

**ORDINANCE NO. 49-913**

AN ORDINANCE OF THE CITY OF WICHITA, GRANTING TO KANSAS GAS AND ELECTRIC COMPANY, A KANSAS CORPORATION, DOING BUSINESS AS WESTAR ENERGY, AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF WICHITA, KANSAS.

THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Definitions.

(a) For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

*City as the Grantor* – shall mean the City of Wichita, Kansas.

*Company as the Grantee* – shall mean Kansas Gas and Electric Company, doing business as Westar Energy.

*Distributed or Distribution* – shall mean all sales, distribution, or transportation by the Company or by others through the Facilities of the Company in the Right-of-Way to any consumer for use within the City.

*Downtown Area* - shall mean the area described as follows: Starting at a point on the east bank of the Arkansas River at Douglas, thence northerly along said bank of the River to Second Street; thence northeasterly to Greenway Boulevard; following said boulevard northerly to Central; following Central northeasterly to its junction with Waco; thence north on Waco to Pine, east on Pine to Market. south on Market to Central, east on Central to Washington, south on Washington to Waterman, west on Waterman to St. Francis, south on St. Francis to Kellogg, West on Kellogg to the east bank of

the River; thence northerly following the east bank of the River to the point of beginning on Douglas.

*Electric Utility Service*- shall mean and include:

- (i) all sales of electricity to all Customers at retail within the corporate limits of the City;
- (ii) ancillary or unbundled electric services provided to all Customers at retail within the corporate city limits of the City when sold separately from kWh which shall include, but not be limited to: reactive supply and voltage control; scheduling; system control and dispatch; regulation and frequency response; energy imbalance; operating reserves; supplemental reserves, and spinning reserves; and
- (iii) transmission and distribution of electricity when sold separately from energy to any person located within the city limits of the City.

"Electric Utility System" or "System" - shall mean an electric power system installed and operated in the City in compliance with applicable rules and regulations of the Federal Energy Regulatory Commission (FERC) and Kansas Corporation Commission (KCC), and their successors, which shall include, but not be limited to, the generation, transmission and distribution facilities, equipment and administrative services necessary to provide electric service for any use in the City, and such extensions, additions or reductions as may hereafter be made.

*Facilities* – shall mean all electric distribution lines, substations, works, and plants together with all necessary appurtenances thereto.

*Gross receipts* – shall mean any and all compensation and other consideration derived by the Company from any Distribution of Electric Utility Service to a consumer for any use within the City, including domestic, commercial and industrial purposes, through charges as provided in tariffs filed and approved, and including without limitation interruptible sales and single sales; and all revenues from any operation or use of any or all of the Facilities in the Right-of-Way by others. Such term shall not include revenues from certain miscellaneous charges and accounts, including but not limited to delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

*Public Improvement* – shall mean any existing or contemplated public facility, building, or capital improvement project, financed by the City, including without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement, and Public Projects.

*Public Project* – shall mean any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

*Public Project for Private Development* – shall mean a Public Project, or that portion thereof, arising solely from a request or requirement of a third (3<sup>rd</sup>) party that primarily benefits a third (3<sup>rd</sup>) party.

*Right-of-Way* – shall mean present and developed streets, alleys, rights-of-way dedicated or acquired right-of-way interest in the real property that is developed, and public easements, including easements dedicated to the City in plats of the City for streets and alleys but not including any Utility Easement.

*Street Right-of-Way* – shall mean the entire width between property lines of land, property, or an interest therein of every way publicly maintained, dedicated right-of-way where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley, or any other public way for vehicular travel by whatever name.

*Utility Easement* – shall mean an easement owned by or dedicated to the City for the purpose of providing the Company and other utilities access to customers and users of any utility service.

(b) Definitions maintained in the parties' prior agreement, Franchise Ordinance 45-987, shall apply to any terms of dispute that are not specifically defined herein.

Section 2. Grant.

There is hereby granted to Company, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Right-of-Way of the City for the purpose of supplying electric energy to the City and the inhabitants thereof for the full term of this Franchise; subject, however, to the terms and conditions herein set forth. Nothing in this grant shall be construed to franchise or authorize the use of the Company's Facilities or the Right-of-Way by the Company or others, for any purpose not related to the provision of electric energy. The Company may not allow a

subsidiary, affiliate, or a third (3rd) party to acquire rights to occupy the Rights-of-Way under this Franchise; provided, that nothing in this section shall prevent Company from allowing the use of its Facilities by others when such use is compensated to the City under the provisions of a franchise granted by the City to any such third party.

The Company must revise its franchise fee payments due to any expansion or reduction by annexation or contraction within a reasonable time after receipt of notice from the City, but in no event later than thirty (30) calendar days after receipt of such notice.

Section 3. Term.

- a. The term of this Franchise shall be twenty (20) years from the effective date of this Ordinance.
- b. Upon 60 days advance written notice by the City, the franchise fee percentage rate may be changed on the fifth, tenth or fifteenth anniversary of the effective date of this Ordinance.
- c. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:
  1. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

2. Change in the structure or operation of the electrical energy industry or the City which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City;

3. Any new or amended contract entered into by either party that materially affects this franchise agreement;

4. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of this Franchise; or

5 Any other mutually agreed upon reason.

d. Amendments under this section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to subsection (c).

Section 4. Compensation to the City.

a. In consideration of and as compensation for the franchise hereby granted to the Company by the City, the Company shall make an accounting on a monthly basis of all Gross Receipts it has earned within City Limits during the preceding month. The Company shall pay the City:

A monthly sum equal to six percent (6%) of the Gross Receipts received for the preceding month; and the above sum shall be adjusted for uncollectible receivables and for receivables which are later collected.

b. Payment of the compensation above shall be effective on the first day of the first month after final passage and approval by the City and

acceptance by the Company. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance 45-987. Such payments shall be made to the City under procedures, which are mutually agreed to by the Company and the City within thirty (30) days of the last day of the month to which such accounting shall apply.

c. Notwithstanding anything to the contrary in this Franchise, the fee provided for in this Section 4 shall not become effective within any area annexed by the City until 30 days after the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

d. Company will use commercially reasonable efforts to ensure the accuracy of its records and of the determination of the amount of Gross Receipts subject to the fee provided for in this Section 4. In the event and to the extent the accounting rendered to the City by the Company is found to be incorrect due to Company's failure to use commercially reasonable efforts as provided herein, then payment shall be made on the corrected amount within 30 days of discovery of the mistake, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, documents, contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said

accounting. Notwithstanding the obligation herein, the Company shall have the right to require the reasonable protection of proprietary information of the Company.

e. Both parties have a mutual interest in increasing the quality and quantity of appropriate trees in the City right-of-way, while reducing reoccurring line clearance pruning and educating and improving communications with landowners and Westar customers concerning areas where street ROW and Westar utility easement are in the same location.

The City shall put forth a good faith effort to utilize 1% of the Gross Receipts towards its tree maintenance program through the City of Wichita Parks and Recreation Forestry and Reforestation Department. To accomplish this good faith effort, the City Forestry section will commit to the utilization of the 1% of the Gross Receipts to hiring employees, purchasing, planting, and all maintenance of trees that follow the “Right Tree, Right Place” principals when the tree location is within a utility easement and/or right-of-way. Should funds from the 1% of Gross Receipts exceed the commitment referenced above, trees and other maintenance projects for other ROW or publicly controlled property under the jurisdiction of Park and Recreation will be selected as deemed appropriate by the Forestry section.

Section 5. Payment and Charges.

The payments and compensation herein provided shall not be in lieu of all other licenses, permits, taxes, charges, and fees. Additionally, the usual general property taxes and special ad valorem property assessments, sales and excise taxes, or charges made for privileges which are not connected with the electric

energy business, will be imposed on the Company and are not covered by the payments herein.

Section 6. Use of Right-of-Way.

a. The use of the Right-of-Way under this Franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-way. In addition, the Company shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City. Further, the Company shall comply with the following:

b. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the

Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

c. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Company in its activities under this Franchise shall be fully repaired or replaced promptly by the Company without cost to the City, however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto.

d. Except in the event of an emergency, as reasonably determined by the Company, the Company shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Except in the event of an emergency, the Company is required to obtain individual permitting approval from the City Engineer prior to engaging in actual construction of its specific Facilities within the Right-of-Way. City shall provide a response to the permit request within 10 days of the date the request is made. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

e. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete

information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Company, the City may include design for Facilities in the design of Public Projects. Also at the request of the Company, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event the Company is required to install new and/or relocate its Facilities.

f. The Company shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way if notified by the City for a Public Project. Such location removal, relocation, or adjustment for a particular Public Project shall be performed by the Company without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of the Company, the Company shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City, the City shall reimburse the Company for any additional expense necessarily incurred by the Company directly due to such inaccurate or mistaken information.

The Company shall only be responsible for removal, relocation, or adjustment of Facilities located in the Right-of-Way at the Company's sole cost once each five (5) years for that particular facility. The City shall reimburse the Company for the removal, relocation, or adjustment of the Company's Facilities located in the Right-of-Way if required before the expiration of five (5) years from the date of the last relocation, removal, or adjustment of that particular facility.

g. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third (3rd) party, the Company shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner.

h. The City shall continue to provide a location in the Right-of-Way for the Company's Facilities as part of a Public Project, assuming the space is available and practical for use, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project. If space is not available or practical for use, City shall use good faith efforts to provide a location in an alternate Right-of-Way for the Company's Facilities.

i. Prior to the Company's installation of Facilities in the Right-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its reasonable discretion designate certain locations or

Facilities in the Right-of-Way to be excluded from use by Company for its Facilities, if in the reasonable judgment of the City Engineer the Facility or location is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other Facilities that have been designated or planned for use by the Company due to engineering, technological, proprietary, aesthetics, or legal limitations or restrictions as may be reasonably determined by the City. The City shall provide a written explanation for any denial for a particular location and shall work with the Company to identify suitable alternatives.

At least ten (10) business days before the beginning of any installation, removal or relocation of its Facilities greater in length than 660 feet the Company shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within ten (10) business days of receipt of such plans, either approve the plans or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom representatives of the City Engineer can communicate on all matters relating to Facilities installation and maintenance.

j It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind

arising out of the failure of the Company to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near the Company's Facilities.

k. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and U.S. Department of Transportation. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.

l. The City encourages the conservation of the Right-of-Way by the sharing of space by all utilities. Notwithstanding provisions of this Franchise prohibiting third (3rd) party use, to the extent required by federal or state law, the Company will permit any other franchised entity by an appropriate grant, or a contract, or agreement negotiated by the parties, to use any and all Facilities constructed or erected by the Company.

m. Permission is hereby granted to the Company to trim trees upon and overhanging the right-of-way and utility easements. The Company shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel qualified to perform the work and in accordance with the latest versions of ANSI

Z133.1 (Safety Requirements for Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush) and ANSI A300 (Part 1) (Standard Practices for Tree, Shrub, and Other Woody Plant Maintenance). For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger.

n. The design, location, and nature of all Facilities to be placed in the Right-of-Way shall be subject to the reasonable review and approval of the City Engineer. Anything placed onto the Facilities is subject to reasonable review and approval of the City Engineer. This is a means to properly manage and control all Right-of-Way usage in the City, and to protect the public aesthetics, health, safety, and welfare. The review and approval is to ensure efficient coordination relating to Right-of-Way use relating to public and private utilities and to evaluate the configuration and size of Facilities that may be located in the Right-of-Way.

o. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of- Way shall be in accordance with applicable present and future federal, state, and City law and regulation, including but not limited to the most recent standards of the Kansas Corporation Commission and the Kansas Department of Transportation, or such substantive equivalents as may hereafter be adopted or promulgated. The standards established in this paragraph are minimum standards and the requirements established or referenced in this franchise may be in addition to or stricter than such minimum standards.

p. If the Company, in its sole discretion, determines that it has spare ducts in its underground conduits, or spare pins, crossarms, or space on any of its poles not then necessary for the provision of Electric Utility Service, and not needed for future anticipated load growth or Emergencies, the Company may permit the City to use one such duct in each conduit, or reasonable spaces on poles, or both, for the City's police and fire alarm wires. traffic control wires or cable, fiber-optic lines connecting City facilities, or other similar, appropriate non-commercial uses, provided that such use by the City is in compliance with the National Electric Safety Code and at the expense of the City. If the Company constructs or extends additional conduits or erects additional poles, the City, at the City's sole expense, may require the Company to provide one such duct in each conduit, or reasonable space on poles, or both, for the City's own use as aforesaid.

q. The City reserves the right to lay, and permit to be laid, storm sewer, gas, water, wastewater and other pipe lines, cables, and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under the Right-of-Way occupied by the Company. The City also reserves the right to change, in any manner, any curb, sidewalk, highway, alley, public way or street. In permitting such work to be done, the City shall meet all applicable codes. The City shall not be liable to the Company for any damage so occasioned, but nothing herein shall relieve any other Person from responsibility for damages to the Facilities of the Company due to negligence.

r. All new electric distribution facilities installed in the Downtown Area shall be installed underground. Additionally, all replacement or upgrading of electric distribution facilities in the Downtown Area shall be installed underground. The City may request any portions of Company's electric distribution facilities in the Downtown Area that are not presently underground to be placed underground at no cost to the City. The City shall provide reasonable written notice to the Company of the City's request that such electric distribution facilities be placed underground. Upon mutual agreement between the City and the Company regarding the request, the Company shall undertake the removal and replacement of such electric distribution facilities to underground locations on a schedule and under terms mutually agreed to by the City and Company.

s. For Facilities installed in any new subdivision within the City, Westar shall follow any applicable City Ordinance regarding installation of above-ground or underground Facilities.

Section 7. Indemnity and Hold Harmless.

a. The Company shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Company's occupancy of the Right-of-Way. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company shall assume responsibility for the defense of such actions at the cost of the Company, subject to the option of the City to appear and defend.

b. The Company shall maintain throughout the term of this franchise insurance insuring the City and the Company with regard to all damages set forth in paragraph (a) of this section, in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person, \$3,000,000 for property damage resulting from any one accident;
- (ii) \$50,000 for property damage resulting from any one accident;
- (iii) \$1,000,000 for all other types of liability.

Should Company elect to self-insure for this purpose, the Company shall possess a certificate of authority from the Kansas Insurance Commissioner.

Section 8. Right of Assignment.

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 9. Option to Acquire.

The City shall have the option at any time after the taking effect of this franchise, to acquire title to the wiring, poles, conduits, lamps, and other appurtenances (exclusive of the power house and generating equipment) which may be at said time used or useful exclusively in any street lighting of the City. Such property and facilities shall be sold to the City by Company, its successors or assigns, at a price determined by the formula identified in K.S.A. 66-1,176(c). Nothing herein shall be construed to in any manner preclude or prevent the City from acquiring title by any means authorized by law to any part, portion or all of the electric property of the Company, its successors or assigns or preclude or

prevent Company from selling its street lighting system to a third party or give City a right of first refusal or option of any kind in connection with such a transaction. In the event Company sells its said street lighting system to a third party, the provisions of this Section shall be null and void and of no further effect.

Section 10. Termination and Forfeiture of Franchise.

The City reserves the right to terminate the franchise and all rights and privileges of the Company hereunder, in the event of a material failure on the part of the Company, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors or assigns, should do or cause to be done any material act or thing prohibited by or in violation of the terms of this ordinance. In such event, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

- (a) Before the City terminates the franchise, it shall first serve a written notice upon the Company, and upon the trustee or trustees in any deed of trust securing bonds of the Company of record in Sedgwick County, Kansas, or the office of the Secretary of State of Kansas, by mailing notice to the Company and to such trustee or trustees to the address designated in such trust deed.

(b) The Company shall have sixty (60) calendar days thereafter in which to comply with the conditions of this franchise.

(c) If, at the end of such sixty day period, the City determines that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to termination by reason thereof the City, in order to terminate such franchise, shall enact an ordinance setting out the grounds upon which the franchise is to be terminated.

(d) If within thirty (30) calendar days after the effective date of said ordinance the Company shall not have instituted an action, either in the District Court of Sedgwick County, Kansas, or some other court of competent jurisdiction to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to termination by reason thereof, such franchise shall be terminated at the end of such thirty day period.

(e) If within such thirty day period the Company does institute an action, as above provided, to determine whether or not Company has violated the terms of this franchise and that the franchise is subject to termination by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to termination by reason of the violation of its terms, this franchise shall terminate thirty (30) calendar days after such final judgment is rendered.

In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have full power and authority to terminate, revoke, and cancel any and all rights granted under this franchise.

Section 11. Acceptance of Terms by Company.

Within thirty (30) days after the final passage and approval of this Ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance. This Ordinance shall constitute a non-exclusive contract between the City and the Company.

Section 12. Conditions of Franchise.

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

Section 13. Reservation of Rights.

The City specifically reserves its right and authority as a Customer of the Company and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the rendering of efficient Electric Utility Service at reasonable rates, and the maintenance of the Company's property in good repair and the Company reserves its right to resist such participation.

In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the

State of Kansas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

Section 14. Notices.

Except in Emergencies, all notices by either the City or the Company to the other shall be made by either depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. Emergency notices shall be provided by telephone, with written notice immediately following by facsimile. All notices shall be addressed to the City as follows:

City Clerk  
455 N. Main Street  
Wichita, Kansas 67202-1635

Notice to Company shall be addressed to the Company as follows:

Vice President, Customer Relations  
818 S. Kansas Ave.  
Topeka, KS 66612

Notice shall be given as required by the terms of this ordinance and for all Emergencies. Notice shall be provided to the above-named addressees unless directed otherwise in writing by City or Company.

Section 15. Non-Waiver Provision.

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

Section 16. Invalidity of Ordinance.

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining provisions of this Ordinance.

Section 17. Governing Law; Venue.

a. Nothing in this franchise shall be considered as a surrender by the City of its right and power to use and relocate the use of its Right-of-Way.

b. The obligations and undertakings of both parties hereto shall be performed at Wichita, Sedgwick County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in State or Federal courts, as appropriate, having jurisdiction for Sedgwick County, Kansas.

Section 18. Effective Date of Ordinance.

This Ordinance shall take effect and be in force on the first day of the first month after its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper.

Section 19. Repeal of Conflicting Ordinances.

Ordinance No. 45-987, which heretofore granted a non-exclusive franchise to the Company, and which became a contract between the City and the Company in accordance with its terms, and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled, repealed, and set aside.

PASSED and APPROVED by the Governing Body on the 16th day of December, 2014.

\_\_\_\_\_  
Mayor Carl Brewer

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

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Sharon Dickgrafe Interim Director of Law