

ORDINANCE NO. G- 1190

AN ORDINANCE AMENDING ARTICLE 1, ELECTRIC FRANCHISE, OF CHAPTER 710 – UTILITY FRANCHISES, OF TITLE VII – UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF JUNCTION CITY, KANSAS, GRANTING TO DS&O ELECTRIC COOPERATIVE, INC., f/n/a DS&O RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE, PRESCRIBING THE TERMS OF THE FRANCHISE, AND REPEALING ORDINANCE NO. G-973

WHEREAS, DS&O Rural Electric Cooperative Association, Inc., n/k/a DS&O Electric Cooperative, Inc. (“DS&O”), a Kansas corporation, provides electric service to customers within the City of Junction City through a franchise agreement adopted by Ordinance No. G-973 with DS&O Rural Electric Cooperative Association, Inc.; and,

WHEREAS, the current franchise agreement expired according to its terms on in 2014; and,

WHEREAS, DS&O, and the City of Junction City desire to continue the franchise relationship, because the service provided by DS&O, benefits the citizens of the City of Junction City; and,

WHEREAS, the City has the authority to grant a franchise to DS&O, to provide electric service pursuant to K.S.A. 12-2001, as amended.

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

SECTION 1. Article 1, Electric Franchise (DS&O Rural Electric Cooperative Association, Inc.), of Chapter 710, Title VII, of the Code of Ordinances of the City of Junction City, Kansas, is hereby amended to read as follows:

ARTICLE I – ELECTRIC FRANCHISE (DS&O Electric Cooperative, Inc.)

SECTION 710.091: - DEFINITIONS

For the purpose of this electric power franchise agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) *City* means the City of Junction City, Kansas.

- (b) *Company* means DS&O Electric Cooperative, Inc., a Kansas corporation.
- (c) *Distributed or Distribution* means 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.
- (d) *Customer* means a person, partnership, association, public or private firm, corporation or governmental agency or other entity using Electric Service at a stated location under a Service Agreement.
- (e) *Facilities* means all electric distribution lines, substations, works, and plants together with all necessary appurtenances located in, along, over, upon, under or through the Rights-of-Way.
- (f) *Franchise Agreement* or *Franchise* means this agreement between the City and the Company.
- (g) *Gross Receipts* means any and all compensation and other consideration derived directly by the Company from any Distribution of electric energy 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; except that such term shall not include revenues from any operation or use of any or all of the Facilities in the Rights-of-Way by others nor shall such term include revenue 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.
- (h) *Public Improvement* means any existing or contemplated facility, building, or capital improvement project, owned, occupied or used by the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, Rights-of- Way improvements, and Public Projects.
- (i) *Public Project* means any project, or that portion thereof, planned, undertaken or financed through the City or any governmental entity for construction, reconstruction, maintenance, or repair of Public Improvements, or for any other purpose of a public nature or in the public interest. In designating a project as a Public Project, the City shall use reasonable discretion.
- (j) *Private Development Project* - shall mean a project, or that portion thereof, planned, undertaken or financed by a non-governmental third party that is primarily for the benefit and use of the third party. As used herein, the term Private Development Project does not include any project or portion that is a Public Project.
- (k) *Rights-of-Way* means the surface and space on, above, and below every municipal street, alley, road, highway, lane or city right-of-way dedicated or commonly used now or hereafter for vehicular travel or utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with communications facilities. This term shall

not include any county, state or federal rights-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such person or agency. "Rights-of-way" shall not include property owned or leased by the City that is not typically utilized as right-of-way for laying of lines, such as city parks, city hall property, or public works facilities.

SECTION 710.092: – FRANCHISE GRANTED.

(a) The Company, its successors and assigns, is granted the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Rights-of-Way of the City for the purpose of supplying electric energy to the City and its inhabitants for the full term of this Franchise; subject, however, to the terms and conditions of this Franchise Agreement.

(b) The Company shall not use, or allow any other person or entity to use, its facilities or the City's Right-of-Way for any purpose other than the provision of electric power. The Company shall not permit a subsidiary, affiliate, or a third party to acquire rights to occupy the Rights-of-Way under this Franchise, except that the Company may allow the use of its Facilities when the City receives prior written notification of such use, and such use is compensated to the City under the provisions of a franchise granted by the City to any such third party.

SECTION 710.093: - CONSIDERATION

(a) As consideration for granting this Franchise, the Company shall pay to the City a sum equal to five percent (5%) of the Gross Receipts received from such Distribution of electric energy and the above sum shall be adjusted for uncollected receivables and for receivables that are later collected. The Company shall make an accounting on a monthly basis to the City of all electric energy that has been distributed within the City.

(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 G-973. Such payments shall be made to the City on a monthly basis for the preceding monthly period.

(c) Notwithstanding anything to the contrary in this Franchise, the fee provided herein 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 shall 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 herein. 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, 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 Franchise 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) The payments and compensation herein provided shall be in lieu of all other City licenses, taxes, charges, and fees, except that 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, shall be imposed on the Company and are not covered by the payments herein.

SECTION 710.094: - TERM AND AMENDMENT

(a) The term of this Franchise shall be ten (10) 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 anniversary of the effective date of this Ordinance.

(c) Upon written request of either the City or the Company, and upon agreement of the other party, the Franchise may 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 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,

(3) 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.

(d) Any amendments pursuant to this section shall be made by ordinance as required by state law. The Franchise shall remain in effect according to its terms until any review or renegotiation is complete and such amendments are adopted and effective.

SECTION 710.095: - USE OF RIGHTS-OF-WAY

(a) The Company shall comply with the City's rules, regulations, policies, resolutions and ordinances in effect or hereafter adopted that relate to the use of the City's Rights-of-Way. The Company shall comply with the City's rules, regulations, policies, resolutions and ordinances that relate to permits, sidewalk and pavement cuts, utility location, construction coordination,

screening, and other requirements on the use of the Rights-of-Way. Provided, however, that the Company retains its right to oppose, challenge, or seek judicial review of, any such rules, regulations, policies, resolutions, or ordinances proposed, adopted, or promulgated by the City, as provided by law. Further, other than the fee required by Sec. 51-39, such rules, regulations or policies shall not require the payment of additional fees or additional costs for the use of the Right of Way.

(b) Further, the Company shall comply with the following:

- (1) The Company's use of the Rights-of-Way shall in all matters be subordinate to the City's use or occupation of the Rights-of-Way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested or granted in the City. The Company shall coordinate the installation of its Facilities in the Rights-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 impact or be impacted by such Public Improvement as defined in the City's Engineering Design Standards and Construction Specifications.
- (2) The Company shall construct and maintain its facilities so as not to interfere with other users of the Rights-of-Way.
- (3) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Rights-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 to the reasonable satisfaction of 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. Nothing in this Franchise shall require the Company to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with the Company's access to any of its Facilities located in a utility easement. Any excavation, back filling, repair and restoration, and all other work performed in the Rights-of-way shall be done in conformance with the City's Engineering Design Standards and Construction Specifications, as promulgated by the City Engineer. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the Company to do the additional necessary work. At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the Company and a reasonable time not to exceed 15 days will be provided to allow for the deficiencies to be corrected.
- (4) 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. 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.

(c) The Company shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new facilities in the Rights-of-Way, and such other related information as may be reasonably required by the City Engineer of all users of the Rights-of-way. Such maps shall be updated and kept current with the City.

(d) The Company shall, upon request of any person requesting temporary relocation of facilities and holding a permit validly issued by the City pursuant to K.S.A. 17-1914, *et seq.* and with notice to the Company provided as required by K.S.A. 17-1914, *et seq.* that the person intends to exercise its rights under the permit, temporarily raise, lower or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit, and the Company may require such permit holder to make payment in advance for any expenses incurred by the Company.

(e) Subject to subsection (g) of this section, the Company shall be responsible for its costs that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way. The Company shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes, as part of a Public Project.

(f) Subject to subsection (g) of this section, the Company shall coordinate with the City on the design and placement of Facilities in the Rights-of-Way during and for the design of Public Projects. At the request and sole expense of the Company, the City may include design for Facilities in the design of Public Projects. Upon request by the City and within the time period specified in the City's request, the Company shall locate, remove, relocate, or adjust any Facilities located in Rights-of-Way if reasonably necessary 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 applicable City rules and regulations. Such relocation or adjustment shall be completed as soon as possible within the time set forth in any request by the City for such relocation or adjustment. If additional location, removal, relocation, or adjustment becomes necessary as a result of inaccurate or mistaken information provided by the Company or City, the party which provided such inaccurate or mistaken information shall be responsible for costs associated with such additional location, removal, relocation, or adjustment without expense to the other party. The City will use its best efforts to continue to provide a location in the Rights-of-Way for the Company's Facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

(g) The Company shall be responsible for removal, relocation, or adjustment of Facilities located in the Right-of-Way at the Company's sole cost no more often than once each three (3) 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 three (3) years from the date of the last relocation, removal, or adjustment of that particular facility.

(h) The Company shall not be responsible for the expenses of relocation to accommodate any new Private Development Project initiated after the effective date of this Franchise. The expenses attributable to such a project shall be the responsibility of the third (3rd) party requesting, requiring, or using such project 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. The Company may require payment in advance of estimated costs of relocation prior to undertaking any work required to accommodate any new Private Development Project initiated after the effective date of this Franchise.

(i) The Company shall take adequate measures to protect and defend its Facilities in the Rights-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 direct damages arising out of the failure of the Company to perform any of its obligations under this Franchise Agreement. 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.

(j) At a minimum, and without limitation, the Company shall comply with all building, electrical and zoning codes currently or hereafter in force in the City.

(k) The Company shall comply with all technical and zoning standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way, as required by present and future federal, state, and City laws and regulations, including but not limited to the most recent standards of the State of Kansas, the Occupational Safety and Health Administration, and the U.S. Department of Transportation.

(l) The City encourages the conservation of the Rights-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 shall 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. For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. The Company shall perform line clearance work in accordance with its General Terms and Conditions, NESC 218, and 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).

SECTION 710.096: - INDEMNITY AND HOLD HARMLESS

The Company, its successors and assigns, in the construction, maintenance and operation of its electric power system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property. The Company, its successors and assigns, shall hold and save the City, its officers, employees, agents and authorized contractors harmless from any and against all claims, damages, expense, liability, and costs, including reasonable attorney fees, caused by the negligence, in whole or in part, of Company employees, agents, or servants, related to the Company's occupancy of the Rights-of-Way. In the event a claim shall be made or an action shall be instituted against the City arising out of the Company's occupancy of the Rights-of-Way, 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.

SECTION 710.097: - BINDING CONTRACT

(a) This ordinance shall become a binding contract between the parties and be in force and effect from and after its passage, and upon approval by the City, written acceptance by the Company to the City Clerk, and publication in the official city newspaper.

(b) 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.

(c) 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 710.098: - ASSIGNABILITY

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, provided, however, that the franchise may be assigned by company without action by the City to any creditworthy entity which succeeds to all or substantially all of the electric utility business of the Company. In the event of such assignment to a successor, Company shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned in form and content satisfactory to City.

SECTION 2. Ordinance No. G-973 and any ordinances or parts of ordinances inconsistent herewith are cancelled and repealed and shall no longer be in effect after the effective date of this ordinance.

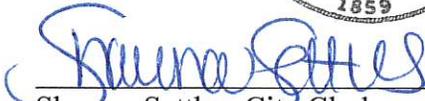
SECTION 3. This Ordinance shall take effect and be in force on the first day of the first month after its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper.

**PASSED BY THE GOVERNING BODY OF THE CITY OF JUNCTION CITY, KANSAS,
ON MARCH 15, 2016 AND SIGNED BY THE MAYOR.**




Mick McCallister, Mayor

ATTEST:


Shawna Settles, City Clerk