

## **EXHIBIT B - FRANCHISES**

### **ORDINANCE NO. 4245**

AN ORDINANCE OF THE CITY OF LIBERAL, KANSAS PRESCRIBING THE TERMS, CONDITIONS, AND PROCEDURES FOR THE GRANTING OF FRANCHISES FOR THE OPERATION OF CABLE TELEVISION SERVICES; PROVIDING FOR MONITORING COMPLIANCE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN EFFECTIVE DATE AND FOR PUBLICATION.

WHEREAS the City Council of the City of Liberal has determined that it should provide uniform and non discriminatory terms, conditions and procedures for the granting and monitoring of cable television systems and the providing of cable television services utilizing the public streets, alleys and rights of way,

Section 1. This chapter shall be known and may be cited as the “Liberal Cable Television Franchise Ordinance,” hereinafter “Ordinance.”

Section 2. Definitions. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

“Affiliate” means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in a Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each Person, directly or indirectly, controlling, controlled by, or under common Control with a Grantee; provided that “Affiliate” shall in no event mean any creditor of a Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common Control with a Grantee.

“Basic Service” means the lowest priced Cable Service tier provided by the Grantee that includes the retransmission of local television broadcast stations, and public, educational and governmental access channels.

“Cable Act” means Title VI of the Communications Act of 1934, as amended.

“Cable System” means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, and other forms of electronic, electrical or optical signals, which includes Cable Service and which is located in the City. The definition shall not include any such facility that serves or will serve only Subscribers in multiple unit dwellings, and which does not use City Streets.

“Cable Service” means (1) the one-way transmission to Subscribers of video programming or other programming service and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a video programming service.

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“City” means the City of Liberal, Kansas.

“Control” and/or “Controlling Interest” shall mean actual working control of a Cable System in whatever manner exercised. Control or controlling interest as used herein may be held simultaneously by more than one Person.

“Converter” means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate channel selector also permits a subscriber to view signals delivered by the Cable System at designated converter dial locations.

“Franchise” means the initial authorization or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, or otherwise, to construct and operate a Cable System.

“Franchise Area” means all of the present geographic area within the City of Liberal, Kansas, and shall include any additions thereto by annexation or other legal means.

“FCC” means the Federal Communications Commission and any legally appointed, designated or elected governmental successor.

“Grantee” means a Person to whom or which a Franchise under this Ordinance is granted by the City, along with the lawful successors or assigns of such Person.

“Gross Revenue” means any and all revenue received by a Grantee from the operation of the Cable System to provide Cable Service to Subscribers in the Franchise Area, including franchise fees collected from Subscribers. For purposes of paying franchise fees, Gross Revenue does not include bad debt, returned check charges, franchise fees collected from Subscribers, retail sales, and unrecovered equipment replacement charges. Gross Revenue includes an allocated portion of all revenue derived by a Grantee from advertising less agency fees, home shopping, or other similar Cable Services delivered over the Cable System in the Franchise Area.

“Installation” means the connection of a Cable System from feeder cable to Subscribers' terminals.

“May” is permissive.

“Normal Business Hours” as applied to a Grantee shall mean those hours during which similar businesses in the City are open to serve Subscribers. In all cases, Normal Business Hours shall include some evening hours at least one night per week and/or some weekend hours.

“Normal Operating Conditions” shall mean those service conditions that are within the control of a Grantee. Those conditions which are not within the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Person” shall mean any individual, firm, partnership, association, corporation, company, or

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organization of any kind.

“Shall” is mandatory.

“Service Interruption” and/or “Outages” shall mean the loss of either picture or sound or both for a single or multiple Subscriber(s).

“Street” means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning entitle a Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.

“Subscriber” shall mean any Person lawfully receiving Cable Service from Grantee.

“User” means a Person utilizing a Cable System Channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

Section 3. Rights and privileges of a Grantee. Any Franchise granted by the City shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the Streets in the Franchise Area now in existence and as may be created or established during its terms, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

Section 4. Agreement and incorporation of application by reference.

(a) Upon adoption of any Franchise and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein, except as noted in the Franchise.

(b) Any Grantee for an initial Franchise, not a renewal or transfer, also agrees to provide all services specifically set forth in its application, if any, and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise. In the event of a conflict between such application and the provisions of this Ordinance, that provision which provides the greatest benefit to the City, in the opinion of the City, shall prevail.

Section 5. Franchise territory. All Franchises granted under this Ordinance will include both the right and the obligation to provide Cable Service within the present territorial limits of the City and for any area henceforth added thereto during the term of the Franchise by annexation or other legal means, subject to the density restrictions set forth in Section 13.119 (b)(1)(b).

Section 6. Duration and acceptance of Franchise. The Franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the Franchise and shall continue in force and effect for a term of no longer than ten (10) years, provided that within thirty (30) days after

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the date the Grantee receives a copy of the final passage of the Franchise the Grantee shall file with the City its acceptance of the Franchise subject to applicable law and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths. Such Franchise shall be non-exclusive and revocable according to the terms and provisions of this Ordinance and applicable law.

Section 7. Franchise renewal. The City and all Grantees shall conduct any proceedings that relate to the renewal of the Grantee's Franchise in accordance with the provisions of the Liberal City Charter, this Ordinance as it may be amended, and Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision under federal or state law.

Section 8. Municipal powers. Any Franchise granted hereunder is subject to the lawful police power of the City to adopt and enforce ordinances of general applicability which are necessary to the safety and welfare of the public; and all Grantees shall agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

Section 9. Franchise required, equal protection. No Cable System shall be allowed to occupy or use the Streets of the City for Cable System installation and maintenance purposes, or be allowed to operate, without a Franchise granted pursuant to this Ordinance.

Section 10. Use of Grantee facilities. Subject to any applicable state or federal regulation or tariffs, the City shall have the right, during the life of the Franchise, to install and maintain equipment upon the poles of the Grantee located in the Public Way, provided that: (a) such use of any wire or pole fixtures by the City does not unreasonably interfere with a current or future use of the Grantee; (b) the City shall indemnify and hold harmless the Grantee from any and all claims, demands, costs, or liabilities of every kind and nature that might arise due to or as a result of the City's use; (c) such use by the City is restricted to non-commercial municipal purposes; (d) the City does not use the poles for any purpose that is in competition with the Grantee's use; and (e) at the Grantee's sole discretion, the City may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such poles, provided, however, that the Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Franchise Area.

Section 11. Initial Franchise Costs. Costs to be borne by the Grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial Franchise including, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this Ordinance, and any costs not covered by application fees incurred by the City in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications. These costs do not apply to any Grantee who already holds a Franchise with the City.

Section 12. Notices. All notices from a Grantee to the City pursuant to this Ordinance shall be to the City Manager's Office. Each Grantee shall maintain with the City, throughout the term of its Franchise, an address for service of notices by mail. Each Grantee shall maintain a central office to address any issues relating to operating under this Ordinance.

Section 13. Letter of credit/security deposit.

(a) Unless otherwise set forth in the Franchise, within thirty (30) days after the award of an initial Franchise, the Grantee shall deposit with the City either an irrevocable letter of credit from a financial institution or a security deposit in the amount of fifty thousand dollars (\$50,000.00). The form and content of such letter of credit or security deposit shall be approved by the City Attorney. These instruments shall be used to insure the faithful performance of the Grantee of all provisions of its Franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or defaults under the Franchise, and the payment by the Grantee of any claims, liens, and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System.

(b) The City may require that the letter of credit or security deposit shall be maintained at the amount established by the City for the entire term of the Franchise, and shall be replenished within thirty (30) days if amounts have to be withdrawn.

(c) If the Grantee fails to pay to the City any compensation within the time fixed herein; or fails after fifteen (15) days written notice to pay to the City any taxes due and unpaid; or fails to repay the City within fifteen (15) days of written notice any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Grantee in connection with the Franchise, or fails, after thirty (30) days written notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by demand on the letter of credit or security deposit, the City may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit or security deposit.

(d) The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the City may have.

(e) The letter of credit or security deposit shall be non-cancelable, except upon thirty (30) days prior written notice to the City.

(f) If an existing letter of credit or security deposit is to be canceled, Grantee shall provide evidence of a replacement letter of credit or security deposit to the City fifteen (15) days prior to the cancellation date. Failure to provide evidence of replacement surety shall be construed as a default granting the City the right to call on the bank for the initial security deposit or letter of credit.

(g) The City at any time during the term of this Ordinance may waive Grantee's requirement to maintain a letter of credit or security deposit. The invitation to waive the requirement can be initiated by the City or Grantee.

Section 14. Performance bond.

(a) Unless otherwise set forth in the Franchise, within thirty (30) days after the award of an initial Franchise, the Grantee shall file with the City a performance bond in the amount of not less than fifty (50) percent of costs to install the system contained in the new application in favor of the City. This bond shall be maintained throughout the construction period and until such time as determined by the City.

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(b) If the Grantee fails to comply with any law, ordinance or resolution governing the Franchise, or fails to well and truly observe, fulfill and perform each term and condition of the Franchise as it relates to the conditions relative to the construction of the Cable System, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the City's legal staff and costs, up to the full amount of the bond. This section shall be an additional remedy to those outlined in Section 13.113.

(c) The City may, upon completion of construction of the Cable System, waive or reduce the requirement of the Grantee to maintain the bond. However, the City may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial Cable System, in a reasonable amount and upon such terms as determined by the City.

(d) The bond shall be non-cancelable, except upon thirty (30) days prior written notice to the City. If an existing bond is to be canceled, Grantee shall provide evidence of a replacement bond to the City fifteen (15) days prior to the cancellation date. Failure to provide evidence of a replacement bond shall be construed as default granting the City the right to call in the bond.

(e) The City at any time during the term of the Franchise may waive a Grantee's requirement to maintain a performance bond. The invitation to waive the requirement can be initiated by the City or Grantee.

Section 15. Liability and insurance.

(a) A Grantee shall maintain and by its acceptance of a Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the City (as additional insured) and the Grantee in the minimum amount of:

- 1) One million dollars (\$1,000,000.00) for property damage to any one person;
- 2) Two million dollars (\$2,000,000.00) for property damage in any one accident;
- 3) One million dollars (\$1,000,000.00) for personal injury to any one person; and
- 4) Two million dollars (\$2,000,000.00) for personal injury in any one accident.

(b) A certificate of insurance obtained by the Grantee in compliance with this section shall be filed and maintained with the City during the term of the Franchise.

(c) Neither the provisions of this section nor any damages recovered by the City thereunder shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder or for damages.

(d) Such coverage shall be non-cancelable, except upon thirty (30) days prior written notice to the City.

Section 16. Indemnification.

(a) Disclaimer of Liability. The City shall not at any time be liable except where negligent for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of a Grantee's Cable System, except as provided by law.

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(b) Indemnification. The Grantee shall, at its sole cost and expense, indemnify and hold harmless the City, all associated, affiliated, allied and subsidiary entities of the City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnities"), from and against:

(1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, tradename, copyright, patent, service mark or any other right of any Person, which may arise out of Grantee's construction, installation, operation, maintenance or condition of its Cable System, its subcontractors or agents, or the Grantee's failure to comply with any Federal, State or local statute, ordinance or regulation.

(c) Assumption of Risk. A Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City owned or controlled property, including Streets.

(d) Defense of Indemnities. In the event any action or proceeding shall be brought against the Indemnities by reason of any matter for which the Indemnities are indemnified hereunder, a Grantee shall not admit liability in any such matter on behalf of the Indemnities without the written consent of the City. The City must afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of any claim or proceeding for which the Grantee is providing indemnification. The City will also fully cooperate in the defense of any such claim and make available to Grantee all such information under its control relating thereto.

(e) Notice Cooperation and Expenses. The City shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. No recovery by the City of any sum under the letter of credit or security fund shall be a limitation upon the liability of the Grantee to the City under the terms of this Section, except that any sum so received by the City from the letter of credit or security fund shall be deducted from any recovery which the City might have against the Grantee under the terms of this Section.

(f) Nonwaiver of Statutory Limits. Nothing in this Ordinance is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in Kansas Statutes, including the limits of liability of the City as exists presently or may be increased from time to time by the legislature.

Section 17. Rights of individuals.

(a) A Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers, Users, or general citizens on the basis of race, color, religion, national origin, income or sex. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination.

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A Grantee will not set arbitrary or inflexible income criteria based solely on personal or household income for providing or denying access.

(b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, and applicable state and local regulations.

(c) The Grantee shall, at all times, comply with the privacy requirements of State and federal law.

Section 18. Public notice. Minimum public notice of any public meeting relating to this Ordinance shall be made as prescribed by applicable state and local law.

Section 19. System construction.

(a) New construction timetable. The requirements of this subsection (a) do not apply to any Grantee who already holds a Franchise with the City and has completed construction of its Cable System.

(1) Within two (2) years from the date of the award of the initial Franchise, the Grantee must make Cable Service available to every dwelling unit within the Franchise Area, subject to the density requirements of Section 13.119(b)(1)b.

a. The Grantee must make Cable Service available to at least twenty (20) percent of the dwelling units within the Franchise Area within six (6) months from the date of the award of the Franchise.

b. The Grantee must make Cable Service available to at least fifty (50) percent of the dwelling units within the Franchise Area within one (1) year from the date of the award of the Franchise.

(2) The Grantee, in its application if any, may propose a timetable of construction which will make Cable Service available in the Franchise Area sooner than the above minimum requirements, in which case the said schedule will be made part of the Franchise, and will be binding upon the Grantee.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the City, will be considered a violation of the Franchise for which the provisions of Section 13.135 shall apply, as determined by the City.

(4) In special circumstances the City can waive one hundred (100) percent completion within the two (2) year time frame provided substantial completion is accomplished within allotted time frame, substantial completion construed to be not less than ninety-five (95) percent and justification for less than one hundred (100) percent must be submitted subject to the satisfaction of the City.

(b) Line extensions:

(1) A Grantee shall only be required to construct and extend its Cable System pursuant to the following requirements:

a. No Subscriber shall be refused service arbitrarily. To expedite the process of extending the Cable System into a new sub-division, the City will forward to the Grantee an



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approved engineering plan of each project. Subject to the density requirements set forth below, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the City that the first home in the project has been approved for building permit, the Grantee shall have a maximum of three (3) months to complete the construction/activation process within the project phase.

b. The Grantee must extend and make Cable Service available to all areas having at least thirty (30) dwelling units per street mile, as measured from the existing Cable System.

c. The Grantee must extend and make Cable Television Service available to any residence in the Franchise Area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred twenty-five (125) foot drop line. For connections greater than one hundred twenty five (125) feet, Grantee may charge the potential Subscriber the appropriate published non-standard installation fee.

(2) Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential Subscriber desiring Cable Service, an estimate of the costs required to extend Cable Service to the Subscriber. The Grantee shall then extend Cable Service upon request of the potential Subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. The amount paid by Subscribers for early extensions shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

(c) Nothing herein shall be construed to require a Grantee to extend its Cable System into an area annexed into the Franchise Area which is currently served by another Grantee.

(1) A Grantee, in its application, may propose a line extension policy which will result in serving more residents of the City than as required above, in which case the Grantee's policy will be incorporated into the Franchise, and will be binding on the Grantee.

(2) The violation of this section shall be considered a breach of the terms of this Ordinance for which the provisions of Section 13.135 shall apply.

Section 20. Construction and technical standards.

(a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its Cable System in a manner consistent with all FCC technical standards. In addition, the Grantee shall provide the City, upon written request, with a written report of the results of the Grantee's most recently conducted semi-annual proof of performance tests conducted pursuant to FCC standards and requirements.

(b) Additional specifications:

(1) Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) A Grantee shall at all times comply with:

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- a) National Electrical Safety Code (National Bureau of Standards);
- b) National Electrical Code (National Bureau of Fire Underwriters);
- c) Bell System Code of Pole Line Construction (if applicable); and
- d) Applicable FCC or other federal, state and local regulations.
- e) All applicable codes adopted by, or to be adopted by, the City.

(3) In any event, the Cable System shall not endanger or interfere with the safety of Persons or property in the Franchise Area.

(4) Any antenna structure used in the Cable System shall comply with construction, marking, and lighting of antenna structures required by the United States Department of Transportation.

(5) All working facilities and conditions used during construction, installation and maintenance of the Cable System shall comply with the standards of the Occupational Safety and Health Administration.

(6) The Grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two (2) hours.

(7) In all areas of the City where the cables, wires, and other like facilities of all public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground.

(8) Upon receiving reasonable advance notice from the City, the Grantee shall remove any abandoned portion of the Cable System which poses a safety or health hazard in the opinion of the City.

Section 21. Use of Streets.

(a) Interference with Persons and improvements. The Grantee's Cable System shall be located, erected and maintained so that none of its facilities shall endanger or unreasonably interfere with the lives of Persons or unreasonably interfere with the rights or reasonable convenience of property owners who adjoin any of the Streets, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the Streets or public property.

(b) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing by the Grantee, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any Street disturbed, in as good condition as immediately before the work was commenced and in accordance with any generally applicable ordinances of the City. Approval by the City shall not be unreasonably withheld.

(c) Erection, removal and common uses of poles:

(1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense

whenever the City determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but Grantee does not make arrangements for such use and Grantee does not place its Cable System underground, the City may require the Grantee to use such poles and structures if the City determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable. For purposes of this Section, the City shall consider the terms of use to be just and reasonable only if they are comparable to established state and/or federal standards.

(3) In the absence of any governing federal or state statute, where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations. For purposes of this Section, just and reasonable terms of use shall be those comparable to established state and/or federal standards.

(d) Relocation of the facilities. If at any time during the period of this Franchise the City shall lawfully elect to alter, or change the grade of any Street, the Grantee, upon reasonable written notice by the City, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the Grantee shall be similarly compensated.

(e) Cooperation with building movers. The Grantee shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) business days advance written notice to arrange for such temporary wire changes.

(f) Tree trimming. The Grantee shall comply with any generally applicable ordinances of the City related to the trimming of trees and other shrubbery in or overhanging the Streets or public property.

Section 22. Operational standards.

(a) The Grantee shall put, keep and maintain all parts of the Cable System in good condition throughout the entire Franchise period.

(b) Upon the reasonable request for Cable Service by any Person located within the Franchise Area, the Grantee shall, within thirty (30) days, furnish the requested service to such Person subject to the line extension policy set forth in Section 13.119 (b)(1)b of this Ordinance, and payment of any reasonable deposits and advance fees required by the Grantee.

(c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

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(d) The Grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the City nor shall other utilities interfere with the Grantee's system.

(e) The Grantee shall maintain a local, toll-free, or collect call telephone access line which will be available to Subscribers 24 hours per day and seven days per week. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours, as defined herein. After Normal Business Hours, an access line will be available to be answered by an answering service or automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

(f) Under normal operating conditions, telephone answer time, including wait time, shall not exceed 30 seconds from when the connection is made. If the call needs to be transferred, transfer time will not exceed 30 seconds. These standards shall be met no less than 90% of the time under Normal Operating Conditions, as measured on a quarterly basis.

(g) Under Normal Operating Conditions, the Subscriber will receive a busy signal less than 3% of the time. This standard shall be met no less than 90% of the time as measured on a quarterly basis.

(h) Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 125 feet of the existing distribution system.

(i) Excluding those situations outside of Normal Operating Conditions, the Grantee will respond to any Service Interruption promptly and in no event later than 24 hours from the time the interruption becomes known to Grantee. All other regular service requests will be responded to within 36 hours during the Normal Business Hours for the Cable System under Normal Operating Conditions. The appointment window alternatives for installations, service calls and other installation activities will not exceed a four-hour "window" during Normal Business Hours for the Cable System, or at a time that is mutually acceptable. The Grantee may schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the Subscriber will be made and the appointment rescheduled as necessary at a time that is convenient to the Subscriber.

(j) Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of 8 hours a day Monday through Friday unless there is a need to modify those hours because of the location or customers served. The Grantee and City by mutual consent will establish supplemental hours on weekdays and weekends if it would fit the needs of the community. At least one walk-in customer service center shall be located in the City.

(k) For Service Interruptions and/or Outages of over four (4) hours, the Grantee shall provide, at the Subscriber's request, a prorated credit of the affected Cable Service.

(l) The Grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of the Subscriber:

- (1) Product and services offered.

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- (2) Prices and service options.
- (3) Installation and service policies.
- (4) How to use the Cable Services.

(m) Bills will be clear, concise and understandable, with all Cable Services itemized.

(n) Credits will be issued promptly, but no later than the Subscriber's next billing cycle following the resolution of the request and the return of the equipment supplied by the Grantee if Cable Service has been terminated.

(o) Subscribers will be notified a minimum of thirty (30) days in advance of any rate or programming channel change, provided that the change is within the control of the Grantee.

(p) The Grantee shall maintain and operate its Cable System in accordance with the rules and regulations as are incorporated herein or may be lawfully promulgated by the Federal Communications Commission, the United States Congress, or the State of Kansas.

(q) The Grantee shall keep a monthly service log which will indicate the nature of each Subscriber contact made in the last twelve (12) months which results in a service call, the date and time it was received, the disposition of said service call, and the time and date thereof. This log shall be made available for periodic inspection by the City, pursuant to Section 13.128 of this Ordinance and Subscriber privacy rights under Section 631 of the Cable Act.

(r) All personnel of the Grantee contacting Subscribers or potential Subscribers outside the office of Grantee must be clearly identified as associated with the Grantee.

(s) The Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless the Grantee provides initial notice of the delinquency and impending termination at least ten (10) days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. This notice shall not be sent until the twenty-eighth (28th) day after the initial bill for service was mailed to the Subscriber. The notice of delinquency and impending termination may be part of a billing statement. This section does not apply to Subscribers disconnected due to NSF checks.

(t) Refund checks shall be issued within thirty (30) days following the Subscriber's request or thirty (30) days following the return of the Grantee's equipment by the Subscriber, whichever is later.

**Section 23. Continuity of Cable Service mandatory.**

(a) It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. This does not require the Grantee to provide service to Subscriber who are abusive to the employee of the Grantee. If the Grantee elects to over build, rebuild, modify or sell the Cable System, or the City gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For purposes of this Section, "continuous and uninterrupted" does not include Service Interruptions and Outages of Cable Service experienced by Subscribers during the regular course of business.

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(b) If there is a change of Franchise, or if a new operator acquires the Cable System, the Grantee shall cooperate with the City, new franchisee or operator in maintaining continuity of Cable Service to all Subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services until it no longer operates the Cable System.

(c) If the Grantee fails to operate the Cable System for thirty (30) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the Cable System or designate an operator until such time as the Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the Cable System received by the City that are the result of the Grantee's failure to perform.

Section 24. Complaint procedure.

(a) The City Manager is designated as having primary responsibility for the continuing administration of the Franchises and implementation of procedures for handling Subscriber complaints against the Grantee received by the City.

(b) During the term of any Franchise, and any renewal thereof, the Grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call. The Grantee will use its good faith efforts to arrange for one or more payment locations in a central location where Subscribers can pay bills or conduct other business activities.

(c) At the time of installation, the Grantee shall furnish information to Subscribers concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent of the Grantee to whom such inquiries or complaints are to be addressed.

(d) When there have been similar complaints made, or where there exists other substantial evidence, which, in the judgment of the City, casts doubt on the reliability or quality of Cable Service, the City shall have the right and authority to require the Grantee to test, analyze and report on the performance of the Cable System. The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;
- (2) What Cable System component(s) were tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to the tests and analysis which may be required.

The City may require that tests be supervised, by an independent person of the City's choice. This person should sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken. Should such a test prove that the Grantee substantially failed to meet the technical standard, the Grantee shall bear the reasonable cost of the test. If the test should prove that the Grantee met the technical

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standards, or if the failure is not substantial, the City shall bear the cost of the test.

The City's right under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.

Section 25. Grantee rules and regulations. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise, and to assure uninterrupted Cable Service to each and all of its Subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the lawfully enforceable provisions hereof or applicable state and federal laws, rules and regulations. For purposes of this Section, "uninterrupted" does not include Service Interruptions and Outages experienced during the regular course of business.

Section 26. Franchise fee.

(a) For the reason that the Streets of the City to be used by the Grantee in the operation of its Cable System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Grantee to use the Streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the City an amount equal to an amount up to and including five (5) percent of the Grantee's Gross Annual Revenue received by the Grantee from the operations of its Cable System to provide Cable Services within the Franchise Area. If the statutory five (5) percent limitation on franchise fees is changed or the federal statute deletes the franchise fee limitation entirely, then the franchise fee may be renegotiated by both parties in good faith. The City will give a Grantee at least seventy-five days notice of any change that the City wants to make in the amount of the franchise fee.

(b) This payment shall be in addition to any other generally applicable tax or payment owed to the City by the Grantee.

(c) The franchise fee shall be payable quarterly to the City within sixty (60) days after the end of each calendar quarter, and shall be accompanied by a complete and accurate certified statement of all of the Grantee's Gross Revenues for the period.

(d) The City shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City which notice shall include a copy of the audit report.

(e) The period of limitation for recovery of any franchise fee payable hereunder shall be four (4) years from the date on which payment by the Grantee is due.

(f) The Grantee shall pay interest on any net franchise fee underpayment for the calendar year at the annual prime rate - or the maximum rate allowed by law, whichever is less - from forty-five (45) days after the end of the calendar year until the date the payment is received by the City. The

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City shall notify Grantee in a timely manner when any net franchise fee underpayment is discovered.

Section 27. Transfer of ownership or control.

(a) Except as may otherwise be provided in a Franchise, the Franchise shall not be assigned or transferred, other than to a Person Controlling, Controlled by, or under common Control with the Grantee, without the prior written consent of the City. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. The proposed assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of the Franchise. The City shall have one-hundred and twenty (120) days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations. The City shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within one-hundred and twenty (120) days unless the requesting party and the City agree to an extension of time. The City shall not unreasonably withhold such consent to the proposed transfer.

(b) Except as may otherwise be provided in a Franchise, the Grantee shall timely notify the City of any actual or proposed change in, or transfer of, or acquisition by any other Person of, Control of the Grantee. Every change, transfer or acquisition of Control of the Grantee shall make the Franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of Control, the City may inquire into the qualification of the prospective Controlling party, and the Grantee shall assist the City in such inquiry.

(c) The consent or approval of the City to any transfer of the Grantee shall not constitute a waiver or release of the rights of the City in and to the Streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the Franchise.

(d) In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of an initial Franchise prior to substantial completion of construction of the proposed Cable System.

(e) In no event shall a transfer of ownership or Control be approved without successor in interest becoming a signatory to the Franchise.

Section 28. Availability of books and records.

(a) The Grantee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect where reasonably necessary to the enforcement of the Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable System, at any time during Normal Business Hours; provided where volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee premises. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions of the Franchise. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.



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(b) The Grantee shall prepare and furnish, upon receipt of a written request from the City, such reports with respect to its operations, affairs, transactions or property as is reasonably necessary or appropriate to the performance of the City's rights, functions or duties under the Franchise. The City shall consult with the Grantee as to the form, detail, and due dates of the reports requested, and accept copies of reports generated by the Grantee in the normal course of business whenever possible

Section 29. Other petitions and applications. Copies of all petitions, applications, communications and reports either submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise or received from such agencies shall be provided to the City upon request.

Section 30. Fiscal reports. Upon request, a Grantee shall file annually with the City no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a Gross Revenues statement certified by an officer or CPA of the Grantee.

Section 31. Required services and facilities.

(a) Unless otherwise provided for in the Franchise, each Cable System shall offer a minimum of fifty-five (55) full-time video programming services to Subscribers.

(b) Such Cable System shall have the technical capacity for "two-way" communications, provided however, that the return does not need to be activated, and the offering of two-way services is not required, until the Grantee believes that such services are technically and economically feasible, and the Grantee has obtained such additional regulatory consent as may be required by state or federal law to provide two-way services.

(c) At the City's request, unless otherwise designated in the Franchise, the Grantee shall maintain the following:

(1) At least one (1) specially-designated, noncommercial public access Channel available on a first-come, nondiscriminatory basis;

(2) At least one (1) specially-designated, noncommercial Channel for use by local educational authorities;

(3) At least one (1) specially-designated, noncommercial Channel for local governmental uses;

(4) These uses may be combined on one or more Channels until such time as dedicated Channels become necessary. Capital support for the purchase and/or replacement of equipment for public, educational and government access shall be separately incorporated into the Franchise.

(5) Upon written request by the City, and provided that no regulatory consent is required from any state or federal authority for the provision of services requested by the City, Grantee shall prepare a proposal to construct and make available an Institutional Network ("I-Net") of cable, optical, electrical or electronic equipment, used for the purpose of transmitting two-way signals between designated City buildings. Nothing contained herein should be construed as a requirement for the Grantee to construct an Institutional Network without fair reimbursement from the City of the capital cost to provide such facilities, nor receive fair compensation for the

maintenance and use of such network.

(d) The Grantee shall incorporate into its Cable System the capacity which will permit the City, in times of emergency, to override, by remote control, the audio of all Channels simultaneously which the Grantee may lawfully override. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the City in the use and operation of the emergency alert override system. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys fees and costs.

(e) (1) The City may desire for the Grantee to interconnect its Cable System with other adjacent cable television systems for the purpose of sharing public, educational, and governmental access programming. Interconnections shall only be implemented upon agreement between Grantee and the contiguous cable operator.

(2) Interconnection procedure: Upon receiving the directive of the City to interconnect, the Grantee shall immediately initiate good-faith negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.

(3) Cooperation required: The Grantee shall reasonably cooperate with any interconnection corporation, regional interconnection authority or City, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

(f) Grantee shall include in its Cable Service a broad range of programming. Grantee shall take into account the programming preferences of its Subscribers in making its programming decisions.

Section 32. Rules and regulations. In addition to the inherent powers of the City to regulate and control its Streets, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this Ordinance; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. In case of a conflict between such additional regulations and the Franchise, the terms of the Franchise shall prevail.

Section 33. Performance evaluation sessions.

(a) The City and the Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third and sixth anniversary dates of the Grantee's award or renewal of a Franchise and as may be required by federal and state law.

(b) Special evaluation sessions may be held at any time during the term of the Franchise at the request of the City or the Grantee.

(c) All evaluation sessions shall be open to the public and announced in accordance with the

City's required legal notice. .

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or City rules.

(e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition.

Section 34. Rate change procedures. The City may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal law.

Section 35. Violations, forfeiture and termination.

(a) In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Grantee shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the City made pursuant to the Franchise;
- (2) Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the City or its Subscribers;
- (3) Failure to begin or complete Cable System construction or Cable System extension as provided under Section 13.119.
- (4) Failure to provide the Cable Services promised in the Grantee's application if any as incorporated herein by Section 13.104.
- (5) Failure to restore Cable Service after ninety-six (96) consecutive hours of interrupted service to the entire Cable System, except when approval of such interruption is obtained from the City; or
- (6) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

(c) The City may make a written demand that the Grantee comply with any such specific provision, rule, order or determination under or pursuant to the Franchise. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of the violation of the Franchise before the City Council. The City shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of the time, place and purpose of the meeting.

(d) The City Council shall hear and consider the issue(s), provide the Grantee with an opportunity to be heard, and shall determine in its discretion whether or not any violation by the

Grantee has occurred.

(e) If the City Council shall determine the violation by the Grantee was the fault of the Grantee and was within its control to prevent, the Council may,

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

(2) Commence an action at law for monetary damages or seek other equitable relief; or

(3) In the case of a substantial default of a material provision of the Franchise, declare that the Franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Council may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(f) This issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council then may terminate the Franchise forthwith upon finding that the Grantee has failed to achieve compliance or may further extend the period, in its discretion.

Section 36. Force majeure. Grantees shall not be held in default under, or in noncompliance with, the provisions of the Franchise or this Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

It is not the City's intention to subject Grantees to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise or Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the City and/or Subscribers.

Section 37. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the Cable System, the Grantee shall notify the City of such fact, and such notification shall be treated as a notification that a change in Control of the Grantee has taken place, and the provisions of the Franchise governing the consent of the City to such change in Control of the Grantee shall apply.

Section 38. Right of acquisition by the City. Federal regulations as per Section 627 of the Cable Act shall apply to the right of acquisition of the Grantee's Cable System by the City.

Section 39. Continuance of operation after revocation. In the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. During such a period of time, Grantee is authorized to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization

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exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation during the six month period shall not be deemed a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

Section 40. Receivership. The City shall have the right to cancel the Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and the Franchise and remedied all defaults thereunder; and

(b) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Grantee.

Section 41. Compliance with state and federal laws, severability.

(a) Notwithstanding any other provisions of this Ordinance to the contrary, the Grantee shall at all times comply with all lawful and generally applicable laws and regulations of the state and federal government or any administrative agencies thereof.

(b) If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof

Section 42. Landlord/tenant.

(a) Interference with Cable Service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive Cable Service, including, but not limited to, cable installation or maintenance from a Cable System regulated by and lawfully operating under a valid and existing Franchise issued by the City.

(b) Gratuities and payments to permit service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of Cable Service to the dwelling unit occupied by a tenant or resident requesting Cable Service.

(c) Penalties and charges to tenants for service prohibited. Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives Cable Service from a Grantee

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operating under a valid and existing Franchise issued by the City.

(d) Reselling service prohibited. No person shall resell, without the expressed, written consent of both the Grantee and the City, any Cable Service, program or signal transmitted by a Cable System operating under a Franchise issued by the City.

(e) Protection of property permitted. Nothing in this chapter shall prohibit a Person from requiring that Cable System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, and safety of Persons or property.

Section 43. Applicant's bids for Initial Franchise.

(a) All bids received by the City from the applicants for an initial Franchise will become the sole property of the City.

(b) The City reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the City may be served.

(c) All questions regarding the meaning or intent of this Ordinance or application documents shall be submitted to the City in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the City as having received the application documents. The City reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids may, at the City's discretion, be disregarded. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

(d) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

(e) Before submitting a bid, each applicant must:

- (1) Examine this Ordinance and the application documents thoroughly;
- (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the Ordinance and a Franchise;
- (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and
- (4) Carefully correlate the bid with the requirements of this Ordinance and the application documents.

(f) The City may make such investigations as it deems necessary to determine the technical, legal and financial ability of the applicant to perform this Ordinance, and the applicant shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the City that such applicant is properly qualified to carry out the obligations of this Ordinance and a Franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

(g) All bids received shall be placed in a secure depository approved by the City and not

opened nor inspected prior to the public opening.

Section 44. Financial, contractual, shareholder and system disclosure for initial Franchises.

(a) No initial Franchise will be granted to any applicant unless all requirements and demands of the City regarding financial, contractual, shareholder and system disclosure have been met.

(b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to this franchise and the proposed Cable System. The Grantee of this Franchise shall disclose all other contracts to the City as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to, the following:

- (1) Locations of all other franchises and the dates of award for each location;
- (2) Estimated construction costs and estimated completion dates for each Cable System;
- (3) Estimated number of miles of construction and number of miles completed in each Cable System as of the date of this application; and
- (4) Date for completion of construction as promised in the application for each Cable System.

(f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to, the following:

- (1) Location of other franchise applications and date of application for each Cable System;
- (2) Estimated dates of franchise awards;
- (3) Estimated number of miles of construction; and
- (4) Estimated construction costs.

Section 45. Publication and Effective Date. This Ordinance shall be effective ten (10) days after the date of its final passage. (6/27/2000)

**ORDINANCE NO. 4367**

A CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL TELEPHONE, L.P., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF LIBERAL, KANSAS.

**SECTION 1.** Pursuant to K.S.A. 2007 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone L.P. d/b/a AT&T Kansas (“AT&T Kansas”), a telecommunications local exchange service provider providing local exchange service within the City of Liberal, Kansas (“City”), subject to the provisions contained hereafter. The initial term of this ordinance shall be for a two (2) year period beginning March 1, 2009 and ending February 28, 2011. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

**SECTION 2.** For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

“*Access line*” shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer’s premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

“*Access line count*” means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

“*Access line fee*” means a fee determined by a city, up to a maximum as set out in K.S.A. 2006 Supp. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

“*Access line remittance*” means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

“*Gross receipts*” means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service



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revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale of lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, privateline service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

*“Local exchange service”* means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

*“Telecommunications local exchange service provider”* means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

*“Telecommunications services”* means providing the means of transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

**SECTION 3.** Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to five percent (5%) of Gross Receipts.

Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to five percent (5%) of gross receipts; unless the City notifies AT&T Kansas prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year. Any increased access line or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2007 Supp. 12-2001. In the event the City elects compensation based on a gross receipts fee, nothing herein precludes the City from switching to an access line fee provided the City notifies AT&T Kansas prior to ninety days (90) before the end of the calendar year that it intends to elect an access line fee for the following calendar year. Alternately, in the event the City elects compensation based on an access line fee, nothing herein precludes the City from switching to a gross receipts fee provided City notified AT&T Kansas prior to ninety days (90) before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year.

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SECTION 4. The City shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance. If the gross receipts or access line fee is determined to be erroneous, AT&T Kansas shall revise the gross receipts or access line fee accordingly and make payment upon such corrected gross receipts or access line fee.

SECTION 5. As a condition of this contract franchise ordinance, AT&T Kansas is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to AT&T Kansas' right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. AT&T Kansas shall also comply with all applicable laws, statutes and/or ordinances, subject to AT&T Kansas' right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6. Nothing herein contained shall be construed as giving AT&T Kansas any exclusive privileges, nor shall it affect any prior or existing rights of AT&T Kansas to maintain a telecommunications system within the City.

SECTION 7. AT&T Kansas shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 8. The City agrees to provide AT&T Kansas with notification in the event that it annexes property into the corporate boundaries of the City that would require AT&T Kansas to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property AT&T Kansas was not required to pay a franchise fee. The City agrees to provide AT&T Kansas with notification in the event the City renumbers or renames any streets that would require AT&T Kansas to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets AT&T Kansas would not have been required to pay a franchise fee. The City agrees that in the event the City does not provide AT&T Kansas with notice of an annexation or renumbering and/or renaming of the streets, AT&T Kansas is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to AT&T Kansas of such.

SECTION 9. The City agrees that pursuant to K.S.A. 2007 Supp. 12-2001(j)(1) and (2) that the franchise fee imposed under this contract franchise ordinance must be accessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

SECTION 10. Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon AT&T Kansas shall be delivered by first class United States mail or by personal delivery to:

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Southwestern Bell Telephone L.P.  
Cindy Zapletal  
Director-External Affairs  
1640 Fairchild Avenue, First Floor  
Manhattan, Kansas 66502

SECTION 11. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 12. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond AT&T Kansas' or the City's control.

SECTION 13. AT&T Kansas has entered into this contract franchise ordinance as required by the City and K.S.A. 2007 Supp. 12-2001. If any clause, sentence, section, or provision of K.S.A. 2007 Supp. 12-2001, and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or AT&T Kansas may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates K.S.A. 2007 Supp. 12-2001, and amendments thereto, if AT&T Kansas is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

SECTION 14. In entering into this contract franchise ordinance, neither the City's nor AT&T Kansas present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the contract franchise ordinance, neither the City nor AT&T Kansas waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or AT&T Kansas may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and AT&T Kansas entering into this contract franchise ordinance.

SECTION 15. The parties agree that in the event of a breach of this contract franchise ordinance by either party, the non breaching party has the right to terminate the contract franchise ordinance. Prior to terminating the contract franchise ordinance, the non breaching party shall first serve a written notice upon the breaching party, setting forth in detail the nature of the breach, and the breaching party shall have thirty (30) days thereafter in which to cure the breach. If at the end of such thirty (30) day period the non breaching party deems that the breach has not been cured, the non breaching party may take action to terminate this contract franchise ordinance.

SECTION 16. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise ordinance shall be effective until the ordinance granting the same has been adopted as provided by law. (12/23/2008)

**ORDINANCE NO. 4378**

AN ORDINANCE GRANTING SOUTHERN PIONEER ELECTRIC COMPANY, A KANSAS CORPORATION, DULY AUTHORIZED TO ENGAGE IN BUSINESS IN THE STATE OF KANSAS, ITS TRUSTEES, SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR CONFLICTING WITH THE TERMS THEREOF AND SPECIFICALLY REPEALING ORDINANCE NO. 3963.

Section 1. That in consideration of the benefits to be derived by the city and its inhabitants, there is hereby granted to Southern Pioneer Electric Company, a Kansas corporation, hereinafter sometimes designated as "company", the right, privilege, franchise, permission and authority for a period of 20 years from the effective date of this ordinance, subject to the conditions hereinafter stated, the lawful Rules and Regulations of the State Corporation Commission, and any other regulatory agency having jurisdiction over the company, and the laws of the State of Kansas, to occupy and use the present and future several streets, alleys, avenues, roads, bridges and other public places in the city, including any territory hereafter added thereto or coming under the city's jurisdiction and for which the company now or shall hereafter hold a Certificate of Convenience or Authority from the State Corporation Commission, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes to the city and its inhabitants and through the city and beyond the limits thereof; to obtain the electricity from any source available; to do all things necessary or proper to carry on the electricity business in the city.

Section 2. In consideration and as compensation for the right, title, privilege and franchise hereby granted and in lieu of any city occupation, license or revenue taxes, the company agrees to pay five (5%) percent of the total of the gross receipt for electricity sold by the company to all residential and commercial consumers, and zero percent of the total of the gross receipts for electricity sold by the company to all industrial consumers located in the present or future corporate boundaries of the city. The amount paid by the company shall be in lieu of, and company shall be exempt from, all other fees, charges, taxes or assessments which the City may seek to impose exclusively on company for the privilege of doing business within the present or future corporate limits of City. However, nothing contained in this section or this ordinance shall exempt company from paying real or personal property or ad valorem taxes or any other excise tax, occupation or business tax or fee, licensing fee or any other tax or fee that is imposed without discrimination on any other person or business.

Gross receipts derived from street lighting, and other electric service provided to the city is exempt. The city commission during the year 2014 and every fifth year thereafter during the term of this franchise, upon giving 30 days notice to the company of its intention to do so, may reconsider the consideration to be paid by the company under this section. If the city commission 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 whatever franchise fee is so established by this city in this section; provided, however, no increase shall exceed one percent of the annual gross revenues. Any consideration hereunder shall be reported and paid to the city by the company in monthly installments not more than 30 days following the close of the month for which payment is to be made. Initial and final payment shall be prorated for the portions of the months at the beginning and end of the term of this ordinance. All payments shall be made to the city clerk. Pursuant to K.S.A. 12-2001(b)(5) the city shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of any such grantee necessary

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to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross receipts is incorrect, then such payment shall be made upon such corrected statement. The Company 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, the Company will no longer be obligated to collect and pay the franchise fee. In addition, as mutually agreed to by and between the City and Company, the Company 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.

Section 3. That all poles, wires, crossarms, fixtures and other equipment and property necessary to carry on the business of selling and distributing electricity, which shall be constructed, erected, maintained and operated under this grant, shall be so located and constructed as not to unnecessarily obstruct or interfere with the lawful use of the streets, alleys, avenues, roads, bridges or other public improvements already installed. The location of company's facilities within the public places and their separation between other existing public or private utilities or improvements shall be in accordance with all city design criteria and technical specifications on file in the office of the city engineer. The company shall perform all work on streets, alleys and public places under supervision of representative of the city if so requested and desired by the city; and shall repay the city all expense to which it has been put in the repair or replacement of streets, highways or pavements in the event such work is done by the city after the neglect or refusal of company to perform same to the satisfaction of the city engineer or manager. At all times company shall perform work on public right-of-way at such times that will allow the least interference with the normal flow of traffic. Prior to all excavations of public property, the company or the company's excavator must obtain the necessary permits from the city engineer's office. All excavation work shall be completed in accordance with all city requirements and specifications.

Section 4. The facilities of the company located in the streets and alleys and public rights-of-way shall be relocated without expense to the city when such relocation is determined to be necessary by official action of the city commission. Provided, however, that the payment of expenses associated with any relocation initiated or necessitated by persons other than the city shall be made by those persons, pursuant to their agreement with the company.

Section 5. The company, its successors and assigns shall be liable to the city for all damages of every kind and character whether to persons, property or otherwise, occasioned by, growing out of, or incident to the company's use or occupancy of the streets, alleys and public grounds of the city when such use and occupancy renders the city, individually or jointly, liable either in law or in equity, and the company shall hold and save the city harmless from all costs and damages, expenses or liability which may be occasioned by such use or occupancy of the streets, alleys and public grounds by the company, and in the event an action shall be instituted against the city and the company jointly or against the city separately, growing out of an injury occasioned by such use or occupancy of the streets, alleys, and public grounds by the properties and works of the company, then upon notice by the city to the company, the company shall assume all liability for the defense of any and all such action and shall cause the same to be defended at the cost of the company, subject to the option of the city to appear and defend any such case. The company shall not be liable for any damages arising proximately from the negligent act of the city.

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Section 6. During the continuance of this franchise, the company shall furnish electricity to the city and its inhabitants in accordance with the terms of this franchise, the rates, charges, rules and regulations now on file with the State Corporation Commission of the State of Kansas, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas. The company further agrees to furnish and the city agrees to use and pay for the street lighting and traffic signal service provided by the company in accordance with the rates and conditions set out in the company's rates and tariffs on file with the State Corporation Commission of the State of Kansas or such revisions of those rates as may be lawfully established from time to time in accordance with the laws of the State of Kansas.

Section 7. The company shall have the right to make reasonable rules and regulations 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. That if such rules and regulations have not been approved by the Kansas Corporation Commission, they shall be approved by the city before being placed in use or effect within the city or its planning area as defined by the statutes of the State of Kansas.

Section 8. From and after the date of this franchise, the company will place newly constructed electrical distribution lines underground to serve new residential subdivisions in accordance with the company's tariffs and city subdivision regulations now existing or hereinafter enacted.

Representatives of both the city and the company shall meet periodically, and at the request of either party to review the company's undergrounding or overhead conversion program. This review shall include, but shall not be limited to, the following:

(a) The moving of electrical distribution facilities located in streets and other public places in the city underground, including conversions and replacements which have been accomplished or which are underway by the company together with the company's plans for additional undergrounding.

(b) The study of KCC authorization of undergrounding programs of other electrical distribution franchises and the funding of such undergrounding programs.

In addition to the above periodic meetings, the company agrees to cooperate with the city in undertaking and developing a program of converting to underground, existing overhead electric distribution lines in the city. The company shall charge for such conversions in accordance with company's filed rules and regulations governing underground service taking into consideration the useful and economic life of the existing facilities.

Section 9. If the company shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this franchise, then the city at its option, may terminate this franchise by proceeding as follows: The city shall cause a first notice to be served on the company, stating specifically the cause for terminating this franchise and declaring it to be the intention of the city to terminate the same; thereupon the company shall have 30 days after the service of the first notice in which to remedy or remove the cause or causes stated in the notice for terminating the franchise and if within the period of 30 days the company does so remove or remedy the cause or causes (or the company certifies to the city the default cannot be so cured within the time and the company shall have diligently commenced to remove or remedy the cause and can complete the cure in not more than 45 additional days), then such notice shall be

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withdrawn and this franchise shall continue in full force and effect. In case the company does not so remedy or remove the cause or causes, then this franchise shall terminate, become null and void from and after the date specified by the city in a final notice of termination sent to company; provided that, the company shall have the right to seek judicial determination of whether the city has properly found that the company has failed to perform any of the covenants or obligations imposed upon it under and by virtue of this franchise. The city may, in its discretion, upon good cause being shown by the company, extend the time to cure the cause or causes of termination in its final notice of termination. Any termination of this franchise pursuant to the provisions of this section shall be without prejudice to the right of the city to collect any amounts then due it.

In the event the city shall terminate this franchise pursuant to this section, then the right of the city to purchase or condemn the company's utility works and/or ways as provided in K.S.A. 12-811 et seq. is hereby expressly reserved.

In the event K.S.A. 12-811 et seq. be repealed or substantially modified during the term of this franchise the same will be given the interpretation and effect which existed at the time of the execution of this agreement. In the event the franchise is terminated as provided in this section, the company shall not be entitled to discontinue its electric service or to remove any or all of its systems in use under the terms of this franchise until the city has had a reasonable opportunity to condemn the system or obtain alternative electric service for the people of the city.

Section 10. The company shall not sell or transfer its plant or system to or merge with another, nor transfer any rights under this franchise to another, by stock exchange or otherwise, unless the city shall approve in writing such sale, transfer, merger, stock exchange or other change in ownership. Approval of the sale, transfer, merger, stock exchange or other change in ownership shall not be unreasonably withheld.

Section 11. The company shall generally introduce and install as soon as practicable electrical energy technological advances in its equipment and service within the city when such advances are technically and economically feasible and are safe and beneficial to the city and its residents. Upon request by the city, the company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the company's operations in the city in the previous year or will be so incorporated in the six months following the city's request. The company shall report in advance to the city any plans to include technological advances relating to communications systems such as fiber optics, which may utilize electric facilities already in place for the transmission of communication signals and which facilities may be installed by the company for its use, the use of the city, or use of others as the company may license.

The city, and the schools or colleges located in the city may use the facilities for their own use without cost, except such additional expense which may be incurred by the company as a result of the city's use. The city, and schools and colleges located in the city shall not use the facilities for commercial purposes unless it reaches prior agreement with the company regarding consideration for the use of the facilities. In no event shall the city, schools or colleges' use impair the company's ability to use its own facilities. Upon request of the city, the company will provide a detailed report for the use of such communication systems, subject to protecting confidential information. Nothing contained herein shall be construed to authorize the company to engage in communications activities for sale or lease or shall this ordinance be construed as a franchise for the telecommunications activities within the city.

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Section 12. The city shall have the right to use all poles and suitable overhead structures or trenches of the company within the city for the purpose of stringing wires or hanging traffic signals or signs, which use shall not include the distribution or transmission of electricity or other commercial purposes. The City may use said facilities for their own use without cost, except such additional expenses which may be incurred by the Company as a result of the City's, schools' or colleges' use. In no event shall the City's use impair the Company's ability to use its own facilities and must meet all applicable regulations and building guidelines as prescribed by the National Electric Safety Code in effect at the time of this resolution and as may be amended from time to time. The company may allow others holding a franchise, except for electric service, from the city, to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the company and such holder of a franchise from the city, provided, however, that the company shall assume no liability nor shall it be put to any additional expense in connection therewith, and the use of the poles and structures by the city or others holding a franchise from the city, shall conform with the standards established by the company and shall not interfere with the company's use of the facilities.

Section 13. The City grants the Company 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 the City, subject to advance notification to the City and the City's right to direct and/or otherwise veto the rights conferred to the Company under this Section.

Section 14. At any time during the term of the franchise, the city through its city commission or the company may propose amendments to the franchise agreement by giving 30 days written notice to the other of the proposed amendments. Both parties thereafter, through their designated representatives, shall negotiate within a reasonable time and in good faith in an effort to agree on mutually satisfactory amendments, provided that any change in the provisions of this franchise agreement must be mutually agreed to by the city and the company.

Section 15. That in the event any other ordinances of the city conflict with this ordinance, the terms and conditions set out herein shall prevail and the conflicting portions of other ordinances shall be deemed inapplicable.

Section 16. That this ordinance shall not take effect and be in force until after the expiration of 60 days from the date of this final passage and acceptance by the company, within the 60 days, in writing. If the company 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, the company shall be deemed to have accepted this ordinance and all of its terms and conditions..

Section 17. In the event that the Kansas Corporation Commission takes any action which is within its jurisdiction and authority over the company, and such action is ultimately upheld by the state court of highest jurisdiction over such action, which would preclude company from recovering from its customers any cost or fee provided for herein, the parties hereto agree to renegotiate this ordinance in accordance with any ruling of the corporation commission.

Section 18. The City acknowledges that certain information it might request from the company 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



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state or federal law. If the company requests that any information provided by company to the City be kept confidential due to its proprietary or commercial value, the City and its employees, agents and representatives shall maintain the confidentiality of such information to the extent allowed by law. If the City is requested or required to disclose any information that the company has requested be kept confidential, the City shall promptly notify the company of such requests or requirement so that the company may seek an appropriate protective order or other relief.

Section 19. 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 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.

Section 20. If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provision shall not be affected.

Section 21. 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.

Section 22. This franchise is granted pursuant to the provisions of K.S.A. 12-2001 *et seq.* and shall take effect and be in full force as therein provided. (12/22/2009)

**ORDINANCE NO. 4002**

AN ORDINANCE PROVIDING FOR THE APPROVAL OF THE TRANSFER OF THE FRANCHISE HELD BY CENTEL CORPORATION TO UTILICORP UNITED INC.

RESOLVED, that the governing body of the City of Liberal, Kansas hereby approves the transfer, direct or indirect through a subsidiary of Centel Corporation (Centel), from Centel to UtiliCorp United Inc. (UtiliCorp) or one of its subsidiaries or affiliates, of the franchise to furnish and sell electricity dated October 6, 1989. The transfer shall be effective on the date of the closing of the acquisition by UtiliCorp of Centel's electric division in the States of Kansas and Colorado.

**RESOLUTION NO. 1954**

A RESOLUTION PROVIDING FOR THE APPROVAL OF THE TRANSFER, ASSIGNMENT AND SALE OF THE BUSINESS BY UTILICORP (LATER RENAMED TO AQUILA, INC.) TO MID-KANSAS ELECTRIC COMPANY (MKEC)

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WHEREAS, on August 7, 1989, the City granted a franchise agreement (the "Franchise Agreement") to the Centel Corporation, ("Centel") as Ordinance No. 3963;

WHEREAS, UtiliCorp United, Inc., doing business as WestPlains Energy, succeeded to the franchise by virtue of its purchase of substantially all of the assets of Centel in 1991, and UtiliCorp United was later renamed Aquila, Inc. ("Aquila"), and the WestPlains Energy division became the Aquila Networks – WPK division;

WHEREAS, Aquila, Mid-Kansas Electric Company ("MKEC"), Sunflower Electric Power Corporation ("Sunflower"), and the six rural electric cooperatives members of each of MKEC and Sunflower (the "Members") are parties to that certain Asset Purchase Agreement dated as of September 21, 2005 (the "Asset Purchase Agreement"), by which Aquila has agreed to transfer, assign and sell to MKEC, and MKEC has agreed to assume, substantially all of the assets and obligations of Aquila constituting the electric utility business conducted by Aquila that serves customers in the State of Kansas (collectively, the "Business"), including without limitation all of Aquila's right, title and interest in, to and under the Franchise Agreement and its plant, facilities, system and operation located in Liberal;

WHEREAS, following the acquisition of the Business by MKEC, MKEC, Sunflower and the Members desire to consider the transfer and assignment of the electric generation and transmission assets and obligations of the Business to Sunflower, and the transfer and assignment of the electric distribution assets, obligations and operations of the Business to the various Members, or a subsidiary thereof, including the transfer and assignment of the electric distribution assets, obligations and operations of the Business located in Liberal to the Southern Pioneer Electric Company ("Southern Pioneer");

WHEREAS, the City has determined that each of MKEC, Sunflower, and Southern Pioneer is, individually, suitable to carry out the Company's obligations under the Franchise Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the City Commission hereby approves and consents to the transfer, assignment and sale of the Business by Aquila to MKEC, including without limitation all of Aquila's right, title and interest in, to and under the Franchise Agreement and in and to its electric plant, facilities, system and operation located in Liberal, effective as of the Effective Time (as defined in the Asset Purchase Agreement);

FURTHER RESOLVED, that the City Commission hereby approves and consents to, for all purposes under the Franchise Agreement, (1) the transfer and assignment by MKEC of the electric generation and transmission assets, obligations and operations of the Business, including the electric generation and transmission assets and operations in Liberal, to Sunflower, and (2) the transfer and assignment by MKEC of the electric distribution assets, obligations and operations of the Business to the various Members, including the transfer and assignment by MKEC of the electric distribution assets, obligations and operations of the Business located in Liberal to Southern Pioneer, in each case effective upon the date specified in written notice by MKEC to the City;

FURTHER RESOLVED, that the City Commission hereby appoints the City Clerk to send written notice of the City Commission's approval to the Company and to MKEC. (2-14-2006)

**ORDINANCE NO. 4185**

AN ORDINANCE GRANTING TO PEOPLES NATURAL GAS COMPANY, DIVISION OF UTILICORP UNITED INC., ITS SUCCESSORS, AND ASSIGNS, A NATURAL GAS FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN, AND EXTEND A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF LIBERAL, KANSAS; AND PRESCRIBING THE TERMS THEREOF AND RELATING THERETO.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LIBERAL, KANSAS:

SECTION 1. The word “Grantee” as employed and used in this Ordinance, shall denote Peoples Natural Gas Company, Division of UtiliCorp United Inc., its successors and assigns, accepted and approved by Grantor as provided in Section 9, herein, and the word “Grantor” or “the City” shall denote the City of Liberal, Kansas, and the word “customer” shall denote any person, firm, corporation, or other public corporation within the City or within three (3) miles beyond the city limits that receives gas which has been transported at any point through Grantee’s pipeline situated in a street, alley, or right-of-way owned or furnished by the City of Liberal.

SECTION 2. Grantee is hereby granted the non-exclusive right, privilege and franchise to construct, operate, maintain and extend a gas distribution system, together with any and all necessary appurtenances through and along the streets, alleys, public easements, and public places of the City for the purpose of supplying, distributing, transporting, and selling natural gas for light, heat, power and all other uses and purposes to customers of Grantee within the city limits as the same now exists or may hereafter be extended for the full term of this franchise, and upon payment of a fee therefor as herein provided for the additional purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of the City to customers within three (3) miles of Grantor’s city limits, subject, however, to the following terms and conditions.

SECTION 3. All mains and works constructed under this franchise shall be constructed in a safe and workmanlike manner and in accordance with applicable law and/or ordinances of Grantor. Grantee shall hold the City harmless from any and all claims and actions, defense or litigation or damage, arising out of (1) the passage of this Ordinance or (2) the construction, erection, installation, maintenance and operation of Grantee’s properties within the corporate limits of the City or (3) the negligence of Grantee’s employees in the operation thereof. Relative to those three instances, Grantee will cause Grantor to be listed as an additional insured on its general liability policy. However, Grantee shall not hold the City harmless from claims and actions, litigation or damage arising out of negligence of the City, its employees or agents. A copy of the process served upon the City shall be served by the City upon the Grantee and vice versa.

SECTION 4. A. Any excavations by Grantee in any of the streets, alleys, avenues, roads, public easements, or public grounds within the corporate limits of the Grantor shall be done in accordance with such reasonable rules and requirements, resolutions and ordinances as now exist or may hereafter be enacted by the governing body of Grantor. Grantee shall notify Grantor of the date and location of any excavations affecting major streets, avenues, roads or public grounds. When required by Grantor, Grantee or its successors and assigns accepted and approved by Grantor as provided for in Section 9 herein shall remove or relocate any mains and works located in the streets, alleys, public easements and public grounds of Grantor to make way for public

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improvements or other works of a public nature. Such removal or relocation will be at the expense of Grantee, its successors and assigns, and without expense to Grantor.

B. All earth, materials, sidewalks, paved crossings, or improvements of any kind (whether owned by Grantor or a customer) injured or removed by Grantee shall be fully repaired and replaced promptly by Grantee. In the event Grantee neglects or refuses to make such repairs or neglects or refuses to replace such earth, materials, sidewalks, paved crossings or improvements within a reasonable time, Grantee shall reimburse Grantor or the customer for the cost Grantor or the customer incurred in making such repairs or replacing such earth, materials, sidewalks, paved crossings or improvements provided that said repairs or replacements were not caused by the fault of the Grantor or customer. The cost to be reimbursed, if necessary, shall be the lowest of three (3) competitive estimates to do the work (obtained prior to the work being initiated) from three properly qualified, independent repairmen.

C. Grantee shall limit all excavations of streets, alleys, public easements or public places to the necessities of Grantee's efficient operation and not unreasonably interfere with any City water pipes, sewers, drainage pipes, or other city structures. Grantee shall not at any time obstruct or open more of any highway or public place than shall reasonably be necessary to enable Grantee to lay, replace or repair mains or pipes. Grantee shall not permit such excavations to remain open longer than reasonably necessary.

D. In the event that at any time during the period of this franchise the City shall elect to alter, or change the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City or its contractor, shall remove, relay and relocate its mains or service pipes, manholes, and other gas fixtures at its own expense. Notice from the City's contractor shall be deemed notice from the City.

SECTION 5. Grantee shall, during the term and period of this franchise, maintain in the city an efficient and sufficient natural gas distribution system. In addition, Grantee shall have an office in the city and employees available, within the city, who can reasonably, timely and adequately respond to customer service needs and emergencies. Grantee shall at all times maintain an adequate pressure and adequate supply of clean standard natural gas of the British Thermal Unit Heating value of not less than 800 British Thermal Units per cubic foot of gas. The heat value (Btu content) of gas billed to customers on a heat value basis shall be determined, or adjusted, so as to accurately reflect the heat value contained in one cubic foot of gas under standard temperature conditions at the actual customer delivery pressure, all pursuant to the most recently published AGA Gas Measurement Standards. Grantee shall provide Grantor timely notice of any change in BTU content, upward or downward, that could negatively impact the continued operation of any natural gas fueled equipment served by Grantee under this franchise. Grantee shall furnish Grantor each month satisfactory proof of the Btu content of the natural gas being furnished under this franchise from each town border station or other receipt point in Grantee's operating system for the City.

SECTION 6. This Ordinance is granted subject to all conditions, limitations and immunities now provided or as hereafter amended and applicable to the operations of a public utility by the laws of the State of Kansas. The rates to be charged for natural gas service within the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Grantee shall be under the jurisdiction and control of such regulatory body as may, from time to time, be vested by law with authority and jurisdiction of the rates, regulations, quality and standards of service to be supplied by Grantee. By entering into this Ordinance, Grantor does

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not waive or forfeit any of the rights granted it under the 'Home Rule' provision of the Kansas Constitution and maintains the right to assert its rights thereunder at any time.

SECTION 7.

A.. In consideration of and as compensation for the franchise hereby granted to Grantee by Grantor, Grantee shall make an accounting on a monthly basis to Grantor concerning all quantities, measured in therms, adjusted for BTU content, of natural gas that have been distributed or transported to Customers located within or within three (3) miles of Grantor's immediate city boundaries. This requirement of the Grantee to account for all natural gas that has been distributed or transported to Customers outside of the city boundaries is subject to Section 14 of Ordinance No. 4185.

B. The Grantee shall pay the Grantor a sum which shall equal the Volumetric Rate, multiplied by the therms of natural gas distributed or transported to Customers located within Grantor's immediate city boundaries. The number of therms shall be adjusted for volume deliveries which Grantee has written off as uncollectible receivables and for volume delivered and written off as receivables and later collected. Such payments shall be made to Grantor under procedures mutually agreed to by Grantee and Grantor within thirty (30) days of the last day of the month to which such accounting shall apply.

C. The Volumetric Rate shall be based on an annual Franchise Fee (Fee) of \$1.6238 per foot for each foot of Grantee's gas distribution main in the City, which at December 31, 2012 was 253,876 feet.

D. The Volumetric Rate as of the date of this ordinance shall be \$0.6276/MMBtu (\$0.06276/therm), and shall be applied to all customers, regardless of class and/or type of service; provided however, that for any Consumer or User receiving more than 30,000 MMBtu (300,000 therms) through a meter in any calendar year at its facilities within the City, the Volumetric Rate applied to those volumes in excess of 30,000 MMBtu shall be 5% of the current Volumetric Rate and such rate shall be effective as of the date of this ordinance and applied to the first billing from Grantee and thereafter.

E. The Fee shall be computed annually and implemented effective with the first billing cycle in August of each year, using the actual footage of mains within the City as of December 31 of the preceding year, but never less than 193,986 feet. No more frequently than once every two and one-half (2 ½) years, the City may, by ordinance, change the per-foot amount up to five percent (5%) compared to the existing per-foot amount.

F. The Grantor shall have access to and the right to examine at all reasonable times, all books, receipts, files, records and documents of the Grantee necessary to verify the correctness of the franchise fee paid by Grantee and to correct the same, if found to be erroneous. (2013, Ord. 4416 - Section 7 only)

SECTION 8. Unless sooner terminated as hereinafter provided, the rights, privileges and franchise hereby granted to and conferred upon Grantee, shall extend for a period of 20 years from the effective date of the franchise. This franchise and all of its rights and privileges may be terminated by the City prior to the expiration of its 20-year term upon the happening of any of the following events:

(a) At the time that Grantee or its successors and assigns propose to sell, assign or transfer its interests in or rights granted by this franchise, as provided in Section 9 of this franchise.

(b) Every fifth year after the effective date of the franchise, if 45 days prior thereto Grantor gives to the Grantee written notice by certified or registered mail, of its election to terminate the franchise.

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- (c) Breach by Grantee of the franchise agreement in any of the following ways:
- 1) At any time furnishing gas to customers having less than 800 BTU heating value.
  - 2) Failure for a period longer than a reasonably prudent franchise operator would require under same or similar circumstances to restore customer service where the interruption of gas service has occurred for any reason.
  - 3) Failure to within 30 days after receiving written notice from Grantor served in the manner provided by the laws of the State of Kansas for the service of original notices in civil actions, to cure any other breach of the franchise agreement.

SECTION 9. The Grantee shall not sell, assign or transfer its interests in or rights granted by this franchise, to another legal entity via merger, stock exchange or otherwise, without the prior written approval of the Grantor. Grantor's consent shall not be withheld if Grantor determines from its documented investigation that the successor is capable of and agrees to provide acceptable and satisfactory service and transportation satisfactory to the City until the beginning of the next five-year period for automatic renewal of this franchise.

The Grantor shall be presumed to have consented to the sale, transfer or assignment by the Grantee unless written objection is received from the Grantor within ninety (90) days following written notice to the Grantor of the proposed sale, assignment, or transfer of this franchise; provided said notice shall include the name and address of the proposed transferee together with copies of all SEC and KCC filings made by the Grantee and the prospective transferee which pertain to the proposed sale or transfer between the parties that have been filed during the six-month period immediately preceding the date of notice to the City. Until such documentation has been furnished by the proposed transferee, the 90-day time for Grantor to provide written objection or disapproval shall not commence to run; provided, however, if the City does not receive said information within fourteen (14) days after being notified of the pending transfer, the City shall in writing request said information be furnished by Grantee.

In the event Grantor provides Grantee with a written disapproval of the proposed sale, assignment or transfer of this franchise within the 90-day time period, Grantor shall within ninety (90) days thereafter pursue its statutory rights under K.S.A. 12-811 *et seq.*, unless the parties, by written agreement, extend said time period or determine a different method of meeting the requirements of the statute

SECTION 10. Upon the expiration of this franchise, whether by lapse of time, by agreement between Grantee and Grantor, or otherwise, Grantee shall have the right, but not the obligation, to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business if service termination has been authorized by the KCC. Grantor shall, within ninety (90) days after the KCC authorization to cease becomes a final order, pursue its rights under K.S.A. 12-811 *et seq.* unless the parties by written agreement agree otherwise. Should Grantee choose to remove any pipes, laterals, and other equipment, it shall comply with the requirements of Section 4 of this Ordinance.

SECTION 11. Ordinances Numbers 3609 and 3110 of the City of Liberal, Kansas, as the same have been amended, are hereby repealed as of the effective date hereof.

SECTION 12. This Ordinance shall be effective sixty (60) days following its passage and publication in the official newspaper of Grantor, if it has been accepted by Grantee.

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SECTION 13. Grantee shall annually provide to Grantor a distribution pipeline map of Grantee's distribution pipeline system within the City limits of Grantor. Said maps are solely for the use of the Grantor for safety and planning purposes. Grantor acknowledges that the maps are only current as of their posted update date and may not be used by Grantor, its employees or agents, or anyone who procures a copy of said map from Grantor, to circumvent the use of the Kansas One Call System.

SECTION 14. Notwithstanding foregoing provisions to the contrary, Grantee shall not be required to collect from or remit to the Grantor a franchise fee from any customer who receives and uses gas outside the Grantor's city limits, until and unless one of the following events occur:

- (a) Existing Kansas statutes are amended to clearly authorize franchise fees to be collected for gas service rendered to customers within three (3) miles of Grantor's city limits; or
- (b) Grantor obtains a judgment from the District Court of Seward County, Kansas, finding Grantor under existing law is entitled to receive a franchise fee from Grantor's gas service to customers beyond the Grantor's city limits but within three (3) miles thereof.

SECTION 15. If any clause, sentence or section of this Ordinance shall be held to be invalid it shall not affect the remaining provisions of this Ordinance. (7-14-98)

**ORDINANCE NO. 4407**

AN ORDINANCE GRANTING UNITED WIRELESS COMMUNICATIONS, INC. A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LIBERAL, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS. For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "City" - means the City of Liberal, Kansas.
- b. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide Telecommunications services within the City.
- c. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunications services.
- d. "Grantee" - means United Wireless Communications, Inc., a Telecommunications service provider providing service and/or operating Facilities within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- e. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) Recurring Local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange Access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/busy interrupt revenue; (5) Local operator

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assistance revenue; (6) Nonrecurring Local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Leasing of dark fiber to third parties; and, (8) Broadband, which includes data services. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, and all other services not wholly local in nature are excluded from Gross Receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within Gross Receipts.

f. 'Local exchange service' - means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term Local exchange service shall not include wireless communication services.

g. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

h. "Telecommunications services" - means providing the means of transmission, between or among points specified by the user, or information of the user's choosing, without change in the form of content of the information as sent and received. This includes provision of a service for transmission of telephone messages, or two-way video or data messages.

## SECTION 2. GRANT OR CONTRACT FRANCHISE.

a. Pursuant to K.S.A. 2011 Supp. 12-2001 there is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying any Telecommunications services.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

(1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide



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Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

a. Pursuant to K.S.A. 17-1902, *et. seq.*, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City and any applicable Federal and State laws. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way.

c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts.

b. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

e. The City shall have the right to examine, upon sixty (60) days (or such other time as agreed by the parties) prior written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Upon acceptance of this Contract franchise, Grantee shall pay to the City a one-time application fee of Two Thousand Five Hundred Dollars (\$2,500.00). The parties agree that such fee reimburses the city for its reasonable, actual and verifiable costs of reviewing and

approving this Contract franchise.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.** It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Grantee shall provide not less than the following insurance:

(1) Workers' compensation is provided for under any worker=s compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

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b. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall timely notify the City if the insurance is cancelled or materially changed with respect to areas and entities covered. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond acceptable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company and authorized to transact business in the State of Kansas.

**SECTION 7. REVOCATION AND TERMINATION.** In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have thirty (30) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such thirty (30) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Commission present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Commission's consideration, and shall have the right to address the City Commission regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Commission to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Seward County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority, if any, as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications

service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.** The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending on December 31, 2023. Thereafter, this Contract franchise will automatically renew for up to three additional five (5) year terms, unless either party notifies the other party of its intent to terminate the contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or

amendment.

SECTION 11. POINT OF CONTACT AND NOTICES. Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Manager or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Liberal  
324 N. Kansas Avenue  
Liberal, KS 67901  
Attn: City Manager  
(620) 626-2204

Grantee:

United Wireless Communications, Inc.  
P.O. Box 117  
Dodge City, KS 67801  
Attn: Craig Mock, General Manager  
(620) 227-8641

or to replacement addresses that may be later designated in writing.

SECTION 12. TRANSFER AND ASSIGNMENT. This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment.

Additionally, Grantee's obligation under this contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

SECTION 13. CONFIDENTIALITY. Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS. Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the State of Kansas, and shall be deemed effective

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on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the “Effective Date”).

SECTION 15. PAYMENT OF PUBLICATION COSTS. In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 16. SEVERABILITY. If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the contract franchise.

SECTION 17. FORCE MAJEURE. Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control. (1/22/2013)

**ORDINANCE NO. 4430**

AN ORDINANCE GRANTING WILDFLOWER TELECOMMUNICATIONS, LLC, D/B/A IDEATEK, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LIBERAL, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS. For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the contract, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

a. Antenna Facilities: means certain components of a telecommunications network consisting of a system of antennae and associated radio equipment, which may be located on existing or new streetlights, stand-alone poles, third party utility poles and other structures (“Structures”) located on or within the public right-of-way. Such Antenna Facilities may be connected to underground and/or aboveground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment in a configuration and at locations to be identified through the City permit process.

b. “City” – means the City of Liberal, Kansas.

c. “Contract franchise” – means this Ordinance granting the right, privilege and franchise to Grantee to provide Telecommunications services within the City.

d. “Facilities” – means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunications services.

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e. “Grantee” – means Wildflower Telecommunications, LLC, a Telecommunications service providing service and/or operating Facilities within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

f. “Gross Receipts” – shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following:

(1) Recurring Local exchange services for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls;

(2) Recurring local exchange Access line services for pay phone lines provided by Grantee to all pay phone service providers;

(3) Local directory assistance revenue;

(4) Line status verification/busy interrupt revenue;

(5) Local operator assistance revenue;

(6) Nonrecurring Local exchange service revenue which shall include customer service for installation of lines, reconnection of service and change for duplicate bills; and

(7) Leasing of dark fiber to third parties; and,

(8) Broadband, which includes data services. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, and all other services not wholly local in nature are excluded from Gross Receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be include within Gross Receipts.

g. “Local exchange service” – means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term Local exchange service shall not include wireless communication services.

h. “Public right-of-way” – means only the area of real property in which the City has dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

i. “Telecommunications services” – means providing the means of transmission, between or among points specified by the user, or information of the user’s choosing, without change in the form of content of the information as sent and received. This includes provision of a service of telephone messages, or two-way video or data messages.(2015, Ord. 4460-amended Definitions in Section 1)

## SECTION 2. GRANT OR CONTRACT FRANCHISE.

a. Pursuant to K.S.A. 2012 Supp. 12-2001 there is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying any Telecommunications services.

(1) Grantor hereby grants to Grantee the right to deploy Antenna Facilities on Structures located on or within the right of way, subject to the City’s reasonable permitting process. (2015, Ord. 4460-added Section 2a.1)

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

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(1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or third-party, without the consent of such party;

(2) Grant the authority to contract, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statues and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable services as a cable operator (as defined by U.S.C. § 522 (5)) within the City, Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573 ©(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

a. Pursuant to K.S.A 17-1902, *et. seq.*, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way, which right is subject to the City's approval of the plan submitted by Grantee as to the easement requested and the means in which services will be provided within the corporate City limits. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City and any applicable Federal and State laws. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statues, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of way.

c. Grantee shall participate in the Kansas One Call utility location program.

### SECTION 4. COMPENSATION TO THE CITY.

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall



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continue to be based on a sum equal to 5% of Gross Receipts.

b. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the city a certified statement showing the manner in which the franchise fee was calculated.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

e. The City shall have the right to examine, upon sixty (60) days (or such other time as agreed by the parties) prior written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Upon acceptance of this Contract franchise, Grantee shall pay to the City a one-time application fee of Twenty-Five Hundred and no/100ths dollars (\$2500.00). The parties agree that such fee reimburses the city for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.** It shall be the responsibility of Grantee to take adequate measure to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the

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City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Grantee shall provide not less than the following insurance:

(1) Workers' compensation is provided for under any worker's compensation of similar law in the jurisdiction where any work performed with any employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The city shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall timely notify the City if the insurance is cancelled or materially changed with respect to areas and entities covered. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitation and exclusions can be evaluated for appropriateness of overall coverage.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond acceptable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be good and sufficient sureties, issued by a surety company and authorized to transact business in the State of Kansas.

**SECTION 7. REVOCATION AND TERMINATION.** In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have thirty (30) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such thirty (30) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City

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Commission present at the meeting and voting setting out the grounds upon which this Contract franchise is to be revoked and at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Commission's consideration, and shall have the right to address the City Commission regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Commission to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Seward County, Kansas. The Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation of termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority, if any, as a public entity with responsible towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunication service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into this Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.** The failure to either the City or the Grantee to insist in any one or more instances upon the strict performances of nay one or more of the terms of provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such terms of provision, and the same shall continue in force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending on January 1, 2019. Thereafter, this Contract franchise will automatically renew for up to three additional five (5) year terms, unless either party notifies the other party of its intent to terminate the contract franchise at lease ninety (90) days before the

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termination of the current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or any amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES.** Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contract's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Manager or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Liberal  
324 N. Kansas Avenue  
Liberal, KS 67901  
Attn: City Manager  
(620) 626-2201

Grantee:

Wildflower Telecommunications, LLC  
102 N. Main  
Buhler, KS 67522  
Attn: Daniel Friesen  
(620) 543-2580

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.** This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without prior written approval of the City. With regard to any transfer or assignment made to a wholly owned parent or subsidiary of Grantee or between wholly owned subsidiaries of Grantee or Grantee's wholly-owned parent, or to an entity

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with which Grantee is under common ownership or control (individually and collectively “affiliated entities”), the City shall not unreasonably withhold the required written approval. As a condition of this Contract franchise, Grantee agrees and affirms that no transfer or assignment to an affiliated entity will serve to deprive the City of any franchise fee to which it was originally entitled or reduce the amount of the same. Should any such transfer or assignment result in a reduction of the amount of any franchise fee previously received by the City, the City may withhold its approval of said transfer or assignment. In the event of any transfer or assignment of either this Contract franchise or Grantee’s business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contract for the successor entity; and advise the City of the effective date of the transfer or assignment.

Additionally, Grantee’s obligation under this contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

**SECTION 13. CONFIDENTIALITY.** Information provided to the City under K.S.A. 12-2001 shall be governed with regard to confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney’s fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.** Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the State of Kansas, and shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the “Effective Date”).

**SECTION 15. PAYMENT OF PUBLICATION COSTS.** In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.** If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, and essential part of the contract franchise.

**SECTION 17. FORCE MAJEURE.** Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee’s or the City’s control. (8/12/2014)