

ORDINANCE NO. 8208

AN ORDINANCE GRANTING TO EVERYGY KANSAS CENTRAL, INC., 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 LEAVENWORTH, KANSAS.

WHEREAS, the City of Leavenworth, Kansas ("City"), a municipal corporation and a City of the First Class, duly organized and existing under the laws of the State, has the right pursuant to Article 12, Section 5 of the State constitution and K.S.A. 12-2001, to grant a franchise to permit a Person to provide Service to persons within the City limits and in accordance therewith, to construct, operate and maintain electric transmission, distribution and street lighting facilities in the City; and

WHEREAS, Everygy Kansas Central, Inc., ("Franchisee") desires to operate its Facilities for the purpose of providing said Service in the City and therefore has applied to the City for a franchise in order to operate its Facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance with said State constitutional provision and K.S.A. 12-2001 *et al*; and

WHEREAS, the City Commission considered this Franchise Ordinance for first reading at its regular meeting held on January 10, 2023, with the second and final reading held at a regular meeting of the City Commission on January 24, 2023.

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

Section 1. Definitions. For the purpose of this Franchise Ordinance, the following words and phrases and their derivations shall have the following meaning:

"City" means City of Leavenworth, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leavenworth as now constituted or as shall hereafter exist.

"Facilities" means all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of selling and distributing within the City, electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes.

"Franchise Ordinance" means this ordinance passed to grant the franchise to Franchisee. This ordinance shall operate as a grant of permission by the City for Franchisee to utilize the City's public right-of-ways and to operate its Facilities in the City as defined herein. Such grant shall at all times be subject to the laws of the State.

"Franchisee" means Everygy Kansas Central, Inc., and its successors, transferees, or assigns.

"Franchise Fee" means the fee imposed by the City on Franchisee solely because of its status as a franchisee in accordance with said State constitutional provision and K.S.A. 12-2001, as set forth in Section 4 below. It shall not include: (a) any tax, fee, or assessment of general

applicability including any which are imposed on Franchisee; (b) requirements or charges incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any permit fee or other fee imposed under any valid right-of-way ordinance, or (d) any other fee imposed by federal, state or local law.

“Gross Receipts” means those receipts, less uncollectible amounts, derived from the sale of electricity for domestic, residential, commercial, or industrial purposes used within the City’s corporate limits as they now exist or may be extended during the term of the franchise granted by this Franchise Ordinance.

“KCC” means the Kansas Corporation Commission.

“Person” means any natural, governmental or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

“Right-of-way” shall mean only the area of real property in which City has a dedicated or acquired right-of-way interest in the real property, and shall include any area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated or acquired as right-of-way.

“Service” means the transmission of electric energy through Franchisee’s Facilities.

“State” means the State of Kansas.

“Subscriber” means any person who receives Service from Franchisee.

Section 2. Grant.

- (a) Franchisee is hereby granted the right, privilege, and franchise to provide Service to the residents of the City, and in connection therewith, to construct, operate, and maintain its Facilities in, through and along the City’s right-of-way on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee’s right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.
- (b) Grantee may allow attachments to its Facilities only if its Facilities are covered by a separate pole attachment agreement or similar agreement with the City. This Franchise shall not:
 - (i) Permit the use of the Franchise or the right-of-way by Grantee or other parties for any other purpose, and a separate franchise shall be required therefor;
 - (ii) Convey equitable or legal title in the right-of-way;

- (iii) Grant authority to construct, maintain or operate any Facilities or related appurtenance on property owned or controlled by the City outside of the right-of-way, specifically including, but not limited to, city easements, city parks, city hall property, police or fire property, or public works facility property.

Section 3. Use of Public Right-of-Way. Franchisee's Facilities shall be located in the right-of-way as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Placement, changes, additions, replacements, maintenance, and repairs for the Facilities shall be conducted in compliance with any applicable ordinance and/or permit requirements. Franchisee shall be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way, as well as paying any associated permit fees. In its use of the right-of-way within the City, Franchisee shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers. Such police powers include, but are not limited to, the following:

- (a) Franchisee's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. Franchisee shall coordinate with the City or its designee the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City. Such placement, as it relates to City parking lot, area lighting and street lighting shall include, but not be limited to, the installation, removal and/or the relocation of power and light wires and poles in the City, whether or not they are in use or usable in the Franchisee's Facilities.
- (b) All earth, materials, sidewalks, pavings, crossings, utilities, public improvements or improvements of any kind damaged or removed by Franchisee in its activities under this franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense and to the reasonable satisfaction of the City.
- (c) All new utility lines shall be placed underground within designated easements in all residential subdivisions within the City of Leavenworth that were approved after the effective date of that certain franchise ordinance no. 7575 (2003), adopted for the benefit of Franchisee when operating under it's previous name of Westar Energy, Inc.. The provisions of this subsection shall not apply to any of the following:
 - (1) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or service to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with these requirements.
 - (2) Electric distribution or transmission lines with capabilities of three thousand (3,000) kVA or more.
 - (3) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
 - (4) Transformers, transformer pads, junction cabinets, or other above-ground facilities normally used with and as a part of an underground distribution system.
 - (5) Underground installation of wiring or electrical power equipment shall not be required in flood plain areas, drainage easements, major or other drainage ways.

- (d) Franchisee shall keep and maintain accurate records and as-built drawings depicting approximate horizontal location of all Facilities constructed, reconstructed, or relocated in the right-of-way. Upon request by the City, Franchisee shall provide to the City a set of plans showing Franchisee's Facilities within the right-of-way or easements in a commonly agreed upon industry standard format. Franchisee shall designate a person familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the right-of-way. Such person or such person's designee shall be available on a scheduled basis in the City to talk to City officials and citizens, including regular City scheduled utility coordinating staff meetings.
- (e) Not less than three (3) working days prior to construction or relocation of any Facilities in the right-of-way or easement, Franchisee shall give written notice to the Director of Public Works of the proposed activity.
- (f) Franchisee shall relocate or adjust any Facilities in the right-of-way for any public funded or public guaranteed improvement project. Such relocation or adjustment shall be performed by Franchisee at its sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City. Franchisee shall not be required to relocate or adjust, at Franchisee's cost, any individual Facilities at the same specific location more often than once in any five (5) year period. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities shall be borne by Franchisee.
- (g) It shall be the sole responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the right-of-way from harm or damage. If Franchisee fails to accurately or timely relocate Facilities when requested, it shall have no claim, for costs or damages against the City and its authorized contractors unless such party is solely responsible for the harm or damage by its negligent or intentional conduct. Franchisee shall be responsible to the City and its 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 Franchisee to perform its obligations under this Franchise ordinance unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm.
- (h) Franchisee shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair or relocation of Facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or in which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.
- (i) 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 the applicable present and future federal, state and city laws and

regulations, including but not limited to, the most recent editions of the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated.

- (j) Franchisee, upon request of any appropriate applicant, shall remove or raise or lower its overhead Facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of overhead Facilities shall be paid by the party or parties requesting the same, and Franchisee may require such payment in advance. Franchisee shall be given not less than fifteen (15) days written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.
- (k) Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269, as amended. All pruning operations shall be performed by personnel certified to perform the work and in accordance with ANSI Z-133.1.1994 and ANSI 300 (Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance), or such substantive equivalents as may hereafter be adopted or promulgated. For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. For emergency/electrical outage restoration, where possible, including ice and windstorms, a notification attempt shall be made before trimming and an accelerated tree trimming and Facilities repair time frame shall be immediately communicated to the City's Director of Public Works.
- (l) Lighting System Repairs. Within sixty (60) days after the effective date of this franchise, Franchisee shall provide to the City a written schedule of a reasonably expedient time frame for the completion of repairs which shall reflect an installation or light fixture outage schedule of no more than thirty (30) days to complete after written notice of such outage is given by the City. Such schedule shall be adhered to by Franchisee at all times in the event any repairs are needed to any light fixture, installation or item in that part of the Facilities which serves as a part of the City's street, parking or area lighting system. Such time frame shall commence upon the receipt by Franchisee of written notice from the City that repairs are required. Such schedule shall not be applicable to Franchisee initiated repairs, however, in the event the Franchisee fails to adhere to such time frame, subject to KCC tariff requirements, the Franchisee shall credit or rebate to the City the equivalent value of the daily cost to the City, if any, of the unrepaired lighting system fixture or installation.

Section 4. Franchise Fee. Effective the first day of the second month following the effective date of this franchise, Franchisee shall pay as its Franchise Fee an amount which will be equal to five percent (5%) of its Gross Receipts and thereafter for the term of this franchise or until changed by the City, Franchisee shall pay five percent (5%) of its Gross Receipts. The payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees, and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Such fee shall be payable on or before the last day of each month without invoice or reminder from the City, and shall be based on the Gross Receipts of the previous month.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the City a "Gross Receipts Report" regarding all applicable monthly revenues. The City acknowledges that Franchisee considers such information to be confidential and proprietary, that such information is the sole property of Franchisee, and that such records should not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 *et seq.* ("KORA") To the extent City, in its sole determination, determines that such records are subject to disclosure under KORA, then to the extent permitted under KORA and subject to applicable time limitations under KORA, the City will use its reasonable commercial efforts to provide Franchisee with advance notice of its intent to disclose such information. The City shall also have access to and the right to examine, within two (2) years of any payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records and documents of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, the City's acceptance of any payment determined as hereinabove provide to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition to access to the records of Franchisee for audits, upon request, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance.

Section 6. Term. This Franchise ordinance shall be effective upon its passage by the governing body of the City and its publication in the official City newspaper and continue to be in effect until that date which is ten (10) calendar years after such effective date, unless sooner terminated as provided herein. Thereafter, this Franchise ordinance will renew automatically for ten (10) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

Section 7. Franchisee Information. Franchisee shall, at its own expense, annually submit to the City the following information:

- (a) The Gross Receipts Report (as referenced by Section 5 herein);
- (b) A summary of the previous year's development of Facilities, including but not limited to, the location of Facilities during the year, and Franchisee's plan of development of Facilities for the next year. This requirement may be met by a meeting in person between Franchisee's designated representative and the City's public works director to discuss these issues: and
- (c) Information as to the number and address of subscribers in the City in digital format. Note: this requirement does not include giving the identification of the subscribers.

Section 8. Subscriber Rates. Franchisee's charges to subscribers shall comply with all applicable federal and state statutes and regulations. Upon request, Franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from KCC. If authorized by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

Section 9. Transfer of Franchise. The rights granted by this franchise are exclusive to Franchisee and shall inure to the benefit of Franchisee and any parent, subsidiary, affiliate or successor entity now or hereafter existing. No other party may use Franchisee's rights granted herein (by retail "wheeling" or otherwise to consumers within the City) and the rights herein shall

not be assignable without the express written consent of the Governing Body of the City, except Franchisee may assign its rights under this Franchise to a parent, subsidiary, affiliate or successor entity without such consent. Provided, that no assignment shall be effective until the assignee assumes all of the obligations contained herein as of the effective date of the assignment, including, but not limited to, the obligations with regard to indemnity, insurance and bond (with the intent being that there shall be no lapse in any coverage as a result of the assignment). Any required consent is to be evidenced by an ordinance or resolution of the Governing Body of the City that fully recites the terms and conditions, if any, upon which consent is given. In the event of any assignment, Franchisee shall timely notify the City of the name of the assignee, provide a point of contact for the assignee, and advise the City of the effective date of the assignment.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use such service provider's existing poles and to relocate its services underground, all other service providers using the same poles, including Franchisee when applicable, shall also relocate their Facilities underground at that time; provided, however, that such placement is economically reasonable. Notice of any intent to enter into such an agreement will be timely provided to Franchisee.

Section 11. Notification Procedure. Any required or permitted notice under this Franchise Ordinance shall be in writing. Notice to the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice to the Franchisee shall be delivered by first class United States mail or by personal delivery to:

Evergy
Customer Solutions Manager
Ed Broxterman
23505 W 86th St.
Shawnee, KS 66227

Any notice concerning a change in the above shall be in writing delivered by first class United States mail or by personal delivery to the City.

Section 12. Indemnification. Upon notice by the City, Franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by Franchisee's actions or operations rendered or offered in accordance with this ordinance. The City agrees to notify Franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to Franchisee. Nothing herein shall be deemed to prevent the City or any Person from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City or its officers, employee, agents and authorized contractors.

Section 13. Insurance Requirements.

- (a) During the term of this franchise, Franchisee shall procure and maintain insurance coverage at its sole expense, from an insurance company qualified to do business in the State of Kansas with a rating of A- or higher. Franchisee may elect to self-insure to the

extent of the insurance requirements in this Franchise Ordinance, as provided in subsection (b) below. Franchisee shall provide insurance in the following amounts:

- (i) Workers' compensation as provided under any workers' compensation or similar law in the State of Kansas, with an employers' liability limit equal to the amount required by law; and
 - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not claims made basis, with a limit of not less than two million dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Franchise; and
 - (iii) Employer's liability limit with a limit of one million dollars (\$1,000,000.00) for each accident/disease/incident/occurrence.
- (b) As an alternative to the requirements of subsection (a), Franchisee may demonstrate to the satisfaction of the City that it is self-insured and as such Franchisee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in aggregate, to protect the City from and against all claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Franchisee, or alleged to so have been caused or occurred.
- (c) Franchisee shall, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Franchisee shall make available to the City on request the policy declarations page and certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

Section 14. Performance Bond Requirement. Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of fifty thousand dollars (\$50,000), for a term consistent with the term of this Franchise Ordinance plus one additional year, conditioned upon Franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period, or evidence of self-insurance as required by Section 13 hereof, shall satisfy this requirement.

Section 15. Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or State law, if the City determines: (a) that it is in the public interest to do so; and (b) that the enforcement of such provision will not impose undue hardship on Franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by duly authorized

representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

Section 16. Forfeiture of Franchise. In case of a material failure of Franchisee to comply with any of the provisions of this Franchise Ordinance, or if Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Franchisee shall forfeit all rights and privileges granted by this Franchise 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) For violations concerning the use of the right-of-way as described in this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.
- (b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such franchise is to be cancelled and terminated.
- (c) If within thirty (30) days after the effective date of an ordinance to terminate the franchise in accordance with Section 16(a) or 16(b) herein, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchisee has violated the terms of such franchise and that the Franchise is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such 30-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by reason of the violation of its terms, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, the City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such franchise ordinance and/or to abate nuisances maintained in violation thereof.

Section 17. Revocation of Franchise. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the Franchisee as a result of and in response to any of the following events or reasons:

- (a) Any provision of this Franchise Ordinance is adjudged by a Court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise as to cause the same to become null and void; or
- (b) Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or after or upon being granted, Franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate such franchise, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchise was appropriately terminated in accordance to the provisions of this Section and is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such thirty-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by the reason addressed by this Section, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Section 18. Miscellaneous Provisions.

- (a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other Persons.
- (b) Exclusive Benefit of Franchise Right by Franchisee. The rights granted to Franchisee by this Franchise Ordinance shall be for the sole use of Franchisee to provide Facilities as authorized herein. The rights are for the exclusive benefit of Franchisee, except where otherwise provided herein, or when authorized by the City.
- (c) Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this Franchise Ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the Franchise Ordinance granted. Franchisee shall accept the provisions of this ordinance in writing, and in doing so the Franchisee: (i) expressly acknowledges that it accepted the Franchise Ordinance

granted in reliance on its independent and personal investigation and understanding of the power and authority of the City to grant the Franchise conferred upon Franchisee; (ii) expressly acknowledges by its acceptance of this Franchise Ordinance that it has not been induced to enter into this franchise upon an understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise Ordinance not expressed herein; and (iii) expressly acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this Franchise Ordinance and is willing to, and does accept, all of the risk directly or indirectly attendant to its provisions, terms, and conditions.

- (d) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State, and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof, or any administrative agency thereof, having jurisdiction hereof. In addition, Franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Unless authorized in writing by the KCC and the City, Franchisee shall not adopt or utilize a rate structure for City parking lot and area lighting that differs from the rate structure adopted or utilized for the City's street lighting. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the Franchise in accordance with the provisions of this Franchise Ordinance.
- (e) Special Lighting Agreements. Franchisee shall promptly, upon written notice from the City, negotiate the establishment of special lighting districts within the City's boundaries which may require, among other things, painted light or power poles, special and/or additional power receptacles and lighting fixtures for special occasions. All such agreements shall provide for the reasonably agreed upon Franchisee's additional expense, if any, to be incorporated in and paid for by the City by a modification in the City's street lighting rate structure unless forbidden by ruling from the KCC.
- (f) Attachment to Poles. Nothing in this Franchise Ordinance shall be construed to require or permit any telephone, television cable, electric light, wireless communications, or power wire attachments by either the City or Franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments. However, notwithstanding any provision in this franchise and subject to Franchisee approval that the proposed City activity does not violate the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated, Franchisee authorizes the City to affix, at the City's cost, but with no charge assessed by the Franchisee to the City, signs, flags, bunting, cables and all necessary paraphernalia on Franchisee's light or power poles which give notice to or are, in the City's sole opinion, appropriate for City sponsored or authorized events. In the event the City utilizes the authority granted herein, it will give Franchisee seven (7) days' notice of its intent to do so, describing the paraphernalia in general terms along with its locations and within seven (7) days after the termination of

the event, the City will remove the paraphernalia at no cost to the Franchisee, leaving the light or power poles in their original condition, less ordinary wear and tear.

- (g) Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.
- (h) Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Franchisee's or the City's control.
- (i) Severability. Any section, subsection, sentence, clause, phrase, or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Repeal of Other Ordinances. All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be cancelled, annulled, repealed, and set aside; provided, that this Franchise Ordinance shall not take effect or become in force until the requirements for adopting a Franchise Ordinance under Kansas Statutes have occurred.

Section 20. Effectiveness. This Franchise Ordinance shall take effect upon its final passage by the City Commission and its publication in the official City newspaper.

Section 21. Acceptance. Franchisee agrees to accept the terms of this Franchise Ordinance in writing within sixty (60) days after its effective date, upon which this franchise shall also become a contract between the City and the Franchisee. In the event this franchise is not timely accepted in writing by the Franchisee, the Franchisee shall be bound by its requirements for as long (during its Term) as the Franchisee provides its Services to the residents of the City; provided, that if Franchisee does not timely accept this Franchise Ordinance as provided herein, City may terminate this Franchise at any time upon written notice to Franchisee.

PASSED and APPROVED by the Governing Body on the 24th day of January, 2023.

/s/ Jermaine Wilson
Jermaine Wilson, Mayor

{SEAL}

ATTEST:

/s/ Sarah Bodensteiner
Sarah Bodensteiner, CMC, City Clerk