

PUBLIC NOTICE

(Published in The Rush County News on Wednesday, August 27, 2025.)

Ordinance No. 2025-01

AN ORDINANCE GRANTING WESTERN CO-OPERATIVE ELECTRIC ASSOCIATION, INC., ITS 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 AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF LIEBENTHAL, KANSAS.

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

FRANCHISE GRANTED

The City of Liebhenthal, Kansas (hereafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Western Cooperative Electric Association, Inc., (hereinafter called "Grantee"), its lessees, successors, and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, maintain, operate and extend in 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, and electric distribution system and all facilities necessary for the projection, 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 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. Grantor further 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.

TERM

The rights and privileges granted by this Ordinance shall take effect at 12:00am on Apr 1, 2025, and remain in effect for a period of twenty (20) years. This franchise shall terminate at 11:59pm on Mar 31, 2045, unless Grantor and Grantee agree to extend this Ordinance in writing prior to such date.

FRANCHISE FEES

In exchange for the franchise granted herein, Grantee shall collect from its customers, but not from the City of Liebhenthal, located within the corporate limits of the City of Liebhenthal, and pay to Grantor an amount equal to five percent (5.0%) of Gross Receipts (as hereinafter defined) derived from the sale, distribution or transportation of electricity delivered within the present or future limits of Grantor. Gross Receipts as used herein are those amounts of money, which the Company receives from the sale of electricity within the City of Liebhenthal under rates authorized by tariffs approved by the Grantee's Board of Directors, as adjusted for refunds, net write-offs of uncollectable accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments including, by way of example, but not limited to purchase capacity cost adjustments, fuel cost adjustments, transmission cost adjustments (or other adjustments) pursuant to federal or state regulation.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees, street cut permits, or taxes which the Grantor may impose for the rights and privileges herein granted or for the privilege of doing business within the City of Liebhenthal, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Grantor, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the City of Liebhenthal shall not be deemed to affect the obligation of the Grantee under this section. Any consideration hereunder shall be reported and paid by electronic transfer to the Grantor by Grantee on a monthly basis. Such payment shall be made not 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 portion of the period at the beginning and end of the term of this Ordinance.

Grantee shall list the local franchise fee collected from its customer as a separate item on bills for utility service issued to customers. If at any time the Kansas Corporation Commission, or other authority having proper jurisdiction, prohibits such recovery, then Grantee will no longer be obligated to collect and pay the franchise fee herein contemplated.

Grantor shall provide ninety (90) days' notice of changes to territorial boundaries of the City of Liebhenthal, including, but not limited to, additions, enlargements, modifications, reductions, and abandonments. Upon consummation of any of the aforementioned, Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City. To the extent permitted by law, Grantee shall be authorized to extend service to City residents in any expanded or additional areas at the earliest practicable time. Service to the expanded or additional areas shall be in accordance with the terms of Grantee's tariffs and this Ordinance, including the payment of franchise fees.

Grantor shall have access to and the right to examine during normal business hours, those of Grantee's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. The Grantor may, at any time, conduct its own audit at its own expense and Grantee shall cooperate fully, including, but not necessarily limited to, providing the Grantor's auditor with information reasonably necessary to complete the audit. 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 30 days of recalculation and any over-payment by Grantee shall be discounted from the next payment(s) due. If any audit conducted pursuant to this section concludes that the Grantee has underpaid the Grantor by two percent (2%) or more, in addition to the obligation to pay such amounts to the Grantor, the Grantee shall also pay all costs of the audit.

GOVERNING RULES AND REGULATIONS

This Ordinance is granted 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. Grantor and Grantee acknowledge the jurisdiction of the Western Cooperative Electric Association, Inc. Board of Trustees over the Grantee's electric retail rates, rules, and regulations. Service to the Grantor shall be provided at the rates set forth in the Grantee's Board-approved tariff as the same may be amended from time to time. No charges to the Grantor by the Grantee for service shall exceed the lowest charge for similar service or supplies provided by the Grantee to any other similarly situated member of the Grantor. 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 rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If any 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 supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provide 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 COMPANY 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 to the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good condition as existed immediately prior to excavation.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment 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 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 affect 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 this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities.

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 Board of Trustees of Grantee, electric 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 streetlights to be increased by making written requests to Grantee, stating the number, capacity, and location desired. Such request is to be made at last ninety (90) days prior to the time such additional streetlights are to be required by Grantor.

EXTENSION OF COMPANY 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, nothing in this franchise shall require Grantee to install new facilities underground, or modify any existing facilities by installing all or a portion of such 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, any property owned by Grantee in fee, or any privately-held easements or licenses held by Grantee, 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 adjoining private property that is adjacent to the public right-of-way.

RELOCATION OF COMPANY 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, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee; provided however, that nothing in this franchise shall require Grantee to relocate facilities underground; provided, further, that nothing shall require Grantee to relocate Grantee facilities located on property owned by Grantee in fee or on privately-held easements or licenses held by Grantee. In the event that Grantor shall order or require 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 adjoining private property adjacent to the public right-of-way.

ing 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 (as hereinafter defined), 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 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. "Private Project" refers to (1) any public work or improvement within the City of Liebhenthal that is wholly or beneficially owned or leased by the City of Liebhenthal or an enterprise of the City of Liebhenthal, or which is being acquired by the City of Liebhenthal or enterprise of the City of Liebhenthal under a capital lease or purchase agreement; or (2) any public work or improvement within the City of Liebhenthal where fifty percent (50%) or more of the funding is provided by any combination of the City of Liebhenthal, any enterprise of the City of Liebhenthal, the federal government, the State of Kansas, or Rush County; or (3) a relocation project necessitated or reasonably required by changes to, or realignment of, any road system or utility system owned by the City of Liebhenthal or by any City of Liebhenthal enterprise. Grantor shall consider reasonable alternatives in designing its Public Projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

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 to Grantee sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

FORCE MAJEURE

It shall not be a breach or default under this franchise 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 any other causes, whether of the kind herein enumerated or otherwise not reasonably with 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 reasonably possible once it occurs in order to resume performance; provided however, that this provision shall not obligate a party to settle any labor strike.

INDEMNIFICATION; LIMITATION OF LIABILITY

Subject to the limitations of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.) and as otherwise permitted under Kansas law, Grantor and Grantee shall each indemnify, hold harmless and defend each other, their affiliates, agents, servants, contractors, employees, officers, and directors from and against any and all costs and expenses for any third party claims, including but not limited to reasonable attorney fees, court costs, and all other amounts which the indemnified party, its affiliates, its agents, servants, contractors, employees, officers, and directors are or may become obligated to pay on account of any and all demands, claims, liabilities or losses to the extent directly caused by the negligence or willful misconduct of the indemnifying party, its agents, servants, employees, officers or directors in connection with or arising out of this Agreement, whether such demands, claims, liabilities or losses are for damages to property, including property of the Grantor or Grantee, or for injury or death of any person, including agents, servants, employees, officers or directors of the Grantor or Grantee.

In no event shall Grantor or Grantee be liable for any incidental, consequential, punitive, special exemplary or indirect damages, lost of revenues or profits, arising out of, or connected in any way with its performance or non-performance under this Agreement, except for the indemnification obligations set forth in this Indemnification; Limitation of Liability section.

INSURANCE

Both Grantor and Grantee (each a "Party") shall, at their own expense, maintain in force throughout the term of this Ordinance and as provided below, the following minimum insurance coverages, with Grantor's purchased under and pursuant to K.S.A. 75-6111 and with no exceptions for Kansas Tort Claims Act claims, with insurers authorized to do business in Kansas:

Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards (if applicable), independent contractors coverage, coverage for pollution (if exposure is present) and punitive or exemplary damages, with minimum limits of One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (2,000,000) general aggregate and Two Million Dollars (\$2,000,000) products and completed operations aggregate combined single limit for personal injury, bodily injury, including death and property damage. Such Commercial General Liability Insurance shall name the other Party, its respective directors, officers, agents, servants and employees

("Other Party Group") as additional insured.

Such Commercial General Liability Insurance policy shall be maintained in full force and effect for two (2) years after termination of this Ordinance, which coverage may be in the form of tail coverage or extended reporting coverage if agreed to by both Grantor and Grantee.

Within ten (10) days following the effective date of this Ordinance, and as soon as practicable after the end of each fiscal year or at the renewal of the Commercial General Liability Insurance policy and in any event within ninety (90) days thereafter, Grantor and Grantee shall each provide certification of the insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer to the Other Party Group.

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 franchise shall not be construed as a waiver of any future defaults, whether of like or different character. Neither Grantor nor Grantee shall be excused from complying with any of the terms and conditions of this Ordinance by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

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 this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 120 of the City of Liebhenthal, Kansas, is hereby repealed as of the effective date hereof.

EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and publication by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee delivering its acceptance, by written instrument to Grantor within sixty (60) days of passage of the Ordinance by the Governing Body of Grantor. Upon final passage and approval of the Ordinance by Grantor, the Grantee shall file its written acceptance with the City Clerk of the City of Liebhenthal, Kansas. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. When written acceptance has been received by Grantor from Grantee, the effective date of the Ordinance shall be the date on which the Ordinance was first published in accordance with applicable laws and regulations. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to terms or provisions therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

CONTINUATION OF UTILITY SERVICE

In the event this franchise is not renewed or extended at the expiration of its term or is terminated for any reason, and Grantor has not provided for alternative utility service, the Grantee shall have no right to discontinue service or to remove any of Grantee's facilities and the Grantor shall have no right to require the removal of Grantee's facilities, except as provided in this franchise and under applicable law, unless otherwise ordered or permitted by the Kansas Corporation Commission or a Court of competent jurisdiction, and Grantee shall continue to provide services provided for in this franchise within the City of Liebhenthal until the Court or Kansas Corporation Commission determines how the City will obtain its utility service. The Grantee further agrees that it will not withhold any temporary services provided for in this franchise necessary to protect the public except as permitted under its tariffs, and rules and regulations. The Grantor agrees that under the circumstances described in this section, the Grantee shall be entitled to monetary compensation as provided in Grantee's tariffs and the Grantee shall be entitled to collect from residents of the City of Liebhenthal and shall be obligated to pay the Grantor, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Grantee would have paid as a franchise fee as consideration for use of the Grantor's streets. Only upon receipt of written notice from the Grantor stating that the Grantor has adequate alternative service of the type provided for in this franchise for its residents and upon order of the Kansas Corporation Commission shall Grantee be allowed to discontinue the provision of the services provided for in this franchise to Grantor and its residents.

AMENDMENTS

This Ordinance may only be amended by a written instrument duly executed by both Grantor and Grantee.

NOTICES

Any notices required to be given hereunder shall be sent to the following:

If Grantee:

Western Cooperative Electric Association, Inc.
General Manager
635 S. 13th St.
WaKeeney, KS 67672

If Grantor:

City Clerk
City of Liebhenthal
202 Birch
Liebhenthal, KS 67553

AUTHORITY

Grantor and Grantee represent and warrant that each has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, by-laws, or applicable law, to legally authorize the undersigned signatories to execute this Ordinance and an acceptance thereof on behalf of the parties and to bind the parties to its terms. The persons executing this Ordinance and an acceptance thereof on behalf of each of the parties warrant that they have full corporate authorization to execute such documents.

THIRD PARTIES

Nothing contained in this Ordinance shall be construed to provide rights to any third parties.

Passed and approved by the Governing Body of the City of Liebhenthal, Kansas, on this 10th day of February, 2025.

/s/ Darrell Warner
Mayor

(SEAL)
ATTEST:
Beverly A. Stark
City Clerk

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