

ORDINANCE NO: 3824

**AN ORDINANCE GRANTING TO THE VICTORY ELECTRIC
COOPERATIVE ASSOCIATION, INC., A KANSAS ELECTRIC
COOPERATIVE, A FRANCHISE TO PROVIDE ELECTRIC SERVICES**

WITHIN THE CITY OF DODGE CITY, KANSAS

BE IT ORDAINED BY THE CITY COMMISSION OF DODGE CITY, KANSAS:

ARTICLE 1: DEFINITIONS

1.1 "City" refers to the City of Dodge City, Kansas, a municipal corporation.

1.2 "Company" refers to The Victory Electric Cooperative Association, Inc., a Kansas electric cooperative corporation.

1.3 "Commission" refers to the governing body of the City.

1.4 "Facilities" refers to and are all facilities reasonably necessary to provide electric energy within and through the City other than the distribution facilities.

1.5 "Overhead to Underground Conversion" refers to and is the process of converting overhead electric distribution facilities to underground facilities.

1.6 "Public Easements" refers to public and dedicated easements and all rights owned or utilized by the City for utility or travel purposes.

1.7 "Relocation" refers to and is the movement of facilities from one location to another within the City in public easements or streets and other public places.

1.8 "Residents" refers to and includes all persons, business, industry, governmental entities or agencies, and any other entity presently located in whole or in part, within the city limits or within the limits of the City as the same may be expanded during the term of the franchise agreement.

1.9 "Gross Receipts" refers to the amounts of money which the Company receives from its customers within the City from the sale of electric energy to customers within the City.

1.10 "Streets and Other Public Places" refers to and are streets, alleys, viaducts, bridges, roads, lanes, parks, and other public places within the City.

1.11 "Industrial Consumers" refers to those consumers which have a metered demand Of 1200 KW or more.

ARTICLE 2: GRANT OF FRANCHISE

2.1 Grant of Franchise. The City hereby grants to Company, for the period specified, and subject to the terms and conditions herein, a non-exclusive franchise (the "Franchise") to furnish, sell and distribute electricity to the City and all residents of the City, and to transmit electricity through the City and beyond the limits of the City, and to do all things necessary for the provision of electric service within the City limits as now constituted and such additional area that may be added to the City by annexation or otherwise.

2.2 Notice of annexations. The City shall provide actual notice of additions or contractions to the City limits. Notice will include a certified copy of the annexation ordinance, proof of publication of the annexation ordinance as required by law and a map of the City detailing the annexed area. The Company shall have thirty (30) days from the date of the notice to adjust its billings to add or delete a franchise fee to the affected customers.

2.3 Street Lighting and Signaling. The Company shall provide street lighting within the City as reasonably requested by the City. The Company shall maintain the street lighting equipment in good repair. The Company will be compensated for the street lighting service through electric charges and rental fees in effect at the initial date of this Franchise, which may be increased based upon cost of service at five (5) year intervals from the date of this Franchise. If the City and the Company shall disagree upon the proposed adjustment, each of them shall have the right to utilize an independent cost of service consultant, and the average of the two (2) opinions shall determine whether an increase should occur and, if so, the amount of such increase.

The City shall provide all traffic signals at the expense of the City and the same shall be metered and billed the same as other electrical service received by the City.

2.4 Term of Franchise. The term of this Franchise shall be from November 4, 2024 to November 4, 2044.

ARTICLE 3: FRANCHISE FEE

3.1 Franchise Fee. In consideration for the grant of this Franchise, the Company shall pay to the City a sum equal to five percent (5%) of the gross receipts received by the Company from the sale of electricity within the City.

3.2 Exemptions. The City shall have the right to make and provide exemptions from the Franchise Fee to existing or new Industrial Consumers. The City may elect to make or provide existing or new Industrial Consumers with a modified franchise fee rate,

not to exceed 5% upon written notice to the Company. The sale of electricity to the City is exempt from payment of the Franchise Fee. No new categories of exemptions outside of the Industrial Consumers will be created without the mutual agreement of the City and the Company.

3.3 Payment Schedule. The Company shall remit the Franchise Fee within thirty (30) days following the close of the month for which payment is to be made. Payment shall be made to the City and sent to the City Clerk.

3.4 Audits. The Company shall maintain adequate records of billings and payments under the Franchise which shall be open to inspection by the City, or the City's auditors, at reasonable times with reasonable notice. The City may request an audit by a professional third-party auditor once during any five (5) year interval, and if it is determined that the Franchise Fees paid to the City were underpaid by more than ten percent (10%) within the most recent calendar year covered by the audit period, the Company shall pay one-half (1/2) of the third party audit expense.

If the audit reveals revenues which are due to the City under the terms of the Franchise, the company shall make payment of the amount due to the City within ninety (90) days the completion of the audit. Overpayments by the Company shall be reimbursed to the Company within ninety (90) days.

ARTICLE 4: CONSTRUCTION AND DESIGN

4.1 NESC Standards. The Company shall design, construct and maintain its electric system in accordance with the National Electric Safety Code (NESC).

4.2 Maintenance. The Company shall maintain its electric system such that electric service be reliable and adequate to customers without undue interruption, recognizing however, that the Company may experience extraordinary interruptions in its wholesale power supply, and that weather related or accidental outages may occur as a result of extraordinary events outside of the control of the company. The Company shall immediately seek to restore any and all interruptions in service which may occur, consistent with the safety of the agents, employees and customers of the Company.

The Company shall regularly trim, cut and/or remove trees and shrubbery which, in the Company's sole discretion, interferes with the safe and reliable use of the Company's electric system and Facilities.

4.3 Minimal Interference. The Company shall install and maintain Facilities so as to minimally interfere with the lawful use of Public Easements.

4.4 Excavations and Construction. All excavation and construction shall be performed to minimize inconvenience to the City and to the public. To the extent possible, the Company and the City shall cooperate in excavation, maintenance and construction

activities to minimize the effect upon the Facilities operated by each of them. After excavations are completed, the Company shall restore the surface of the excavation area to the prior grade and condition as nearly as reasonably possible.

The City and the Company agree to give notice to each other before the commencement of construction or excavation activities upon streets, alleys and public places which may impact or affect the Facilities of each other, and allow inspection by each other, if requested.

The City and the Company shall cooperate and mutually agree on the location and engineering of newly constructed Facilities with due regard to the costs and objectives of each of them.

4.5 Relocation. Any relocation of the Company's Facilities caused or occasioned by a City project shall be at the expense of the Company. If the City requests Overhead to Underground Conversion, the installation cost of said Conversion shall be borne by the City. Any relocated Facilities that were originally underground shall be relocated as underground Facilities by the Company.

4.6 New Service Locations. The Company shall extend service to new locations when requested at the earliest practical time in accordance with and based upon the Company's extension and cost of service policies which are then in effect.

Any newly constructed electrical service lines to new residential service locations will be placed underground with the cost based upon the Company's extension and cost of service policies which are then in effect.

4.7 Overhead to Underground Conversion. The Company agrees to cooperate with the City in a program and a work plan to convert Distribution Facilities and other Facilities to underground, provided that any schedule or work plan will be developed through joint meetings between the Company and the City, and the schedules and work plans will contain reasonable scope and timing requirements. The cost of Overhead to Underground Conversion over and above the cost of typical overhead service shall be paid by the City or by the customer based upon the Company's extension and cost of service policies which are then in effect.

ARTICLE 5: USE OF COMPANY FACILITIES BY OTHERS

5.1 Use by the City. If the Company installs new electric underground conduit, opens a trench, or replaces conduit, the Company shall provide adequate notice to permit additional installation of similar conduit or pull-wire by the City or its contractors, or, in the alternative, the Company may elect to install the additional Facilities for the City. The City shall bear the cost of additional installations made for the benefit of the City, unless

the Company shall elect to install the City Facilities, in which case the City shall pay for materials and the Company shall bear the responsibility of the other installation costs.

The Company will consider allowing the City to use easements that were privately granted to the Company if the easement grant permits such use, so long as the use by the City does not impair the Company's use of the easements.

5.2 Use by Third Parties. The Company may allow third parties holding a franchise from the City (but not including electric service providers) to utilize its poles or other structures upon terms and conditions and for such compensation to be agreed upon between the Company and the third party. Compensation paid by a third party will be retained by the Company. The Company will not be required to pay any additional expense for such use, and all agreements between the Company and third party users shall conform to construction and maintenance standards established by the Company. The Company shall not be required to permit any use that will interfere with Company's use of such facilities.

ARTICLE 6: INDEMNIFICATION

6.1 Liability. The Company shall construct, maintain and operate its Facilities in a manner which provides reasonable protection against injury or damage to persons or property, provided, however; the obligation of the Company hereunder shall not increase or decrease its liability on third-party claims, and provided further that the Company's obligation to the City shall not be diminished by such exception. The Company shall save and hold the City harmless from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses arising out of the negligent operations of the Company within the City and the securing of and the exercise by the Company of the franchise rights granted in this ordinance, including any third-party claims, administrative hearings and litigation. The Company will not be obligated to hold harmless or indemnify the City for claims or demands to the extent arising out of or in connection with any negligent act or failure to act of the City or any of the City's officers or employees.

ARTICLE 7: SALE, TRANSFER OR CONDEMNATION

7.1 Assignment of Franchise. The Company shall not assign or transfer its franchise rights without approval of the City. This provision shall not apply to reorganization or mergers which do not result in a change of control of the Company.

7.2 Nothing in this Franchise shall modify or limit the rights of the City under Kansas law to purchase assets or condemn electrical services, property or Facilities within the City.

ARTICLE 8: DISPUTE RESOLUTION

8.1 Forfeiture. The Company and the City recognize that there may be circumstances where compliance with the provisions of this Franchise is impossible or delayed because of circumstances beyond the Company's control. The Company and the City further recognize that there may be claims of breach or non-compliance by either of them concerning performance under this Franchise. In those circumstances the Company shall have a reasonable time, not exceeding six (6) months, in which to remedy any alleged violations. If the Company and the City cannot agree to remedies for a claimed violation, the Company and the City agree that they will submit to mediation to be conducted by a practicing mediator with experience in commercial disputes, which shall be held in Dodge City, Kansas. The expense of the mediation shall be divided between the Company and the City, however, each of them shall pay their own attorney fees and costs of preparation.

8.2 Judicial Review. If mediation fails to resolve a dispute between them, the Company and the City shall be free to petition for relief in the District Court of Ford County, Kansas,

8.3 Continued Service. During mediation proceedings, and unless and until the District Court shall order otherwise, the Company shall continue to provide service under the terms of this Franchise until final resolution of the forfeiture declaration.

ARTICLE 9: RULES AND POLICIES OF THE COMPANY

9.1 Rules and Policies. The Company will have the right to make reasonable rules and regulations binding or affecting the customers and contractors of the Company for the protection of its property, for the prevention of loss and waste in the conduct and management of its business, and for the sale and distribution of electricity, including rules and regulations with reference to extensions or additions to its electric distribution system, as from time to time is deemed necessary. Those rules and regulations will be furnished to the City.

9.2 State and Federal Regulation. The Company is partially regulated by various federal and state agencies. The Company shall comply with all such regulation, and to the extent such regulation conflicts with this Franchise, the state and federal regulation will prevail.

9.3 Cooperative Governance. The Company is organized and operated as a cooperative, of which the City and all electric customers are members. Nothing in this Franchise will modify the rights of the Company or its members under the Company's articles of incorporation and bylaws.

ARTICLE 10: AMENDMENTS

10.1 Amendments to Franchise. At any time during the term of this Franchise, the City, acting through the Commission, or the Company may propose amendments to this

Franchise by giving thirty (30) days written notice to other of the proposed amendments. The parties will negotiate in good faith in an effort to agree on mutually satisfactory amendments.

10.2 Five Year Review. The City, during the year 2029 and every fifth year thereafter during the term of this Franchise, upon giving sixty (60) days' notice to the Company of its intention to do so, may reconsider the consideration to be paid by the Company as a franchise fee. If the City decides that the franchise fee should be increased or decreased, it shall provide for such increase or decrease by ordinance. The Company agrees to pay the franchise fee established by ordinance by the City, provided that the franchise fee may not exceed any maximum established by State statute or regulations.

ARTICLE 11: MISCELLANEOUS

11.1 Third Parties. Nothing contained in this Franchise will be construed to provide rights to third parties. Nor is this Franchise intended to establish or provide rights to any third party, known or unknown.

11.2 Representatives. The Company and the City may designate representatives for communication and negotiation under this Franchise. The City Manager and the CEO of the Company will be the contact persons in the event disputes cannot be resolved between the designated representatives. The Company is ultimately controlled by a Board of Trustees and the City acts by its City Commission, and all amendments to the Franchise must be approved by such governing bodies.

11.3 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions shall remain effective unless a valid forfeiture shall be decreed by a court of jurisdiction.

ARTICLE 12: FORCE MAJEURE

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Company's or the City's control.

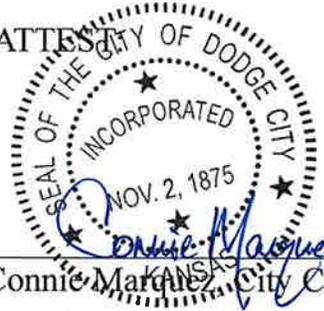
ARTICLE 13: VENUE AND GOVERNING LAW

This franchise contract is made under and in conformation with and is subject to the laws of the State of Kansas

ARTICLE 14: This ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper, and payment to the City of the costs of publication of this ordinance pursuant to K.S.A. (2019 Supp.) 12-2001 (b)(6) and a one-time application fee for reimbursement of the actual legal expenses incurred by the City for the review and approval of this contract franchise pursuant to K.S.A. (2019 Supp.) 12-2001(g).

PASSED BY THE GOVERNING BODY, this 4th day of November, 2024, for the City of Dodge City, Kansas.

ATTEST



Connie Marquez
Connie Marquez, City Clerk

Charles Taylor
Charles Taylor, Mayor

APPROVED AS TO FORM:

Paige Bangerter Gilmore
Paige Bangerter Gilmore, City Attorney

Shane Lauer
The Victory Electric Cooperative Assoc., Inc.