

ELECTRICAL STANDBY AND SUPPLEMENTAL SERVICE AGREEMENT

BETWEEN THE CITY OF COLUMBIA, MISSOURI,

AND

THIS AGREEMENT is entered into on the date of the last signatory noted below (the "Effective Date"), between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and _____, a _____ organized in the State of _____ (hereinafter "Customer"). City and Customer are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Section 27-117.1 of the City's Code of Ordinances allows industrial electric utility customers to enter into an agreement with the City of Columbia for standby and supplemental electrical service; and

WHEREAS, Customer meets the requirements set forth in Section 27-117.1 for the standby and supplemental service and desires to enter into an agreement with the City for such service for its own use, and not for resale, at its industrial business located at _____ within the City of Columbia's electric service territory; and

WHEREAS, the Parties agree that the supply of electric service may be interrupted at times and may not be constant.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Standby and Supplemental Service. Pursuant to the terms set forth herein and in Chapter 27 of the City of Columbia's Code of Ordinances, Customer shall receive standby and supplemental service for its business at the location noted above.
 - a. Voltage. Pursuant to this Agreement and the requirements set forth in Chapter 27, Customer shall receive service at _____ voltage.
 - b. Minimum monthly capacity and charge. Customer hereby guarantees a monthly billing capacity of not less than _____ kW and a minimum monthly charge of _____.
 - c. Equipment. Customer, at its sole cost, shall install equipment required to receive service from City's transmission or distribution lines as set forth in Exhibit A.
 - d. Metering. City reserves the right in the event that service is provided to more than one substation from one delivery point, to (1) meter primary at the delivery point or (2) meter the substations individually and totalize, each hour, the energy delivered and the losses of all the transformers involved.
 - e. Access.

i. At no cost to City, Customer shall provide City easements or rights of way as set forth in Exhibit B.

ii. Customer shall also provide City adequate space for its metering equipment and shall grant to the City the right of ingress and egress, at any reasonable time, to operate and maintain its metering equipment at the locations set forth in Exhibit C.

f. Power Factor. Customer will, at all times, maintain a power factor of not less than ninety (90) percent lagging. If power factor is less than ninety (90) percent, the measured kw demand will be multiplied by the ratio of ninety (90) percent divided by the actual power factor to determine the adjusted measured demand to be used for determination of billing demand. The department may, at its option, use for adjustment the power factor determined: (1) By test during periods of maximum demand; or (2) By measurement of the average monthly power factor. Where power factor corrective equipment is installed by the consumer, the City reserves the right to require installation, at the consumer's expense, of such control and switching devices as may be necessary to prevent or eliminate excessive or detrimental voltage and/or power factor variations on the City's system.

g. Motors. The City may, at its option, require that any motor, whose HP size exceeds 1/6 of the size of the nameplate capacity of the transformer bank supplying consumer shall be controlled so that its starting current does not exceed 300% of its full load running current. All motor starting equipment shall be connected for "closed circuit transition." Motors of the size determined above and designed for full voltage "across the line" starting may at the City's option, be permitted to operate from the City's system provided, however, that study by the City indicates that the operation of such motors will not be detrimental to service furnished other consumers. Advance written permission by the City will be required for "across the line" motor installations.

h. Additional Requirements and Conditions. Any additional requirements or conditions for this service are set forth in Exhibit D.

2. Term. The "Term" of this Agreement shall commence at 00:00 hours on _____, 20__ (the "Commencement Date"), and shall continue until the date that is one (1) year following the Commencement Date. Thereafter, the Agreement shall automatically be renewed for successive terms of one year, unless the Agreement is terminated pursuant to the provisions of this Agreement or as set forth in Chapter 27 of the City's Code.

3. Termination.

a. By Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement by both Parties.

b. By Convenience. With thirty (30) days written notice, either Party may terminate this Agreement for convenience.

c. By Default. Either Party may terminate this Agreement in accordance with Section 4.

d. By Force Majeure. The agreement may be terminated due to force majeure in accordance with Section 5.

4. Default. Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to terminate this Agreement with ten (10) days written notice. A Party shall be considered in Default of this Agreement upon:

a. The failure to perform or observe a material term or condition of this Agreement, including but not limited to any material Default of a representation, warranty or covenant made in this Agreement;

b. The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator;

c. The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or

d. Customer reselling electricity provided by City pursuant to this Agreement; or

e. The failure of the Party to provide information, access, or data to the other Party as required under this Agreement, provided that the Party entitled to the information or data under this Agreement requires such information, access or data to satisfy its obligations under this Agreement.

5. Force Majeure. The performance of each Party under the Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, which, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, and act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure.

6. Reserved.

7. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

8. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia

Utilities Department

P.O. Box 6015

Columbia, MO 65205-6015

ATTN: Director

If to Customer:

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

9. No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

10. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

11. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

12. General Laws. Customer shall comply with all federal, state, and local laws, rules, regulations, codes, and ordinances.

13. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

14. HOLD HARMLESS AGREEMENT. To the fullest extent not prohibited by law, Customer shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Customer, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Customer or a subcontractor), of anyone directly or indirectly employed by Customer or by

any subcontractor, or of anyone for whose acts the Customer or its subcontractor may be liable. This provision does not, however, require Customer to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

15. Electronic Signature. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

16. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit	Description
A	Equipment to be installed by Customer
B	Easements or Rights of Way granted by Customer to City
C	Metering locations
D	Additional Requirements and/or Conditions (if applicable)

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

17. Entire Agreement. Except as set forth in Chapter 27 of the City's Code of Ordinances, this Agreement represents the entire and integrated Agreement between Customer and City related to Customer's eligibility for standby and supplemental electric service. Except as set forth in Chapter 27 of the City's Code of Ordinances, all previous or contemporaneous agreements, representations, promises and conditions relating to Customer's eligibility for standby and supplemental electric service described herein are superseded.

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement the day and the year of the last signatory noted below.

Customer:

Name and Title: _____

Date: _____

City of Columbia

John Glascock, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

SAMPLE