

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE RENEWAL OF THE MUNICIPAL ELECTRIC SERVICE AGREEMENT (MESA) BETWEEN THE CITY OF BRANSON AND THE EMPIRE DISTRICT ELECTRIC COMPANY

AN ORDINANCE AUTHORIZING AND PROVIDING A CONTRACT BETWEEN THE CITY OF BRANSON, MISSOURI (HEREINAFTER SOMETIMES CALLED THE CITY) AND THE EMPIRE DISTRICT ELECTRIC COMPANY (HEREINAFTER SOMETIMES CALLED THE COMPANY), ITS SUCCESSORS OR ASSIGNS, FOR ELECTRIC SERVICE AND EQUIPMENT TO LIGHT THE CITY'S STREETS, ALLEYS, AND PUBLIC WAYS, ELECTRIC SERVICE FOR LIGHT AND POWER FOR THE CITY'S PARKS, OTHER PROPERTIES AND PUBLIC PLACES, FOR A TERM OF YEARS, AND SPECIFYING THE PRICES TO BE PAID FOR SUCH LIGHTING AND POWER SERVICE, AND THE TERMS AND CONDITIONS OF SUCH CONTRACT; AND IN CONSIDERATION OF COMPANY'S COVENANTS AND OBLIGATIONS CONTAINED HEREIN AND COMPANY'S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN INCLUDING BUT NOT LIMITED COMPANY'S AGREEMENT TO PAYMENT BY THE COMPANY OF THE LICENSE AND OCCUPATION TAX IMPOSED UPON COMPANY BY ORDINANCE NO. 686 OF THE CITY AS FULL PAYMENT BY THE COMPANY OF ANY OCCUPATION TAX, FRANCHISE TAX, LICENSE TAX, OR ANY SIMILAR TAX OR CHARGE IMPOSED UPON THE COMPANY BY THE CITY (OTHER THAN THE LICENSE AND OCCUPATION TAX IMPOSED UPON THE COMPANY BY ORDINANCE NO. 686 OF THE CITY, OR ANY AMENDMENT THEREOF) FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF THE COMPANY'S FACILITIES WITHIN THE CITY; EXCEPT PROVIDING FURTHER THAT NOTHING HEREIN SHALL PROHIBIT THE CITY FROM LAWFULLY COLLECTING MOTOR VEHICLE LICENSE FEES AND ANY AD VAL OREM TAX ON THE COMPANY'S REAL ESTATE AND PERSONAL PROPERTY.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, as follows:

ARTICLE 1: That said CITY of **Branson**, Missouri is hereby authorized and does contract with The Empire District Electric Company, a corporation, its successors or assigns for electric service and equipment to light the CITY's streets, alleys and public ways; and electric service for light and power for the CITY's parks, other properties and public places.

ARTICLE 2: The CITY and the COMPANY mutually agree that this ordinance will constitute a contract and that all of its terms, conditions and provisions for payment shall be in effect for a period of two (2) years from the date of execution hereof as provided in Article 13; and shall be automatically extended for a further period of two (2) years from each successive expiration date unless one party shall notify the other in writing not less than sixty (60) days prior to any such expiration date of its desire to terminate this agreement; and further providing that this contract shall not be effective for a total period exceeding ten (10) years; and further provided that the terms of Article 5 are not limited by the terms of Article 2.

ARTICLE 3: The COMPANY agrees to furnish and the CITY agrees to use and pay for the street lighting service described in SPL Street Lighting data sheet, designated Exhibit A, attached hereto and made a part hereof, and for any and all additional street lighting service subsequently agreed upon under the terms of this contract or any amendment hereto, according to the rates and conditions set out in the Municipal Street Lighting Service Schedule SPL, attached hereto and made a part hereof.

ARTICLE 4: When, by agreement with the CITY, the COMPANY shall install, own, operate and maintain street lights charged for under Schedule SPL, or is required to provide special or excessive electric facilities to serve CITY owned street lighting systems served under Schedule SPL, there shall be charged, in addition to the rates hereinbefore set out, a

Facilities Usage Charge, payable as herein provided, as mutually agreed upon by the parties.

ARTICLE 5: It is agreed that the Facilities Usage Charge shall be computed at the rate set forth in Municipal Street Lighting Service Schedule SPL as now or in the future approved by competent authority having jurisdiction. Said rate shall be applied to the investment in COMPANY owned street lights and special or excessive electric facilities to serve CITY owned street lights utilized by the CITY under Schedule SPL. The total of such investment by the COMPANY is **\$1,534,845.00** and the total of the Facilities Usage Charge shall be **\$138,136.05** until additional street lights are requested by the CITY and installed by the COMPANY and this contract amended by written agreement. Such Facilities Usage Charge shall be due and payable by the CITY of **Branson**, Missouri, to the COMPANY so long as the street lights and/or special electric facilities herein referred to in Article 4 and its references shall be utilized by said CITY, but for a term of not less than ten (10) years from date hereof, and shall be payable as provided in said Schedule SPL.

ARTICLE 6: The COMPANY agrees to change the location of any street lamp in use upon the written request of the CITY, provided the CITY shall pay the COMPANY the actual cost thereof.

ARTICLE 7: The COMPANY shall furnish and the CITY shall take and pay for all electric service for municipal use, other than street lighting service, as may be required from time to time by the CITY in its parks, buildings, properties and public places, according to the rates and provisions of the filed standard rate schedules of the COMPANY, and subject to the valid rates, rules and regulations of any competent regulating authority of COMPANY.

ARTICLE 8: The rates and conditions set forth in the attached Schedule SPL, and all applicable rates, rules and regulations of the COMPANY filed with competent authority having jurisdiction as now or hereafter promulgated, shall be allowed provided the CITY utilizes the COMPANY's service for its entire requirements for electric or power service and the COMPANY serves the CITY under the provisions of an electric franchise having an original term of not less than ten (10) years; and COMPANY's agreement to pay the License and Occupation Tax imposed upon COMPANY by Ordinance No. **686** of the CITY; shall be accepted by the CITY as full payment of any Occupation Tax, Franchise Tax, License Tax or any similar tax or charge imposed upon the COMPANY by the CITY (other than the License and Occupation Tax imposed upon the COMPANY by Ordinance No. **686** of the CITY, or any amendment thereof) for the establishment, operation and maintenance of the COMPANY's facilities within the CITY; provided however, that nothing herein shall prohibit the CITY from lawfully collecting motor vehicle license fees or any ad valorem tax on the COMPANY's real estate and personal property.

ARTICLE 9: The COMPANY agrees to protect the CITY and save it harmless from any and all loss, damage or expense to persons or property which is caused by the negligence of the COMPANY in its use or maintenance of any and all equipment owned by it, and used to supply service under this contract. The CITY agrees to protect the COMPANY and save it harmless from any and all loss, damage or expense to persons or property which may arise due to the use or maintenance of any street lighting equipment owned by the CITY, unless such loss, damage or expense be the sole and proximate result of the COMPANY's negligence.

ARTICLE 10: The COMPANY agrees to exercise reasonable care in maintaining the facilities to be maintained by it and in rendering the service to be rendered by it in the performance of this contract, so that the said service and said facilities may be furnished and maintained in a satisfactory manner.

ARTICLE 11: The CITY agrees for the term of this contract to utilize the COMPANY's service for the purpose herein set forth, and that the electric service rendered the CITY hereunder shall be for its use alone, and shall not be resold, and that it will utilize no electric or power service from a source other than the COMPANY.

ARTICLE 12: This contract supersedes all prior representations or agreements, either verbal or written, concerning matters herein contained, and shall inure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties hereto.

ARTICLE 13: Upon the passage and approval of this Ordinance, two copies thereof shall be prepared by the Clerk, and shall be signed in the name of the CITY by the **Mayor** with the seal of the CITY affixed, attested by the Clerk, and shall also be signed for THE EMPIRE DISTRICT ELECTRIC COMPANY by a proper officer, with the seal of the COMPANY affixed, attested by Its Secretary, and thereupon same shall be a valid and binding contract between the said parties. One counterpart shall be delivered to the Clerk, placed and kept in the records of the CITY and the other

counterpart shall be delivered to the COMPANY.

Read this first time on this _____ day of _____, 2005.

Read this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this _____ day of _____, 2005.

Louis E. Schaefer
Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K Westfall
City Clerk

Matthew K. Thompson
Assistant City Attorney

For ALL TERRITORY

No supplement to this tariff will be issued except for the purpose of cancelling this tariff.

MUNICIPAL STREET LIGHTING SERVICE
 SCHEDULE SPL

AVAILABILITY:

This schedule is available to municipalities served by the Company under the provisions of an Electric Franchise having an original term of not less than ten (10) years, for outdoor lighting for streets, alleys, parks and public places under the provisions of the Company's standard Municipal Electric Service Agreement, having an original term of not less than two (2) years.

ANNUAL STREET LIGHTING CHARGE:	Annual Charge Per Lamp	Annual kWh	Watts
Incandescent Lamp Sizes (No New Installation Allowed)			
4,000 lumen	\$ 44.13	1,088	
10,000 lumen	90.82	2,331	
Mercury-Vapor Lamp Sizes:			
7,000 lumen	59.94	784	175
11,000 lumen	71.94	1,186	250
20,000 lumen	103.00	1,868	400
53,000 lumen	173.78	4,475	1000
High-Pressure Sodium-Vapor Lamp Sizes (Lucalox, etc.):			
6,000 lumen	56.17	374	70
16,000 lumen	70.32	694	150
27,500 lumen	91.51	1,271	250
50,000 lumen	130.42	1,880	400
130,000 lumen	210.46	4,313	1000
Metal Halide Lamp Sizes:			
12,000 lumen	88.09	696	175
20,500 lumen	107.73	1,020	250
36,000 lumen	144.11	1,620	400
110,000 lumen	318.47	4,056	1000

The monthly charge per lamp, is 1/12th of the annual charge.

INTERIM ENERGY CHARGE/FUEL ADJUSTMENT:

In addition to the above charges, an Interim Energy charge will be added to each customer's bill as shown on the Interim Energy Charge Rider, Rider IEC.

DETERMINATION OF ENERGY (kWh) USAGE FOR NON-METERED FIXTURES:

The monthly energy for each type and size of lamp is determined by multiplying the annual kWh listed above, by the monthly usage factor listed in the table below:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	12 month total
Usage Factor	.103	.089	.087	.075	.070	.064	.067	.073	.079	.091	.098	.104	1.00

THE EMPIRE DISTRICT ELECTRIC COMPANY

Sec. 3 5th Revised Sheet No. 1a
Cancelling P.S.C. Mo. No. 5For ALL TERRITORYNo supplement to this tariff will be issued except
for the purpose of cancelling this tariff.Sec. 3 4th Revised Sheet No. 1a
Which was issued 3-4-99MUNICIPAL STREET LIGHTING SERVICE
SCHEDULE SPL

MUNICIPALITY OWNERSHIP:

If the Municipality owns the Street Lighting System, the Company will furnish electric energy, will inspect street lights, replace broken lamps or glassware, and repaint steel poles when necessary. However, replacement or repairs to poles, conduit, cable overhead conductors or fixtures other than glassware shall be paid for by the Municipality.

COMPANY OWNERSHIP - FACILITIES USAGE CHARGE:

When, by agreement with the Municipality, the Company shall install, own, operate and maintain street lights served under this schedule or is required to provide special or excessive electric facilities to serve Municipality-owned street lighting systems served under this schedule, a separate agreement shall be executed by and between the Municipality and the Company setting forth the investment in such street lighting facilities and a Facilities Usage Charge in the amount of .75% per month of such investment. The Facilities Usage Charge shall be payable by the Municipality to the Company in the manner prescribed in the aforementioned separate agreement and in addition to the Annual Street Lighting Charge as set forth herein.

MINIMUM:

The total annual net amount of the Annual Street Lighting Charge, plus the Facilities Usage Charge, shall not be less than an amount equal to twelve times the total of charges to the Municipality for street lighting service for the calendar month prior to the date of the contract.

PAYMENT:

All bills shall be rendered monthly and shall be payable on or before the 25th day of each month succeeding the month during which service was rendered.

CONDITIONS OF SERVICE:

1. All lamps shall burn every night from dusk to dawn, subject to a reasonable maintenance schedule.
2. The character of street lighting circuit (series or multiple) shall be determined by the Company.
3. The Company Rules and Regulations, P.S.C. Mo. No. 5, Section 5, are a part of this schedule.