

AN ORDINANCE REPEALING ORDINANCE NO. 2025-0020 AND APPROVING A MUNICIPAL ELECTRIC SERVICE AGREEMENT WITH THE EMPIRE DISTRICT ELECTRIC COMPANY, D/B/A LIBERTY AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

WHEREAS, a Municipal Services Agreement is needed with The Empire District Electric Company, d/b/a Liberty for electric service and equipment for city streets; and

WHEREAS, electric service is also needed for light and power at the city's parks and other public properties and places; and

WHEREAS, during the April 22, 2025 Board of Aldermen meeting, Ordinance No. 2025-0020, approving the MESA Agreement was approved by the Board and executed by the Mayor but after the meeting, it was discovered additional changes were needed regarding the Agreement.

WHEREAS, the changes have been made and agreed upon by Liberty and the City; and

WHEREAS, the Board of Aldermen desires to repeal Ordinance No. 2025-0020 and approve a Municipal Electric Service Agreement with The Empire District Electric Company, d/b/a Liberty for such electric power needs.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby repeals Ordinance No. 2025-0020 and approves the Municipal Electric Services Agreement with The Empire District Electric Company, d/b/a Liberty as specified in the related specifications and substantial conformity with the terms shown on Exhibit "1" attached and incorporated by this reference as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

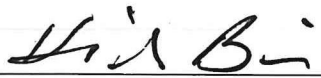
Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 27th day of May, 2025.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 10th day of June, 2025.


Larry D. Milton
Mayor

ATTEST:


Hillary Briand
City Clerk

APPROVED AS TO FORM:


City Attorney

Office Use Only

MASTER CONTRACT NUMBER:

C2025-0138

MUNICIPAL ELECTRIC SERVICE AGREEMENT

THIS **MUNICIPAL ELECTRIC SERVICE AGREEMENT** ("Agreement") is entered into as of this _____ day of _____, 2025, by the CITY OF BRANSON, MISSOURI, a fourth-class municipality of the State of Missouri (hereinafter referred to as "City"), and by The Empire District Electric Company d/b/a Liberty (hereinafter referred to as "Utility"); City and Utility are collectively referred to herein as the "Parties" or a "Party."

WITNESSETH:

WHEREAS, the City of Branson desires to engage the Utility to continue providing 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, properties, and public places; and

WHEREAS, the Utility made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal; and

WHEREAS, Utility is an "electrical corporation" and "public utility" subject to the general jurisdiction of the Missouri Public Service Commission ("MoPSC").

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Utility as follows:

1. Services. The City agrees to engage the services of the Utility, and the Utility agrees to perform the services hereinafter set forth in connection with this Agreement in accordance with the standard of care, skill, expertise, materials, and requirements set forth and pursuant to its tariffs on file with the MoPSC, including Schedule SPL, as the same may be amended from time to time.

2. Addition to Services.

- a. When, by agreement with the City, the Utility 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.
- b. It is agreed that the Facilities Usage Charge shall be computed at the rate set forth in Municipal Street Lighting Service Schedule SPL (*Exhibit 1*) as now or in the future in effect and on file with the MoPSC. Said rate shall be applied to the investment in Utility owned streetlights and special or excessive electrical facilities to serve City owned streetlights utilized by the City under Schedule SPL. As of December 31, 2024, the City's annual Facilities Usage Charge is \$198,106.59. This charge shall only increase or otherwise be changed pursuant to written agreement of the parties (via Utility form SA-22 or other written agreement). Such Facilities Usage Charge shall be due and payable by the City of Branson, Missouri, to the Utility so long as the street lights and/or special electric facilities herein referred to in Article 2(a) 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.

- c. The Utility agrees to change the location of any streetlamp in use upon the written request of the City, provided the City shall pay the Utility the actual cost thereof.
- d. The Utility shall furnish and the City shall take and pay for electric service for municipal use, 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 Utility, and subject to the valid rates, rules and regulations of any competent regulating authority of Utility, including the MoPSC.

3. Exchange of Data. All information, data, plans, and reports in the City's possession and necessary for the carrying out of the work, shall be furnished to the Utility without charge, and the Parties shall cooperate with each other in every way possible in carrying out the scope of services.

4. Personnel. The Utility represents that Utility will secure, at Utility's own expense, all personnel required to perform the services called for under this Agreement by Utility. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Utility. All services required hereunder will be performed by the Utility or under Utility's direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted without the written approval of the City, which shall not be unreasonably withheld.

5. Term. The services of the Utility under this Agreement shall be for an initial period of two (2) years from the date of execution and shall be automatically extended for an additional four (4) two (2) year terms, unless one Party shall notify the other in writing not less than sixty (60) days prior to any such renewal period expiration date of its desire to terminate this Agreement, having obtained any necessary approval(s) from all government agencies, including but not limited to the MoPSC. The terminating Party shall follow all laws, rules, and regulations required for said termination. If City lawfully terminates this Agreement, Utility will assist City in the orderly termination of services, including timely transfer of services to another designated provider. Anticipatory profits and consequential damages shall not be recoverable by Utility. This Agreement shall not be effective for a period of more than 10 years.

6. Costs not to Exceed. The City of Branson is limited by law and its bidding and procurement process with respect to the amount of money it can pay. The rates and conditions set forth in the attached Schedule SPL (Exhibit 1), and all applicable rates, rules and, regulations of the Utility filed with competent authority having jurisdiction as now or hereafter promulgated, shall be allowed provided the City utilizes the Utility's service for electric or power service and the Utility serves the City under the provisions of an electric franchise; except for providing further that nothing herein shall prohibit the City from lawfully collecting an Occupation Tax, License Tax, motor vehicle license fees, or any ad valorem tax on the Utility's real estate and personal property.

7. Payment.

- a. **Conditioned upon acceptable performance.** Provided Utility performs the services in the manner set forth herein, the City agrees to pay the Utility in accordance with the terms set forth in *Exhibit 1*, which shall constitute complete compensation for all services to be rendered under this Agreement; provided, that where payments are to be made periodically to Utility for services rendered under this Agreement, the City expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of services set forth in *Exhibit 1*.

8. City's Limitation on Indebtedness. In accordance with the laws of the State of Missouri, specifically Missouri Constitution, Art. VI, Section 26, notwithstanding any provision to this contract, nothing in this Agreement shall be construed as creating an obligation or debt beyond the City's fiscal year, and in the event that it does, performance of the City's obligations under this Agreement is expressly subject to appropriation of funds by the City year-to-year during the duration of this Agreement.

9. Conflicts. No salaried officer or employee of the City and no member of the Board of Alderman shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders the Agreement void. Any federal regulations and applicable provisions in Section 105.450 *et seq.* RSMo. shall not be violated. Utility covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. The Utility further covenants that in the performance of this Agreement no person having such interest shall be employed.

10. Assignment. The Utility shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, which shall not be unreasonably withheld. Provided, however, that claims for money due or to become due to the Utility from the City under this Agreement may be assigned to a bank, trust contractor, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this Agreement, including the right to change or delete activities from this Agreement or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Agreement, though City will attempt to so notify any such assignee.

11. Discrimination. The Utility agrees in the performance of this Agreement not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Utility or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

12. Occupational License. The Utility shall obtain and maintain an occupational license with

the City of Branson, Missouri, if required by City Code, and any required state or federal license. The cost for this occupational license shall be borne by the Utility. Utility shall not purchase materials or begin work on this Agreement until this occupational license has been obtained, if required.

13. Compliance with Laws. Utility agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Utility affirmatively states that payment of all local, state, and federal taxes and assessments owed by Utility is current.

14. General Independent Contractor Clause. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the Utility will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, Missouri Prevailing Wage requirements, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Utility will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Utility's activities and responsibilities hereunder. The Utility agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Utility and the City, and the City will not be liable for any obligation incurred by the Utility, including but not limited to unpaid minimum wages and/or overtime premiums.

15. No Third-Party Benefits. This Agreement shall not be deemed to create any third-party benefit hereunder for any member of the public or to authorize anything or anyone, not a party hereto, to maintain suit pursuant to the terms of this Agreement.

16. City Benefits. The Utility shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

17. Non-Agency. The parties agree that nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties.

18. Insurance. Utility agrees to maintain insurance as set forth below and provide to City certificates of coverage evidencing said coverage at the time of signing this Agreement, if requested, and on each anniversary of such insurance coverage during the term of this Agreement and any renewals, if requested, which certificates shall contain a provision that the policy will not be cancelled unless and until thirty (30) days' notice of said cancellation has been given to the City, but, in any event, the Utility, any time after the Agreement has been signed, shall notify the City of any impending cancellation, actual cancellation, termination or nonrenewal of the policy by faxing or delivering to the City a copy of the insurer's cancellation, termination or nonrenewal notice to Utility within ten (10) business days of Utility's receipt of said notice. Utility shall also advise the City in writing within ten (10) business days of any oral or other advisement by the

insurer of any impending cancellation, actual cancellation, termination or nonrenewal of the policy. (If the City gives written permission for some of the work under this Agreement to be subcontracted or it is subcontracted, Utility shall assure that the subcontractor has the insurance set forth below and that the City and Utility are listed as an additional insured on all of subcontractor's policies):

- a. **Comprehensive General Liability.** Minimum limit of \$1,000,000 combined single limit, \$2,000,000 annual aggregate for bodily injury and property damage per occurrence with City named as an additional insured on the policy.
- b. **Comprehensive Automobile Liability.** \$1,000,000 combined single limit with City named as an additional insured on the policy.
- c. **Workers' Compensation.** Statutory requirements.

The provision of insurance shall not be construed, nor is it intended to be a waiver of sovereign immunity or any other defense available to City, its officers, agents or employees except to the extent insurance coverage is actually provided.

19. Liability and Indemnity. The Parties mutually agree to the following:

- a. In no event shall a Party be liable to the other for special, indirect, or consequential damages. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Agreement.
- b. The Utility shall defend, indemnify, and hold the City and its elected or appointed officials, officers, employees and agents harmless from and against all actual claims and alleged claims and all damages, including but not limited to losses, liabilities, costs, expenses and attorney fees arising out of personal injuries, including illness or death, and damage to, or destruction of, property, which are caused by the Utility or the Utility's agents, employees, sub-contractors or by others for whom Utility is liable arising out of or in any way connected with or resulting from, performance of, or failure to perform, this Agreement; unless the same shall be due to the negligence or intentional acts or inactions of the City or anyone acting on behalf of the City.
- c. The Utility shall indemnify and hold the City harmless from all wages or overtime compensation due its employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law, if applicable.
- d. All the provisions in this Agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes. Further, this Agreement is not intended to act as a waiver or limitation of City, or any of its officer's, agent's or employee's rights and/or defenses regarding sovereign or any other immunity or defense under Federal Law, Missouri Law, or Municipal Law or Regulation. The Parties agree that the City is not indemnifying this Agreement for any reason

whatsoever.

- e. Notwithstanding any provision to the contrary, in no event shall Utility's aggregate liability for all damages connected with its services under the Agreement be more than the actual damages incurred by City.
- f. In the event of litigation by the City against Utility to enforce the terms of this Agreement, or to remedy a breach of the terms of this Agreement (either in law or in equity), the City shall be entitled to recover from the Utility its reasonable attorney fees, costs, and expenses arising from such litigation if the City is a prevailing party. If the Utility is the prevailing party in litigation brought by or against the City, the Utility shall be entitled to recover from the City its reasonable attorney fees, costs, and expenses arising from such litigation.

20. Missouri Immigration Law Affidavit. After January 1, 2009, Utility takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The Utility's execution of this Agreement constitutes certification of compliance with this provision.

21. Anti-Discrimination Against Israel Act. If this agreement has a total potential value of \$100,000 or more and Utility has 10 or more employees, the following applies: Pursuant to Section 34.600, RSMo, Utility agrees to comply with Missouri law regarding the Anti-Discrimination Against Israel Act, and execution of this Agreement constitutes Utility's certification of compliance with the Anti-Discrimination Against Israel Act, including that it is not currently engaged in, and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in, or with, Israel companies authorized by, licensed by, or organized under, the laws of the State of Israel; or persons or entities doing business in the State of Israel.

22. Equal Employment Opportunity. During the performance of this Agreement, Utility agrees that Utility will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin, or any other legally protected category.

23. Notices. All notices required or permitted herein under and required to be in writing may be given by email or first-class mail addressed to City and Utility at the addresses or email addresses provided. The contact information provided by the Utility vendor contact information page must be kept current. The contact information for the City is provided below. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by email or mail shall be deemed to be the date transmission occurs.

- a. **Notice to the City of Branson**

Cathy Stepp, City Administrator
110 W. Maddux, Suite 210
Branson MO

417-337-8548
cstepp@bransonmo.gov

b. Notice to the Utility

Floyd (Junior) Shook
215 W. Main
Branson, MO 65616
Email: Floyd.Shook@LibertyUtilities.com
Office Phone: 417-625-5100

24. Jurisdiction. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri or the Federal District Court for the Western District of Missouri, as appropriate. The Party's submit to the personal jurisdiction of and waive any personal jurisdiction or inconvenient forum objection to those courts.

25. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

26. Waiver. All waivers of and consents to any terms and conditions of this Agreement, or any rights, powers, or remedies under it, by either party must be in writing in order to be effective. Once a right has vested in a party, that party shall not be deemed to have waived its right due to its failure or election to not exercise its right at the time it vests, and such party shall continue to have the option to exercise its right unless it waives its right in writing. No waiver or consent granted with respect to one matter or incident shall be construed to operate as a waiver or consent with respect to any different or subsequent matter or incident.

27. Use of Electronic Signatures. The Parties agree to the electronic execution and delivery of any agreement, contract, or purchase order resulting from the acceptance of a bid and that any electronic signatures including facsimile transmission are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

28. Entire Agreement. This Agreement contains the entire Agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

THE EMPIRE DISTRICT ELECTRIC
COMPANY d/b/a LIBERTY

CITY OF BRANSON, MISSOURI

DocuSigned by:
By: Tim Wilson
3D0F0EBBAF2A4D8...
Name: Tim Wilson
Title: President - Electric
5/21/2025

Larry D. Milton
Mayor Date

ATTEST:

Hillary Briand
City Clerk Date

APPROVED AS TO FORM:

Solon McGee 05/23/2025
City Attorney Date