

ORDINANCE NO. 2723

AN ORDINANCE GRANTING EVERGY METRO, INC., AN ELECTRIC FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE ALL FACILITIES NECESSARY OR PROPER FOR SUPPLYING CONSUMERS WITH ELECTRIC ENERGY, GRANTING THE RIGHT TO USE THE RIGHT-OF-WAY FOR SAID PURPOSE, AND PRESCRIBING THE TERMS OF AND RELATING TO SUCH FRANCHISE.

WHEREAS, pursuant to K.S.A. 12-2001 et seq., Evergy Metro, Inc., desires the right, privilege and franchise for the purpose of construction, maintenance and operation of facilities for supplying consumers with electric energy service pursuant to the provisions of the laws of the State of Kansas; and

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

SECTION I. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

- (a) "City" shall mean the City of Gardner, Kansas.
- (b) "Electric Energy Service" shall mean the one-way transmission to consumers of electric energy.
- (c) "Facilities" shall mean power lines, conduits, wires, guys, anchors, cables, pipes, poles, vaults, lamp posts, street lights, transformers and appliances, and buildings, machinery and attachments in connection therewith and appurtenant thereto, either above or underground.
- (d) "Franchise" shall mean this Ordinance granting the right, privilege and franchise to Grantee to provide Electric Energy Service within the City.
- (e) "Grantee" shall mean Evergy Metro, Inc. and, as appropriate, its successors and permitted assigns.
- (f) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitation, streets, alleys, sidewalks, sewers, water, drainage, stormwater facilities, right-of-way improvements and public projects.
- (g) "Public project" shall mean any project planned or undertaken by the City or any governmental entity at public expense for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.
- (h) "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. It shall include the area on, below or above the City's present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.

SECTION II. Grant. There is hereby granted to Grantee the nonexclusive right, privilege and franchise to construct, maintain and operate its Facilities in, through and along the Right-of-Way for the purpose of supplying Electric Energy Service to certain parts of the City and the inhabitants thereof as well as customers outside the City limits; subject, however, to the terms and conditions herein set forth. Grantee may allow attachment to its facilities only if its facilities are covered by a separate pole attachment agreement with the City. This Franchise shall not:

- (a) 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 therefore.
- (b) Convey equitable or legal title in the Right-of-way.
- (c) 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 parks, city hall property, police or fire property or public works facility property.

As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the Kansas Corporation Commission (KCC), and shall comply with all applicable laws, statutes and/or regulations. In the case of a City permit, the City shall not unreasonably withhold or delay the issuance of such permit.

Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise agreement from the City. Grantee shall not knowingly allow the use its Facilities by any third party in violation of federal, state, or local law. Grantee shall hold harmless and indemnify the City for any use of its Facilities that violates federal, state, or local law.

SECTION III. Use of Right-of-Way.

- (a) Subject to the provisions of this Franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Right-of-Way. Such Facilities shall be constructed and maintained so as to interfere with and obstruct as little as reasonably possible the ordinary use and safety of the streets, alleys, lanes and highways of said city and the legal use of the Right-of-way by other utilities. Grantee's use of the Right-of-way 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 public health, safety and welfare, and to the construction and use of the Right-of-Way, including but not limited to, the City's Ordinance for the Use and Occupancy of the Public Right-of-Way (codified as Chapter 12.05 of the Gardner Municipal Code, as may be amended), and the City's Plan Requirements and Standards for Utility Structures (codified in Chapter 17.05 of the Gardner Municipal Code, as may be amended). Provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of Grantee to oppose, challenge, or seek judicial review of, in such manner as in now or may hereafter be provided by law, any such rules, regulations, policies, resolutions or ordinances proposed, adopted or promulgated

by the City; and provided further that, in the event of a conflict between any rule, regulation, policy, resolution or ordinance adopted by the City and any tariff on file with the Kansas Corporation Commission (KCC), the KCC tariff shall control.

- (b) Grantee's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way. Grantee and the City shall coordinate the installation of Grantee's Facilities in the Right-of-Way in a matter that minimizes the adverse impact on Public Improvements, as reasonably determined by the City.
- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-way damaged, altered, or removed by Grantee (or of any agent, affiliate, employee, or subcontractor of Grantee occupying, installing, repairing or maintaining the Facilities in furtherance of Grantee's activities under this Franchise) shall be fully repaired or replaced promptly by the Grantee without cost to the City, however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be shared as agreed to in writing among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto.
- (d) Grantee 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. Grantee 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 Grantee, the City may include design for Facilities in the design of Public Projects. Also at the request of Grantee, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event Grantee is required to install new and/or relocate its Facilities. Grantee shall participate in the Kansas One Call utility location program at all times while this Franchise is in effect.
- (e) Grantee shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way if reasonably necessary and requested by the City for a Public Project. Such location, removal, relocation, or adjustment for a particular Public Project shall be performed by Grantee 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 Grantee, Grantee shall be responsible for costs associated with such without expense to the City.
- (f) In the event a relocation of Grantee's Facilities from the Right-of-Way is needed as set forth in subsection (e), above, the City shall advise Grantee at the first

available opportunity and not less than one hundred eighty (180) days prior to the expected date of construction commencement where possible. In all cases where City requests or requires Grantee to relocate Grantee's Facilities from the Right-of-Way pursuant to this Agreement, City shall use its best efforts to provide and make available adequate and suitable replacement Right-of-Way equivalent in type and size before Grantee shall be required to relocate. 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.

- (g) It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Right-of-Way from reasonably foreseeable harm or damage. If Grantee fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures and exercise due caution when working near Grantee's Facilities.
- (h) 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.
- (i) The City encourages the conservation of the Right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, Grantee 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 Grantee.
- (j) Within sixty (60) days after the completion of initial or any additional construction, Grantee shall provide a complete set of plans with accurate and complete information to the AIMS system showing and describing the exact locations, both horizontal and vertical, of all Facilities constructed and existing within the right of way and within private easements; such mapping and identification shall be at the sole expense of Grantee.
- (k) Grantee is granted permission to prune or trim vegetation growing upon or overhanging the Right-of-way and public utility easements when necessary in Grantee's reasonable discretion to correct or avoid interference with Grantee's Facilities. Grantee shall notify the City prior to performing such work, including anticipated annual schedule and location of such work and the identity of Grantee's contractor(s) approved to perform such work. Moreover, Grantee shall perform such line clearance work in accordance with regulations established under OSHA 29 CFS 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 300 (Part 1) (Standard Practice 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 in writing by informational door hanger, letter or other written notification.

SECTION IV. Grant of Easements. As partial consideration for this Franchise, and to the extent Grantee is able to do so without cost to Grantee, Grantee agrees to grant to the City for public projects without additional cost, such easements as Grantee may have in property within the City.

SECTION V. Indemnity and Hold Harmless. Grantee shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against any and all claims, lawsuits, judgments, liens, losses, damages, expenses, liability, fees and costs (including attorney fees and court costs), of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery is sought, to the extent occasioned in any manner by Grantee's occupancy of the Right-of-Way, including but not limited to the related actions by Grantee's agents, officers, employees, directors, representatives, affiliates or subcontractors. 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 Grantee, then upon notice by the City to Grantee, Grantee will assume liability and responsibility for the defense of such actions at the cost of Grantee, subject to the option of the City to appear and defend at its own cost. The City does not waive any governmental immunity available to it under Kansas law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity. Grantee and the City shall promptly advise each other in writing of any known claim or demand against Grantee or the City related to or arising in any way out of Grantee's activities in the Right-of-Way.

SECTION VI. Insurance Requirement and Performance Bond.

- (a) During the term of this Franchise, Grantee 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. Grantee 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), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee 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 Grantee, or alleged to so have been caused or occurred.
- (c) Grantee 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. Grantee 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.
- (d) Grantee shall, prior to the commencement of any work or renewal thereof, deliver to the City a performance bond in an amount consistent with the requirements of the City's Ordinance for the Use and Occupancy of the Public Right-of-Way (referenced in Section III above), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Right-of-way. The required bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION VII. Payments and Charges. The payments herein provided shall be in lieu of all other licenses, taxes, charges, or fees, except that the usual general property taxes and special ad valorem property taxes, sales and excise taxes, permits and fees including charges for pavement cuts and other charges based on restoring premises, costs and damages provided for herein and charges outside the scope of this Franchise will be imposed on Grantee, and are not covered by the payments herein. The franchise fee is compensation to the City for use of the Right-of-Way and shall in no way be deemed a tax of any kind.

SECTION VIII. Compensation to City.

- (a) In consideration of the premises, Grantee agrees to pay to the City, and the City agrees to accept as adequate compensation and consideration for the Franchise hereby granted and in lieu of occupation, license, privilege and all other taxes and fees not otherwise excepted hereinabove, a franchise fee of three percent (3%) of the total gross receipts charged and collected from the sale or distribution of Electric Energy Service to all consumers located in the present or future corporate boundaries of the City during the term of this Franchise.
- (b) Grantee will ensure the accuracy of its records and of the determination of the amount of Gross Receipts subject to the fee provided for herein. In the even and to the extent the accounting rendered to the City by Grantee is found to be incorrect, then payment shall be made in the correct amount.

- (c) It is the intent of the City to charge franchise fees for sales of Electric Energy Service within the City on a non-discriminatory basis. Therefore, if during the term of this Franchise the law of the State of Kansas is changed to permit competition between retail electric suppliers in any territory certified as a single certified service territory pursuant to K.S.A 66-1 , 170, et seq., including but not limited to the allowance of "Wheeling" or other transport and distribution of Electric Energy Service for other retail electric suppliers, then the City and Grantee agree to enter into good faith negotiations for the purpose of revising this Franchise to address said change and the collection of franchise fees. Should the City and Grantee fail to agree upon such revisions, then the City and Grantee shall each have the right to terminate this Franchise up on 120 days written notice.
- (d) Any consideration hereunder shall be reported and paid to the City by Grantee on a semi-annual basis on May 1 and November 1 of each year in which this Franchise remains in effect, reflecting the gross receipts charged and collected from the sale of such Electric Energy Service for the preceding month. The term "gross receipts" as used in this Section shall not include (1) electrical energy sold to the United States or the State of Kansas or to any agency or political subdivision thereof, (2) electrical energy sold for resale and (3) amount paid to the City pursuant to this Section.
- (e) The percentage of gross receipts charged and collected from the sale of Electric Energy Service hereunder may be adjusted by the City upon 180 days prior written notice to Grantee.
- (f) Payments by Grantee shall be made without invoice or reminder from the City, and shall be mailed or delivered to the City c/o Finance Director, City Hall, 120 East Main Street, Gardner, Kansas 66030.
- (g) No acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

To facilitate the auditing of amounts paid under this Franchise, Grantee shall provide current rates and charges, as from time to time amended, and such documents and information concerning sales as may be reasonably requested by the City, provided however that in the event information is sought that is specific to an individual customer and identifies that customer, the consent of the customer will be required to release the information. Further, in accordance with K.S.A. 12-2001 (as may be amended), the City shall further have the right to examine all books, receipts, files, records and documents necessary to verify the correctness of the franchise fee paid by Grantee.

- (h) Fees imposed under this Agreement shall not become effective within an area that is annexed by the City and becomes subject to this Agreement until thirty (30) days after the City provides Grantee with a certified copy of the annexation ordinance, proof of publication of the ordinance as required by law, and a map of the City detailing the annexed area.

SECTION IX. Supply of Service to Within City Corporate Limits. During the term of this Franchise, the Company shall construct, maintain and operate its transmission and distribution system within the City and shall furnish electric energy to such portions of the City and its inhabitants within the Company's present and any future certificated service territory in accordance with the terms of this Franchise, the rates, charges, rules and regulations now on file with the State Corporation Commission of the State of Kansas, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas. Nothing contained herein shall be construed to constitute agreement or consent by the City that Company shall continue to serve those areas of the City, or those areas annexed into the City in the future, for the duration of the term of this Franchise. City retains the right to request Company and/or to petition the Kansas Corporation Commission to serve all areas presently within the City or those areas which may be annexed into the City in the future. Nothing contained herein shall be construed as a guarantee upon the part of the Company to furnish uninterrupted service, and interruptions due to acts of God, fire, strikes, civil or military authority, orders of court and other causes reasonably beyond the control of the Company are specifically exempt from the terms of this Section. The Company shall abide by all other City ordinances that do not conflict with this Franchise.

SECTION X. Poles and Wires. All poles and wires shall be erected in accordance with the rules and regulations of the State Corporation Commission of the State of Kansas as set out in Docket No. 1944 and any amendments thereto. All poles carrying said wires shall be placed in such manner as to interfere with and obstruct as little as reasonably possible, the ordinary use of the streets, alleys, lanes and highways of said City, and shall not unreasonably interfere with any gas main, water main or sewer now laid out or constructed in or under said streets, alleys, lanes or highways of said City.

SECTION XI. Attachment to Facilities. Except as otherwise provided herein, nothing in this Franchise shall be construed to require or permit either party to utilize or attach to the Facilities of the other without a separate written agreement.

SECTION XII. Forfeiture of Grant and Privilege. In case of failure by Grantee to comply with any of the provisions of this Franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, Grantee shall forfeit all rights and privileges granted by this Franchise and all rights hereunder shall terminate, provided that said termination shall not take effect until the City shall carry out the following proceedings. Before the City proceeds to cancel this Franchise, it shall first serve a written notice upon Grantee setting forth in detail in such notice the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions of this Franchise. If at the end of such period the City deems that the conditions have not been complied with and that this Franchise is subject to repeal by reason thereof, the City shall enact a repealing ordinance setting out the grounds upon which said grant and privilege is to be cancelled or terminated. If within thirty (30) days after the effective date of said repealing ordinance Grantee shall not have instituted an action, either in the District Court of Johnson County, Kansas, or some other court of competent jurisdiction, to determine whether or not Grantee has violated the terms of this Franchise, this Franchise shall be cancelled. If within such thirty (30) day period Grantee does institute an action as above provided to determine whether or not Grantee has violated the terms of this Franchise and prosecutes such action to final judgment with due diligence then, in that event, in case the court finds that this Franchise is subject to cancellation by reason of the violation of its terms, this Franchise shall terminate thirty (30) days after such final judgment is

rendered. Provided, nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

SECTION XIII. Rights and Duties of Grantee Upon Expiration of Franchise. Upon expiration of this Franchise, whether by lapse of time, by agreement between Grantee and the City, by Grantee's voluntary abandonment of the Right-of-way with approval of the City, or by forfeiture thereof, Grantee shall have the right to remove from public property any and all of its Facilities used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of Grantee immediately upon and during such removal, to restore the right-of-way from which said Facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

SECTION XIV. Term and Reopeners.

- (a) This Franchise shall be and remain in full force and effect for a period of ten (10) years from the effective date hereof, unless sooner terminated as herein provided. Provided, In the event the parties are actively negotiating in good faith a new franchise or an amendment to this Franchise upon the termination date, the parties by written mutual agreement may extend the Franchise's termination date to allow for further negotiations. Such extension period shall be deemed a continuation of this Franchise and not as a new franchise or amendment.
- (b) Upon written request of either the City or Grantee, the Franchise shall be reopened and renegotiated at any time upon any of the following events:
 - i. Change in federal, state or local law, regulation, or order that materially affects any rights or obligations of either party, including but not limited to, the scope of the grant to Grantee or the compensation received by the City; or
 - ii. Change in the structure or operation of the electrical energy service industry that materially affects any rights or obligations of either the City or Grantee, including but not limited to, the scope of the grant to Grantee or the compensation received by the City; or
 - iii. Any other material and unintended change or shift in the economic benefit to the City or a change Grantee did not anticipate upon accepting the grant of this Franchise.
- (c) Amendments under subsections (b), if any, shall be made by ordinance as prescribed by Statute. This Franchise shall remain in effect according to its terms pending completion of any review or renegotiations pursuant to this Section.

SECTION XV. Point of Contact and Notices. Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S.

Mail or Certified Mail, return receipt requested, shall be deemed delivered upon actual receipt or refusal of delivery. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Gardner, Kansas
120 E. Main Street
Gardner, Kansas 66030
Attn: City Clerk
(913) 856-0997

Grantee:

Evergy
Attn: Rebecca Galati
P.O. Box 418679
Kansas City, MO 64141-9679
(913) 894-3013; (913) 894-3086 fax
Rebecca.Galati@evergy.com
or to replacement addresses that may be
later designed in writing.

SECTION XVI. Benefit/Assignment. The rights granted by this Franchise are exclusive to Grantee and shall inure to the benefit of Grantee and any parent, subsidiary, affiliate or successor entity now or hereafter existing. No other party may use Grantee'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 Grantee 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 Grantee shall timely notify the City of the assignee, provide a point of contact for the assignee, and advise the City of the effective date of the assignment.

SECTION XVII. Reservation of Rights. This non-exclusive franchise 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. The City does not in any manner waive its regulatory or other rights and powers under the laws of the State of Kansas, its Constitutional Home Rule powers, or by virtue of present or future city ordinances. Neither party waives any applicable present or future legal rights, positions or claims before any administrative agency or court, but each party expressly reserves all rights, remedies and arguments at law or equity without limitation.

SECTION XVIII. Failure to Enforce. The failure of either the City or Grantee to insist in any one or more instances upon the strict performance of any one or more terms or provisions of this Franchise 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 the City or the Grantee unless said waiver or relinquishment is in writing.

SECTION XIX. Invalidity of Franchise. If any clause, sentence, or section of this Franchise, or any portion thereof, shall be held to be invalid, it shall not affect the remaining

provisions of this Franchise; provided, however, the City or Grantee may elect to declare the entire Franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Franchise. In such event, if Grantee is required by law to enter into a franchise with the City, the parties agree to act in good faith in promptly negotiating a new franchise.

SECTION XX. Repeal. Grantee's prior franchise ordinance, Ordinance No. 2077, is hereby repealed. Provided, the repeal of said franchise ordinance shall not affect any rights of either party regarding any unpaid consideration thereunder, if any, and said franchise ordinance repealed is hereby continued in force and effect after the passage, approval, publication and acceptance of this Ordinance for the sole purpose of preserving such rights.

SECTION XXI. Effectiveness and Acceptance of Franchise. This Franchise is made under and in conformity with the laws of the State of Kansas, shall take effect and be in force on the first day of the first month after its passage and approval by the City, publication and written acceptance by Grantee, and shall constitute a non-exclusive contract between the City and Grantee subject to the provisions of the laws of the State of Kansas.

SECTION XXII. Payment of Costs. Grantee shall be responsible for all costs and expenses of publishing this Franchise and any amendments thereof, as outlined in K.S.A. 12-2001(6) and K.S.A. 12-3007.

PASSED by the Governing Body this 18th day of January, 2022.

_____/s/_____

Mayor

ATTEST:

APPROVED AS TO FORM

_____/s/_____

City Clerk

_____/s/_____

Counsel

(Seal)