



Bill No. 4098

Ordinance No. _____

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, MAINTAIN, OPERATE, AND USE ALL EQUIPMENT, FACILITIES, DEVICES, MATERIALS, APPARATUS OR MEDIA INCLUDING BUT NOT LIMITED TO DUCTS, LINES, PIPES, HOSES, CABLES, CULVERTS, TUBES, POLES, TOWERS, WIRES, CONDUITS, CONDUCTORS, MANHOLES, TRANSFORMERS UNDERGROUND VAULTS, SWITCHGEAR, CAPACITORS, RECEIVERS, AND TRANSMITTERS, WITH ALL NECESSARY OR APPROPRIATE APPURTENANCES AND APPLIANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREETS, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES, AND OTHER PUBLIC PLACES IN THE CITY OF BALLWIN AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING AND DISTRIBUTING ELECTRICITY WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, MISSOURI, AS FOLLOWS:

SECTION 1. A non-exclusive franchise, right, permission and authority is hereby granted to, and renewed and vested in Union Electric Company d/b/a Ameren Missouri, a Missouri corporation, its successors and assigns, hereinafter called "Company", to construct, reconstruct, excavate for, place, maintain, operate, and use all equipment, facilities, devices, materials, apparatuses or media including but not limited to ducts, lines, pipes, hoses, cables, culverts, tubes, poles, towers, wires, conduits, conductors, manholes, transformers underground vaults, switchgear, capacitors, receivers, and transmitters, with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of BALLWIN, Missouri, hereinafter called "City", as now fixed and as hereafter extended, and areas dedicated to the City for public utility use, for the purpose of furnishing and distributing electricity and other services within said City and in territory adjacent to said City, and for the purpose of transmitting electricity through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to and the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys, sidewalks, squares, bridges and other public places,

and areas dedicated to the City for public utility use, and Company's exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

SECTION 2. Company shall pay to said City on or before the last day of each month of each year that this franchise remains in effect, an amount equal to Seven percent (7%) its gross receipts, as herein defined, from supplying or furnishing electricity or electrical service, or power for compensation for any purpose in the City for the preceding month, or such other percentage rate as may be provided in Section 14-251 of the Code of Ordinances of the City of Ballwin, as amended. The City shall notify Company within sixty (60) days of any percentage rate change as provided for in Section 14-251 of the Code of Ordinances.

With each franchise payment hereunder, Company shall file with the Clerk of said City a sworn statement of the gross receipts for the applicable period and also a sworn statement of all payments made by it for such period on account of any of the taxes enumerated above in this Section. The term "gross receipts" shall mean the aggregate amount of all sales and charges that result from Company's business of supplying electric energy or electricity transmission and distribution service to customers within said City during any period less discounts, credits, refunds, sales taxes, state or county taxes on electricity distribution service, and uncollectible accounts. In the event retail wheeling of unbundled electric energy becomes available in the City (i.e., retail customers are permitted to choose their suppliers of electric energy), then Company and City agree within three (3) months of the availability of retail wheeling ("the Negotiated Period") to revise the definition of gross receipts to be consistent with law and regulation in effect at that time and to eliminate any provision that prevents Company from competing equally with other potential suppliers of electric energy in the City. In the event the Company and City cannot agree upon a revised definition of gross receipts within the Negotiation Period, this Ordinance shall automatically terminate. The Negotiation Period may be extended at any time prior to termination by written agreement between City and Company.

SECTION 3. In order for Company to render efficient and continuous electrical service it will be necessary for Company to trim the trunks and branches of trees along or over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said City, and areas dedicated to the City for public utility use, wherever the same are likely to come in contact with its equipment; therefore, Company is hereby granted the right to trim such trees, including the trunk branches, and all parts thereof, so as to enable it to erect and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient and continuous service that the circumstances will permit; provided, however, that Company shall exercise proper care and discretion in cutting and trimming said trees and all parts thereof.

SECTION 4. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SECTION 5. This Ordinance shall confer no right, privilege or authority on Company, its successors, licensees, transferees or assigns, unless Company shall within ninety (90) days after due notice to the Company of the enactment of this Ordinance, file with the City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges, and authority herein granted shall become null and void.

SECTION 6. This Ordinance and Franchise, upon its enactment and its acceptance by Company, as hereinbefore provided, shall continue and remain in full force and effect for a period of twenty (20) years from the filing of the Company's acceptance.

SECTION 7. The City acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said City shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance.

SECTION 8. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 9. If it shall become necessary for the City in the exercise of its police power to change for a proper governmental purpose the grade or width or general structure of any street, road, alley, sidewalk, square, bridge or other public place, which change shall require the relocation of any pole, tower, wire, conduit, conductor, manhole, underground vault, or other equipment of the Company situated on said street, road, alley, sidewalk, square, bridge or other public place within the City, then, Company shall, without cost to the City, unless agreed to otherwise by the City and the Company, make such relocation as may be necessary to conform to any such change, it being understood that this provision is for the sole benefit of the City and shall not relieve other persons, corporations, partnerships or governmental bodies of any obligation to pay such relocation costs as they may be obligated to pay as a matter of law or by reason of contractual or applicable tariff provisions. The Company after using said streets, avenues, alleys, parks and other public places, shall restore them as quickly as reasonably possible and as nearly as practicable to their former condition and shall hold the City harmless for any and all damage arising from negligence or mismanagement of said

Company and/or its agents and employees in constructing, extending, or maintaining the said works. Danger signal lights are to be kept burning all night along the line of all street excavations and temporary barricades are to be erected at night at the end of trenches and at all streets where they cross said excavation. For any failure on the part of the Company, and/or its agents and employees, to comply with all the provisions of this section, after written notice to said Company of the existence of said failure, said notice to be served and shall be deemed to have been fully given when delivered by hand or dispatched (with reasonable evidence of receipt) by electronic facsimile transmission, or three (3) days after being sent by prepaid, certified mail, return receipt requested, or by a nationally recognized overnight courier service, addressed to the party to whom the notice is intended to be given at the addresses specified below, shall, in addition to saving the City harmless from any such negligence or mismanagement, owe and be indebted to the city in the sum of \$100.00 for each and every day for which said Company shall fail and/or neglect to remedy the defects and specifically mentioned in such notice. This Section shall not affect or repeal any ordinance of the City that contains any reasonable regulations for the control and maintenance public streets, avenues, alleys, parks and other public places of the City shall be effective against the Company so far as such ordinances are reasonably applicable to the condition and business of the Company.

SECTION 10. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby. Nothing in this Ordinance shall be construed as preventing the City from enacting any right-of-way management legislation, which shall become effective in accordance with any such ordinance and/or the terms and conditions of this Ordinance.

SECTION 11. If, at any time, during the term of this Ordinance, City grants or renews a franchise to another entity or person for the purposes of transmitting, furnishing and distributing electricity for light, heat, power or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify City of such treatment, terms, or conditions. Upon receipt of such notice, City and Company shall negotiate in good faith to amend this Ordinance to provide Company such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and entity or person receiving the more favorable treatment, terms, or conditions.

SECTION 12. This bill shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein. The Ordinance shall be subject to approval or disapproval of the voters of this City only upon the terms and conditions as provided in Mo. Rev. Stat. § 88.251. If the City Clerk

does not receive within thirty days after the passing of this Ordinance a petition sufficient in form and signed by the requisite number of voters, it shall be a valid and binding franchise of the City upon the filing of an acceptance by the Company according to the terms prescribed herein and shall remain in full force and effect and cannot be repealed or amended. Nothing in this Ordinance shall be construed as granting the Company the right to grant, license, rent or convey to any third party use of the rights of the way of the City, for any purpose, except as may be otherwise provided by applicable law.

SECTION 13. The franchise granted under the Ordinance shall terminate automatically if (i) the Public Service Commission, or its successor in interest, no longer regulates the rates of the Company, and/or (ii) the license tax imposed on the Company, pursuant to RSMo. Section 94.270, is found not to apply to Company's operations, for any reason. This section shall be void and of no effect if the State of Missouri (i) grants the City taxing authority over electric energy suppliers, (ii) taxes electric energy suppliers at the state level and distributes a portion of that tax's proceeds to the City, or (iii) provides state funds to compensate the City.

SECTION 14. Company shall hold the City harmless from all liability, damages, penalties and expenses, including attorney's fees, which the City may incur on account of injury or damage to persons or property caused by company in the exercise of any franchise right, pursuant to this Ordinance.

SECTION 15. This Ordinance authorizes use of publicly owned rights-of-way ONLY for the purpose of transmitting, furnishing and distributing electricity. Notwithstanding the foregoing, Company or its contractors can construct, reconstruct, excavate for, place, maintain, operate and use communication equipment, devices and components, along with their associated wires, cables (including fiber-optic), conduits, structures and supporting facilities (hereinafter "Communication facilities") in, along, across, over and under the public right-of-way, provided that the communication facilities are used by the company solely in transmitting, furnishing and distributing electricity. The Company shall also inform the City when another entity requests to use the Company's facilities in the public right-of-way of the City without providing Company evidence of a valid franchise agreement (or permit) with the City.

SECTION 16. The Company shall not assign or transfer any of its rights under this Ordinance without the prior written consent of the City, which shall not be unreasonably withheld, except that the Company may assign any utility into which the Company may be merged or consolidated.

SECTION 17. This bill shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein. The Ordinance shall be subject to approval or disapproval of the voters of this City only upon the terms and conditions as provided in Mo. Rev. Stat. § 88.251. If the City

Clerk does not receive within thirty days after the passing of this Ordinance a petition sufficient in form and signed by the requisite number of voters, it shall be a valid and binding franchise of the City upon the filing of an acceptance by the Company according to the terms prescribed herein and shall remain in full force and effect and cannot be repealed or amended.

Passed this ____ day of _____, 2021. _____
Tim Pogue, Mayor

Approved this ____ day of _____, 2021. _____
Tim Pogue, Mayor

Attest: _____
Eric Sterman, City Administrator

STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

I, _____, City Clerk within and for the City of BALLWIN, in the State and County aforesaid, do hereby certify that:

- (1) the foregoing constitutes a full, true and correct copy of Ordinance No. _____ of said City as:
 - (a) introduced before the Board of Aldermen on the _____ day of _____, 20__; and
 - (b) completed in the form as finally passed and which remained on file with the undersigned City Clerk for public inspection at least thirty (30) days before the final passage thereof; and
 - (c) passed by the Board of Aldermen and approved by the Mayor on the _____ day of _____, 20__, as fully as the same appears of record in my office.
- (2) I did not receive, within thirty (30) days after the final passage and approval of the Ordinance, a petition sufficient in form and signed by the requisite number of voters as set forth in § 88.251 RSMo.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of BALLWIN, Missouri, at my office in said City, this _____ day of _____, 20__.

City Clerk