson

\_\_\_\_\_  
Vice President Kathi Mocol Date: \_\_\_\_\_

\_\_\_\_\_  
Commissioner Jody Brennan Date: \_\_\_\_\_

\_\_\_\_\_  
Commissioner Kayden Fox Date: \_\_\_\_\_

\_\_\_\_\_  
Commissioner Mathew Meyer Date: \_\_\_\_\_