APPENDIX B
FRANCHISE AGREEMENTS

NOTE: The franchise agreements included herein are for information only. Each contains the substance as adopted by the Governing Body but publication clauses, repealers and signatures have been omitted. Complete copies of franchise agreements as adopted are on file in the office of the City Clerk.

CABLE TELEVISION – KNOLOGY OF KANSAS, INC.

The franchise for cable television is contained in ordinance number 7055 adopted 12/8/98 and amended by Ord. 7055 and Ord. 8059 and Ord. 8577. (Prior cable franchise agreements can be found at: Ord. 3938 adopted 2/25/69, Ord. 4399 adopted 3/27/73 and Ord. 5453 adopted 4/26/83.)

WHEREAS, on the 25th day of February, 1969, the City of Lawrence, Kansas, passed and approved Ordinance No. 3938, whereby there was granted to the World Company, Inc., for a period of ten (10) years from the effective date thereof, the nonexclusive right, authority, power and franchise to establish, construct, acquire, maintain and operate a Closed-Circuit Electronic System within the City of Lawrence, Kansas; to render, furnish and sell closed-circuit electronic service from such System to the inhabitants of the City of Lawrence, Kansas; and to use and occupy the streets, as defined by said ordinance, and other public places within the corporate limits of said City for its Closed-Circuit Electronic System, as by said ordinance provided; and

WHEREAS, on March 27, 1973, the Governing Body of the City of Lawrence, Kansas, passed and approved Ordinance No. 4399, whereby Section II of said Ordinance No. 3938 was amended to extend the term of said nonexclusive franchise granted the World Company, Inc., by a period of five (5) years; and

WHEREAS, under date of February 28, 1983, the World Company, Inc., made written application to the Governing Body of the City of Lawrence, Kansas, for an extension of its said nonexclusive franchise for an additional period of fifteen (15) years, as well as modification and amendment of said Ordinance No. 3938; and

WHEREAS, on March 15, 1983, the Governing Body of the City of Lawrence, Kansas, acknowledged receipt of the written application by the World Company, Inc., for said extension, modification and amendment of said Ordinance No. 3938, and

WHEREAS, pursuant to K.S.A. 12-2007 there was published in the official city newspaper on the 9th day of April, 1983, a Notice of Public Hearing, whereby notice was given that a public hearing on said application by the World Company, Inc., for the extension and amendment of the franchise granted by Ordinance No. 3938 of the City of Lawrence, Kansas, as amended by Ordinance No. 4399 of said City; and

WHEREAS, said public hearing was held and conducted in accordance with the laws of the State of Kansas and said published Notice of Public Hearing, and it has been determined that an extension of the terms and other provided amendments of the subject franchise will provide the franchise holder the assurances necessary to permit it to make the additional investment required to upgrade and expand upon its current operations and service, all for the benefit of its subscribers and viewers.

WHEREAS, on August 23, 2010 the City received a written request from Sunflower, to assign to Knology of Kansas, Inc. a wholly owned subsidiary of Knology Inc. ("Knology"), the nonexclusive cable television franchise granted Sunflower under City Ordinance No. 7055, as amended ("Franchise") (Ord. 8577).

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

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the following meanings:

(a) "Cable Information Service" shall mean a digital two-way interactive packet switched service provided over the Cable System using a cable modem and Internet protocols, which may include separately or in combination, broadband connectivity between the customer, access to the Internet, interactive content and programming, menus, navigational aids, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements. For purposes of interpretation of this Ordinance, Cable Information Service shall include the Datavision service, and such similar successor service if any, provided by the Grantee on and after the date of adoption of this Ordinance.

(b) "Cable Service" shall mean:

(i) the one-way transmission to subscribers of video programming, or other programming service, and

(ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(c) "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within the City.

(d) "City" shall mean the City of Lawrence, Kansas.

(e) "Downstream Transmission" shall mean the transmission of signals from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

(f) "Facilities" or "Facility" shall mean any distribution or transmission component of a cable system.

(g) "FCC" shall mean the Federal Communications Commission of the United States government, or such successor agency or department.

(h) "Franchise Area" shall mean the area within the City which the Grantee is authorized to provide services under this Franchise, and any amendments thereto.

(i) "Grantee" shall mean Knology of Kansas, Inc. a wholly- owned subsidiary of Knology Inc. ("Knology"), and any other divisions or affiliates providing services over the Cable System. (Ord. 8577)

(j) "Gross Revenues" shall mean for purposes of franchise fee calculations all revenues received by Grantee from the operation of the Cable System to provide Cable Services within the City. Gross Revenues shall include, without limitation, subscriber revenues, basic monthly service fees, premium service fees, installation and reconnection fees, leased channel fees, additional outlet fees, and fees for subscription audio services, all adjusted for non-payment. Gross Revenues shall not include amounts collected for taxes, franchise fees, late fees, local origination programming or access programming fees, fees for rental of set top boxes and other equipment or revenues from Non-Cable Services. (Ord. 8059)

(k) "Headend" shall mean a facility for signal reception and distribution on a Cable System including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, and all other related equipment and facilities.

(l) "Non-Cable Services" shall mean those services not explicitly defined as Cable Services or Cable Information Services, including without limitation, telephone services.

(m) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-way improvement and public projects.

(n) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or Public improvements, or any other purpose of a public nature.

(o) "Right-of-way" shall mean present and future streets, alleys, Right-of-way and public utility easements, including public utility easements and Right-of-way dedicated in plats to the City.

(p) "Upstream Transmission" shall mean the carrying of a transmission to the Headend from remote points on the Cable System or from interconnection points on the Cable System.

Section 2. Grant of Franchise.

(a) Pursuant to K.S.A. 12-2001 ET SEQ., and K.S.A. 12-2006 ET SEQ the City grants to the Grantee the non-exclusive right, privilege and franchise to construct, maintain, extend and operate its Facilities, in, through and along the Right-of-way for the purpose of providing Cable Services and Cable Information Services to the City and its inhabitants for the full term of this Franchise; subject to the terms and conditions of this Ordinance and applicable law.

(b) Nothing in this Agreement shall be interpreted as providing the Grantee the right, privilege or franchise to construct, maintain, extend or operate facilities, equipment, wiring, or attendant materials, in, through and along the Right-of-Way for the purpose of providing Non-Cable Services to the City and its inhabitants, except as otherwise permitted by this Ordinance and applicable laws.

Section 3. Use of Right-of-way. In the use of the Right-of-way under this Ordinance, the Grantee shall be subject to all applicable local, state and federal law and regulations. In addition, Grantee shall comply with the following:

(a) The Grantee's use of Right-of-way shall in all matters be subordinate to the City's use of Right-of-way for any public purposes. The Grantee shall coordinate the placement of its Facilities in a manner which minimizes adverse impact on Public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public improvements so as not to impact or be impacted by such public improvement.

(b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged, or removed by the Grantee in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Grantee at its sole expense and to the reasonable satisfaction of the City

and the Grantee.

(c) The Grantee shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical location of all facilities constructed, reconstructed, or relocated in the Right-of-way after the date hereof and provide location information regarding specific future project locations to the City upon request. Where such information is available electronically, upon request from the City, Grantee agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this section only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Grantee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Grantee and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Grantee seven days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Grantee to safeguard such information.

The 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 the Grantee, or of the City at the written request of the Grantee, in seeking to safeguard the confidentiality of information provided by the Grantee to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Grantee shall have no further obligation under this section to provide the City with such information.

(d) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the Right-of-way, the Grantee shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interests of the City as set forth in this Ordinance.

(e) The Grantee shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its Facilities located within Right-of-way when requested by the City or its authorized agents for a Public project. Such location and identification shall be at the sole expense of the Grantee, without expense to the City, its employees, agents, or authorized contractors.

(f) As reasonably necessary, the Grantee shall relocate or adjust any Facilities located in the Right-of-way for a Public project within a reasonable time. Such relocation or adjustment shall be performed by the Grantee at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to the rules and regulations of the City not inconsistent with this Ordinance pertaining to such. The Grantee shall cooperate with all private citizens and businesses requiring the Grantee to move Facilities. For projects which are not Public improvements, Grantee may charge reasonable fees for the temporary removal of Facilities according to a written schedule established by the Grantee.

(g) It shall be the primary responsibility of the Grantee to take adequate measures to protect and defend its Facilities in the Right-of-way from harm and damage. If the

Grantee fails to accurately or timely locate Facilities when requested, the Grantee has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the Right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. The City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Grantee's Facilities.

(h) Except in the event of an emergency, the Grantee shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of Facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the Right-of-way, the Grantee shall erect and maintain signs and other devices as required by City Ordinances, regulations and rules.

(i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of the Facilities in the Right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

Section 4. Street Tree Ordinance. The Grantee shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming and removing of trees located in or on the City Right-of-way.

Section 5. Location of Underground Equipment and Facilities. The Grantee's equipment shall be placed underground as required by City Ordinances, including Chapter 5 Article 4A of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and necessary trenching shall be installed and maintained or provided by the Grantee in accordance with the Ordinances of the City without expense to the City.

Section 6. Franchise Fee.

(a) In partial consideration for the grant of this Franchise and the premises, the Grantee agrees to pay and the City agrees to accept as adequate compensation and consideration for the Franchise granted in lieu of any occupation, license or privilege tax or any lease or easement charge, a franchise fee as defined herein. The Grantee shall pay to the City as a Cable Service franchise fee a sum equal to four percent (4%) of Gross Revenues derived from the operation Grantee's Cable System to provide Cable Services within the corporate limits of the City through June 30, 2007. On and after July 1, 2007, the Grantee shall pay to the City as a Cable Service franchise fee a sum equal to five percent (5%) of Gross Revenues derived from the operation of Grantee's Cable System to provide Cable Services within the corporate limits of the City. (Ord. 8059)

(b) **Reserved.** (this section was repealed by Ordinance 8059).

(c) The franchise fee shall be paid monthly, by electronic transfer to the City, or other method approved by the City and the Grantee, for the preceding monthly period. The Company shall pay the applicable fee to the city within forty-five (45) days of the last day of the applicable month for which a fee payment is due. Payments received

after the due date shall be subject to a one-time charge equal to ten percent (10%) of the payment due. The Grantee shall provide with every payment required pursuant to this Section a completed report in substantially the same form as Exhibit A.

(d) The franchise fee shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes or special assessments) which might be imposed by the City for the privilege of operating Grantee's Cable System and Facilities within the City.

(e) The Grantee and the City agree that the City may modify the franchise fee established by this Ordinance as follows: During or after the fifth year of this Franchise, the City may adopt an Ordinance increasing the Cable Service franchise fee to a maximum of four percent (4%). During or after the tenth year of this Franchise, the City may adopt an Ordinance increasing the Cable Service franchise fee to a maximum of five percent (5%). Before any such modification decision, the City shall conduct a duly noticed public hearing allowing for comment on the proposed franchise fee increase by Grantee and all interested parties. The City shall provide the Grantee with ninety (90) days notice prior to the effective date of any Cable Service franchise fee modification.

Section 7. Sharing of Space. The City encourages the conservation of Right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Grantee shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all Facilities constructed or erected by the Grantee. All agreements and installations shall be subject to all existing and future Ordinances and regulations of the City. Grantee agrees that it will not grant any entity rights to occupy the Right-of-way without providing notice to the City.

Section 8. Technical Requirements for Cable System.

(a) General. The Grantee's Cable System operated hereunder shall at all times be operated and updated, as needed, so that at a minimum, it is conformance with all applicable and current federal, state and local technical specifications and standards, including but not limited to, technical specifications contained in FCC rules and regulations, or any other applicable law which may supersede such rules. As a supplement to the technical standards, the Grantee shall operate the system in a manner to provide to all subscribers video and audio signals of consistently good quality.

(b) Specifications of Cable System. The Grantee hereby commits to upgrade and improve the technical capabilities and specifications of the Cable System by December 31, 2001. In reviewing the progress of the planned technical upgrade the Grantee and the City shall examine the following technical specification goals:

1. Downstream frequency spectrum of 54-750 MHZ.

2. Upstream frequency spectrum of 5-40 MHZ.

3. Channel capacity of a minimum of 70 channels.

4. Channel capacity of a minimum of 4 N.T.S.C. video channels.

5. Two-way capable between Grantee and subscriber.

Section 9. Public, Educational and Governmental Access.

(a) Access channels. The Grantee shall make available to the City the public, educational and governmental (PEG) access channels as specified in this Section.

(1) The Grantee shall continue to make available to the City (1) access channel for City non-commercial uses and purposes, at no cost to the City.

(2) The Grantee shall continue to make available to the Unified School District No. 497, (USD #497), one (1) access channel for USD #497 non-commercial uses and purposes.

(3) By January 1, 2000, the Grantee shall make available to University of Kansas one (1) access channel for University of Kansas non-commercial uses and purposes.

(4) By January 1, 2000, the Grantee shall make available to the Haskell Indian Nations University (Haskell) one (1) access channel for Haskell non-commercial uses and purposes.

The above four (4) access channels shall be of the same quality as other channels of the cable system. Grantee shall not charge the City, USD #497, the University of Kansas or Haskell for such access. Grantee shall serve as Designated Access Manager for public use of access channels.

(b) Additional access channels. After the upgrade of Grantee's Cable System as specified in Section 8, the Grantee shall make available to the City up to two additional access channels in accordance with the following procedures:

(1) The City may request an additional access channel when the existing access channels are in use at least 80% of the week on a 8-hour per day/seven day per week schedule, with at least 80% of the programming from unduplicated, locally originated programming. The existing access channels must maintain this level of usage for at least six consecutive weeks. Programming consisting primarily of text messages shall not be including in calculating access use.

(2) When the City determines that access channel use meets the above threshold and the City desires an additional access channel, the City shall deliver to Grantee a written request for an additional access channel accompanied by reports or other documentation showing that access use meets or exceeds the above threshold.

(3) The Grantee has 30 days to respond to the request for an additional access channel. If the Grantee agrees with the request, the Grantee and the City shall establish an implementation schedule, taking into account Grantee's then existing programming obligations and other factors.

(4) If Grantee disagrees with the request for an additional access channel, then the City shall schedule a public hearing before the City Commission to provide Grantee and others interested an opportunity to present testimony and other evidence concerning the request for an additional access channel. Following the hearing, the City Commission shall issue a decision on the request.

(5) Interested parties may appeal the decision under applicable law.

(c) The Grantee, shall provide a loaner program for community residents for the use of

two (2) 8mm studio equipment cameras for use in the production and programming needs of the access channels.

(d) Indemnification by PEG access users. All producers and users of any of the PEG facilities or channels shall agree in writing to hold harmless the Grantee and, where applicable, the City, from any and all liability or other injury (including the reasonable cost of defending claims or litigation) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which claims result from the use of PEG facilities or channels, or the City's or Grantee's policies, practices or decisions regarding such use.

Section 10. Institutional Network.

(a) Construction and activation. Grantee shall construct and activate a Public Institutional Network (PIN) in accordance with the specifications in Appendix A. Grantee shall retain ownership and control of the PIN and related Facilities, subject to the City's rights under this Ordinance to use the PIN.

(b) Review and adjustment of PIN requirements and capabilities. During years five and ten of this Ordinance, the City may conduct a review and adjustment of PIN requirements and capabilities. The City shall conduct any PIN review in accordance with the following procedures:

(1) If the City elects to initiate a PIN review, it shall provide the Grantee with written notice at least 90 days before commencing the review. The notice shall include the PIN requirements and capabilities under review and any proposed adjustments.

(2) Within 60 days of delivery of the notice, representatives of the City and the Grantee shall meet to develop mutually agreeable adjustments to PIN requirements and capabilities. Any mutually agreeable adjustments shall be presented to the City Commission as recommendations for modification to this Section.

(3) If the City and the Grantee cannot develop mutually agreeable adjustments to PIN requirements and capabilities within a reasonable time, then the City and the Grantee shall submit to the City Commission their respective proposals for modification to this Section. Grantee's proposal shall be considered a request for modification of franchise obligations under 47 USC § 548.

(4) The City Commission shall review the proposals and the comments of interested parties at a public hearing. The City Commission shall then issue a decision concerning any modification to this Section, taking into account the costs, the current and projected PIN usage, changes in technology and other relevant factors.

(5) The Grantee may appeal under applicable law a denial of a modification proposal under this Section.

(c) Indemnification by PIN users. The City and PIN users shall agree in writing to hold

harmless the Grantee and the City, where applicable, from any and all liability or other injury (including the reasonable cost of defending claims or litigation) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which claims result from the use of the PIN.

Section 11. Cable System Service Standards. The Grantee shall provide service standards which comply, at a minimum, with Cable System service standards required by the FCC.

Section 12. Access to Information and City Audit regarding Grantee Equipment, Facilities and Revenues. The Grantee shall provide the City, or City audit representatives, with reasonable access to Grantee records, revenue codes and information documenting the total gross revenues from Cable Service as defined in this Ordinance. The Grantee shall comply with all reasonable requests for information in the performance of any audit and shall pay 50% of the actual and reasonable costs of such audit, not to exceed $2,500 per audit.

Section 13. Attachment to Poles. Nothing in this Ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or the Grantee on the poles of the other. If such attachments are desired by the City or the Grantee, a separate agreement shall be prerequisite to such attachments.

Section 14. Indemnification and Hold-Harmless. The Grantee, its successors and assigns, shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which the City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Grantee, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of Cable Services and the transmission, distribution of such services within the City or outside the City.

Section 15. Assignment of Franchise. Pursuant to the written permission of the City and the submission of FCC form 394 or such successor form, the Grantee shall have the right to assign the Franchise granted under this Ordinance, and the associated rights and privileges to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Grantee should seek approval to assign this Franchise, the Grantee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This Franchise shall be assignable only in accordance with federal law and the laws of the State of Kansas, as the same may exist at the time when any assignment is made. In the event that Grantee assigns this Franchise to a wholly owned subsidiary or affiliate of Grantee, such assignment shall require thirty (30) days prior written notice to the City and shall not require City approval.

Section 16. Conditions of Franchise. This Franchise is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Grantee's control. This Franchise shall not be exclusive.

Section 17. Other Franchises. Grantee agrees that the City may grant to other providers one or more franchises to provide Cable Service and other services. To avoid unfair competition due to disparate franchise obligations, if the City grants franchise rights to other providers in competition with Grantee, Grantee may petition the City to modify terms of this Ordinance to adjust or eliminate terms that are more burdensome or costly than the terms of a competing provider's franchise. The City

shall schedule a public hearing on the petition within 60 days of receipt and shall issue a written decision granting or denying such petition within 60 days of such hearing.

Section 18. Changes in laws or regulations. The City or the Grantee may seek modification of this Ordinance due to changes in federal or state laws or regulations in accordance with the following procedures:

(1) The party seeking modification shall serve the other party notice of a request for modification under this Section. The notice shall specify: (I) the changes in laws or regulations on which the modification request is based; and (ii) the desired modifications.

(2) Within 60 days of delivery of the notice, representatives of the City and the Grantee shall meet to develop mutually agreeable modifications to the Ordinance. Any mutually agreeable modifications shall be presented to the City Commission as recommendations for modification to the Ordinance under this Section.

(3) If the City and the Grantee cannot develop a mutually agreeable recommendation for modification within a reasonable time, then the City and the Grantee shall submit to the City Commission their respective proposals for modification under this Section.

(4) The City Commission shall review the proposals and comments of interested parties at a public hearing. The City Commission shall then issue a decision concerning any modification to the Ordinance under this Section.

(5) The Grantee may appeal under applicable law a denial of a modification proposal under this Section.

Section 19. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas 66044. For the purpose of this Agreement, notice to the Grantee will be to: Knology of Kansas, Inc., Bruce Schoonover, Jr., Director-Regulatory Affairs, 1241 O.G. Skinner Dr., West Point, GA 31833. Notice will be effective upon delivery, by hand delivery or by first class mail to the above address until the City or the Grantee notifies the other, in writing, of a change in address. (Ord. 8577)

Section 20. Length of Franchise Agreement. This Agreement shall be effective for fifteen (15) years after its effective date pursuant to Section 24. Upon request by the City, the Grantee and the City may periodically conduct a meeting to review this Ordinance, and related performance and cooperation issues.

Section 21. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration of this Ordinance, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture thereof, the Grantee has the right to remove from public property all of its Facilities used in its business within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Grantee immediately upon such removal, to restore the Right-of-way from which its Facilities are removed to as good condition as before removal and without cost to the City.

Section 22. Performance Guarantee and Escrow.

(a) Grantee shall, within thirty (30) days of the effective date of this Ordinance, deliver to the City satisfactory evidence of a performance bond in the amount of Twenty Thousand Dollars ($20,000.00), payable to the City. The bond shall be used to ensure the faithful performance by the Grantee of all provisions of the Ordinance and payment by Grantee of any claims, liens, and taxes due to the City which arise by reason of the construction, operation, or maintenance of the Cable System.

(b) The City shall be entitled to claim against the bond for any actual losses suffered by the City as a result of Grantee's violation of this Ordinance. Before making such a claim, the City must provide Grantee with written notice and a reasonable opportunity to cure any alleged violation. If Grantee fails to cure or otherwise resolve the alleged violation, then the City shall conduct a public hearing, allowing Grantee and other interested parties to comment on the alleged violation and the proposed claim against the bond.

Section 23. Termination or Forfeiture of Franchise.

(a) In case of failure on the part of the Grantee, its successors and assigns, to comply with any of the provisions of this Ordinance, or if the Grantee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, the Grantee, its successors and assigns, shall forfeit all rights and privileges granted by this Ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings and all additional provisions as required by the State and federal law.

(b) Before the City proceeds to forfeit the Franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provision of this Ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Grantee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this Franchise. If, at the end of such ninety (90) day period, the City deems that the conditions of such Franchise have not been complied with by the Grantee and that such Franchise is subject to cancellation by reason thereof, the City, in order to terminate the Franchise shall enact an Ordinance setting out the grounds upon which the Franchise is to be canceled and terminated. If within thirty (30) days after the effective date of the Ordinance, the Grantee has not instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Grantee has violated the terms of this Franchise and that the Franchise is subject to cancellation by reason thereof, such Franchise shall be canceled and terminated at the end of such thirty-day period.

(c) If within such thirty (30) day period the Grantee does institute an action, as above provided, to determine whether or not the Grantee has violated the terms of this Franchise and that the Franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in the event the court finds that the Franchise is subject to cancellation by reason of the violation of its terms, this Franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 24. Effectiveness. This Ordinance shall become effective after the following: 1) the Ordinance has been approved by the Grantee in writing pursuant to Section 27; 2) the Ordinance has been read in full at three regular meetings of the governing body; 3) the Ordinance has been published in the official city paper once a week for two consecutive weeks; and 4) the expiration of 60 days from the date of final passage without the submission of a proper petition asking that the Franchise be submitted for adoption to popular vote; all as provided by K.S.A. 12-2001. The Grantee shall pay for the required publications of this Ordinance.

Section 25. Severability. If any provision, section or subsection of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections, or subsections or applications of this Ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this Ordinance are declared to be severable.

Section 26. Repeals. To the extent of their validity on the date of effectiveness of this Ordinance, Ordinance No. 3938, 4399 and Ordinance No. 5453 are hereby repealed.

Section 27. Grantee Acceptance. The Grantee shall, within sixty (60) days, from the final publication of this Ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this Ordinance, and in case its failure to do so, this Ordinance shall be null and void. The acceptance of this Ordinance shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths.

ELECTRIC - WESTERN RESOURCES

ORDINANCE NO. 6450

AN ORDINANCE GRANTING WESTERN RESOURCES, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF, PROVIDING FOR A MONTHLY FRANCHISE FEE PAYMENT TO BE MADE TO THE CITY OF LAWRENCE, KANSAS AND REPEALING ORDINANCE NO.4308.

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

Section 1. Grant of Franchise**.** That in consideration of the benefits to be derived by the City of Lawrence, Kansas, hereinafter "City" and its inhabitants, there is hereby granted to Western Resources, Inc., a Kansas corporation, hereinafter "Company," the right, privilege and authority to occupy and use the present and future streets, highways, alleys, avenues, roads, and utility easements, in the City, including any territory hereafter added thereto or coming under the City's jurisdiction for which the Company now or shall hereafter hold a Certificate of Convenience or Authority from the State Corporation Commission. The Company shall have the authority to place and maintain equipment and property necessary to carry on the business of selling and distributing electricity for all purposes to the City of Lawrence, Kansas, and its inhabitants, and through the City and beyond the limits thereof; to obtain electricity from any source available; and to do all things necessary and proper to carry on the business in the City of Lawrence, Kansas. (Ord. 6450; Ord. 7034)

Section 2. Placement of Company Equipment. The poles, wires, cables, conduits, pipes and other equipment and facilities (hereinafter “equipment”) of the Company shall be laid, installed and maintained by the Company so as to not obstruct or interfere with any public drain, sanitary sewer, water pipe, storm sewer, or other public improvement already installed. The equipment of the Company located in or on the right-of-way or easement of streets, highways, alleys, avenues, roads, bridges, and utility easement in the City shall be relocated without expense to the City when necessary for City purposes. The equipment of the Company shall be installed and maintained in accordance with the current rules and regulations of the State Corporation Commission and all applicable electric codes and ordinances adopted by the City. The placement and siting of the equipment of the Company shall conform to Chapter 5, Article 4A, of the Code of the City of Lawrence, Kansas, and amendments thereto. In no event shall the Company be required to place facilities underground other than as required by City ordinances, include Chapter 5, Article 4A, of the Code of the City of Lawrence, Kansas, and amendments thereto. (Ord. 7034)

Section 3. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way. (Ord. 6450)

Section 4. Location of Underground Equipment and Facilities. The Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 4A of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the

equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City. Maps showing the location shall be filed in the Office of the City Engineer. (Ord. 6450)

Section 5. Franchise Fee.

(A) In consideration of the grant of this franchise and the premises herein, the Company agrees to pay and the City of Lawrence, Kansas agrees to accept as adequate compensation and consideration for the franchise hereby granted in lieu of any occupation, license, or privilege tax or any lease or easement charge, five percent (5%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City. The City may by ordinance modify the franchise fee, without approval of the Company, to an amount not to exceed five percent (5%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City, such ordinance shall take effect not earlier than ninety (90) days after publication. Total gross receipts shall include all sources of income generated, directly or indirectly, by the use of City property, right-of-way, and utility easements granted by this franchise. Gross receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electrical energy." These other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges. (Ord. 7034, Ord. 8030)

(B) The franchise fee shall be paid monthly, by electronic transfer to the City of Lawrence, Kansas, or other method approved by the City and Company, for the preceding monthly period. On or before March 1 of every year, the Company shall also submit a report in substantially the same form as Attachment A to this ordinance which shall detail revenues from specific sources for the preceding year. The Company shall pay the applicable fee to the City within forty-five (45) days of the last day of the applicable month for which a fee payment is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent (1%) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one percent (1%) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company. In the event the Company makes an overpayment of franchise fee payments, the appropriate payment to the Company shall include a one percent (1%) per month charge beginning on and after forty-five (45) days after the City and the Company agree in writing to the amount of the overpayment. (Ord. 7034)

Section 6. Access to Information regarding Company Equipment, Facilities and Revenues.
The Company shall provide the City with reasonable access to current Company records, information, and map documenting the placement of equipment installed within the City. Such information shall include reasonable access to information and data stored electronically or by computer, including information stored on a geographic information system. The Company shall provide the City, or City audit representatives, with reasonable access to Company records and information documenting the total gross receipts from sales within the City. The Company shall be required to maintain detailed accounting records and detailed records supporting outside taxing authority revenue deductions, and provide those records for review and reasonable access by the City or City audit representatives. (Ord. 7034)

Section 6.5. Notification and Confirmation of City Annexation.
The City shall notify the Company of the adoption of ordinances annexing territory into the City by the use of a form substantially in the same form as Exhibit B. The Company shall acknowledge the

receipt of the notification and return an executed form to the City. The Company shall be responsible for ensuring that appropriate jurisdictional codes for customer accounts have be altered to reflect the adoption of ordinances annexing territory into the City limits. (Ord. 7034)

Section 7. Indemnification. The Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages arising from the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of its electric generation, transmission, distribution, and street lighting systems within the City or outside the City. (Ord. 6450)

Section 8. Assignment of Franchise. The Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, subject to the approval of the State Corporation Commission, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this franchise, the Company shall notify the City in writing and provide a copy of the Company's filing with the State Corporation Commission. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. (Ord. 6450)

Section 9. Length of Franchise Agreement. This Agreement shall be effective as provided in Section 12 of Ordinance No. 6450 and Section 7 of this ordinance. Provided further that absent a written request by either the Company or the City for negotiation of a new agreement received prior to February 1, 2003, this agreement shall be effective until July 1, 2008. Provided further that absent a written request by either the Company or the City for negotiation of a new agreement received prior to February 1, 2008, this agreement shall be effective until July 1, 2013. (Ord. 7034)

Section 9.5. Amendment of Franchise Ordinance and Agreement Upon Changed Conditions
In the event customers of the Company within the area covered by this Agreement are granted the right to purchase electricity from a provider other than the Company, either party may, upon thirty (30) days' notice to the other party, request that the provisions of this Agreement, including the franchise fee rate provided herein, be adjusted to reflect the modifications of governing law allowing the customers of the Company to purchase electricity from providers other than the Company. The parties agree that, upon the giving and receipt of such notice, they will meet in good faith to negotiate any necessary changes to this Agreement to conform it to the intent of the modifications of governing law. The failure to negotiate in good faith shall be considered a material breach of this Agreement. (Ord. 7034)

Section 9.6. No Authority Pursuant to Franchise Ordinance for Non Electric Sale Services
Nothing in this ordinance and franchise agreement shall be construed as authority for the Company to provide telecommunications, gas, telephone, cable television or other non electric sale services within the City of Lawrence, Kansas. The Company and the City agree that the Company shall be required to obtain a separate franchise agreement with the City in order to use the City property, right-of-way and public easements for the provision of telecommunications, gas, telephone, cable television or other non electric sale services to customers within the City of Lawrence, Kansas. (Ord. 7034)

Section 10. Breach of Ordinance. If the Company shall commit a material breach of its duties and obligations under this ordinance, and such breach shall continue for a period of sixty (60) days after written notice has been sent to the Company's local office detailing the breach, without the Company curing the same or attempting with reasonable diligence to do so, the City shall have the right to declare a forfeiture hereof whereupon this franchise shall terminate. (Ord. 6450)

Section 11. Repeal of Expiring Franchise Ordinance. Ordinance No. 4308, adopted by the City on May 30, 1972, is repealed upon the effective date of this ordinance. (Ord. 6450)

Section 12. Effectiveness. This ordinance shall be considered as amending the cited provisions of

Ordinance No. 6450 and Ordinance No. 6483. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Lawrence, Kansas, their successor and assigns, from and after the following: 1) the ordinance has been approved by the Company; 2) the ordinance has been read in full at three regular meetings of the governing body; 3) the ordinance has been published in the official city newspaper once a week for two successive weeks, and 4) the expiration of 60 days from the date of final publication without the submission of a proper petition asking that the franchise be submitted for adoption to popular vote; all as provided by K.S.A. 12-2001. The Company shall pay for the required publications of this ordinance. (Ord. 7034)

ELECTRIC - KAW VALLEY ELECTRIC COOPERATIVE

ORDINANCE NO. 7147

AN ORDINANCE GRANTING TO KAW VALLEY ELECTRIC COOPERATIVE A NON EXCLUSIVE FRANCHISE AND THE RIGHT AND PRIVILEGE TO PROVIDE ELECTRIC SERVICE WITHIN THE CITY OF LAWRENCE AND TO USE THE PUBLIC RIGHT-OF-WAY TO LOCATE LINES AND OTHER FACILITIES FOR THE PURPOSE OF SUPPLYING ELECTRIC SERVICES TO THE CITY OF LAWRENCE, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

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

Section 1. Definitions. For purpose of this Ordinance, the following words and phrases shall have the meanings given herein:

(A) The Company shall mean Kaw Valley Electric Cooperative, a cooperative under the laws of the State of Kansas, its successors and assigns.

(B) City shall mean the City of Lawrence, Kansas.

(C) Electric Service shall mean the provision of electricity to a user or consumer within the City of Lawrence.

(D) Facilities shall mean electric lines, conduits, wires, cables, pipes, poles, towers, vaults and appliances, and appurtenances and improvements thereto, either under or above ground.

(E) Public improvement shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects.

(F) Public project shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.

(G) Right-of-way shall mean present and future streets, alleys, right-of-way and public utility easements, including public utility easements and right-of-way dedicated in plats to the City.

(H) Telecommunications shall mean the 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 2. Grant of Franchise.

(A) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Company the right, privilege and franchise to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying electric service to the City and its inhabitants thereof for the full term of this franchise; subject, however, to the terms and conditions herein set forth.

(B) This franchise does not provide the Company the right to provide "Cable Service" or "Telecommunications Service" to the City and inhabitants thereof. For purposes of this ordinance, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. "Telecommunications Service" is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(C) Upon written request from the Company, the City agrees to begin negotiations in good faith with the Company within thirty (30) days to provide the Company a franchise to provide "Cable Service" or "Telecommunications Service" to the City and the inhabitants thereof.

Section 3. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

(A) The Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purposes. Nothing in this franchise ordinance shall be interpreted as a guarantee to the Company that it may occupy or use a certain right-of-way which the City determines is unreasonable for the use by the Company to use or occupy. The Company shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

(B) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Company in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Company at its sole expense and to the reasonable satisfaction of the City and the Company.

(C) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Company agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Company and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the

Company and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company to safeguard such information.

The Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Company, or of the City at the written request of the Company, in seeking to safeguard the confidentiality of information provided by the Company to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Company shall have no further obligation under this section to provide the City with such information. Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change. All points of facilities shall be horizontally located from street centerline or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(D) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interests of the City as set forth in this Ordinance.

(E) The Company shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Company, without expense to the City, its employees, agents, or authorized contractors. The Company shall designate the General Manager, Kaw Valley Electric, 1100 SW Auburn Road, P.O. Box 750640, Topeka, Kansas, 66675-0640 as its agent to provide the City with timely information when required by this subsection.

(F) As reasonably necessary, the Company shall relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time. Such relocation or adjustment shall be performed by the Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Ordinance pertaining to such.

(G) It shall be the sole responsibility of the Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Company fails to accurately or timely locate facilities when requested, the Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Company facilities.

(H) Except in the event of an emergency, the Company shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of

facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

(I) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations. The equipment of the Company shall be installed and maintained in accordance with the current rules and regulations of the State Corporation Commission and all applicable electric codes and ordinances adopted by the City.

Section 4. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 5. Location of Underground Equipment and Facilities. The Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 4A of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City.

Section 6. Franchise Fee. (Ord. 8080)

(A) In consideration of the grant of this franchise and the premises herein, the Company agrees to pay and the City of Lawrence, Kansas agrees to accept as adequate compensation and consideration for the franchise hereby granted in lieu of any occupation, license, or privilege tax or any lease or easement charge, five percent (5%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City. The City may by ordinance modify the franchise fee, without approval of the Company, to an amount not to exceed five percent (5%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City, such ordinance shall take effect not earlier than ninety (90) days after publication. Total gross receipts shall include all sources of income generated, directly or indirectly, by the use of City property, right-of-way, and utility easements granted by this franchise. Gross receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electrical energy." These other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges.

(B) The franchise fee shall be paid monthly, by electronic transfer to the City of Lawrence, Kansas, or other method approved by the City and Company, for the preceding monthly period. Concurrent with the payment, the Company shall monthly submit a report in substantially the same form as Attachment A to this ordinance which shall detail revenues from specific sources for the preceding year. The Company shall pay the applicable fee to the City within forty-five (45) days of the last day of the applicable month for which a fee payment is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent

(1%) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one percent (1%) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company. In the event the Company makes an overpayment of franchise fee payments, the appropriate payment to the Company shall include a one percent (1%) per month charge beginning on and after forty-five (45) days after the City and the Company agree in writing to the amount of the overpayment.

(C) The franchise fee shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the City for the privilege of operating an electric system within the City.

(D) The Company agrees to use due diligence in ascertaining the boundaries of the City, including the annexation of property into the City. The City shall provide copies of annexation ordinances to the Company on a timely basis. The Company shall obtain a copy of the annual boundary resolution adopted by the City, and the Company shall compare the City boundaries with existing and planned Company services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City. The Company shall be responsible for ensuring that appropriate jurisdictional codes for customer accounts have be altered to reflect the adoption of ordinances annexing territory into the City limits.

Section 7. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City and complying with the franchise requirements of the City.

Section 8. Access to Information regarding Company Equipment, Facilities and Revenues. The Company shall provide the City, or City audit representatives, with reasonable access to Company records, revenue codes and information documenting the total gross receipts as defined in Section 6 to verify the correctness of amounts paid under this franchise.

Section 9. Attachment to Poles. Nothing in this ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or the Company on the poles of the other. If such attachments are desired by the City or the Company, then a separate non-contingent agreement shall be prerequisite to such attachments.

Section 10. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of electric services and the transmission, and/or distribution of such services within the City or outside the City.

Section 11. Assignment of Franchise. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this franchise, the Company shall notify the City in writing. All such assignments

shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 12. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive.

Section 13. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Company will be to: General Manager, Kaw Valley Electric Cooperative, 1100 SW Auburn Road, P.O. Box 750640, Topeka, Kansas, 66675-0640. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 14. Amendment of Franchise Ordinance and Agreement Upon Changed Conditions.
In the event customers of the Company within the area covered by this Agreement are granted the right to purchase electricity from a provider other than the Company, either party may, upon thirty (30) days' notice to the other party, request that the provisions of this Agreement, including the franchise fee rate provided herein, be adjusted to reflect the modifications of governing law allowing the customers of the Company to purchase electricity from providers other than the Company. The parties agree that, upon the giving and receipt of such notice, they will meet in good faith to negotiate any necessary changes to this Agreement to conform it to the intent of the modifications of governing law. The failure to negotiate in good faith shall be considered a material breach of this Agreement.

Section 15. No Authority Pursuant to Franchise Ordinance for Non Electric Sale Services.
Nothing in this ordinance and franchise agreement shall be construed as authority for the Company to provide telecommunications, gas, telephone, cable television or other non electric sale services within the City of Lawrence, Kansas. The Company and the City agree that the Company shall be required to obtain a separate franchise agreement with the City in order to use the City property, right-of-way and public easements for the provision of telecommunications, gas, telephone, cable television or other non electric sale services to customers within the City of Lawrence, Kansas.

Section 16. Length of Franchise Agreement. This agreement shall be effective for five (5) years after its effective date pursuant to Section 19. This agreement shall be extended for successive five (5) year terms unless prior to one hundred eighty (180) days before the expiration of the original term or of a successive term either party provides written notice to the other party of its intention to terminate the agreement at the expiration of such term; provided that this Agreement shall not be renewed beyond September 1, 2014 without the written permission of both the City and the Company.

Section 17. Rights and Duties of Grantee upon Expiration of Ordinance.
Upon expiration of this Ordinance, whether by lapse of time, by agreement between the Company and the City, or by forfeiture thereof, the Company shall have the right to remove from public property and all of its facilities used in its business within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 18. Termination or Forfeiture of Franchise.

(A) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation

of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

(B) Before the City of Lawrence proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise.

If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City of Lawrence, in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

(C) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 19. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Lawrence, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 21, 2) the ordinance has been read in full at three regular meetings of the governing body, 3) the ordinance has been published in the official city paper once a week for two consecutive weeks, and 4) the expiration of 60 days from the date of final passage without the submission of a proper petition asking that the franchise be submitted for adoption to popular vote; all as provided by K.S.A. 12-2001. The Company shall pay for the required publications of this ordinance.

Section 20. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 21. Company Acceptance. The Company shall, within sixty (60) days, after the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

GAS – ATMOS ENERGY CORPORATION

ORDINANCE NO. 8237

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION ITS SUCCESSORS AND ASSIGNS, A NON EXCLUSIVE NATURAL GAS FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN NATURAL GAS SERVICE LINES IN THE PUBLIC RIGHT-OF-WAY WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF LAWRENCE, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF LAWRENCE, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

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

Section I. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

(A) The Company shall mean Atmos Energy Corporation its successors and assigns.

(B) City shall mean the City of Lawrence, Kansas.

(C) Facilities shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale of natural gas within the city to the inhabitants thereof for any use, including domestic, commercial, and industrial purposes.

(D) Gas Service shall mean the supplying, selling, transmitting, transporting, or distributing of natural gas within the city through the use of Company facilities.

(E) Public improvement shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects, which are supported by public funds.

(F) Public project shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature, which is supported by public funds.

(G) Right-of-way shall mean present and future streets, alleys, avenues, bridges, public rights-of-way, and public utility easements, including public utility easements and right-of-way dedicated in plats to the City.

(H) Gross Rate shall mean gross receipts derived from the sale or distribution of natural gas, including customer service charges.

Section 2. Grant of Franchise.

(A) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Company the right, privilege, franchise, permission and authority to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying natural gas or processed gas for all purposes to the City and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through said City for the full term of this franchise; subject, however, to the terms and conditions herein set forth. The City further grants the Company the right, privilege, franchise, permission and authority to lay, install, maintain, and operate over, across and along all of the rights-of-way of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the

inhabitants of the City and in carrying on such business.

(B) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to the Company the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without a separate grant of a franchise from the City.

Section 3. Governing Rules and Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Kansas. The rates to be charged by the Company for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by the Company. In determining the rights and duties of the Company, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

(A) The Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purposes. The Company shall coordinate the placement of its facilities in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

(B) Upon receipt and acceptance of a valid application for service, the Company shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of City. No obligation shall extend to, or be binding upon, the Company to extend its facilities if the Company is, for any reason, unable to obtain and deliver an adequate energy supply.

(C) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Company in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Company at its sole expense and to the reasonable satisfaction of the City and the Company.

(D) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Company agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Company and the City agree that such information is confidential

and proprietary and agree that such information shall remain the sole property of the Company and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company to safeguard such information.

The Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Company, or of the City at the written request of the Company, in seeking to safeguard the confidentiality of information provided by the Company to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Company shall have no further obligation under this section to provide the City with such information

(E) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interests of the City as set forth in this Ordinance.

(F) The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and locations of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Company, without expense to the City, its employees, agents, or authorized contractors. The Company shall designate an agent to provide the City with timely information when required by this subsection.

(G) As reasonably necessary, the Company shall remove and relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time. Such relocation or adjustment shall be performed by the Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Ordinance pertaining to such. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section.

(H) It shall be the sole responsibility of the Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Company fails to accurately or timely locate facilities when requested, the Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Company facilities.

(I) Except in the event of an emergency, the Company shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior

authorization from the City.

In addition, all work performed in the traveled way or which in any way Impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

(J) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

Section 5. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 6. Location of Underground Equipment and Facilities. The Company equipment, other than equipment of Company which is, within the natural gas industry, customarily placed above ground or required by law to be located above ground, shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City.

Section 7. Franchise Fee.

(A) In consideration for the grant of this franchise, the Company agrees to collect from its customers, but not from the City, located within the corporate limits of the City, and pay to the City, and the City agrees to accept as adequate compensation and consideration for the franchise fee as defined herein an amount equal to five percent (5%) of the gross receipts derived from the sale, distribution or transportation of natural gas, including customer service charges.

(B) If at any time during the duration of this agreement, the Company shall provide gas transportation service to ten (10) or more locations within the City, the Company and the City shall mutually agree to amend this ordinance within ninety (90) days of notification of such situation, to provide that the fee structure in (A) above shall be on a volumetric basis.

(C) The Company shall list the local fee collected from consumers within the City as a separate item on bills for utility service issued to consumers. If at any time the Kansas Corporation Commission, or other authority having proper jurisdiction, prohibits such recovery, then the City and Company shall renegotiate this ordinance.

(D) The franchise fee shall be paid monthly, by ACH or electronic transfer to the City, or other method approved by the City and Company. Concurrent with submission of the monthly payment, the Company shall also submit a report that shall detail revenues from specific sources. The Company shall pay the applicable fee to the City within thirty (30) days of the last day of the applicable calendar quarter for which a fee payment is due and owing. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance. Payments received after the due date shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company.

(E) The franchise fee collected and paid by the Company shall be in lieu of, and the Company shall be exempt from, all other licenses, charges, excise or right-of-way permit fees or taxes or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the City for the privilege of operating a natural gas system within the City.

(F) The Company agrees to use due diligence in ascertaining the boundaries of the City, including the annexation of property into the City. The City shall provide copies of annexation ordinances to the Company on a timely basis. The Company shall obtain a copy of the annual boundary resolution adopted by the City, and the Company shall compare the City boundaries with existing and planned Company services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

Section 8. The City shall have access to and the right to examine during normal business hours, those of the Company's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by the Company shall be paid within thirty (30) days of the recalculation and any over-payment by the Company shall be discounted from the next payment(s) due.

Section 9. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City.

Section 10. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of gas service facilities within the City or outside the City.

Section 11. Assignment of Franchise. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this franchise, the Company shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 12. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein

enumerated or otherwise not reasonably 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 provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 13. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Company will be to: Atmos Energy Corporation, P.O. Box 650205, Dallas, Texas 75265-0205, Attn: Contracts Administration. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 14. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of five (5) years from the effective date thereof; provided that the term shall continue for one subsequent term of five (5) years upon the anniversary of the effective date, unless either the City or the Company in writing at least ninety (90) days before the expiration of the initial and subsequent terms notifies the other party that it does not desire to renew the franchise under the current terms and conditions. After such notice is provided, the franchise ordinance and franchise agreement shall expire upon said anniversary. After the notification of pending expiration, the City and the Company shall in good faith seek to draft amendments and revisions to the terms and conditions of a franchise agreement which shall be mutually satisfactory.

Section 15. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration, termination, or forfeiture of this Ordinance, whether by lapse of time or by agreement between the Company and the City, the Company shall have the right to remove from right-of-way and public property all of its facilities used in its business within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 16. Termination or Forfeiture of Franchise.

(A) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

(B) Before the City of Lawrence proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

(C) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 17. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Lawrence, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 20, 2) the ordinance has been read at two regular meetings of the governing body, and 3) the ordinance has been published in the official city paper. The Company shall pay for the required publication of this ordinance.

Section 18. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 19. Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 20. Company Acceptance. The Company shall, within sixty (60) days, after the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas

GAS – BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY, A KANSAS CORPORATION.

ORDINANCE NO. 8957

AN ORDINANCE GRANTING TO BLACK HILLS/KANSAS GAS UTILITY COMPANY,LLC. d/b/a BLACK HILLS ENERGY, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON EXCLUSIVE NATURAL GAS FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN NATURAL GAS SERVICE LINES IN THE PUBLIC RIGHT-OF-WAY WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF LAWRENCE, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF LAWRENCE, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.; AND REPEALING ORDINANCE 7155 AND ORDINANCE 8241.

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

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

(A) The Company shall mean Black Hills/Kansas Gas Utility Company, LLC., d/b/a Black Hills Energy, its successors and assigns.

(B) City shall mean the City of Lawrence, Kansas.

(C) Facilities shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale of natural gas within the city to the inhabitants thereof for any use, including domestic, commercial, and industrial purposes.

(D) Gas Service shall mean the supplying, selling, transmitting, transporting, or distributing of natural gas within the city through the use of Company facilities.

(E) Gross receipts shall mean any and all compensation and other consideration derived directly by the Company from any sale, distribution or transportation of natural gas to a consumer located within the present or future corporate limits of the City for any use, including domestic, commercial and industrial purposes; but such term shall not include the value of gas supply provided by parties other than the Company or revenue from certain miscellaneous charges and accounts as set forth in the Terms and Conditions of Gas Service on file and approved, including but not limited to appliance service fees, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, temporary service charges and delayed or late payment charges as such terms are used in tariffs filed and approved.

(F) MMBtu shall mean a measurement of one million British thermal units (Btu's), which is equal to approximately 1,000 cubic feet of natural gas; a cubic foot is the quantity of natural gas occupying one cubic foot of space at a pressure of 14.73 PSIA and a temperature of 60 degrees Fahrenheit.

(G) Public improvement shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, fiber optic cabling and related facilities, traffic signal facilities, right-of-way improvement and public projects, which are supported by public funds.

(H) Public project shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature, which is supported by public funds.

(I) Right-of-way shall mean present and future streets, alleys, avenues, bridges, public rights-of-way, and public utility easements, including public utility easements and right-of-way dedicated in plats to the City.

(J) Volumetric Rate shall mean that sum measured in cents per MCF as established in this ordinance.

Section 2. Grant of Franchise.

(A) Pursuant to K.S.A. 12-2001 et seq., as amended, there is hereby granted to the Company the right, privilege, franchise, permission and authority to construct, maintain, extend and operate its facilities, in, through and along the rights-of-way for the purpose of supplying natural gas or processed gas for all purposes to the City and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through said City for the full term of this franchise; subject, however, to the terms and conditions herein set forth. The City further grants the Company the right, privilege, franchise, permission and authority to lay, install,

maintain, and operate over, across and along all of the rights-of-way of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business.

(B) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to the Company the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without a separate grant of a franchise from the City.

Section 3. Governing Rules and Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Kansas. The rates to be charged by the Company for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by the Company. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes the Company from recovering from its customers any cost associated with services provided hereunder, then the City and the Company shall renegotiate the terms of this Ordinance. In determining the rights and duties of the Company, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

(A) The Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purposes. The Company shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

(B) Upon receipt and acceptance of a valid application for service, the Company shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of City. No obligation shall extend to, or be binding upon, the Company to extend its facilities if the Company is, for any reason, unable to obtain and deliver an adequate energy supply.

(C) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Company in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Company at its sole expense and to the reasonable satisfaction of the City and the Company.

(D) The Company shall keep and maintain accurate records and as-built drawings

depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Company agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Company and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Company and agree that pursuant to K.S.A. 45-221 (12), (18), (45) as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company to safeguard such information.

The Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Company, or of the City at the written request of the Company, in seeking to safeguard the confidentiality of information provided by the Company to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Company shall have no further obligation under this section to provide the City with such information.

(E) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interests of the City as set forth in this Ordinance.

(F) The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and locations of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Company, without expense to the City, its employees, agents, or authorized contractors. The Company shall designate an agent to provide the City with timely information when required by this subsection.

(G) As reasonably necessary, the Company shall remove and relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time. Such relocation or adjustment shall be performed by the Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Ordinance pertaining to such. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section.

(H) It shall be the sole responsibility of the Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Company fails to accurately or timely locate facilities when requested, the Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm

or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Company facilities.

(I) Except in the event of an emergency, the Company shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

(J) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

Section 5. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 6. Location of Underground Equipment and Facilities. The Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City.

Section 7. Franchise Fee. In consideration of the franchise granted herein, Company shall collect from its customers, but not from the City, located within the corporate limits of the City and pay to the City an amount equal to:

(A)

(1) From January 1, 2016 through the last billing cycle on or around July 1, 2016 an amount equal to the following fee schedule which is applicable to volumes of natural gas which the Company sells, distributes, or transports to a customer:

Customer Class	Description	Volumetric Fee
Residential Class (RS)	Any individually metered, single-family dwelling where service is primarily used for residential use	$0.30/Mcf
Small Commercial (SC)	Any individually metered, non-residential customer with an annual consumption of less than 500 Mcf	$0.30
Small Volume (SV)	Any individually metered, non-residential customer with an annual consumption of greater	$0.15/Mcf

	than 500 Mcf, but less than 5,000 Mcf	
Large Volume (LV)	Any individually metered, non-residential customer with annual consumption greater than 5,000 Mcf: ➢ 5,000 Mcf/Year ➢ 50,000 Mcf/Year ➢ 200,000 Mcf/Year	 $0.15 /Mcf $0.05 /Mcf $0.03 /Mcf

(2) Effective with the first billing cycle of July 2016, three percent (3%) of gross receipts received from the sale or distribution of natural gas, as measured at the customer's meter, delivered within current and future corporate limits of the City, and

(3) A sum equal to the Volumetric Rate multiplied by the number of MMBtu of transported gas, as measured at customer's meter, delivered within current or future corporate limits of the City, for those customers who so qualify.

(4) The sums in (1) and (2) shall be adjusted for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

(B)

(1) Effective with the first billing cycle of July 2016, volumetric rates of $0.104/MMBtu shall be applied to annual volumes up to 50,000 MMBtu delivered through a meter to a consumer or user and $0.00104/MMBtu on annual volumes over 50,000 MMBtu delivered through a meter to a consumer or user. Provided, however, that for consumers or users whose 2016 volumes delivered though a meter have exceeded 50,000 MMBtu as of the first billing cycle of July, 2016, a rate of $0.104/MMBtu shall be applied to the first 25,000 MMBtu and $0.00104/MMBtu shall be applied to volumes exceeding 25,000 MMBtu. These rates shall remain in effect through December 31, 2016. Thereafter, the volumetric rate shall be calculated and implemented annually as described in subparagraph (3) of this section.

(2) Volumes billed will be adjusted for heat content.

(3) The Volumetric Rate shall be based on the Settlement Prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the 15th day of each month as published daily on the following business day (or the next day in which a Settlement Price is published) for the twelve-month period beginning in July of the second preceding year and ending in June of the preceding year. For the 15th day of each month during said twelve-month period, the Settlement Prices for the next twelve months shall be summed and divided by twelve to determine an average Settlement Price. The average Settlement Prices for each of the twelve months shall then be summed and divided by twelve and multiplied by 3% to obtain the Volumetric Rate to be effective January 1 of the next succeeding year, provided however, to the extent any consumer or user receives more than 50,000 MMBtu in any calendar year at a meter within the City, then for those volumes delivered to that consumer or user during the calendar year in excess of 50,000 MMBtu, the Volumetric Rate for those volumes in excess of 50,000 MMBtu shall be 1% of the current Volumetric Rate. The Volumetric Rate Calculation Form for 2016 is attached hereto as Exhibit A.

(4) The Volumetric Rate shall be recalculated annually by the Company each July following the process herein described, to be effective January 1 of the next succeeding year and shall be effective upon filing of the completed Volumetric Rate Calculation Form with the City Clerk without the requirement of amendment of this ordinance.

(C) The amount paid by Company shall be in lieu of, and Company shall be exempt from, all

other occupation, license, excise or right-of-way permit fees or taxes which the City may impose for the rights and privileges herein granted for the privilege of doing business within the City's right-of-ways, and in the event any such fee, charge, license, tax or assessment shall be imposed by the City, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Company. However, the Company shall not be exempt from and shall remain obligated to pay: (1) ad valorem property taxes imposed generally upon its real and personal property; and (2) all fees, licenses and permits for business activities not directly associated with the sale and delivery of natural gas within the City.

(D) Any consideration hereunder shall be reported and paid to the City by the Company monthly, by electronic transfer or other method approved by the City and the Company. Concurrent with submission of the monthly payment, the company shall also submit a report which shall detail revenues from specific sources. The Company shall pay the applicable fee to the City within thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portion of the period at the beginning and end of the term of this Ordinance. Payments received after the due date shall be subject to a late payment charge of one and one-half percent (1 1/2%) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one and one-half percent (1 1/2%) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company.

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

(F) The Company agrees to use due diligence in ascertaining the boundaries of the City, including the annexation of property into the City. The City shall comply with K.S.A. 12-2016, and amendments thereto. The Company shall obtain a copy of the annual boundary resolution adopted by the City, and the Company shall compare the boundaries with existing and planned Company services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

(G) The franchise fee imposed by this Ordinance shall not become effective within any area which is annexed by the City and becomes subject to this ordinance until 30 days after the city clerk provides the Company with a certified copy of the annexation ordinance, proof of publication of the ordinance as required by law and a map of the City detailing the annexed area.

Section 8. The City shall have access to and the right to examine during normal business hours, those of the Company's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by the Company shall be paid within thirty (30) days of the recalculation and any over-payment by the Company shall be discounted from the next payment(s) due; provided, that neither party shall have the obligation to correct a mistake, including but not limited to collection of the fee from customers or remittance of that fee to the City, that is discovered more than three (3) years after the occurrence thereof.

Section 9. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and

all facilities constructed or erected by the Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City.

Section 10. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of gas service facilities within the City or outside the City.

Section 11. Assignment of Franchise. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this franchise, the Company shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 12. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably 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 provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 13. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Company will be to: General Manager, Black Hills Energy Kansas, 601 N. Iowa, Lawrence, KS 66049. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 14. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of five (5) years from the effective date thereof and for two consecutive five (5) year terms thereafter unless the City, through its Clerk, shall notify the Company in writing at least one hundred and eighty (180) days before the expiration of the initial and subsequent terms, that the City, for good cause, desires not to renew the franchise, and such notice shall specify the City's reasons.

Section 15. Rights and Duties of Company upon Expiration of Ordinance. Upon expiration, termination, or forfeiture of this Ordinance, whether by lapse of time or by agreement between the Company and the City the Company shall have the right to remove from right-of-way and public property all of its facilities used in its business within reasonable time after such expiration or

forfeiture, but in such event, it shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 16. Termination or Forfeiture of Franchise.

(A) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

(B) Before the City of Lawrence proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

(C) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 17. Effectiveness. This Ordinance shall take effect and be in force after its passage and publication as provided by law. The Company shall pay for the required publication of this ordinance.

Section 18. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 19. Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 20. Repeal. To the extent of its validity on the date of effectiveness of this ordinance, Ordinance No. 7155 and Ordinance No. 8241 is hereby repealed.

Section 21. Company Acceptance. The Company shall, within thirty (30) days, after the publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The

acceptance of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

Exhibit A Volumetric Rate Calculation Form to follow:

The City of Lawrence
Volumetric Rate Calculation Form
For the Transportation of Natural Gas in Pipelines Located in the City of Lawrence
Based on the NYMEX settlement prices for the dates shown, published the following business day

Month	Last Year (2014)						This Year (2015)					
	15-Jul	15-Aug	15-Sep	15-Oct	17-Nov	15-Dec	15-Jan	17-Feb	16-Mar	15-Apr	15-May	15-Jun
Aug Last Year	4.097											
Sept Last Year	4.094	3.776										
Oct Last Year	4.099	3.807	3.931									
Nov Last Year	4.139	3.879	3.997	3.800								
Dec Last Year	4.216	3.977	4.085	3.885	4.341							
Jan Current Year	4.279	4.054	4.149	3.967	4.444	3.719						
Feb Current Year	4.256	4.045	4.141	3.956	4.396	3.730	3.158					
Mar Current Year	4.182	3.973	4.078	3.896	4.293	3.697	3.121	2.759				
Apr Current Year	3.925	3.752	3.844	3.681	3.812	3.479	3.036	2.779	2.716			
May Current Year	3.911	3.737	3.826	3.660	3.760	3.474	3.043	2.819	2.739	2.610		
June Current Year	3.939	3.769	3.851	3.688	3.774	3.505	3.075	2.859	2.787	2.649	3.016	
July Current Year	3.969	3.807	3.880	3.721	3.796	3.541	3.121	2.910	2.843	2.706	3.070	2.889
Aug Current Year		3.816	3.892	3.734	3.806	3.549	3.128	2.923	2.865	2.725	3.090	2.912
Sept Current Year			3.881	3.727	3.794	3.532	3.112	2.915	2.854	2.729	3.085	2.925
Oct Current Year				3.755	3.823	3.559	3.136	2.944	2.878	2.755	3.104	2.954
Nov Current Year					3.893	3.641	3.225	3.049	2.959	2.852	3.190	3.067
Dec Current Year						3.815	3.394	3.229	3.109	3.028	3.338	3.242
Jan Next Year							3.521	3.356	3.229	3.137	3.432	3.342
Feb Next Year								3.341	3.218	3.127	3.415	3.335
Mar Next Year									3.173	3.085	3.360	3.291
Apr Next Year										2.959	3.144	3.110
May Next Year											3.138	3.108
June Next Year												3.134
Avg Settlement Price	4.092	3.866	3.963	3.789	3.994	3.603	3.173	2.990	2.948	2.864	3.199	3.109

July 2014- through June 2015 settlement price average	$3.466
x Bundled Franchise Fee Rate	3%
Volumetric Rate/MMBtu for volumes up to 25,000 MMBtu, to be implemented with the first billing cycle in July 2016	$0.1040
x 1%	$0.00104
Volumetric Rate/MMBtu for volumes greater than 25,000 MMBtu to be implemented with the first billing cycle in July 2016	

GAS - GREELEY GAS COMPANY

ORDINANCE NO. 5902

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO GREELEY GAS COMPANY FOR THE SALE AND DISTRIBUTION OF NATURAL GAS WITHIN THE CITY OF LAWRENCE, KANSAS, PRESCRIBING THE CONSIDERATION, TERM, CONDITION AND COVENANTS OF SAID NON-EXCLUSIVE FRANCHISE; AND REPEALING ALL ORDINANCES INCONSISTENT OR CONFLICTING WITH THE TERMS THEREOF.

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

Section 1. That permission is hereby given to Greeley Gas Company, (hereafter Greeley), by and through this non-exclusive franchise to maintain and operate, within the area certificated to Greeley by the Kansas Corporation Commission located within the City of Lawrence, Kansas, (hereafter City), its present plant, and to construct, erect, lay, operate and maintain on, through and under the public streets, alleys, bridges and other public grounds, all needful and proper mains, pipes, regulators, and all appliances necessary for the construction, operation and maintenance of natural gas distribution and sales for the period of fifteen (15) years from the effective date of this ordinance, for the purpose of furnishing, selling and distributing natural gas in the area certificated to Greeley by the Kansas Corporation Commission located in the City, subject, however, to all terms, conditions, covenants, specifications and limitations hereinafter contained. Not later than 120 days before the end of the fifth year and/or the end of the tenth year of the franchise either the City or Greeley shall advise the other of its intent to reopen discussion of the terms and conditions of the agreement.

Section 2. The said Greeley shall furnish and deliver natural gas to such person or persons who make application for the same within the certificated territory in the City, provided, the person or person making such application shall subscribe to and agree to keep and abide by the rules, regulations, policies and orders on file with the Kansas Corporation Commission.

Section 3. Greeley shall operate its business and conduct its affairs in accordance with the rules, regulations, policies, and orders of the Kansas Corporation Commission in effect during the term of this franchise agreement, governing and concerning the billing practices, security deposits, late payment charges and discontinuances of service of natural gas utilities which are subject to the jurisdiction of the Kansas Corporation Commission, together with all amendments thereto, copies of which shall at all times be on file in the Office of the City Clerk of the City of Lawrence, Kansas.

Section 4. Greeley shall take reasonable steps to resolve all disputes it may have with its customers relative to compliance with any rule, regulation, policy or order provided for and referred to in Section 3 of this Ordinance. In the event any of such disputes are not resolved by and between the original customer and the employee(s) of Greeley designated to handle the matter at hand, upon request by the effected customer, the Chief Operating Officer of Greeley, or his or her designee, who shall hold a supervisory position with Greeley, shall meet and confer with such customer at the earliest practicable time. If the meeting between the Chief Executive Officer, or his or her designee, and the customer, shall not resolve the dispute to the satisfaction of the customer, Greeley shall give the customer written notice of the customer's right to notify the Kansas Corporation Commission.

Section 5. That as a part consideration for the rights and privileges herein granted for the furnishing of gas, and in lieu of any license or occupation tax or any other charge, the said Greeley shall pay or cause to be paid into the treasury of the City, for the benefit of said City, any expenses to which said City may be put for the publishing of this ordinance or the holding of any election in connection therewith; and, in addition thereto, five percent (5%) per annum of the gross receipts of said gas plant for gas sold during the term of this franchise to all consumers served by Greeley within the City and Greeley shall make and report to the Governing Body all such gross receipts once each month, and pay into the treasury of the City the amount due the City at the time said report is made. Said Governing Body, or its designee, shall also have access to and the right to examine, at all reasonable

times, all books, receipts, files, records, and documents of Greeley necessary to verify the correctness of such monthly statements, and to correct the same if found to be erroneous and for any other purposes necessary in connection with this franchise. If such statement of gross receipts be incorrect, then such payment shall be made upon such corrected statement. It is mutually understood and agreed that the franchise tax percentage provided for herein may be reviewed by the Governing Body during the month of June of each year of this franchise, or any extension thereof, beginning in 1987 at which time the amount thereof shall be fixed for the ensuing one-year period.

Section 6. Greeley shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City.

Section 7. Natural gas furnished to consumers under this franchise shall be of marketable quality and shall be substantially free from impurities, except that it shall contain some element or compound with an easily detectable odor in an amount sufficient to be noticeable when the gas is released but not sufficient to be harmful to human and animal life or to interfere with combustion, but in no event shall the level of such odorization be less than the minimum required by Federal regulations. In no event shall the quality of natural gas so furnished have a system wide average total heat content of less than 900 British Thermal Units per cubic foot, or in any manner be of less quality than required by the applicable Federal or Kansas standards, whichever such requirement of quality shall be greater. Greeley shall semi-annually submit to the City all necessary data and records requested by the City to show the quality of the natural gas so furnished.

Section 8. Greeley shall at all times maintain its lines and all appliances, equipment and attendant facilities used in the sale and distribution of natural gas to the consumer, in a good and safe state of repair such that it will meet or exceed the minimum standards provided by the Natural Gal Pipeline Safety Act and enforced by the Kansas Corporation Commission.

Section 9. Gas pressure, as measured at the outlet of Greeley service to any consumer, shall be maintained between limits of five (5) inches and nine (9) inches water column, to be determined as follows:

(A) Stationary Gauge: Greeley shall maintain graphic recording pressure gauges at points in the distribution system that are typical of average pressures.

(B) Portable Gauge: Greeley shall also keep and maintain a portable graphic recording gauge, which shall be used on the request of the City or of any customer of Greeley within the limits of the area served, to test the pressure at any point in the distribution system where it connects with the service of a customer.

In the event the gas pressure shall fall below or exceed the above-stated maintenance levels, Greeley shall immediately give notice thereof to the City Manager of the City, or such other member of the administrative staff of the City who shall be in charge; and in addition thereto, it shall notify the public, through appropriate social service agencies, the press and media, of such gas pressure deviation, the effects to be expected therefrom and measures to be taken by the public because of such deviation.

Section 10. All gas service shall be supplied through meters which shall accurately measure the amount of gas supplied to any consumer.

(A) Request for Meter Check: Greeley shall at any time when requested by a consumer make a test of the accuracy of any gas service meter.

(B) Result of Meter Check: If, upon test, it is found that such meter overruns to the extent of two percent (2%) or more, Greeley shall pay the cost of such tests and shall make a refund for overcharges collected since the last known date of accuracy, but for not longer than six (6) months, on the basis of the inaccuracy found to exist at the time of the tests; if the meter is found to be accurate or slow or less than two

percent 92%) fast, the customer shall pay the rate approved by the Kansas Corporation Commission for such testing, as well as for the undercharges since the last know date of accuracy, but not longer than six (6) months, on the basis of the inaccuracy found to exist at the time of the test.

(C) Compulsory Check: Every meter, whether complained of by a consumer or otherwise, shall be removed from service at least once each one hundred twenty (120) months and thoroughly tested for its accuracy; any meter found inaccurate shall not be returned to service until properly adjusted.

(D) All residential dwellings containing more than one (1) living unit which shall be constructed or converted to such use after the effective date of this Ordinance shall contain a separate natural gas meter for each such dwelling unit.

Section 11. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or installations, Greeley shall do so at such time as will cause the least amount of inconvenience to its customers, and, unless such repairs are unforeseen and immediately necessary, it shall give reasonable notice thereof to the effected customers and, if the interruption in service is anticipated to last more than twelve (12) hours, it shall give notice thereof to the City Manager of the City, or his or her designee.

Section 12. Greeley 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 Greeley to exercise its rights and perform its obligations under this franchise, and to reasonably assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict, with the laws of the State of Kansas, or with the rules, regulations and laws of the United States.

Section 13. All pipes, mains, and other natural, artificial or mixed gas equipment and apparatus laid or placed by Greeley shall be so located in the streets, alleys and other public places in the City as not to obstruct or interfere with any water pipes, sewers, drains, or other structures already installed. Greeley shall, when practicable, avoid interfering with the use of any street, alley or other highway where the paving or surface of the streets would be disturbed.

Section 14. In case of any disturbance of grass or shrubs or pavement, sidewalk driveway or other surfacing, or any City property, Greeley shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all grass, shrubs, paving, sidewalk, driveway or surface of any street or alley or any City property disturbed, in as good condition as before said work was commenced.

Section 15. In the event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of any street, alley or other public way, Greeley upon reasonable notice by the City, shall remove, relay and relocate its mains or service pipes, manholes and other gas fixtures at its own expense.

Section 16. Greeley shall not as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, unless however required pursuant to Section 3 hereof, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Section 17. Greeley shall file with the City Clerk of the City its KCC approved rules, regulations and tariffs, including its service extension policy, which shall remain in full force and effect until change or changes are requested by Greeley and approved by the Kansas Corporation Commission, and all such modifications, shall be filed with said City Clerk.

Section 18. If during the term of this franchise Greeley receives refunds, or it the cost to Greeley of the gas sold under this franchise is reduced by order of any regulatory body having competent jurisdiction, Greeley shall, at the earliest practicable time, pass on to its consumers such refunds or any savings resulting therefrom, less the cost of making such refunds; likewise, if the cost to Greeley of said gas is increased, Greeley shall add to the consumer's cost the amount of the increased cost after such has been approved by the Kansas Corporation Commission.

Section 19. Greeley shall save and hold harmless, defend and indemnify the City of Lawrence, Kansas, its officers, employees, officials, servant and agents from and against any and all suits, claims, liability judgments and damages of any kind or nature arising from or attributed to the negligence of Greeley, its officers, directors, shareholders, employees, agents or servants.

Section 20. It is recognized that Greeley is presently under contract to purchase its natural gas supply at specified contract prices. However, Greeley shall, upon the termination of the current term of said existing contract, purchase its natural gas supply at the lowest available wholesale price from sources which will insure an adequate and continuing reliable supply and source of natural gas, the quality of which shall meet the minimum standards as required by this Ordinance. No later than six (6) months before the expiration of the current term of the contract which Greeley has for the purchase of its supply of natural gas, and all such future contracts, Greeley shall meet with and report to the Governing Body on its efforts and progress in negotiating an agreement for the purchase of its future supply of natural gas in accordance with the terms of this Section. Before such meeting, Greeley shall deliver to the City all written evidence of its efforts to comply with this Section.

Section 21. Greeley shall within sixty (60) days from and after the passage, approval and final publication of this ordinance, file with the City Clerk of the City its written acceptance of all the terms and provisions hereof, and in case of its failure so to do, this Ordinance shall be null and void.

Section 22. Greeley shall always maintain an office in Kansas and also an agent in Kansas on whom notices and process may be served, and service of notices and process on the person then acting in charge of said office shall be notice duly served on said Greeley.

Section 23. This franchise is granted under authority of K.S.A. 12-2001.

Section 24. This franchise shall not be sold, assigned, transferred, or leased by Greeley nor shall any contract or agreement with reference to or affecting such franchise or right hereunder entered into by Greeley be valid or of any force or effect whatsoever, unless such sale, assignment, transfer, lease, contract or agreement shall be approved by this Governing Body, or any other authority that may hereafter be constituted by or under the laws of the State of Kansas to give such approval, provided that any such approval shall not be unreasonably withheld.

Section 25. This Ordinance is and shall be binding upon the City, Greeley and their successors and assigns.

SECTION 26. This Ordinance shall take effect and be in full force from and after its passage and approval by the Governing Body, its acceptance by Greeley, its publication according to law, the expiration of sixty (60) days from the date of the final passage of said Ordinance, and any approval by the electors of the City of Lawrence as may become necessary by operation of law.

PASSED by the Governing Body of the City of Lawrence, Kansas, this 17th day of May, 1988.

TELECOMMUNICATIONS - SOUTHWESTERN BELL TELEPHONE

ORDINANCE NO. 8081

Note: This franchise agreement was adopted on March 6, 2007.

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS CONCERNING THE CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a AT&T KANSAS, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF LAWRENCE, KANSAS.

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

SECTION 1. Pursuant to K.S.A. 2005 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 Lawrence, Kansas ("City"), subject to the provisions contained hereafter. The initial term of this contract franchise ordinance shall be for a period of two (2) years beginning July 1, 2007, and ending June 30, 2009. Thereafter, this contract franchise ordinance will automatically renew for an additional one (1) year term, unless either party notifies the other party of its intent to terminate the contract franchise ordinance 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 ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 2005 Supp. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the contract franchise ordinance. 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 process 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. 2005 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 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 or 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. On and after July 1, 2007, compensation shall be 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 or that it intends to switch to an access line fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2005 Supp. 12-2001.

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.

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 under K.S.A 2005 Supp. 12-2001, and other state and federal laws, this contract franchise ordinance must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications local exchange service provider operating in the City. In entering into this contract franchise ordinance, the City specifically recognizes it must ensure all other telecommunications local exchange service providers operating in the City are subject to a substantially similar contract franchise ordinance within a timely manner not to exceed one hundred and eighty (180) days from either the time this contract franchise ordinance becomes effective, or from the date a telecommunications local exchange service provider begins to offer local exchange service in the City. It is the City's sole responsibility to identify the telecommunications local exchange service providers operating in the City, and utilize all available legal means, if necessary, to ensure all such telecommunications local exchange service providers are subject to a substantially similar contract franchise ordinance.

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:

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. 2005 Supp. 12-2001. If any clause, sentence, section, or provision of K.S.A. 2005 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. 2005 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 immediately. 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 and published as provided by law.

TELECOMMUNICATIONS – KNOLOGY OF KANSAS, INC.

Note: This franchise agreement was originally adopted on June 12, 2001. Transfer of the franchise was approved with the adoption of ordinance 8575.

ORDINANCE NO. 8576

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS APPROVING THE TRANSFER BY THE WORLD COMPANY OF ITS RIGHTS UNDER THE NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE ORDINANCE GRANTED BY ORDINANCE NO. 7359, AS AMENDED IN ORDINANCE NO. 8058, AND PREVIOUSLY GRANTED TO THE WORLD COMPANY BY THE CITY OF LAWRENCE, KANSAS IN ORDINANCE NO. 8575, TO KNOLOGY OF KANSAS INC., AND PURSUANT TO K.S.A. 12-2001 *ET SEQ*.

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

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

(a) "The Telephone Company" shall mean Knology of Kansas, Inc., its successors and assigns. (Ord. 8058, Ord. 8575, Ord. 8576)

(b) "City" shall mean the City of Lawrence, Kansas.

(c) "Facilities" shall mean telephone and telecommunication lines, conduits, wires, cables, pipes, poles, towers, vaults and appliances, and appurtenances and improvements

thereto, either under or above ground.

(d) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects.

(e) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.

(f) "Right-of-way" shall mean present and future streets, alleys, right-of-way and public utility easements, including public utility easements and right-of-way dedicated in plats to the City.

(g) "Telecommunications" shall mean the 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.

(h) "Telecommunications Service" shall mean the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2. Grant of Franchise.

(A) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Telephone Company the right, privilege and franchise to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying Telecommunications Services to the City and its inhabitants thereof for the full term of this franchise; subject however, to the terms and conditions herein set forth.

(B) This franchise does not provide the Telephone Company the right to provide "Cable Service" to the City and inhabitants thereof. For purposes of this ordinance, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service; but "Cable Service" does not include point to point, point to multi-point, and switched video services that the Telephone Company has historically offered or other similar services that the Telephone Company may in the future offer. Nothing in this franchise is intended to preclude the City from seeking, or authorize the City to seek, a franchise from any subsidiary, affiliate, or third party providing "Cable Services." The Telephone Company and the City agree that nothing in this franchise is intended to authorize the City to seek from the Telephone Company nor to require the Telephone Company to obtain a franchise to offer "Open Video Systems" as that term is used in section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). The Telephone Company and the City further agree, however, that this ordinance does not authorize the Telephone Company to offer "Open Video Systems" without paying the fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573 (c)(2)(b) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. 573.

(C) Upon written request from the Telephone Company, the City agrees to begin negotiations in good faith with the Telephone Company within thirty (30) days to provide the Telephone Company a franchise to provide "Cable Service" to the City and the inhabitants thereof on terms no more burdensome than the franchise(s) granted to other providers of "Cable Service" with the City.

Section 3. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Telephone Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is

subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Telephone Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

(a) The Telephone Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purposes. The Telephone Company shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement. The Telephone Company agrees to cooperate with the City in the establishment of a City owned conduit along West 6th Street, between Wakarusa and K-10 which will provide for the location of all telecommunications and cable service underground facilities in this street corridor.

(b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Telephone Company in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Telephone Company at its sole expense and to the reasonable satisfaction of the City and the Telephone Company.

(c) The Telephone Company shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide location information regarding specific future project locations to the City upon request. Where such information is available electronically, upon request from the City, Telephone Company agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Telephone Company and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Telephone Company and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Telephone Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Telephone Company to safeguard such information.

The Telephone Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Telephone Company, or of the City at the written request of the Telephone Company, in seeking to safeguard the confidentiality of information provided by the Telephone Company to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Telephone Company shall have no further obligation under this section to provide the City with such information. Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change.

All points of facilities shall be horizontally located from street centerline or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(d) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Telephone Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review

shall only concern matters related to the interests of the City as set forth in this Ordinance.

(e) The Telephone Company shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Telephone Company, without expense to the City, its employees, agents, or authorized contractors. The Telephone Company shall designate an individual as its agent to provide the City with timely information as required by this Ordinance.

(f) As reasonably necessary, the Telephone Company shall relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time. Such relocation or adjustment shall be performed by the Telephone Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Ordinance pertaining to such. The Telephone Company shall cooperate with the City in the location of facilities in such a manner as to reduce interference with the possible moving of large structures (e.g. relocated house structures, etc.) in the public right-of-way, this cooperation may include the requirement that certain public right-of-way corridors be designated by the City and that such corridors shall not include the location of Telephone Company facilities which are located in such a manner as to interfere with the moving of large structures in the right-of-way.

(g) It shall be the sole responsibility of the Telephone Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Telephone Company fails to accurately or timely locate facilities when requested, the Telephone Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Telephone Company facilities.

(h) Except in the event of an emergency, the Telephone Company shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Telephone Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

(i) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

Section 4. Street Tree Ordinance. The Telephone Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 5. Location of Underground Equipment and Facilities. The Telephone Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 4A of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the

Telephone Company in accordance with the ordinances of the City without expense to the City.

Section 6. Franchise Fee. a) In partial consideration for the grant of this franchise and the premises herein, the Company agrees to pay and the City of Lawrence, Kansas agrees to accept as adequate compensation and consideration for the franchise hereby granted in lieu of any occupation, license, or privilege tax or any lease or easement charge, a franchise fee as defined herein. The Company shall pay to the City a sum equal to four percent (4%) of gross revenue for local exchange telecommunications service, rendered wholly within the corporate limits of the City through June 30, 2007. On and after July 1, 2007, the Company shall pay to the City a sum equal to five percent (5%) of gross revenue for local exchange telecommunications service rendered wholly within the corporate limits of the City. For purposes of this Ordinance, gross revenue for local exchange telecommunications service shall mean those revenues less uncollectibles, derived from the following: (Ord. 8058)

(1) Recurring local exchange service revenues for business and residence which include basic exchange service, Touch Tone, optional calling features and measured local calls;

(2) Recurring local exchange service revenues for public, semi-public and private coin telephones, less commission;

(3) Local directory assistance;

(4) Line status verification/busy interrupt;

(5) Local operator assistance;

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

(b) Telephone Company and City agree that all other services, including but not limited to, extended area service, resale, unbundled loops, nonregulated services, carrier and end user access, long distance and all other services not wholly local in nature are excluded from "local exchange telecommunications services." Telephone Company and City agree that gross revenue from "local exchange telecommunications services" shall be reduced by bad debt expenses and uncollectibles and further agree that franchise fees collected and late charges shall not be included within gross revenues from "local exchange telecommunications services."

(c) If during the term of this ordinance Telephone Company offers additional services of a wholly local nature which if in existence at the effective date of this ordinance would have been included with the definition of "local exchange telecommunications services," such services shall be included within "local exchange telecommunications services" from the date of the offering of such services in City for the remaining term of the ordinance.

(d) The franchise fee shall be paid monthly, by electronic transfer to the City of Lawrence, Kansas, or other method approved by the City and Company, for the preceding monthly period. The Company shall pay the applicable fee to the City within forty-five (45) days of the last day of the applicable month for which a fee payment is owed and due. Payments received after the due date shall be subject to a ten percent (10%) late payment charge.

(e) The Telephone Company and the City agree that the City shall have the sole authority to modify the franchise fee established by this Ordinance pursuant to the following provisions: During the second year or thereafter during the term of the franchise agreement, the City may adopt an ordinance increasing the franchise fee to a maximum of 3%; During the third year or thereafter during the term of the franchise agreement, the City may adopt an ordinance increasing the franchise fee to a maximum of 4%; During the fourth year or thereafter during the term of the franchise agreement, the City may adopt an ordinance increasing the franchise fee to a maximum of 5%.

Further provided that the City provides the Telephone Company with ninety (90) days notice prior to the effective date of any franchise fee modification; that such franchise fee modification and ordinance comply with all lawful requirements for notice to customers; and that the City agrees to indemnify and hold harmless the Telephone Company for any and all liability, costs, damages, and expenses, including attorney's fees, resulting from claims, causes or actions and demands arising out of or related in any manner to the increases in compensation pursuant to this subsection.

(f) The parties agree that if federal law or state law is enacted setting forth a maximum allowable level of compensation for franchise rights governed by this ordinance, this ordinance shall be amended to reduce the level of compensation required by this ordinance.

(g) The franchise fee shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the City for the privilege of operating a telephone system within the City.

Section 7. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Telephone Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Telephone Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Telephone Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City. Nothing in this section shall be construed as requiring Telephone Company to provide City notice when it provides telecommunications services to any entity.

Section 8. Access to Information regarding Company Equipment, Facilities and Revenues. The Company shall provide the City, or City audit representatives, with reasonable access to Company records, revenue codes and information documenting the total gross revenues from local exchange telecommunications service as defined in Section 6.

Section 9. Attachment to Poles. Nothing in this ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or the Telephone Company on the poles of the other. If such attachments are desired by the City or the Telephone Company, then a separate non-contingent agreement shall be prerequisite to such attachments.

Section 10. Indemnification and Hold-Harmless. The Telephone Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Telephone Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of telecommunications services and the transmission, distribution of such services within the City or outside the City.

Section 11. Assignment of Franchise. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this franchise, the Company shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. (Ord. 8575)

Section 12. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Telephone Company's control. This franchise shall not

be exclusive.

Section 13. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas 66044. For the purpose of this Agreement, notice to the Grantee will be to: Knology of Kansas, Inc., Bruce Schoonover, Jr., Director-Regulatory Affairs, 1241 O.G. Skinner Dr., West Point, GA 31833. Notice will be effective upon delivery, by hand delivery or by first class mail to the above address until the City or the Grantee notifies the other, in writing, of a change in address. (Ord. 8576)

Section 14. Length of Franchise Agreement. This agreement shall be effective for three (3) years after its effective date pursuant to Section 17. This agreement shall be extended for one (1) successive one (1) year term, and additional one (1) year terms, unless prior to one hundred eighty (180) days before the expiration of the original term or of a successive term either party provides written notice to the other party of its intention to terminate the agreement at the expiration of such term.

Section 15. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration of this Ordinance, whether by lapse of time, by agreement between the Telephone Company and the City, or by forfeiture thereof, the Telephone Company shall have the right to remove from public property and all of its facilities used in its business within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Telephone Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 16. Termination or Forfeiture of Franchise.

(a) In case of failure on the part of the Telephone Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Telephone Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Telephone Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

(b) Before the City of Lawrence proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Telephone Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such franchise have not been complied with by the Telephone Company and that such franchise is subject to cancellation by reason thereof, the City of Lawrence, in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Telephone Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Telephone Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

(c) If within such thirty (30) day period the Telephone Company does institute an action, as above provided, to determine whether or not the Telephone Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 17. Effectiveness. This ordinance shall become effective and be in force and shall be a

binding contract between the Telephone Company and the City of Lawrence, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Telephone Company in writing pursuant to Section 19, 2) the ordinance has been read in full at three regular meetings of the governing body, 3) the ordinance has been published in the official city paper once a week for two consecutive weeks, and 4) the expiration of 60 days from the date of final passage without the submission of a proper petition asking that the franchise be submitted for adoption to popular vote; all as provided by K.S.A. 12-2001. The Telephone Company shall pay for the required publications of this ordinance.

Section 18. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 19. Company Acceptance. The Company shall, within fifteen (15) days, from the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Telephone Company subject to the provisions of the laws of the State of Kansas. (Ord. 8576)

Further, the City and the Telephone Company hereby acknowledge and agree that should there exist any period of time between the transfer of the Franchise and the date Knology files the written acceptance required herein, all the provisions of Ordinance No. 7359 relating to the granting of a Contract Franchise shall be deemed to have remained in effect during said period. (Ord. 8576)

TELECOMMUNICATIONS – NEXTG NETWORKS OF ILLINIOS

ORDINANCE 8621
(adopted May 17, 2011)

AN ORDINANCE GRANTING TO NEXTG NETWORKS OF ILLINOIS, INC. A NON EXCLUSIVE CONTRACT FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF LAWRENCE, KANSAS PURSUANT TO K.S.A 12-2001 *ET SEQ*.

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

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

a) "City" shall mean the City of Lawrence, Kansas.

b) "Contract Franchise" shall mean this ordinance granting the right privilege and franchise to Grantee to provide interexchange telecommunication services within the City.

c) "Grantee" shall mean NextG Networks of Illinois, Inc., an Interexchange Telecommunications carrier within the City holding a Certificate of Convenience and Authority from the State Corporation Commission of the State of Kansas under Docket #10-NXTC-769-COC to provide Telecommunications Services in the State of Kansas. References to grantee shall also include as appropriate any and all successors and assigns.

d) "Facilities" shall mean telephone and telecommunication lines, conduits, antenna, ducts,

wires, cables, pipes, poles – including traffic signal and lighting, towers, vaults and appliances, and all equipment and appurtenances and improvements thereto, either under or above ground used to provide Telecommunications services.

e) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects.

f) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.

g) "Public right-of-way" shall mean 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, boulevards or bridges 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 carrier" means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996.

i) "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, and including RF Transport Services as defined in Grantee’s Telecommunications Tariff on file with the Kansas Corporation Commission.

Section 2. Grant of Contract Franchise.

a) There is hereby granted to the Grantee the nonexclusive right, privilege and Contract franchise to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying Telecommunications Services to the City and its inhabitants thereof for the full term of this Contract franchise; subject, however, to the terms and conditions herein set forth.

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 Facilities 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. The parties agree that the City and the Grantee shall enter into a separate lease agreement for equipment or facilities on City owned property not in the Public right-of-way; 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 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 Contract 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.

f) Nothing herein contained shall be construed as giving Grantee any exclusive privileges.

g) Grantee or Grantee's contractor shall, prior to commencing any construction on City owned municipal facilities in the Public right-of-way, post a payment bond assuring that the attachments of Grantee's Facilities to City owned facilities in the Public right-of-way will be constructed without the attachment of any construction liens.

Section 3. Use of Right-of-Way. In the use of the right-of-way under this Contract franchise, the Grantee shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, statutes, ordinances, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. As a condition of this Contract franchise, 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 Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to Grantee's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. In addition, the Grantee shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to the use of the right-of-way, including but not limited to, permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

a) The Grantee's use of the right-of-way shall in all matters be subject and subordinate to the City's use of the right-of-way for any public purposes and the public health, safety and welfare requirements and regulations of the City. The Grantee shall coordinate the placement of its facilities in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Grantee in its activities under this Contract franchise shall be fully repaired or replaced within a reasonable time by the Grantee at its sole expense and to the reasonable satisfaction of the City and the Grantee.

c) The Grantee shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way

after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Grantee agrees to provide such information in an electronic format. Such location and identification shall be at the sole expense of the Grantee, without expense to the City, its employees, agents, or authorized contractors.

City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Grantee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Investor owned utility and agree that pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that the City is required by law to disclose such information, the City shall provide the Grantee advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Grantee to safeguard such information.

The 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 the Grantee, or of the City at the written request of the Grantee, in seeking to safeguard the confidentiality of information provided by the Grantee to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Grantee shall have no further obligation under this section to provide the City with such information. Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change.

All points of facilities shall be horizontally located from street centerline or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

d) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Grantee shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interest of the City as set forth in City ordinances.

e) The Grantee shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Grantee, without expense to the City, its employees, agents, or authorized contractors. The Grantee shall designate an agent to provide the City with timely information when required by City ordinance.

f) As reasonably necessary, the Grantee shall relocate or adjust any Facilities located in the Right-of-way for a Public project upon 45-days written notice. Such relocation or adjustment shall be performed by the Grantee at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to the rules and regulations of the City not inconsistent with this Contract franchise pertaining to such.

g) It shall be the sole responsibility of the Grantee to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Grantee fails to

accurately or timely locate facilities when requested, the Grantee has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Grantee facilities.

h) Except in the event of an emergency, the Grantee shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Grantee shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

i) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

j) The city shall have the authority to prohibit the Grantee's use or occupation of a specific portion of Public right-of-way that is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

k) Signs/Graffiti. Grantee shall not place signs or advertising signs, except safety-related signage, on their Facilities or appurtenances thereto or in the Public right-of-way. Grantee shall remove graffiti, if any, every 90 days. City may, upon 30 days prior written notice to Grantee, undertake any activities necessary to abate or remove graffiti located therein which has not been removed within said 90 day period. Grantee shall reimburse City all costs incurred by City in connection with such abatement or removal within 30 days of the City presenting Grantee with a statement of such costs.

Section 4. Street Tree Ordinance. The Grantee shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 5. Location of Underground Equipment and Facilities. The Grantee's equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, and amendments thereto. Consistent with Section 5-1904 (B)(iii) of the Code of the City of Lawrence, Kansas 2011 Edition, and amendments thereto, Grantee's antennas and support structures shall be exempt from this requirement. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Grantee in accordance with the ordinances of the City without expense to the City. Nothing in this Contract franchise prevents the Grantee from co-locating on existing above-ground facilities with the owner's permission.

Section 6. Compensation to the City. In consideration for the grant of this Contract franchise, the Grantee agrees to pay and the City agrees to accept as adequate compensation and consideration for the Contract franchise hereby granted the following fees as defined herein:

a) Quarterly Franchise Fee. The Grantee shall on a quarterly basis, pay the City an amount equal to 5.0 percent (5%) of its gross receipts as defined herein. For the purpose of this Ordinance, "Gross receipts" means only those receipts collected from within the corporate boundaries of the City of Lawrence, Kansas and which are derived by Grantee from or in connection with the provision of interexchange services either directly by Grantee or indirectly through a reseller or others which use Grantee's Facilities, if any.

Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee 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.

b) Attachment Fee for Street Light or Traffic Signal Poles or Lighting fixtures in the Public Right-of-Way. In addition to the quarterly fee described in Section 6(a), the Grantee shall pay the City an additional fee (the "Municipal Facilities Fee") for the right to attach Grantee Facilities to City owned street light or traffic signal poles and lighting fixtures in the Public right-of-way. The amount of the Municipal Facilities Fee shall be $500.00 per year for each attachment to a street light pole, traffic signal pole or lighting fixture in the Public right-of-way.On or before December 31st of each year, Grantee shall submit payment along with a list identified by location of each City-owned street light or traffic signal poles and light fixtures in the public right of way to which Grantee has attached Grantee's facilities.

c) Grantee shall pay City for the actual cost of the City's inspection of the attachment to the City municipal facility and the cost to repair or replace the municipal facility as required by the City. Subject to the provisions of Section 7 below, the Grantee shall not be required to pay any Municipal Facilities Fee for equipment attached to (*i.e.* "co-located" upon) third-party facilities that are owned by or other parties or entities and are legally allowed in the Public right-of-way.

d) If during the term of this ordinance Grantee offers additional services which if in existence at the effective date of this ordinance would have been included with the definition of "Gross Revenues" such services shall be included within "Gross Revenues" from the date of the offering of such services in City for the remaining term of the ordinance.

e) The franchise fee shall be paid quarterly, by electronic transfer to the City of Lawrence, Kansas, or other method approved by the City and Grantee, for the preceding quarterly period. Concurrent with submission of the quarterly payment, the Grantee shall also submit a report in substantially the same form as Attachment A to this ordinance which shall detail revenues from specific sources. The Grantee shall pay the applicable fee to the City within forty-five (45) days of the last day of the applicable quarter for which a fee payment is due and owing. Payments received after the due date shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Grantee; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Grantee.

Section 7. Sharing of Space. The City encourages the conservation of Public right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Grantee shall permit any franchised entity by appropriate contract or agreement negotiated by the parties to use any and all Facilities constructed or erected by the Grantee. All agreements and installations shall be subject to all existing and future Ordinances and regulations of the City. Grantee agrees that it will not grant any entity rights to occupy the right-of-way without providing notice to the City.

Section 8. Technical Requirements. The interexchange telecommunications services provided hereunder shall at all times be operated and updated, as needed, so that at a minimum, it is conformance with all applicable and current federal, state and local technical specifications and standards, including but not limited to, technical specifications contained in FCC rules and regulations, or any other applicable law which may supersede such rules. As a supplement to the technical standards, the Grantee shall operate the system in a manner to provide to all subscribers signals of consistently good quality.

Section 9. Service Standards. The Grantee shall provide service standards which comply, at a minimum, with interexchange service standards required by the State and the FCC.

Section 10. Access to Information and City Audit regarding Grantee Equipment, Facilities and Revenues. At the request of a municipality, no more than once per year, the municipality may perform a reasonable audit of the Grantee's calculation of the Grantee fee.

Section 11. Attachment to Poles. Nothing in this Contract franchise shall be construed to require or permit any telephone, telecommunications, antenna, equipment, electric light, power wire attachments or other related appurtenances by either the City or the Grantee on the poles of the other. If such attachments are desired by the City or the Grantee, a separate agreement shall be prerequisite to such attachments. Grantee shall not install, construct or erect poles or other above-ground facilities without the City's prior approval. Such approval shall not be unreasonably withheld.

Section 12. Indemnification and Hold-Harmless. The Grantee, its successors and assigns, 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 but excluding such claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents, contractors or employees, who are directly responsible to the City. This indemnity provision shall extend beyond the termination or expiration of this Contract franchise.

Grantee 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 13. Transfer and Assignment. Pursuant to the written permission of the City, which shall not be unreasonably withheld, Grantee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Grantee should seek approval to assign this Contract franchise, the Grantee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This Contract franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

This prohibition shall not apply in the case of sale, assignment, transfer or lease by the Grantee to an affiliated interest, nor shall it apply to assignments made or security interests granted in order to secure financing. The grantee shall, however, provide at least thirty days advance notice of such affiliate transfer, assignment or sale. The City shall have discretion to review the financial, technical and operational qualifications of any entity acquiring this Contract franchise or any of the Grantee's facilities or equipment in the Public right-of-way.

Section 14. Conditions of Contract franchise. This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules

and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Grantee's control. This Contract franchise shall not be exclusive.

Section 15. Other Franchises or Agreements. Grantee agrees that the City may grant to other Grantees one or more franchises or agreements to provide telecommunications interexchange services.

Section 16. Notice to Parties and Point of Contact. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or by a recognized overnight delivery service, to the following addresses:

If to City, to:
City of Lawrence, Kansas
Attn: City Clerk
6 East 6th / P.O. Box 708
Lawrence, KS 66044

With a copy to:
Attn: Director of the Legal Department
Toni R. Wheeler
6 East 6th
P.O. Box 708
Lawrence, KS 66044

If to Grantee, to:
NextG Networks of Illinois, Inc.
Contracts Manager
890 Tasman Drive
Milpitas, CA 95035
contracts@nextgnetworks.net

Any such notice shall be deemed effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

Section 17. Term and Termination Date.

a) This Contract franchise shall be effective for a term of five (5) years from the effective date of this Contract franchise ordinance. Thereafter, this Contract franchise will renew for one (1) additional five (5) year term, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) 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 Contract 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 *et seq.*, 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 18. 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. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, Grantee shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

(1) Workers' compensation as 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 One Million Dollars ($1,000,000) 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) As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c) Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. 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.

d) Grantee shall as a material condition of this Contract franchise, prior to the commencement of any work, deliver to the City satisfactory evidence of a performance bond in the amount of $20,000 payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way and must be issued by a surety company authorized to transact business in the State of Kansas and satisfactory to the City Attorney in form and substance. Bond shall remain in

effect the entire term of this contract to ensure the ongoing performance of the terms and obligations of the franchise as well as any future phases of construction and/or repair work. Notwithstanding the foregoing sentence, the City reserves the right to require Grantee to provide additional financial assurance for future phases of construction and/or repair work, as reasonably determined by the City.

Section 19. Hazardous Substances. Grantee represents and warrants that its use of the Public right-of-way will not generate any hazardous substance, and it will not store or dispose on the Public right-of-way nor transport to or over the Public right-of-way any hazardous substance in violation of applicable laws. Grantee further agrees to hold City harmless from and indemnify City and its agents, officers and employees against Grantee's release of any such hazardous substance and any damage, loss, or expense or liability directly resulting from such release including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of City, it employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

Section 20. Attachment of Antennas, Construction Ground Equipment Improvements and Interference.

a) Grantee warrants that its use of the Public right-of-way will not interfere with any existing radio frequency users on the Public right-of-way as long as the existing radio frequency users operate and continue to operate within the frequencies existing as of the date of this Contract franchise and in accordance with all applicable laws and regulations. If at any time during the term of this Contract franchise, Grantee's use of the Public right-of-way interferes with any existing radio frequency user's operations, and after City has notified Grantee of such interference, Grantee shall take all necessary actions to discontinue the interference. Grantee's use of the Public right-of-way shall in all matters be subordinate to the City's and/or any governmental entity's use of the Public right-of-way for any public purposes. Grantee shall relocate or adjust its facilities, equipment, antenna or adjust its operations to accommodate the City's use within a reasonable time when such relocation or adjustment is requested by the City to accommodate the City's use, or any governmental entity's use, of the Public right-of-way for public purposes; provided, however, in the event City requires such relocation or adjustment more than one (1) time during the term of this Contract franchise or if such relocation or adjustment impairs Grantee's ability to use the Public right-of-way Grantee shall have the option to instead terminate this Contract franchise effective as of the date such relocation or adjustment was to have taken effect. Any relocation or adjustment shall be at the sole cost and expense of the Grantee.

b) If any interference with City's or any other governmental entity's use cannot be eliminated within three (3) days of written notice thereof, Grantee agrees to suspend operations (transmissions) at the site while the interference problems are studied and a means is found to mitigate them. If said interference cannot be eliminated, then this Contract franchise will be terminated, and Grantee shall remove its building and equipment from City's Public right-of-way.

c) City shall cause all subsequent users of the Public right-of-way to first coordinate with Grantee to ensure that their frequencies and antenna locations will be compatible with Grantee's.

Section 21. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration of this Ordinance, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture

thereof, the Grantee shall have the right to remove from public property and all of its facilities used in its business within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Grantee immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 22. Termination or Forfeiture of Contract franchise.

a) In case of failure on the part of the Grantee, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Grantee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Grantee, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

b) Before the City of Lawrence proceeds to forfeit said Contract franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Grantee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this Contract franchise. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such Contract franchise have not been complied with by the Grantee and that such Contract franchise is subject to cancellation by reason thereof, the City of Lawrence, in order to terminate such Contract franchise shall enact an ordinance setting out the grounds upon which said Contract franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Grantee shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Grantee has violated the terms of this Contract franchise and that the Contract franchise is subject to cancellation by reason thereof, such Contract franchise shall be canceled and terminated at the end of such thirty-day period.

c) If within such thirty (30) day period the Grantee does institute an action, as above provided, to determine whether or not the Grantee has violated the terms of this Contract franchise and that the Contract franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the Contract franchise is subject to cancellation by reason of the violation of its terms, this Contract franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 23. 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 full 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 24. Utilities. Payment for electric service and for telephone or other utility services used or consumed by the Grantee shall be Grantee's responsibility. Grantee shall install a separate meter to record Grantee's electrical and other utility charges associated with the use of the Public right-of-way and shall timely pay all costs associated therewith.

Section 25. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Grantee and the City of Lawrence, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Grantee in writing pursuant to Section 26 and 2) the passage and publication of this ordinance as required by law.

Section 26. Grantee Acceptance. The Grantee shall, within sixty (60) days, after the publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this Ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Grantee subject to the provisions of the laws of the State of Kansas.

Section 27. Severability. If any provision, section or subsection of this Contract franchise or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections, or subsections or applications of this Contract franchise which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this Contract franchise are declared to be severable.