

BUTLER RURAL ELECTRIC COOPERATIVE, INC.**BOARD OF TRUSTEES****December 2, 2019**

A special meeting of the Board of Trustees of Butler Rural Electric Cooperative, Inc. was held at the Cooperative office at 3888 Stillwell Beckett Road, Oxford, Ohio on Monday, December 2, 2019 to discuss how to proceed following the General Manager's announcement of his retirement on April 1, 2020. The meeting was called to order by Thomas McQuiston at 1:00 p.m. The meeting was opened with an invocation and the Pledge of Allegiance led by Tom McQuiston.

ROLL CALL

Board members present were: Tom McQuiston, Bob Hoelle, Ron Kolb, Michael Tilton, David Evans, Butch Foster, Jim Meador and Robert Spaeth. Also present was Thomas Humbach, Attorney.

GENERAL MANAGER SEARCH

Tom McQuiston provided an electronic copy to the Board of Trustees on the Executive Search Services provided by NRECA prior to the meeting. The Trustees discussed options for seeking a General Manager. They reviewed the Executive Search Services proposal for a General Manager. A motion was made by Mike Tilton, with a second from Butch Foster, to authorize Tom McQuiston to execute the agreement with NRECA for the Executive Search. The vote was unanimous. Motion carried.

ADJOURNMENT

There being no further items to discuss, the meeting was declared adjourned by Tom McQuiston, Chairman.

Respectfully submitted,



David Evans
Secretary/Treasurer

AGREEMENT FOR EXECUTIVE SEARCH

This Executive Search Agreement (“Agreement”) is entered into, to be effective as of _____ (“Effective Date”), by and between **NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION (“NRECA”)**, with its principal place of business located at 4301 Wilson Boulevard, Arlington, VA 22203, and **BUTLER RURAL ELECTRIC COOPERATIVE INC. (“Client”)**, with its principal place of business located at 3888 Stillwell Beckett Road, Oxford, OH 45056. NRECA and Client may be referred to herein individually as a “Party” and collectively as the “Parties.”

NRECA agrees to provide the services set forth in this Agreement and further described in the Statement of Work (“SOW”), attached hereto. In the event of a conflict between the terms of this Agreement and the terms of the SOW, the terms of the Agreement shall prevail.

1. **Fees.** Upon signing this Agreement, NRECA will issue a retainer invoice in the amount of five thousand (\$5,000.00) dollars, which must be paid within 20 calendar days of receipt. Thereafter, payment for services will be due in three separate invoices, in accordance with the following schedule, invoices must be paid within 20 calendar days of receipt: \$15,000 after the facilitation of the in-person kick-off meeting with Client’s Board of Directors; \$15,000 after the facilitation of the in-person screening meeting with Client’s Board of Directors; and, the remaining balance as calculated below minus the retainer and the previous payments of \$30,000. The final invoice will include a fee equal to 25% of the candidate’s first year projected W-2 compensation; to include all types of sign on bonuses, commissions, and incremental first year pay adjustments (collectively “Projected Compensation Amount”), plus a charge for incurred expenses (e.g., travel, advertising, background checks and other miscellaneous search related items) in connection with the services performed. In the event, that the final invoice indicates a credit is due to Client for overpayment of services, NRECA will issue the refund within thirty (30) days’ after the Agreement expires or is terminated. The final invoice is not subject to reduction even if the candidate’s employment terminates. NRECA’s fee shall be deemed earned and Client shall be obligated to pay such fee whenever:

- i. A candidate referred to Client by NRECA is hired, directly, or indirectly, for any position, as an employee, consultant, or independent contractor, by Client, its affiliate, parents or subsidiaries, within 12 months of the most recent activity on behalf of that candidate by NRECA;
- ii. A candidate referred to Client by NRECA is referred by Client to another employer or recruiting firm and the candidate is hired, directly, or indirectly, for any position, as an employee, consultant, or independent contractor, by such employer or through such recruiting firm within 12 months of the most recent activity on behalf of that candidate by NRECA; or,
- iii. An internal candidate of Client’s who is put through the prescribed NRECA search process is hired, directly, or indirectly, for any position, as an employee, consultant, or independent contractor, by Client, its affiliate, parents or subsidiaries, within 12 months of the most recent activity on behalf of that candidate by NRECA.

For purposes of subsections (i) and (ii) "referred" means any manner or means of communication of a candidate's identity.

In the event that the Client should terminate this Agreement prior to the hiring of a candidate, directly or indirectly, Client will be issued a final invoice due upon receipt which shall consist of NRECA's actual incurred expenses, plus a percentage of the fees based on the Potential Projected Compensation Amount, as further defined below, in accordance with the following schedule: 20% upon signing of this Agreement, 75% after screening and reference checks, and 90% after the screening meeting. For purpose of this Section, Potential Projected Compensation Amount means an amount agreed to by Client and NRECA in writing; however, in the event the Parties cannot agree to a Potential Projected Compensation Amount, then it shall be determined based on the midpoint of the compensation market analysis provided by NRECA.

Upon the date of hire, directly or indirectly, of a candidate, NRECA shall issue a final invoice which shall be due upon receipt. Interest of 1% per month will be charged on all undisputed unpaid fees more than 30 calendar days past due. Client agrees to reimburse NRECA for all reasonable costs of collection, including attorneys' fees.

In the event that more than one candidate is hired, directly or indirectly, as a result of the services performed by NRECA, 25% of the actual first year compensation will be due for each individual hired.

NRECA fees and expenses are neither refundable nor contingent upon its success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as Client's choice.

2. **Term, Termination, and Effect of Termination.** This Agreement will commence upon the Effective Date and shall continue until: (i) a candidate has been hired, directly or indirectly, by Client; or, (ii) a Party terminates this Agreement in accordance with the terms of this Agreement. Either Party may terminate this Agreement at any time. Upon expiration or termination of this Agreement, NRECA will deliver any records it has obtained for the Client related to Equal Employment Opportunity Commission (EEOC) required filings, as requested by the Client, at the onset of the engagement, along with the final invoice submitted by NRECA to Client for payment. NRECA shall be under no obligation to make any required filings on behalf of Client, nor is NRECA responsible for a keeping a copy of any records provided under this Agreement after the Agreement has expired or terminated.

3. **Guarantee.** In the event the employment of a candidate referred to Client under this Agreement lasts less than 365 calendar days, and provided that all fees and expenses relating to such referral have been paid in full, NRECA will attempt to refer a replacement candidate for the same position at no additional charge to Client, except for incurred expenses. NRECA's obligation under this Agreement is limited to attempting to find a replacement candidate. No refund will be made if Client hires a replacement from any other source, or if Client is no longer actively seeking to fill the position.

Notwithstanding the foregoing paragraph of this Section 3, NRECA shall be under no obligation to perform per this Section, should Client terminate the candidate's employment for convenience, or the where the candidate dies or is unable to work due to disability.

4. Confidentiality.

i. NRECA agrees to maintain the confidentiality of any nonpublic proprietary Client information that it may obtain in the course of performing the services under this Agreement.

ii. All candidate referrals made by NRECA are made on a confidential basis and Client shall indemnify, defend, and hold NRECA and its officers, directors, and employees harmless against any and all liability as a result from Client's unauthorized disclosure or misuse of information regarding any candidates or their candidacy.

5. DISCLAIMER. NRECA does not guarantee the performance of any candidate or the accuracy of information provided regarding a candidate, and disclaims any responsibility for any claim, loss, or liability as a result of candidate's acts or omissions. NRECA urges Client to conduct such investigations, as it deems necessary to verify candidate information or to obtain such further information, as it may deem relevant.

6. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE NEGLIGENCE OR MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE AND FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO: (A) OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; OR, (B) DAMAGES CAUSED BY A PARTY'S NEGLIGENCE OR MISCONDUCT.

7. Relationship between NRECA and Client. The services provided by NRECA under this Agreement are provided as an independent contractor. Nothing in this Agreement shall be construed as creating the relationship of principal and agent, joint venturers, or employer and employee, between NRECA and Client.

8. Assignment. This Agreement and all of its provisions are binding on and inure to the benefit of NRECA and Client and their respective successors and permitted assigns, but neither this Agreement nor any rights, interests, or obligations hereunder may be assigned by either Party without the prior written consent of the other Party. Any attempt to assign this Agreement without the prior written consent of a Party shall be void and without further effect.

9. **Non-Discrimination.** NRECA does not discriminate in referrals, or consent to discrimination by its clients, against any candidate on the basis of age, race, color, religion, disability, sex, gender identity, national origin, veteran status, marital status or any other characteristic or class protected by applicable law.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and the federal laws of the United States of America. The Parties hereby consent and submit to the jurisdiction and forum of the state and federal courts in the Commonwealth of Virginia in all questions and controversies arising out of this Agreement.

11. **Force Majeure.** Neither Party shall be liable for delays or any failure to perform under this Agreement due to causes beyond its reasonable control. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed Party must notify the other Party promptly upon the occurrence of any such event, or performance by the delayed Party will not be considered excused pursuant to this Section, and inform the other Party of its plans to resume performance.

12. **No Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect that Party's right to enforce such provisions, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision. An effective waiver under this Agreement must be in writing signed by the Party waiving its right.

13. **Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other Party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail.

14. **Advertising and Publicity.** Client shall not use the name of or refer to NRECA directly or indirectly in any advertisement, news release, or professional or trade publication without prior written approval from NRECA. Client hereby grants NRECA a limited license during the term of this Agreement to use its name, trademark, trade logo in performing the services under this Agreement.

15. **Entire Agreement and Miscellaneous.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions, or agreements between NRECA and Client as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by NRECA and Client. If any provision or portion of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be overbroad, excessive, or unenforceable in any circumstances or to any extent, then the remainder of this Agreement and the application of such provision or portion in all other circumstances shall be valid and enforceable to the fullest extent permitted by law or equity. The Parties intend that this Agreement is valid and shall be enforced as written. The terms and provisions of this Agreement that by their sense and context are

intended to survive the performance thereof or hereof by either Party or both Parties hereto shall so survive the completion of performance and termination of this Agreement, including but not limited, to the following Sections: Fees; Confidentiality; Limitation of Liability; Governing Law; Advertising and Publicity; Notices; Entire Agreement and Miscellaneous. All rights and remedies of a Party herein shall be in addition to all other rights and remedies available at law or in equity, including without limitation, specific performance, and temporary and permanent injunctive relief. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that an electronic signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date and each Party warrants its respective signatory whose signature appears below is duly authorized by all necessary and appropriate corporate action to execute this Agreement on behalf of such Party.

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION (NRECA)	BUTLER RURAL ELECTRIC COOPERATIVE INC
By:	By:
Printed Name: Leigh Taylor	Printed Name: Thomas McQuiston
Title: Sr Principal, Executive Search	Title: Board President
Date:	Date:
Address for Notice: 4833 Front St., Unit B, #462 Castle Rock, CO 80104	Address for Notice: 3888 Stillwell Beckett Road Oxford, Ohio 45056

STATEMENT OF WORK

1. Scope of Service:

A list of key steps and estimated timing are set forth below. The scope of NRECA's executive search services includes position understanding, candidate generation and candidate screening and interviews. There will be 3 on-site visits to the cooperative or other designated location(s) to conduct the kick-off meeting, screening meeting, and interviews. Additional on-site visits may be added as appropriate.

2. Schedule of Services.

Position Understanding

- Gathering of information related to the Client's Board and organizational policies as standard for executive search engagements.
- Facilitation of Leadership Profile Questionnaire administration and qualification discussion.
- Compensation market analysis provided.
- Facilitation of In-Person Kick-Off meeting with the Client's Board of Directors.

Candidate Generation

- Job Posting, candidate identification, initial screening of candidates and reference checks.
- Consultant phone screen interviews.

Candidate Screening and Interviews

- Facilitation of in-person screening meeting with Client's Board of Directors.
- In-person finalist interviews/selection/employment offer/ negotiations/ transition.
- If requested, NRECA to collect any EEOC related information for Client

3. Background Checks

NRECA will conduct background checks on candidates as requested by Client. Requests must be in writing and must specify the scope of the background check requested. All background checks will be conducted at Client's expense. NRECA will provide Client results of the background check upon Client's written request. Client shall indemnify, defend, and hold NRECA and its officers, directors, and employees harmless against any and all claims asserted by a candidate arising out of or relating to a background check performed by NRECA.

4. Client Responsibilities:

- a. Client shall not contact candidates directly without consent from NRECA.
- b. Client shall designate a point of contact for NRECA to work with directly.