

Ordinance No. 1350

**An Ordinance granting Prairie Land Electric Cooperative, Inc., as agent for  
Mid-Kansas Electric Company, LLC.,  
its lessees, successors and assigns,  
an electric franchise and the authority  
to construct, operate, maintain, and extend  
an electric distribution plant and system,  
and granting the right to use the streets, alleys, and other public places  
within the present or future corporate limits  
of the City of Phillipsburg, Kansas**

Be it ordained by the Governing Body of the City of Phillipsburg, Kansas, as follows:

**FRANCHISE GRANTED**

The Governing Body of the City of Phillipsburg, Kansas (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Prairie Land Electric Cooperative, Inc., as agent for Mid-Kansas Electric Company LLC., (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, install, maintain, operate and extend in, along and across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, an electric distribution system and all facilities necessary for the production, transmission and distribution of electrical power and energy for the purpose of carrying on a general power and light business and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of electric power and energy from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, poles, transmission lines, distribution lines, anchors, guy wires, cables, conduits, street lighting poles, transformers and all other apparatus and appliances necessary or incident thereto for all purposes for which it may be used, and to do all other things necessary and proper in providing electric service to the inhabitants of Grantor and in carrying on such business.

**TERM**

The rights and privileges granted hereunder shall remain in effect for a period of twenty (20) years from the effective date of this Ordinance.

**FRANCHISE FEES OR TAXES**

In exchange for the franchise granted herein, Grantee shall collect from its electric customers located within the corporate limits of Grantor and pay to Grantor an amount equal to **four percent (4%)** of gross receipts Grantee derives from the sale, distribution or transportation of electricity delivered within the present or future limits of Grantor. The Grantor may make further adjustments in the franchise fee, from time to time. Gross receipts as used herein are revenues received from the sale, distribution or transportation of electricity, after adjustment for the net write-off of uncollectible accounts and

corrections of bills theretofore rendered. The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other fees, charges, taxes or assessments which the Grantor may impose for the privilege of doing business within the present or future corporate limits of Grantor, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Grantor imposes any such fee, charge, tax or assessment, the payment to be made by Grantee in accordance with this section shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the present or future corporate limits of Grantor shall not be deemed to affect Grantee's obligations under this section.

Grantee shall report and pay any amount payable under this section on a semi-annual basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance.

Grantee shall list the franchise fee collected from customers as a separate item on bills for utility service issued to its customers. If at any time the Kansas Corporation Commission or other authority having proper jurisdiction prohibits such recovery, Grantee will no longer be obligated to collect and pay the franchise fee. In addition, Grantee may reduce the franchise fee payable for electricity delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within Grantor's corporate limits. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later of: (a) sixty (60) days after Grantee's receipt of the annexation ordinance pertaining to such area, or (b) such time as is reasonably necessary for Grantee to identify the customers in the annexed area obligated to pay the franchise fee.

Grantor shall have access to and the right to examine, during normal business hours, such of Grantee's books, receipts, files, records and documents as is necessary to verify the accuracy of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by Grantee to Grantor.

## **GOVERNING RULES AND REGULATIONS**

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be

vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken so as to allow Grantee to be made economically whole. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

#### **PROVISION FOR INADEQUATE ENERGY SUPPLIES**

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or the supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

#### **CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES**

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee a sufficient length of time in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

### **TREE TRIMMING**

Grantor grants Grantee the right, permission and authority to trim and remove trees upon, over, across and along all of the streets, alleys, avenues, bridges, public rights-of-way and public places of Grantor.

### **STREET LIGHTING**

Grantee will furnish, erect, maintain, clean, repair and operate, in accordance with the street lighting tariffs as approved from time to time by the Kansas Corporation Commission, street lights within the corporate limits of Grantor. Grantor will receive and pay for the street light service at the rates stipulated in the tariff.

Grantor may, from time to time, cause the number of street lights to be increased by making written request to Grantee, stating the number, capacity, and location desired. Such request is to be made at least ninety (90) days prior to the time such additional street lights are required by Grantor. However, Grantee has the right to refuse requests for additional street lights made less than one year before expiration of this Ordinance.

### **EXTENSION OF GRANTEE'S FACILITIES**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor; provided however, that nothing in this Ordinance shall require Grantee to install new facilities underground. In the event that Grantor shall order or request Grantee to install facilities underground along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing new facilities underground. No obligation shall extend to, or be binding upon, Grantee to install new facilities underground unless Grantee is able to obtain an easement for such facilities on private property adjacent to the public right-of-way.

### **RELOCATION OF GRANTEE'S FACILITIES**

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference and is not merely for the convenience of the Grantor; provided however, that nothing in this Ordinance shall require Grantee to relocate facilities underground. In the event that Grantor shall order or request Grantee to install facilities underground along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing facilities underground. No obligation shall extend to or be binding upon Grantee to install facilities underground unless Grantee is able to obtain an easement for such facilities on private property adjacent to the public right-of-way. If Grantor orders or requests Grantee to relocate its facilities or

equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and is not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of-way until it receives the reasonable cost of relocating the same and Grantor provides a reasonable alternative location for such facilities.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense of moving Grantee's facilities and equipment in such location, and any damages incident thereto.

#### **CONFIDENTIAL INFORMATION**

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

#### **FORCE MAJEURE**

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its

obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

### **HOLD HARMLESS**

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or appliances; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

### **SUCCESSORS AND ASSIGNS**

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

### **NO THIRD PARTY BENEFICIARIES**

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

### **SEVERABILITY**

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

### **NON-WAIVER**

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

### **REPEAL CONFLICTING ORDINANCES**

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 1176 of the City of Phillipsburg, Kansas, is hereby repealed as of the effective date hereof.

### **EFFECT AND INTERPRETATION OF ORDINANCE**

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

**EFFECTIVE DATE AND ACCEPTANCE**

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon Grantee's acceptance by written instrument, within sixty (60) days of passage by the Grantor and filing with the Clerk of the City of Phillipsburg, Kansas. The Clerk of the City of Phillipsburg, Kansas, shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

Passed and approved by the Governing Body of the City of Phillipsburg, Kansas, this 3rd day of November 2008.

  
Mayor

Attest:

  
Clerk of the City of Phillipsburg, Kansas

Acceptance by Prairie Land Electric Cooperative, Inc.  
of the terms and provisions of Ordinance No. 1350  
of the City of Phillipsburg, Kansas,  
granting a franchise to said company.

Prairie Land Electric Cooperative, Inc., hereby accepts for itself, its successors and assigns, all of the terms, conditions and provisions of Ordinance No. 1350, passed by the governing body of Phillipsburg, Kansas, on the 3rd day of November, 2008, granting a franchise to Prairie Land Electric Cooperative, Inc.

IN WITNESS WHEREOF, Prairie Land Electric Cooperative Inc., has caused these documents to be executed by the General Manager, on this 3rd day of November, 2008.

Prairie Land Electric Cooperative, Inc

By Allen Miller  
General Manager

Received this 3<sup>rd</sup> day of November, 2008.

City of Phillipsburg, Kansas

By Brenda J. Chance  
City Clerk

C E R T I F I C A T E

State of Kansas                    )  
  )  
County of Phillips            )

I, \_\_\_\_\_, the duly qualified and acting City Clerk of the City of Phillipsburg, in said County of Phillips, and the official custodian of the records of the said City, do hereby certify that the foregoing is a true, correct and complete copy of Ordinance No. 1350 passed in the manner required by law at a meeting of the Governing Body, of said municipality, held on the 3rd day of November, 2008, approved and signed on the 3rd day of November, 2008, and recorded on the 3rd day of November, 2008, as said ordinance appears from the records in my office; that the vote of the Governing Body on said ordinance as cast and recorded on the records in my office was as follows:

For the Ordinance: Rod Jones \_\_\_\_\_  
John R. Mills \_\_\_\_\_  
Fred E. Robinson \_\_\_\_\_  
Michael Jones \_\_\_\_\_  
David Rippe \_\_\_\_\_

Against the Ordinance:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Given under my hand and the corporate seal of said municipality this 3rd day of November, 2008.

Attest: Brenna J. Chance  
City Clerk