

StreetVision Streetlighting Agreement

Attachment 1

PENDIX

-- 14 --

synergy

synergy

ELECTRICITY RETAIL CORPORATION
("Synergy")

City of Joondalup DOCUMENT REGISTRATION
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and

CITY OF JOONDALUP
("LGA")

STREETVISION STREET LIGHTING AGREEMENT

Electricity Retail Corporation
228 Adelaide Tce
PERTH WA 6000
Ref:3051244v1

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STREET LIGHTING AGREEMENT

THIS AGREEMENT is made the 1st day of July 2007

BETWEEN:

1. PARTIES

- 1.1 **ELECTRICITY RETAIL CORPORATION** trading as **SYNERGY** a statutory corporation established pursuant to the Electricity Corporations Act 2005, ABN 71 743 446 839 of 363 Wellington Street, Perth WA 6000 (Synergy); and
- 1.2 **CITY OF JOONDALUP**
BOAS AVENUE JOONDALUP WA 6027
(ABN 64 245 472 416)

2. RECITALS

- 2.1 The LGA wishes to have road reserves and other areas within its local government area illuminated at night for the benefit of ratepayers, residents, road users, and the general public.
- 2.2 Synergy has agreed to provide the Street Lighting Services to the LGA in accordance with the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

3. DEFINITIONS AND INTERPRETATION

- 3.1 **Definitions** - In this Agreement unless the context otherwise requires:

BGR Replacement Schedule means if applicable the bulk globe replacement schedule set out in Schedule D.

Business Day means a day other than a Saturday, Sunday or public holiday in the State of Western Australia.

Decorative Streetlight means a streetlight that does not have a standard luminaire.

Expert has the meaning given in clause 15.1.

Illumination Period means the illumination period set out in Schedule B applicable to the StreetVision Streetlights;

Standard Streetlight means a streetlight including a Decorative Streetlight from Western Power's then current range of streetlights.

Street Lighting Services means the services described in clause 5 and Schedule C;

StreetVision Streetlights mean all the streetlights specified in Schedule B.

3.2 **Interpretation** - In this Agreement unless the context otherwise requires:

3.2.1 words importing the singular include the plural and vice versa;

3.2.2 words importing any gender include the other genders;

3.2.3 references to persons include corporations, associations, statutory authorities and bodies politic;

3.2.4 references to any party or persons shall mean and include a reference to that party or person, its successors or legal personal representatives, as the case may be, assigns and transferees;

3.2.5 if a word or phrase is defined, cognate words and phrases have corresponding definitions;

3.2.6 all references to "dollar" or the "\$" sign, shall be references to the currency of the Commonwealth of Australia; and

3.2.7 a reference to an Act of a Parliament shall include any regulations, rules, by-laws and orders made under that Act, and a reference to an Act of a Parliament shall include any amendment, reenactment, variation or extension thereof or statutory provision substituted therefor.

4. TERM

- 4.1 The initial term of this Agreement shall be for the period of one (1) year as from the date of execution (or such other period agreed in writing by Synergy and the LGA) unless terminated earlier in accordance with the provisions of this Agreement.
- 4.2 At the expiry of the initial term this Agreement shall continue for successive one-year periods unless (a) either party gives written notice of termination at least 90 days before the expiry of the then current term or (b) the Agreement is terminated in accordance with its terms.

5. STREET LIGHTING SERVICE

- 5.1 Synergy will use reasonable endeavours to illuminate the StreetVision Streetlights during the Illumination Period.
- 5.2 Synergy will use reasonable endeavours to:
- (a) maintain all StreetVision Streetlights in the LGA's district; and
 - (b) provide certain additional services
- in accordance with Schedule C.

6. CHARGES

- 6.1 In consideration of Synergy providing the Street Lighting Services the LGA must pay Synergy the charges as set out in Schedule A (Prices & Rates).
- 6.2 Synergy will review the charges on a regular basis (not more frequently than annually) and Synergy may increase the charges by such amount as is deemed reasonable by Synergy to take into account the installation of additional StreetVision Streetlights (if any) in the LGA's district and also changes in the cost of providing the Street Lighting Services (including, but not limited to, changes in network charges and the costs of electricity supply).

6.3 Western Power has agreed that at its option and cost it will either repair or replace any StreetVision Streetlight that becomes inoperable during the term of the Agreement, unless the inoperable StreetVision Streetlight is attributable to an act or omission of the LGA, in which case the LGA will be responsible for all costs and expenses incurred in connection with the repair or replacement.

6.4 In the event that Western Power is responsible for the repair or replacement of a StreetVision Streetlight, the following will apply:

(a) Western Power may at its discretion pursue the third party responsible for the inoperability of the StreetVision Streetlight but the LGA will not be held liable under the Agreement for these potential costs.

(b) The LGA must at its cost and expense provide all reasonable assistance to Western Power in connection with any attempt by Western Power to recover costs from a third party pursuant to the terms of this Agreement.

(c) In the event that Western Power in its absolute discretion concludes that a StreetVision Streetlight should be replaced and not repaired, then regardless of the nature or type of the inoperable StreetVision Streetlight, the replacement StreetVision Streetlight will be a Standard Streetlight.

(d) Western Power will retain all rights in and ownership of any replacement StreetVision Streetlights deployed by Western Power under the terms of this Agreement.

7. INVOICE AND PAYMENT

7.1 Synergy will submit its invoice for payment to the LGA at the end of each month (or such other reasonable period selected by Synergy) for the Street Lighting Services during the month and the LGA must pay each invoice in full within 14 Business Days of the date of the invoice.

7.2 In the event of a dispute over an amount owing, the LGA, pending the resolution of the dispute, must pay the undisputed portion of the invoiced amount. The matter shall be resolved in accordance with Clause 15 (Dispute Resolution). Following resolution of the dispute, the LGA must pay any amount owing, together with interest back to the due date for the original invoice calculated pursuant to clause 7.3, within 5 Business Days.

7.3 If Synergy does not receive payment of the charges set out in Schedule A (Prices and Rates) by the due date for the invoice then, without prejudice to Synergy's rights, the LGA must pay interest on the unpaid balance from the due date at a rate percent per annum equal to three percentage points above the maximum rate of the range of the business indicator (small/medium sized business) rates as published in the Reserve Bank of Australia's Bulletin and quoted in respect of the month which includes the date from which interest commences to be payable. If there is no such rate published then the average of the maximum equivalent rates applicable as at last Business Day of such month and charged by BankWest, Australia and New Zealand Banking Group Limited and the Commonwealth Bank of Australia shall be used.

7.4 A breach of Clause 6 or this Clause 7 by the LGA entitles Synergy, without prejudice to its other rights, to terminate this Agreement on 30 days notice.

8. UPGRADING OF STREETLIGHTS

In addition to any upgrade work that is included in the Street Lighting Services, Synergy must undertake upgrade work as agreed with the LGA from time to time.

9. NO CAPITAL CHARGES

The parties acknowledge that the charges payable under this Agreement are only for the provision of the Street Lighting Services. Without limiting the generality of the foregoing and except as may be expressly set out in clause 6 or Schedule C the charges do not include any charge for (or any obligation in relation to) the cost of installing any new streetlights, (including the capital and installation costs of the streetlights, streetlight poles, etc.). Any work undertaken in accordance with Clause 8 may incur capital, labour and other charges.

10. VARYING ILLUMINATION PERIOD

Any variation to the Illumination Period for StreetVision Streetlights must be by agreement between Synergy and the LGA and is at the LGA's cost.

11. OUTAGES

11.1 Synergy is released from its obligation to provide the Street Lighting Services in circumstances of Force Majeure (as defined in clause 11.2 below), during system emergencies or operational contingencies, during maintenance or upgrade work and in circumstances in which the electricity supply network has faults.

11.2 "Force Majeure" means act of God; strikes lockouts, stoppages or restraints of labour or other industrial disturbances; war; acts of public enemies, riot or civil commotion or sabotage; fire, explosion, earthquake, landslide, flood, washout, lightning, storm or tempest; vandalism, breakdown of or accident to plant, machinery, equipment, lines or pipes; failure of suppliers to supply fuel, equipment or machinery; restraints, embargoes, or other unforeseeable actions of the Governments or Government agency or of the instrumentalities of Western Australia or of the Commonwealth of Australia and any other cause (whether specified above or otherwise) which is not reasonably within the control of Synergy, which affects Synergy, its contractors or suppliers of goods and services (including, but not limited to, any supply of streetlights or parts or the Electricity Networks Corporation).

12. CONSEQUENTIAL LOSS

If any breach or default under this Agreement gives a party right to damages, such damages are limited to damages for direct and foreseeable loss attributable to such breach or default. The rights of either party to damages for indirect or consequential loss are excluded. Neither party is liable to the other for any loss of profit or revenue suffered by a party to this Agreement or any other person. Synergy is not liable to the LGA or to any third party in relation to any property damage, personal injury or death arising from a failure to illuminate any streetlight.

13. TERMINATION

Upon termination of this Agreement for any reason Synergy may in its sole discretion, cease to provide any streetlighting service to the LGA or may continue to provide a streetlighting service in which case the LGA is liable to pay the greater of:

- (a) applicable tariffs (as determined by Western Power) set out in the Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006 (WA); or

- (b) the amount that Synergy charges similarly situated customers for the provision of those streetlighting services.

14. APPLICATION OF ACT AND BY-LAWS

Nothing in this Agreement limits in any way the operation or effect of the *Energy Operators (Powers) Act 1979 (WA)* or the *Electricity Corporations Act 2005 (WA)*.

15. DISPUTE RESOLUTION

15.1 In the event of a dispute, the parties must meet within 14 days (of one party issuing a dispute notice to the other party) to resolve the dispute. If they do not meet or having met, fail to agree within a further 14 days (such agreement being evidenced in writing and signed by both parties) then an independent expert appointed by both parties (**Expert**) must determine the dispute. The Expert must give a determination together with written reasons within a further 14 days and the Expert's determination is final and binding on the parties except in case of fraud, mistake or miscarriage.

15.2 The Expert appointed must be suited by reason of his or her qualifications, experience and expertise for the determination in question. Unless otherwise agreed by the parties the Expert is appointed to act as an expert and not as an arbitrator.

16. MISCELLANEOUS

16.1 The LGA must not assign the whole or any part of its rights under this Agreement without the prior written consent of Synergy.

16.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement.

16.3 A purported modification, variation or amendment of this Agreement or any waiver of any rights of any party or any approval or consent has no effect unless and until the same is in writing executed by the parties.

16.4 If any term or other part of this Agreement is or becomes for any reason invalid or unenforceable at law, the remainder of this Agreement continues to be valid and enforceable and such term or other part of this Agreement is severed or modified without affecting the remainder of this Agreement.

16.5 No waiver by any party to this Agreement of any breach or default by the other party of any of the terms of this Agreement nor any delay in the exercise of any power or remedy which may become exercisable as a result of such breach or default operates or is to be construed as a waiver of any other preceding or succeeding breach or default by that other party whether of a similar or different character.

16.6 The terms of this Agreement are confidential. Neither party must disclose any aspect of this Agreement without the prior written consent of the other party (except where such disclosure is required by law).

16.7 To the extent permitted by law Synergy's liability, howsoever arising, in relation to this Agreement is limited to the price and/or rates quoted in respect of the services to be undertaken pursuant to this Agreement.

16.8 Synergy may subcontract performance of any obligations under this Agreement.

Signed for and on behalf of CITY OF JOONDALUP by:

Signature:

Print Name:

Position/Title:

Date:

Signed for and on behalf of ELECTRICITY RETAIL CORPORATION
trading as SYNERGY by:

Signature:

Print Name:

Position/Title:

Date:

SCHEDULE A
PRICES & RATES
(CLAUSE 6.1)

Annual Charge (\$ per annum) (incl. GST)	\$ 1,680,284.00
Monthly Charge (\$ per month) (incl. GST)	\$ 140,023.67

**SCHEDULE B
(CLAUSE 3.1 AND 5)
STREETVISION STREETLIGHTS AND ILLUMINATION PERIOD**

StreetVision Streetlights

The StreetVision Streetlights are all streetlights in the LGA's district (excluding streetlights that are the subject of separate agreements with third parties, such as streetlights on freeways or security lighting and excluding disconnected or non-operational streetlights).]

Illumination Period
The Illumination Period is from dusk till dawn.

SCHEDULE C

SERVICES (CLAUSE 5)

STREETLIGHT SERVICES FOR CONTRACT CUSTOMERS

- 1.0 BULK GLOBE REPLACEMENT (BGR)
- (a) Synergy must conduct a rolling BGR to ensure that all globes in StreetVision Streetlights are replaced:
- (i) every 4 years for High Pressure Sodium (HPS) and Mercury Vapour (MV) lamps
 - (ii) every 2 years for Metal Halide (MH) lamps
- in accordance with the BGR Replacement Schedule.

2.0 Other StreetVision Streetlight Services

- (a) The following is a list of the other Streetlighting Services:
- (i) replacement of 50W luminaires with 80W luminaires for each 50W luminaire that ceases to illuminate or that is replaced under the BGR Replacement Schedule.
 - (ii) replacement of 400W luminaires with 250W HPS luminaires for each 400W luminaire that ceases to illuminate or that is replaced under the BGR Replacement Schedule.
 - (iii) replacement of all incandescent (open type) luminaires with 80W MV luminaires for each incandescent (open type) luminaire that ceases to illuminate or that is replaced under the BGR Replacement Schedule.
 - (iv) where a non-standard luminaire not mentioned above requires replacing as a result of ceasing to illuminate or as part of the BGR Replacement Schedule, new luminaire used will be good or better than that of the existing luminaire.
 - (v) disposal of all luminaires that have been replaced.

(vi) where a new luminaire is required, the new luminaire:

(A) will be a Double Insulated (DI) luminaire

(B) shall have a PE cell fitted

(C) shall be connected to the LV (415V) mains where available

(D) the wiring from the streetlight circuit or LV mains to the luminaire shall be Double Insulated (DI)

(vii) Disposal of globes on StreetVision Streetlights at the time when the globe is replaced.

(viii) Removal and disposal of PCB choke boxes when the PCB choke box ceases to function.

(ix) Replace/secure faulty fuse covers or fuse holders where required.

(x) repair or replacement of faulty street light bracket and fittings.

(xi) Replace faulty PE cells.

(xii) Testing of streetlight after globe replacement or repairs.

(xiii) Where an isolation of a fitting is necessary, the luminaire shall be upgraded to a Double Insulated (DI) luminaire.

(xiv) Streetlight circuit wires shall not be removed unless an immediate safety hazard exists.

3.0 Streetlight Fault Reporting Hotline

The LGA and/or members of the public are encouraged to report faulty streetlights by calling 1800 622 008.

4.0 Repair of Faulty Streetlights

Faulty Streetlight Repair	
Repair of faulty streetlights once reported by the public. Streetlight maintenance service. <u>Service Standard</u> Streetlight maintenance service to be carried out once reported.	Repair within 5 business days in Metro and 9 business days in Regional areas Performance Target 100%

5.0 Complaints Management

Complaints Management	
In response to complaints made by the general public Response standard <u>Service Standard</u> Response time after receipt of complaint.	Performance Target 100% Within 20 business days

6.0 Enquiries

Enquiries	
In response to enquiries made by the general public	
Response standard	
Service Standard	Response time after receipt of enquiry
Performance	Target
100%	Within 5 business days

7.0 Review of Streetlight Technology and Product Range

Customers will have the opportunity to propose changes to product range and lamp technology at forums that are proposed to be held approximately every 4 years. Following these forums, Synergy will liaise with the network provider to discuss the possibility of implementing any changes to the product range and lamp technology, but Synergy makes no representation or warranty that the network provider will accept the recommendations suggested at the forum.

8.0 Pricing Services

To assist with budgeting:

- (a) annual prices for the next financial year will be provided by the end of February; and
- (b) annual prices will be fixed for the financial year and Synergy will not charge for additional lamps installed during this period.

9.0 Reporting

In response to request for streetlight reports and/or data:

- (a) streetlight fault response times will be provided within 10 business days as and when requested; and

- (b) number of lamps under contract will be provided within 15 business days of request.

10.0 Account Management Service

The main tasks and responsibilities of account management are to:

- (a) present one face/point of contact to the LGA for all energy enquires (other than in relation to the fault services referred to in this Schedule). Your single point of contact is your Account Manager whose name and contact details are set out below. Synergy may allocate a different Account Manager to you from time to time;
- (b) provide information for annual contract negotiation and accurate billing;
- (c) supply streetlight data information to the LGA (a fee may be charged);
- (d) provide assistance with Networks related issues; and
- (e) provide an overall view of the various services available from Synergy.

• ACCOUNT MANAGER'S CONTACT DETAILS

Telephone	Kathleen Clayton
Mobile Phone	0418 943 378
E-mail	Kathleen.clayton@synergyenergy.com.au
Facsimile	9326 6164
Courier Address	363 Wellington Street Perth WA 6000
Postal Address	GPO Box K851

SCHEDULE D

BULK GLOBE REPLACEMENT SCHEDULE

SECTOR 1

Includes the suburbs:

Duncraig, Greenwood, Hilliards, Kallaroo
Kingsley, Marmion, Padbury, Sorrento, Warwick

SECTOR 2

Includes the suburbs:

Beldon, Burns Beach, Connolly, Craigie, Currambine, Edgewater,
Heathridge, Iluka, Joondalup, Kinross, Mullaloo,
Ocean Reef, and Woodvale

