

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Osage)
Valley Electric Cooperative Association and)
The City of Harrisonville, Missouri for Approval)
Of a Written Territorial Agreement Designating) File No. _____
The Boundaries of each Electric Service Supplier)
Within the City of Harrisonville, Cass County,)
Missouri.)

JOINT APPLICATION FOR APPROVAL OF TERRITORIAL AGREEMENT

COME NOW Osage Valley Electric Cooperative Association ("Osage Valley") and the city of Harrisonville, Missouri ("Harrisonville") (collectively, Applicants), by and through their respective counsel, and for their Joint Application to the Missouri Public Service Commission (the "Commission"), pursuant to 4 CSR 240-2.060, 4 CSR 240-3.130, and RSMo. §394.312 and §416.041, for an order approving Applicants' Joint Application for Approval of Territorial Agreement (Agreement), respectfully state as follows:

Applicants

1. Osage Valley is a rural electric cooperative organized and existing under the laws of Missouri with its principal office at 1321 Orange St, Butler, Missouri 64730. Osage Valley is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri counties. Osage Valley has no pending action or final judgments or decisions against it from any state or federal agency or court that involve its customer service or rates within the three years immediately preceding the filing of this Joint Application. Osage Valley has no overdue annual report or assessment fees. A copy of a Certificate of Good Standing from the Office of the Missouri Secretary was filed with the Commission in Case No. EO-2021-

0339 and is incorporated herein by reference.

2. Harrisonville is a Missouri fourth class municipality existing pursuant to §79.010 RSMo, with its principal office and place of business at Harrisonville City Hall, 300 E. Pearl Street, Harrisonville, MO. 64701. Harrisonville is engaged in the business of providing electrical services to customers in its municipal service area. Harrisonville has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or its rates, which have occurred within the three years immediately preceding the filing of this Joint Application. Harrisonville has no overdue annual report or assessment fees.

Correspondence and Communication

3. Correspondence, communications, and orders in regard to this Joint Application should be directed to:

Alex C. Felzien
Mauer Law Firm, PC
1100 Main Street, Suite 2100
Kansas City, MO 64105
16.759.3300 (telephone)
Email: afelzien@mauerlawfirm.com

Megan E. McCord
Friel, McCord & Smiley, LLC
P.O. Box 14287
Springfield, MO 65814
417-227-8405 (telephone)
e-mail: mmccord@reclawfirm.com

The Territorial Agreement

4. **The Territorial Agreement.** Subject to the terms and conditions of the Agreement, Applicants have specifically designated the boundaries of the exclusive electric service area of each electric service supplier for service of new structures in portions of Cass County, which are more particularly described in the Territorial Agreement. Applicants have attached a copy of the Territorial Agreement to this Application as **Appendix B**. The impetus for this Agreement is a request by MoDOT to

serve new facilities to be installed within the city limits of Harrisonville to which Harrisonville desires Osage Valley provide electric service.

5. **Service Areas.** A map of the boundary established between the Applicants' service areas is part of Appendix B and are incorporated herein by reference.

6. **Authority to Serve in Proposed Areas.** Osage Valley is authorized to serve the areas it is proposing to serve in the Agreement, incorporated rural areas of Cass County, Missouri under Sections 394.080 and 394.312 RSMo.

7. **Change of Supplier.** The Agreement does not require transfer of any facilities or customers between the parties, so no list of structures and persons whose utility service would be changed by the Addendum, as required by 4 CSR 240-3.130(1)(E), is included.

8. **Other Electric Suppliers.** To Applicants' knowledge and belief, there are no other electric suppliers serving in the areas covered by this Agreement.

9. **Public Interest.** The Agreement is not detrimental to the public interest. It is affirmatively in the public interest because it will ensure reliable electric service for the affected area. The change also achieves operational efficiencies and reduces utility duplication. Thus, the proposed change of supplier is in the public interest for reasons other than a rate differential.

10. **Scope of Agreement.** Osage Valley will continue to have service responsibilities beyond the boundaries of the Agreement unaffected by the terms of the Agreement. Harrisonville will continue to have service responsibilities beyond the boundaries of the Agreement unaffected by the terms of the Agreement. This Agreement does not bind or detrimentally affect non-parties.

11. **Application Fee.** The Commission's fee required by 4 CSR 240-3.130 is submitted herewith.

WHEREFORE, Applicants respectfully request that the Commission issue its report and order:

- (a) Finding that the designation of electric service areas is not detrimental to the public interest and approving the Applicants' Territorial Agreement;
- (b) Granting Applicants full administrative authority to perform in accordance with all of the terms and conditions of their Agreement, presented as **Appendix B** to this Joint Application; and
- (c) Ordering all further relief and actions as necessary or convenient to implement said agreement.

Respectfully submitted,



Megan E. McCord, #62037
Friel, McCord & Smiley, LLC
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Springfield, MO 65814
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Email: mmccord@reclawfirm.com
ATTORNEY FOR OSAGE VALLEY
ELECTRIC COOPERATIVE

/s/ Alex C. Felzien

Alex C. Felzien, #70054
Mauer Law Firm, PC
1100 Main Street, Suite 2100
Kansas City, MO 64105
816.759.3300 (telephone)
Email: afelzien@mauerlawfirm.com

ATTORNEY FOR THE CITY OF
HARRISONVILLE

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Joint Application was served by electronic mail or U.S. Mail, postage prepaid, this 27th day of June, 2023 upon the following:

Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, Missouri 65102
staffcounsellservice@psc.mo.gov

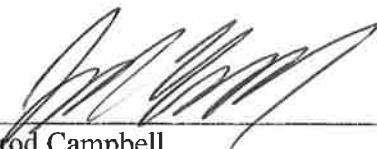


Megan E. McCord

VERIFICATION


STATE OF MISSOURI)
) ss
COUNTY OF Bates)

Being first duly sworn, Jarrod Campbell states as follows: that he is the General Manager of Osage Valley Electric Cooperative; that he has read the foregoing Application; that the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief; and, that Megan E. McCord of Friel, McCord & Smiley, LLC is authorized by Osage Valley Electric Cooperative, Inc. to make this filing and represent it in this matter.



Jarrod Campbell

Subscribed and sworn to before me this 25th day of May, 2023.



Notary Public

TAMARA S WEST
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES FEBRUARY 28, 2026
BATES COUNTY
COMMISSION #14941734

VERIFICATION

STATE OF MISSOURI)


)ss

COUNTY OF Cass)

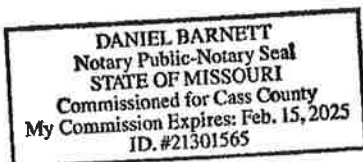
I, Brad Ratliff state that I am employed by the City of Harrisonville as City Administrator; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Harrisonville.


Brad Ratliff

Subscribed and sworn to before me this 23 day of May, 2023.


Daniel Barnett, Notary Public

Expires - 2-15-2025



TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into as of this 23rd day of May, 2023, by and between the CITY OF HARRISONVILLE, MISSOURI, a city of the fourth class organized and existing under the laws of Missouri with its principal office located at 300 East Pearl Street Harrisonville, Missouri 64701 ("Harrisonville") and OSAGE VALLEY ELECTRIC COOPERATIVE ASSOCIATION, a Missouri rural electric cooperative organized and existing pursuant to Chapter 394, RSMo. with its principal office located at 1321 Orange St, Butler, Missouri 64730 ("Osage Valley").

WITNESSETH:

WHEREAS, Harrisonville and Osage Valley are authorized by law to provide electric service within certain areas of Missouri, including portions of Cass County; and

WHEREAS, Section 394.312, RSMo. provides that competition to provide retail electrical service as between rural electric cooperatives such as Osage Valley and municipal electrical suppliers such as Harrisonville may be displaced by written territorial agreements; and

WHEREAS, Harrisonville and Osage Valley desire 1) to promote the orderly development of retail electrical service within a portion of the City of Harrisonville, Cass County, Missouri, 2) to avoid unnecessary and wasteful duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment(s) for serving the public; and

WHEREAS, this Territorial Agreement does not require any customer of either Harrisonville or Osage Valley to change its supplier.

NOW, THEREFORE, Harrisonville and Osage Valley, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains to two parcels of land in Cass County, Missouri, both of which are located within State right-of-way for a highway corridor. A description of the parcels is as follows and shall herein after be referred to as the "tracts":

1. SE ¼ of the NW ¼ of Section 16, Township 44N, Range 31W of Cass County, Missouri.
2. NW ¼ of the NE ¼ of Section 16, Township 44N, Range 31W of Cass County, Missouri.

B. A map of the above-described tracts is attached hereto and marked Exhibit A.

C. This Agreement shall have no effect whatsoever upon service by Osage Valley or Harrisonville in any other area.

D. The described tracts are located within the corporate limits of the City of Harrisonville, Missouri, and thus is not a "rural area" as defined by Section 394.020(3) RSMo.

2. Definitions.

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Section 394.315 RSMo. in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the tracts described herein.

B. The term “permanent service” shall have the same meaning as the definition of “permanent service” found in Section 394.315 RSMo., in effect at the relevant time. The term shall be liberally construed to give effect to the expressed intent of this Agreement.

C. The term “new structure” shall mean (i) one on which construction has not commenced by the Effective Date, or (ii) one on which construction has commenced by the Effective Date but on the Effective Date is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within in the structure has not been permanently installed and permanently energized by physical connection to the facilities of an electrical supplier, or (iii) one for which the respective electrical inspection authority has not granted a permit by the Effective Date for it to be energized, or (iv) one for which the respective building authority has not granted an occupancy permit by the Effective Date.

D. The term “Effective Date” shall mean 12:01 a.m. of the date on which the Report and Order of the Commission approving this Agreement is effective pursuant to the terms of such Report and Order, unless a writ of review or other proceeding is taken challenging the Report and Order, in which case there shall be no Effective Date of this Agreement until Harrisonville and Osage Valley both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

A. Osage Valley, pursuant to this Territorial Agreement, shall be entitled to provide permanent service to all structures now located within the tracts described in Paragraph 1A above and all new structures that may be built therein and therefore it shall be considered the exclusive Service Area of Osage Valley, as between Harrisonville and Osage Valley. Harrisonville does not now serve any structures, and shall not be allowed to serve any new structures, within the tracts.

B. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent – Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been

expressly agreed to by Harrisonville and Osage Valley. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this Agreement if the party objects to the form or content of the Commission's order approving the Agreement. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. Structures within the subject service area are being served by Osage Valley. To the knowledge of Harrisonville and Osage Valley, there are no other suppliers of electricity providing permanent electric service within the tracts.

6. Structures Coming Into Existence After the Effective Date.

A. After the Effective Date, Osage Valley shall have the exclusive right, as between Harrisonville and Osage Valley, to provide permanent service to new structures within the tracts described in Paragraph 1A above.

B. During interim period between the date of execution of this Agreement and the Effective Date, the parties shall abide by the territorial division provisions of this Agreement and may provide provisional service to any customer seeking service. Pending the issuance of a decision by the Commission either granting or denying approval of this Agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless (i) ordered to do so by the Commission or a court of competent jurisdiction or (ii) as a necessary part of the provision of service to its customers in other areas and such construction is within a previously established easement obtained for the purpose of providing service in other areas. In the interim before this Agreement is approved by the Commission, if a new structure should come into existence on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and that party has existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case docketed for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the

exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering services outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The initial term of this Agreement shall be thirty-five (35) years from and after the Effective Date ("initial term"). Thereafter, this Agreement shall be automatically renewed for successive ten (10) year terms ("renewal terms") commencing on the anniversary of the Effective Date ("renewal date") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of supplier to any structure in the other's Service Area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. Harrisonville and Osage Valley agree to undertake all actions reasonably necessary to implement this Agreement. Harrisonville and Osage Valley will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Osage Valley shall pay the entire filing fee of this Agreement; the parties shall pay equal halves of all other costs assessed by the Commission (none are anticipated) for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorneys fees of each party, will be borne by the respective party incurring the costs, unless otherwise agreed by the parties.

10. General Terms.

A. Land Description. The land description utilized in this Agreement is assumed by the parties to be accurate and sufficiently reliable and to match any maps being submitted; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver. No failure of Harrisonville or Osage Valley to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications. Neither the boundaries described in this agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival. This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors, and assigns.

E. Lack of Approval or Termination. If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, this Agreement shall be nullified and of no legal effect between the parties. If this Agreement is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service, or any other service to its customers in other areas.

G. The subsequent platting, re-platting, subdividing, re-subdividing, or re-naming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Harrisonville or Osage Valley established by this Agreement.

12. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Sections 394.312 and 394.315 RSMo., which allow an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of the conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in Missouri is changed during any term of this Agreement to provide that the provider of the electrical facilities (i.e., conductors) within the Service Area is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit Harrisonville from providing electrical power and energy to structures within the Service Area of Osage Valley established by this Agreement, or Osage Valley from providing electrical power and energy to structures within the Service Area of Harrisonville established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if Sections 394.312 or 394.315 RSMo. are repealed and not reenacted in a form substantially equivalent to their status on the Effective Date, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of Sections 394.312 and 394.315 RSMo., as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 25th day of May, 2023.

CITY OF HARRISONVILLE, MISSOURI

By: 

OSAGE VALLEY ELECTRIC
COOPERATIVE ASSOCIATION

By: 

Title: City Administrator

Attest: [Signature]

(seal)

Title: CEO/General Manager

Attest: Carla Eye

(seal)

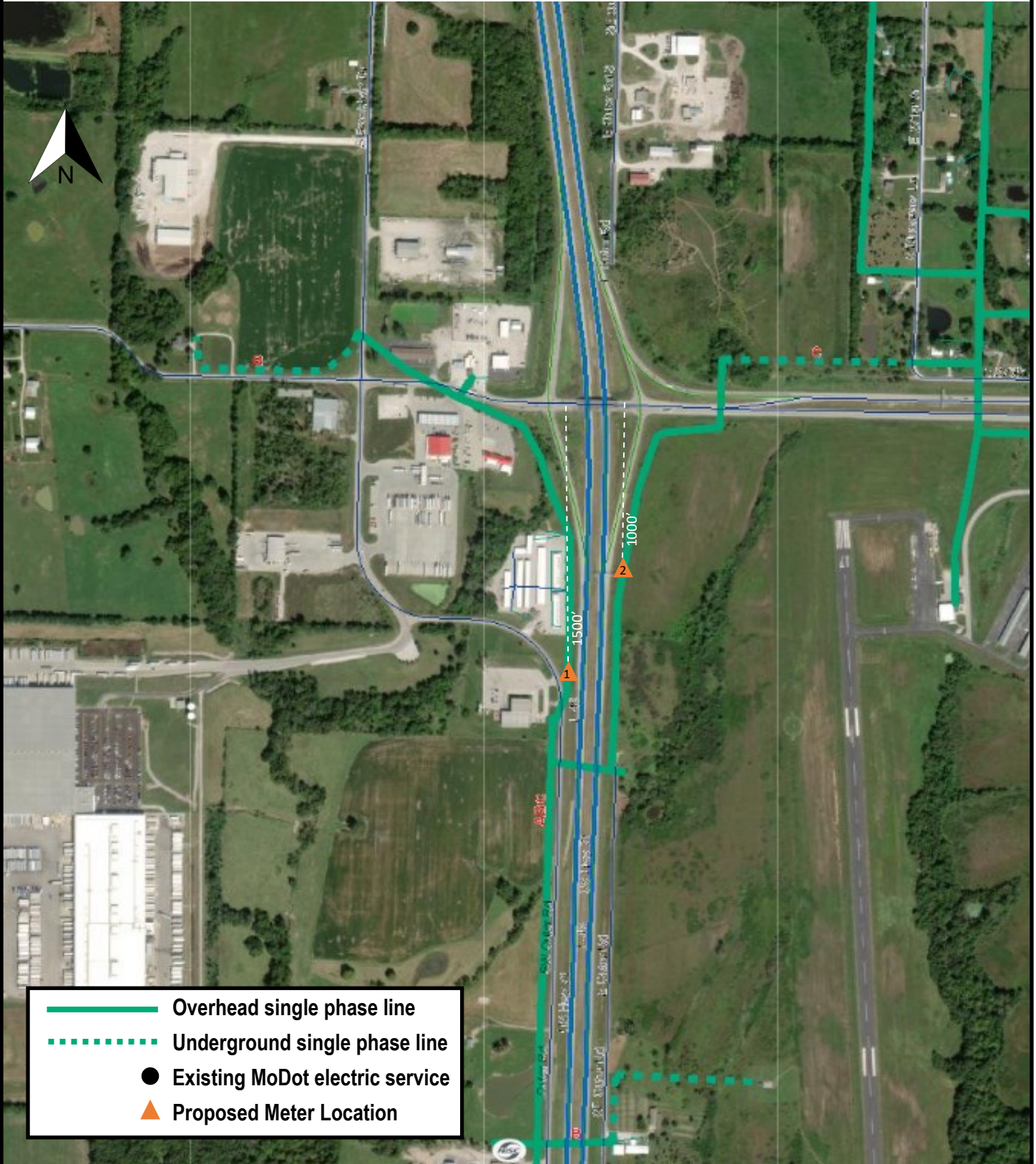


Contacts:

Trevon Riley, Engineer
triley@osagevalley.com

Tammy West, Engineering Assistant
twest@osagevalley.com

MO-7 & I-49 Interchange



Council Bill 2023-54

Resolution 2023-24

A RESOLUTION OF THE BOARD OF ALDERMEN OF THE CITY OF HARRISONVILLE, MISSOURI AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A TERRITORIAL AGREEMENT BETWEEN THE CITY OF HARRISONVILLE AND OSAGE VALLEY ELECTRIC COOPERATIVE ASSOCIATION.

WHEREAS, the City of Harrisonville intends to enter into a Territorial Agreement with Osage Valley Electric Cooperative Association to designate the boundaries of the exclusive electric service area of each electric service supplier for service of new structures in portions of Cass County, which are more particularly described within said agreement; and

WHEREAS, the agreement does not require transfer of any facilities or customers between the parties; and

WHEREAS, there are no other electric suppliers serving in the areas covered by this Agreement; and

WHEREAS, Osage Valley will continue to have service responsibilities beyond the boundaries of the agreement and unaffected by the terms of the agreement; and

WHEREAS, the City of Harrisonville will continue to have service responsibilities beyond the boundaries of the agreement unaffected by the terms of the agreement.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF HARRISONVILLE, MISSOURI

Section 1. The City Administrator is authorized to enter into a Territorial Agreement between the City of Harrisonville and Osage Valley Electric Cooperative Association, a copy which is attached to this resolution.

Section 2. The Territorial Agreement between the City of Harrisonville and Osage Valley has been concurrently reviewed and approved by Osage Valley.

Section 3. *Effective Date.* The effective date of this Resolution shall be the 15th day of May 2023.

PASSED AND RESOLVED BY THE BOARD OF ALDERMEN AND APPROVED BY THE MAYOR OF THE CITY OF HARRISONVILLE, MISSOURI ON THIS 15TH DAY OF MAY 2023.

VOTE TAKEN AS FOLLOWS:

AYES: Doerhoff, Chaney, Franklin, Mills, Milner, Reece, Turner

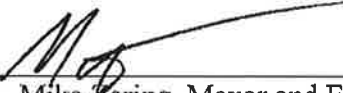
NAYS:

ABSENT:

ABSTAIN:

EXCUSED: Davidson





Mike Laring, Mayor and Ex-Officio
Chairman of the Board of Aldermen

ATTEST:



Daniel Barnett, City Clerk

WITNESS my hand and seal this 15th day of May 2023.

Attachment

1. Territorial Agreement between the City of Harrisonville and Osage Valley Electric Cooperative Association