

**THE EMPIRE DISTRICT ELECTRIC COMPANY
MUNICIPAL ELECTRIC SERVICE AGREEMENT**

Bill No. _____

Ordinance No. 16-739

AN ORDINANCE authorizing and providing a contract between the **CITY OF GENTRY, ARKANSAS**, (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 providing for a payment by the COMPANY, and acceptance by the CITY of such payment as full payment by the COMPANY of any Occupation Tax, Franchise Tax, License Tax or any similar tax or charge by the CITY for the establishment, operation and maintenance of the COMPANY's facilities within the CITY; and providing further that said payment shall not be taken in lieu of the CITY's right to collect motor vehicle license fees and any ad valorem tax on the COMPANY's real estate and personal property.

BE IT ORDAINED by the CITY COUNCIL as follows:

ARTICLE 1: That said **CITY OF GENTRY, ARKANSAS** 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 one (1) year from the date of execution hereof as provided in Article 15, and shall be automatically extended for a further period of one (1) year 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 **\$60,786.55** and the total of the Facilities Usage Charge shall be **\$5,470.79** 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 GENTRY, ARKANSAS**, 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 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 all territorial boundaries as now or in the future established by appropriate regulatory authority.

ARTICLE 8: The COMPANY agrees to pay to the CITY during the term of this contract and at such times as may be mutually agreed upon a sum equal to four (4) percent of the gross receipts collected by the COMPANY from the sale of all electric energy sold to all of COMPANY's customers within the present or future boundaries of the **CITY OF GENTRY, ARKANSAS** under rate schedules as now or in the future approved by the Public Service Commission of Arkansas for residential and commercial service having a reserved capacity of 40 kilowatts or less excluding schools, churches, and church schools.

ARTICLE 9: The rates provided in 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, subject to all territorial boundaries as now or in the future established by appropriate regulatory authority, 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 the payments made by the COMPANY to 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 for the establishment, operation and maintenance of the COMPANY's facilities within the CITY; provided, however, that said payment shall not be taken in lieu of the CITY's right to collect motor vehicle license fees or any ad valorem tax on the COMPANY's real estate and personal property.

ARTICLE 10: 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.

ARTICLE 11: 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 12: 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, within the service territory of the COMPANY as now or in the future, established by appropriate regulatory authority.

ARTICLE 13: The rates and charges to be paid by the CITY herein are subject to change and amendment by application of the COMPANY to the Public Service Commission of Arkansas or other regulatory authority having jurisdiction.

ARTICLE 14: 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 15: 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.

Approved this 4th day of February, 2016.

(CITY SEAL)

CITY OF GENTRY, ARKANSAS

By

MAYOR

ATTEST:

Jayne Kooistra
CLERK

The foregoing Ordinance having been duly passed and adopted, the CITY OF GENTRY, ARKANSAS and THE EMPIRE DISTRICT ELECTRIC COMPANY hereby execute this contract in their respective corporate names by their proper officers with their respective corporate seals hereto affixed, as and for their contract covering all the terms of said Ordinance.

Done this 4th day of Feb., 2016..

(CITY SEAL)

CITY OF GENTRY, ARKANSAS

By

MAYOR

ATTEST:

Jayne Kooistra
CLERK

THE EMPIRE DISTRICT ELECTRIC COMPANY

(COMPANY SEAL)

By

VICE PRESIDENT

ATTEST:

SECRETARY

STATE OF ARKANSAS)

COUNTY OF BENTON) SS.

CITY OF GENTRY

I, Jayne Kooistra, Clerk of the CITY OF GENTRY, ARKANSAS, do hereby certify that the above and foregoing is a full, true and correct copy of Ordinance No. 16-739, duly passed by the Governing Body of said Municipality and the execution of the contract therein provided, as the same appears on the records of said Municipality.

Witness my hand and the seal of said CITY this 4th day of Feb., 2016.

Jayne Kooistra
CLERK

(CITY SEAL)

