

## **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.

### **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 6<sup>th</sup> 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 - 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 Gas 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 (2%) 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 – MIDCONTINENT COMMUNICATIONS.**

##### **ORDINANCE 9399**

(adopted October 3, 2017)

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,  
GRANTING TO MICONTEINENT COMMUNICATIONS, A SOUTH  
DAKOTA GENERAL PARTNERSHIP, A NON-EXCLUSIVE  
TELECOMMUNICATIONS FRANCHISE, ESTABLISHING THE  
TERMS OF THE FRANCHISE CONTRACT, AND REPEALING  
ORDINANCE NO. 7359 AND ORDINANCE NO. 8576.**

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

**SECTION 1:** In accordance with K.S.A. 2016 Supp. 12-2001 *et seq.*, and amendments thereto, the City of Lawrence, Kansas, a municipal corporation, hereby enters, by way of this ordinance, into a non-exclusive telecommunications franchise contract with Midcontinent Communications, a South Dakota general partnership, the terms of which are as follows:

#### **FRANCHISE CONTRACT**

**Section 1. Definitions.** For the purposes of this Franchise Contract, the following words and phrases shall have the meanings set forth herein:

- (a) **"City"** shall mean the City of Lawrence, Kansas, a municipal corporation. References to the City shall also include, as appropriate, any and all successors and assigns.

- (b) **“Company”** shall mean Midcontinent Communications, a South Dakota general partnership. References to the Company shall also include, as appropriate, any and all successors and assigns.
- (c) **“Facilities”** shall mean any and all electric lines, conduits, wires, cables, pipes, poles, towers, vaults, and appliances, and all appurtenances and improvements thereto, whether above or below ground.
- (d) **“Gross Receipts”** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(6), and amendments thereto.
- (e) **“Public Improvement”** shall mean any existing or contemplated public facility, public building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water lines, drainage, Right of Way improvements, or other Public Projects.
- (f) **“Public Project”** shall mean any project planned or undertaken by the City, or by any other governmental entity, for the construction, reconstruction, maintenance, or repair of Public Improvements or other public facilities, or for any purpose of a public nature.
- (g) **“Public Right of Way”** shall mean only that area of real property in which the City has a dedicated or has acquired a right-of-way interest in the real property. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.
- (h) **“Telecommunications Local Exchange Provider”** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(8), and amendments thereto.
- (i) **“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 transmitted or received.
- (j) **“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 or means employed.

## **Section 2. Grant of Franchise to the Company.**

- (a) Pursuant to K.S.A. 12-2001 *et seq.*, and amendments thereto, in exchange for good and valuable consideration, the terms of which are set forth in more detail below, the City hereby grants to the Company the right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in the City's Public Rights of Way, for the purpose of providing Telecommunications Service, subject to the Company's compliance with the terms and conditions established herein.
- (b) This franchise is granted and accepted under and subject to all applicable laws and under and subject to all orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. This franchise shall not be exclusive.



**Section 3. Term.** This Franchise Contract shall be effective from the Effective Date, as defined in Section 20, *infra*, until 11:59 p.m. on December 31, 2022. Thereafter, this Franchise Contract will automatically renew for three successive additional five-year terms, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Contract, which notification must occur not less than one-hundred-eighty (180) days before the termination of the then-current term. Any successive term shall be deemed a continuation of this Franchise Contract and not a new Franchise Contract or an amendment hereto. Unless otherwise amended or terminated, this Franchise Contract will expire of its own accord at 11:59 p.m. on December 31, 2037, and in no event shall survive that date.

**Section 4. Compensation to the City.** As compensation for the franchise herein granted to the Company, the Company (a) shall make an accounting to the City on a monthly basis of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month and (b) shall pay to the City a Franchise Fee, which shall be a monthly sum equal to five percent (5%) of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month.

**Section 5. Payment.**

- (a) The Company shall pay the Franchise Fee to the City monthly by electronic transfer to the City of Lawrence, Kansas, or by any other method approved by the City and the Company. Contemporaneously with each payment, the Company shall submit to the City a report, in substantially the same form as Appendix A to this Franchise Contract, which shall detail revenues from specific sources for the preceding year. The Company shall pay the Franchise Fee to the City within forty-five days of the last day of the applicable month for which the Franchise Fee is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent per month.
- (b) The Franchise Fee shall be in lieu of all other licenses, charges, fees, or impositions (other than the usual general or *ad valorem* taxes or other Temporary Right of Way Work or Use Permit Fees) which might be imposed upon the Company for the privilege of using the Public Rights of Way to provide Telecommunications Service.

**Section 6. Use of Public Rights of Way.** In using the Public Rights of Way, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to permits, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and other requirements affecting the use of the Public Rights of Way. The Company shall also comply with the following:

- (a) The Company's use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. 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 affect or be affected by such Public Improvements.
- (b) To the extent that the Company uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its

Facilities, the Company agrees that it will seek City approval and comply with all City requirements before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall be unobtrusive.

- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by the Company while engaging in any activity under this Franchise Contract shall be fully repaired or replaced to their original condition within a reasonable time by the Company at its sole cost and expense and to the reasonable satisfaction of the City.
- (d) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way after the date hereof and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City the Company agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of the Company, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and the Company agree that such information is confidential and proprietary. The City and the Company also agree that such information shall remain the sole property of the Company. The City and the Company further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to disclose such information, the City shall provide the Company advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company in safeguarding such information.

The Company agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of 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 to the City by the Company under this section.

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

- (e) Except in cases of emergency or routine maintenance, a minimum of forty-eight (48) hours prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, the Company shall submit to the Department of Public Works for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specifications. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.
- (f) Except in cases of emergency, the Company shall notify the City not less than twenty-eight (28) days in advance of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would

reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the approval or denial of such authority, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, the Company shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to the Company, its employees, agents, or contractors.

- (g) As reasonably necessary, the Company shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90) days prior written notice from the City. Such relocation or adjustment shall be performed by the Company, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City.
- (h) It shall be the sole responsibility of the Company to take adequate measures to protect and to defend its Facilities in the Public Rights of Way from harm and damage. If the Company fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then the Company has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near the Company's Facilities.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be followed at all times work is performed in the Public Rights of Way. Additionally, all work performed in the Public Rights of Way shall be in compliance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
- (j) The City shall have the authority to prohibit the Company's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.

**Section 7. Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, the Company shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

**Section 8. Location of Underground Facilities and Equipment.** The Company's Facilities and equipment shall be placed underground as required by City Ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, Kansas, and amendments thereto. Consistent with Section 5-1904(B)(iii) of the Code of the City of Lawrence, Kansas, as may be amended, however, any markers, antennas, and support structures necessary for the Company's purposes hereunder and that are specifically approved by the City in writing shall be exempt from that requirement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any

necessary trenching shall be installed, maintained, or provided by the Company in accordance with City ordinances and at the Company's sole cost and expense.

Nothing in this License Agreement prevents the Company from co-locating its Facilities on existing above-ground facilities with the owner's prior written consent.

**Section 9. Sharing Space.** The City encourages the conservation of the Public Rights of Way by the sharing of space among 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 by the Company. All said agreements and installations shall be subject to all future ordinances, resolutions, rules, regulations, and policies of the City. The Company agrees that it will not grant any entity the right to occupy the Public Rights of Way without first giving written notice to the City and receiving written approval of the City.

**Section 10. No Authority.** This Franchise Contract does not grant the Company the right or the authority to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services. If the Company wishes to use the Public Rights of Way for any other purpose, it shall first negotiate and enter into a separate Franchise Contract or other agreement with the City. If the Company wishes to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services, the City agrees, upon the written request of the Company, to commence negotiations in good faith with the Company within thirty (30) days of the written request therefor.

**Section 11. Access to Information.**

- (a) The Company, in determining the amount of Gross Receipts subject to the Franchise Fee, agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect, due to the Company's failure to use commercially reasonable efforts, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof shall not be deemed a settlement, compromise, or accord and satisfaction, if the amount in dispute is later determined to be incorrect.
- (b) The Company further agrees that all of its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Ordinance, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying the Company's accounting. The City shall bear the costs of any such audit, unless however the audit discloses that the Company owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, the Company shall be responsible to the City for the reasonable costs of the audit. Notwithstanding the foregoing, the Company shall continue to have the right to require from the City reasonable protection of proprietary information.

**Section 12. Insurance; Performance Bond.**

- (a) During the initial term, any subsequent additional term, or any other extension of this Franchise Contract, the Company shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should the Company elect to use the services of an affiliated captive insurance company for this purpose, the Company shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. The Company shall provide not less than the following insurance:

- (i) Worker's compensation, as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed, with an employers' liability limit equal to the amount required by law.
  - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims-made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from the Company's operations under this Franchise Contract.
- (b) As an alternative to the requirements of Section 12(a), *supra*, the Company may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by Midcontinent Communications or so alleged to have been caused or to have occurred.
- (c) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance showing that the above-described insurance is in force and will not be cancelled or materially changed without first giving the City thirty (30) days prior written notice. The Company 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.
- (d) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Fifty Thousand Dollars (\$50,000.00) 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 Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require the Company to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

### **Section 13. Termination or Forfeiture of Agreement.**

- (a) In case of failure on the part of the Company to comply with any of the provisions of this Franchise Contract, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Contract, then the Company shall forfeit all rights and privileges granted by this Franchise Contract and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:
  - (i) Before the City may proceed to terminate this Franchise Contract, it shall first serve a written notice as provided by the Notice provisions of this

Franchise Contract, setting forth, in detail, the conditions of neglect, default, or failure complained of, and the Company shall have thirty (30) days after the receipt of such notice in which to comply with the conditions of this Franchise Contract. If, at the end of such thirty-day period, the City deems that the conditions of the Franchise Contract have not been met and that such Franchise Contract is subject to cancellation therefor, then the City, in order to terminate the Franchise Contract, shall by resolution, setting forth the grounds for termination, terminate this Franchise Contract. If within thirty (30) days after the effective date of said resolution, the Company shall not have instituted an action for declaratory judgment in the District Court of Douglas County, Kansas, to determine whether or not the Company has violated the terms of this Franchise Contract, then this Franchise Contract shall be deemed canceled and terminated at the end of such thirty-day period.

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

(iii) Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law.

(b) In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have the right, by giving written notice hereunder, to terminate this Franchise Contract.

(c) The Company may terminate this Franchise Contract at any time, with or without cause, effective at 11:59 p.m. on December 31 of the then-current year by giving notice to the City of its intent to terminate no later than 11:59 p.m. on June 30 of the then-current year.

**Section 14. Indemnification.** The Company shall indemnify and save and hold harmless the City, its officers, employees, agents, and authorized contractors, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by the Company's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of the Company's occupancy or use of the Public Rights of Way, then, upon notice by the City to the Company, the Company shall assume responsibility for the defense of such claim or action at the cost of the Company, subject to the City's unilateral option to appear and defend itself. The Company's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's negligence, recklessness, or willful misconduct. This indemnifying provision shall survive the termination or expiration of this Franchise Contract.

#### **Section 15. Transfer and Assignment.**

(a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, the Company shall have the right to assign this Franchise Contract and the rights and privileges hereby granted to any person, firm, or corporation. If the Company should seek approval to assign this Franchise Contract, the Company shall notify the City in writing. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Franchise Contract. All such assignments shall be in writing and authenticated copies thereof

shall be filed with the City Clerk and the City Attorney. This Franchise Contract shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.

- (b) Notwithstanding the foregoing subsection, the Company shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with the Company. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, the Company's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment.

**Section 16. Reservation of Rights.** The City specifically reserves its right and authority, as a Customer of the Company and as a governmental entity responsible for its residents, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the efficient provision of Telecommunications Service at reasonable rates and the maintenance of the Company's Facilities in good repair. The Company specifically reserves its right to oppose any such position the City may take.

In granting its consent hereunder, the City does not in any manner waive its regulatory rights, any other rights and powers under the laws of the State of Kansas, as may be amended, nor any of its rights and powers under the ordinances, present or future, of the City.

**Section 17. Notices.** All notices, requests, demands, or 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 Street  
P.O. Box 708  
Lawrence, Kansas 66044

**With a copy to:**

City of Lawrence, Kansas  
Attn: City Attorney  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**If to the Company, to:**

Midco  
Attn: Nancy Vogel  
3901 N. Louis Ave.  
Sioux Falls, South Dakota 57101  
[Nancy.vogel@midco.com](mailto:Nancy.vogel@midco.com)

**With a copy to:**

Midco  
Attn: General Counsel  
3901 N. Louis Ave.  
Sioux Falls, South Dakota 57101  
[notices@midco.com](mailto:notices@midco.com)

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

**Section 18. Non-waiver.** The failure of either the City or the Company to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Franchise Contract shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Franchise Contract shall be deemed to have been made by the City or the Company, unless said waiver or relinquishment is in writing and signed by both the City and the Company.

**Section 19. Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or the Company's reasonable control.

**Section 20. Effectiveness.** This Ordinance shall become effective and be in full force as a binding contract between the City and the Company from and after the following: **(a)** the ordinance has been approved and accepted by the Company in accordance with Section 24, *infra*; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 21. Publication Costs.** The Company shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 22. Severability.** If any provision, section, or subsection of this Franchise Contract or the application thereof to any person or circumstances is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this Franchise Contract that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this Franchise Contract are hereby declared to be severable.

**Section 23. Governing Law.** The terms of this License Agreement shall be governed by the laws of the State of Kansas.

**Section 24. Company Acceptance.** The Company shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and the Company. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.

**SECTION 2.** Existing Ordinance No. 7359 and Ordinance No. 8576 are hereby repealed, it being the intent of the Governing Body that the provisions of this ordinance supersede them.

**SECTION 3.** If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining part of this ordinance.



## **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 31<sup>st</sup> 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 6<sup>th</sup> / 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, its 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.

**ELECTRIC – WESTAR ENERGY, INC.**

**ORDINANCE NO. 9679**

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, GRANTING WESTAR ENERGY, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, ESTABLISHING THE TERMS THEREOF, PROVIDING FOR A MONTHLY FRANCHISE FEE PAYMENT TO BE MADE TO THE CITY AND REPEALING EXISTING ORDINANCE NO. 6450, ORDINANCE NO. 6468, ORDINANCE NO. 6483, ORDINANCE NO. 7034, AND ORDINANCE NO. 8030.**

(Adopted June 4, 2019)

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

FRANCHISE CONTRACT

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 Westar Energy, 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 which is now or hereafter in the Company's certified territory as defined by the Kansas 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.

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. However, except in cases where the Company has made a mistake in relocating its equipment hereunder, the Company shall not be required to move the same equipment more than once in any two-year period. 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 19, Chapter 5, Article 20, Chapter 16, Article 8, and Chapter 16, Article 9 of the Code of the City of Lawrence, Kansas, and amendments thereto, including any administrative regulations adopted in accordance therewith. In no event shall the Company be required to place facilities underground other than as required by City ordinances, including Chapter 5, Article 19, of the Code of the City of Lawrence, Kansas, and amendments thereto.

Section 3. Pruning of Trees; Street Tree Ordinance. (a) The Company shall have the right to prune trees overhanging the right-of-way and utility easements. The Company shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269, as amended. All pruning operations shall be performed by personnel qualified to do such work and in accordance with the latest versions of ANSI Z133.1 and ANSI A300 (Part 1), as amended. For the pruning of trees located on private property, customers shall be contacted at least one (1) week in advance of the tree pruning. (b) The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the City Code) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 4. 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. Maps showing the location shall be filed in the Office of the City Engineer.

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, excluding temporary right-of-way permit fees required by Chapter 16, Article 8 of the City Code, as amended, 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. Such ordinance shall take effect no 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. On or before March 1 of every year, the Company shall also submit a report 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.

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.

Section 7. Notification and Confirmation of City Annexation. The City shall notify the Company of the adoption of ordinances annexing territory into the City. 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.

Section 8. 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 for 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.

Section 9. 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.

Section 10. Term of Franchise Agreement. This Agreement shall be effective as provided in Section 15, *infra*. 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, 2034, this agreement shall be effective until July 1, 2034. 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, 2039, this agreement shall be effective until July 1, 2039.

Section 11. 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 12. 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 or license 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 13. 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.

Section 14. Repeal of Expiring Franchise Ordinance. Ordinance No. 6450, passed by the City on July 6, 1993, and Ordinance No. 6468, Ordinance No. 6483, Ordinance No. 7034, and Ordinance No. 8030, amending that ordinance, are repealed upon the effective date of this ordinance.

Section 15. 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 successor and assigns, from and after its publication as required by law. The Company shall pay for the required publication of this ordinance.

## **TELECOMMUNICATIONS-UNITE PRIVATE NETWORKS**

**ORDINANCE NO. 9874**  
(Adopted September 14, 2021)

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,  
GRANTING TO UNITE PRIVATE NETWORKS, A DELAWARE  
LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE  
TELECOMMUNICATIONS FRANCHISE AND ESTABLISHING  
THE TERMS OF THE FRANCHISE CONTRACT.**

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

### **FRANCHISE CONTRACT**

**Section 1. Definitions.** For the purposes of this Franchise Contract, the following words and phrases shall have the meanings set forth herein:

- (a) **"City"** shall mean the City of Lawrence, Kansas, a municipal corporation. References to the City shall also include, as appropriate, any and all successors and assigns.
- (b) **"Company"** shall mean Unite Private Networks, a Delaware limited liability company. References to the Company shall also include, as appropriate, any and all successors and assigns.
- (c) **"Facilities"** shall mean any and all electric lines, conduits, wires, cables, pipes, poles, towers, vaults, and appliances, and all appurtenances and improvements thereto, whether above or below ground.
- (d) **"Gross Receipts"** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(6), and amendments thereto.
- (e) **"Public Improvement"** shall mean any existing or contemplated public facility, public building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water lines, drainage, Right of Way improvements, or other Public Projects.
- (f) **"Public Project"** shall mean any project planned or undertaken by the City, or by any other governmental entity, for the construction, reconstruction, maintenance, or repair of Public Improvements or other public facilities, or for any purpose of a public nature.
- (g) **"Public Right of Way"** shall mean only that area of real property in which the City has a dedicated or has acquired a right-of-way interest in the real property. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast

service, easements obtained by utilities, or private easements in platted subdivisions or tracts.

- (h) **“Telecommunications Local Exchange Provider”** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(8), and amendments thereto.
- (i) **“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 transmitted or received.
- (j) **“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 or means employed.

## **Section 2. Grant of Franchise to the Company.**

- (a) Pursuant to K.S.A. 12-2001 *et seq.*, and amendments thereto, in exchange for good and valuable consideration, the terms of which are set forth in more detail below, the City hereby grants to the Company the right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in the City’s Public Rights of Way, for the purpose of providing Telecommunications Service, subject to the Company’s compliance with the terms and conditions established herein.
- (b) This franchise is granted and accepted under and subject to all applicable laws and under and subject to all orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. This franchise shall not be exclusive.

**Section 3. Term.** This Franchise Contract shall be effective from the Effective Date, as defined in Section 20, *infra*, until 11:59 p.m. on December 31, 2026. Thereafter, this Franchise Contract will automatically renew for two successive additional five-year terms, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Contract, which notification must occur not less than one-hundred-eighty (180) days before the termination of the then-current term. Any successive term shall be deemed a continuation of this Franchise Contract and not a new Franchise Contract or an amendment hereto. Unless otherwise amended or terminated, this Franchise Contract will expire of its own accord at 11:59 p.m. on December 31, 2036, and in no event shall survive that date.

**Section 4. Compensation to the City.** As compensation for the franchise herein granted to the Company, the Company (a) shall make an accounting to the City on a monthly basis of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month and (b) shall pay to the City a Franchise Fee, which shall be a monthly sum equal to five percent (5%) of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month.

## **Section 5. Payment.**

- (a) The Company shall pay the Franchise Fee to the City monthly by electronic transfer to the City of Lawrence, Kansas, or by any other method approved by the City and the Company. Contemporaneously with each payment, the Company shall submit to the City a report, in substantially the same form as Appendix A to this Franchise Contract, which shall detail revenues from specific sources for the preceding year. The Company shall pay the Franchise Fee to the City within forty-five days of the last day of the applicable month for which the Franchise Fee is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent per month.



- (b) The Franchise Fee shall be in lieu of all other licenses, charges, fees, or impositions (other than the usual general or *ad valorem* taxes or other Temporary Right of Way Work or Use Permit Fees) which might be imposed upon the Company for the privilege of using the Public Rights of Way to provide Telecommunications Service.

**Section 6. Use of Public Rights of Way.** In using the Public Rights of Way, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to ROW permits, ROW permit fees, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and other requirements affecting the use of the Public Rights of Way. The Company shall also comply with the following:

- (a) The Company's use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. 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 affect or be affected by such Public Improvements.
- (b) To the extent that the Company uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its Facilities, the Company agrees that it will seek City approval and comply with all City requirements before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall be unobtrusive.
- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by the Company while engaging in any activity under this Franchise Contract shall be fully repaired or replaced to their original condition within a reasonable time by the Company at its sole cost and expense and to the reasonable satisfaction of the City.
- (d) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way after the date hereof and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City the Company agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of the Company, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and the Company agree that such information is confidential and proprietary. The City and the Company also agree that such information shall remain the sole property of the Company. The City and the Company further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to

disclose such information, the City shall provide the Company advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company in safeguarding such information.

The Company agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of 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 to the City by the Company under this section.

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

- (e) Except in cases of emergency or routine maintenance, a minimum of forty-eight (48) hours prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, the Company shall submit to the Department of Municipal Services and Operations for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specifications. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.
- (f) Except in cases of emergency, the Company shall notify the City, in compliance with the City's Administrative Regulations of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its Administrative Regulations in the approval or denial of such authority, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.  
In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, the Company shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to the Company, its employees, agents, or contractors.
- (g) As reasonably necessary, the Company shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90) days prior written notice from the City. Such relocation or adjustment shall be performed by the Company, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City.
- (h) It shall be the sole responsibility of the Company to take adequate measures to protect and to defend its Facilities in the Public Rights of Way from harm and damage. If the Company fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then the Company has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures,

including but not limited to calling for utility locations and observing marker posts, when working near the Company's Facilities.

- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be followed at all times work is performed in the Public Rights of Way. Additionally, all work performed in the Public Rights of Way shall be in compliance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
- (j) The City shall have the authority to prohibit the Company's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.

**Section 7. Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, the Company shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

**Section 8. Location of Underground Facilities and Equipment.**

- (a) The Company's Facilities and equipment shall be placed underground as required by City Ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, Kansas, as amended. Consistent with Section 5-1904(B)(iii) of the Code of the City of Lawrence, Kansas, as amended, however, any markers, antennas, and support structures necessary for the Company's purposes hereunder and that are specifically approved by the City in writing shall be exempt from that requirement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by the Company in accordance with City ordinances and at the Company's sole cost and expense.
- (b) In excavating within the Public Rights of Way, in addition to complying with City ordinances, regulations, and policies, the Company shall comply with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, and shall, prior to commencing any such excavation, request utility locates. Notwithstanding the provisions of that Act, **no** excavation may be commenced in the Public Rights of Way until such utility locates have been requested **and** performed.
- (c) Nothing in this License Agreement prevents the Company from co-locating its Facilities on existing above-ground facilities with the owner's prior written consent.

**Section 9. Sharing Space.** The City encourages the conservation of the Public Rights of Way by the sharing of space among 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 by the Company. All said agreements and installations shall be subject to all future ordinances, resolutions, rules, regulations, and policies of the City. The Company agrees that it will not grant any entity the right to occupy the Public Rights of Way without first giving written notice to the City and receiving written approval of the City.

**Section 10. No Authority.** This Franchise Contract does not grant the Company the right or the authority to use the Public Rights of Way for any other purpose than the provision of

Telecommunications Services. If the Company wishes to use the Public Rights of Way for any other purpose, it shall first negotiate and enter into a separate Franchise Contract or other agreement with the City. If the Company wishes to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services, the City agrees, upon the written request of the Company, to commence negotiations in good faith with the Company within thirty (30) days of the written request therefor.

#### **Section 11. Access to Information.**

- (a) The Company, in determining the amount of Gross Receipts subject to the Franchise Fee, agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect, due to the Company's failure to use commercially reasonable efforts, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof shall not be deemed a settlement, compromise, or accord and satisfaction, if the amount in dispute is later determined to be incorrect.
- (b) The Company further agrees that all of its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Ordinance, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying the Company's accounting. The City shall bear the costs of any such audit, unless however the audit discloses that the Company owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, the Company shall be responsible to the City for the reasonable costs of the audit. Notwithstanding the foregoing, the Company shall continue to have the right to require from the City reasonable protection of proprietary information.

#### **Section 12. Insurance; Performance Bond.**

- (a) During the initial term, any subsequent additional term, or any other extension of this Franchise Contract, the Company shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should the Company elect to use the services of an affiliated captive insurance company for this purpose, the Company shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. The Company shall provide not less than the following insurance:

  - (i) Worker's compensation, as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed, with an employers' liability limit equal to the amount required by law.
  - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims-made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from the Company's operations under this Franchise Contract.
- (b) As an alternative to the requirements of Section 12(a), *supra*, the Company may demonstrate to the satisfaction of the City that it is self-insured and that it has the

wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by the Company or so alleged to have been caused or to have occurred.

- (c) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance showing that the above-described insurance is in force and will not be cancelled or materially changed without first giving the City thirty (30) days prior written notice. The Company 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.
- (d) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Seventy-five Thousand Dollars (\$75,000.00) 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 Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require the Company to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

### **Section 13. Termination or Forfeiture of Agreement.**

- (a) In case of failure on the part of the Company to comply with any of the provisions of this Franchise Contract, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Contract, then the Company shall forfeit all rights and privileges granted hereby and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:
  - (i) Before the City may proceed to terminate this Franchise Contract, it shall first serve a written notice as provided by the Notice provisions of this Franchise Contract, setting forth, in detail, the conditions of neglect, default, or failure complained of, and the Company shall have thirty (30) days after the receipt of such notice in which to comply with the conditions of this Franchise Contract. If, at the end of such thirty-day period, the City deems that the conditions of the Franchise Contract have not been met and that such Franchise Contract is subject to cancellation therefor, then the City, in order to terminate the Franchise Contract, shall by resolution, setting forth the grounds for termination, terminate this Franchise Contract. If within thirty (30) days after the effective date of said resolution, the Company shall not have instituted an action for declaratory judgment in the District Court of Douglas County, Kansas, to determine whether or not the Company has violated the terms of this Franchise Contract, then this Franchise Contract shall be deemed canceled and terminated at the end of such thirty-day period.
  - (ii) If, within such thirty-day period, the Company does institute an action as above described to determine whether or not it has violated the terms of this

Franchise Contract and prosecutes such action to final judgment with due diligence, then, in the event that the court finds that this Franchise Contract is subject to termination by reason of the violation of its terms, then this Franchise Contract shall terminate thirty (30) days after such final judgment is rendered and available appeals have been exhausted.

- (iii) Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law.
- (b) In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have the right, by giving written notice hereunder, to terminate this Franchise Contract.
- (c) The Company may terminate this Franchise Contract at any time, with or without cause, effective at 11:59 p.m. on December 31 of the then-current year by giving notice to the City of its intent to terminate no later than 11:59 p.m. on June 30 of the then-current year.

**Section 14. Indemnification.** The Company shall indemnify and save and hold harmless the City, its officers, employees, agents, and authorized contractors, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by the Company's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of the Company's occupancy or use of the Public Rights of Way, then, upon notice by the City to the Company, the Company shall assume responsibility for the defense of such claim or action at the cost of the Company, subject to the City's unilateral option to appear and defend itself. The Company's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's negligence, recklessness, or willful misconduct. This indemnifying provision shall survive the termination or expiration of this Franchise Contract.

**Section 15. Transfer and Assignment.**

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, the Company shall have the right to assign this Franchise Contract and the rights and privileges hereby granted to any person, firm, or corporation. If the Company should seek approval to assign this Franchise Contract, the Company shall notify the City in writing. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Franchise Contract. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Franchise Contract shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (b) Notwithstanding the foregoing subsection, the Company shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with the Company. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, the Company's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee

has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment

**Section 16. Reservation of Rights.** The City specifically reserves its right and authority, as a Customer of the Company and as a governmental entity responsible for its residents, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the efficient provision of Telecommunications Service at reasonable rates and the maintenance of the Company's Facilities in good repair. The Company specifically reserves its right to oppose any such position the City may take.

In granting its consent hereunder, the City does not in any manner waive its regulatory rights, any other rights and powers under the laws of the State of Kansas, as may be amended, nor any of its rights and powers under the ordinances, present or future, of the City.

**Section 17. Notices.** All notices, requests, demands, or 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 the City, to:**

City of Lawrence, Kansas  
Attn: City Clerk  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**With a copy to:**

City of Lawrence, Kansas  
Attn: City Attorney  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**If to the Company, to:**

Unite Private Networks, LLC  
Attn: Charlene White, Vice-President of Real Estate  
1511 Baltimore Ave., 2nd Floor  
Kansas City, Missouri 64108

**With a copy to:**

Unite Private Networks, LLC  
Attn: General Counsel  
1511 Baltimore Ave., 2nd Floor  
Kansas City, Missouri 64108

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

**Section 18. Non-waiver.** The failure of either the City or the Company to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Franchise Contract shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Franchise Contract shall be deemed to have been made by the City or the Company, unless said waiver or relinquishment is in writing and signed by both the City and the Company.

**Section 19. Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or the Company's reasonable control.

**Section 20. Effectiveness.** This Ordinance shall become effective and be in full force as a binding contract between the City and the Company from and after the following: **(a)** the ordinance has been approved and accepted by the Company in accordance with Section 24, *infra*; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 21. Publication Costs.** The Company shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 22. Severability.** If any provision, section, or subsection of this Franchise Contract or the application thereof to any person or circumstances is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this Franchise Contract that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this Franchise Contract are hereby declared to be severable.

**Section 23. Governing Law.** The terms of this License Agreement shall be governed by the laws of the State of Kansas.

**Section 24. Company Acceptance.** The Company shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and the Company. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.

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

**ORDINANCE NO. 9897**  
(adopted 12/21/2021)

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, GRANTING TO BLACK HILLS/KANSAS GAS UTILITY COMPANY, L.L.C., A KANSAS LIMITED LIABILITY COMPANY, d/b/a BLACK HILLS ENERGY, AND ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE GAS SERVICE FRANCHISE, THE RIGHT AND PRIVILEGE TO USE AND MAINTAIN GAS SERVICE FACILITIES IN THE PUBLIC RIGHTS OF WAY WITHIN THE PRESENT AND FUTURE CORPORATE LIMITS OF THE CITY OF LAWRENCE, KANSAS, FOR THE PURPOSE OF SUPPLYING GAS SERVICE TO THE CITY AND TO ITS INHABITANTS, PURSUANT TO K.S.A. 12-2001 ET SEQ., AND REPEALING ORDINANCE NOS. 7155, 8241, 8957, AND 9822.**

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

**SECTION 1. Definitions.** For purposes of this franchise ordinance, the following words and phrases shall have the meanings given herein:

- (a) **"Black Hills"** shall mean Black Hills/Kansas Gas Utility Company, L.L.C., a Kansas limited liability company, d/b/a Black Hills Energy, and its successors and assigns.
- (b) **"City"** shall mean the City of Lawrence, Kansas.



- (c) **“Facilities”** shall mean all mains, services, pipes, conduits, appliances, improvements, and appurtenances thereto, either under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale, within the City, of Gas Service to the City and its inhabitants for any use, including domestic, commercial, and industrial purposes.
- (d) **“Gas Service”** shall mean the supplying, selling, transmitting, transporting, or distribution of natural gas or processed gas within the City through the use of Black Hills’ Facilities.
- (e) **“Gross Receipts”** shall mean any and all compensation and other consideration derived directly by Black Hills from any sale, distribution, or transportation of Gas Service 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 Black Hills 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 limitation, streets, alleys, sidewalks, sewers, water mains, drainage conduits, fiber optic cables, conduits, and facilities, traffic signal facilities, right-of-way improvements, and other Public Projects.
- (h) **“Public Project”** shall mean any project planned or undertaken by the City, or any other governmental entity, for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.
- (i) **“Public Rights of Way”** shall mean those areas of real property in which the City has a right-of-way interest, whether through purchase, dedication, or other means of acquisition. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, or other public way.
- (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, the City hereby grants to Black Hills the right, privilege, franchise, permission, and authority to construct, maintain, extend, and operate its Facilities, in, through and along the Public Rights of Way for the purpose of supplying Gas Service to the City and its inhabitants and consumers in the vicinity thereof for the full term of this franchise; subject, however, to Chapter 16, Articles 8, 9, and 9A of the City Code, as amended, as well as the terms and conditions set forth in this franchise ordinance. The City further grants to Black Hills the right, privilege, franchise, permission, and authority to lay, install, maintain, and

operate over, across, and along the Public Rights of Way of the City all Facilities necessary or convenient for providing Gas Service and to do all other things necessary and proper to provide Gas Service to the City and its inhabitants, and in carrying on such business.

- (b) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to Black Hills the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without entering into a separate Contract Franchise, Video Service Provider's Agreement, or other agreement with 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 Black Hills for Gas 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 Black Hills 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 Black Hills; provided, however, should any judicial, regulatory, or legislative body, having proper jurisdiction, take any action that precludes Black Hills from recovering from its customers any cost associated with services provided hereunder, then the City and Black Hills shall renegotiate the terms of this franchise ordinance.

**SECTION 4. Use of Public Rights of Way.** In the use of Public Rights of Way, hereunder, Black Hills 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 governmental bodies now or hereafter having jurisdiction. In addition, Black Hills shall be subject to all policies, rules, regulations, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, including Temporary Right of Way Permits or Annual Right of Way Permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the Public Rights of Way, including those set forth at Chapter 16, Articles 8, 9, and 9A of the City Code, as amended, and shall also comply with the following:

- (a) Black Hills' use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. Black Hills 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 affect or be affected by such Public Improvements.
- (b) Upon receipt and acceptance of a valid application for service, Black Hills shall, subject to its own economic feasibility criteria, make reasonable extensions of its Facilities to serve customers located within the current or future corporate limits of City. No obligation shall extend to, or be binding upon, Black Hills to extend its Facilities if Black Hills 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 Black Hills in its activities under this franchise ordinance shall, in accordance with City regulations, be fully repaired or replaced within a reasonable time by Black Hills at its sole cost and expense and to the reasonable satisfaction of the City.

- (d) Black Hills shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, or relocated in the Public Rights 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, Black Hills agrees to provide such information in an electronic format. The City agrees to use information obtained pursuant to this subsection only to locate Black Hills' Facilities in connection with Public Improvements and Public Projects and further agrees not to disclose such information to anyone other than City employees or its agents requiring such information to locate utility facilities in connection with Public Improvements and Public Projects, except as required by law. Black Hills and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of Black Hills and agree that, pursuant to K.S.A. 45-221(a)(12), (18), and (45) as amended, such information does not constitute open public records as contemplated by 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 Black Hills seven days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with Black Hills to safeguard such information.

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

In the event such information is required by force of law to be publicly disclosed, Black Hills 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 21 days prior to construction, reconstruction, or relocation of any Facilities in the Public Rights of Way, Black Hills shall submit to the Department of Municipal Services and Operations (MSO), for review and approval, plans and specifications of the proposed project. 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. In cases of emergency, Black Hills shall comply with Section 16-811 of the City Code, as amended.

In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, Black Hills shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to Black Hills, its employees, agents, or contractors.

- (f) Black Hills 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 the Public Rights of Way when requested by the City or its authorized agents for Public Improvements or a Public Project. Such location and identification shall be at the sole cost and expense of Black Hills, without any cost or expense to the City, its employees, agents, or authorized contractors. Black Hills shall designate an agent to provide the City with timely information when required by this subsection.

- (g) As reasonably necessary, Black Hills shall remove and relocate or adjust any Facilities located in the Public Rights of Way for Public Improvements or a Public

Project within a reasonable time. Such relocation or adjustment shall be performed by Black Hills at its sole cost and expense, without any cost or expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City. The City shall consider reasonable alternatives in designing its Public Improvements and Public Projects so as not arbitrarily to cause Black Hills unreasonable additional expense in exercising its authority under this section.

- (h) It shall be the sole responsibility of Black Hills to take adequate measures to protect and to defend its Facilities in the Public Rights of Way from harm and damage. If Black Hills fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 et seq., then Black Hills has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near Black Hills' Facilities
- (i) Except in the event of an emergency, Black Hills shall follow the City Code and City Administrative Regulations, as currently existing and as hereafter be amended, relating to traffic control.
- (j) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Public Rights of Way shall be in accordance with applicable present and future federal, state, and City law and regulations.
- (k) The City shall have the authority to prohibit Black Hills' use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation.

**SECTION 5. Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, Black Hills shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

**SECTION 6. Location of Underground Equipment and Facilities.**

- (a) Black Hills' Facilities and equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the City Code, as amended. Consistent with Section 5-1904(B)(iii) of the City Code, as amended, any markers and support structures necessary for Black Hills' purposes hereunder and that are specifically approved by the City in writing before the installation of such shall be exempt from that requirement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by Black Hills in accordance with City ordinances and at Black Hills' sole cost and expense.
- (b) In excavating within the Public Rights of Way, in addition to complying with City ordinances, regulations, and policies, Black Hills shall comply with the Kansas

Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 et seq., and shall, prior to commencing any such excavation, request utility locates. Notwithstanding the provisions of that Act, no excavation may be commenced in the Public Rights of Way until such utility locates have been requested and performed.

**SECTION 7. Franchise Fee.** In consideration of the franchise granted herein, Black Hills shall collect from its customers, excluding the City, located within the corporate limits of the City and shall pay to the City an amount equal to:

- (a) (1) The Volumetric Rate shall be recalculated in August annually beginning January 1, 2023, based upon the Settlement Price for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX). The Volumetric Rate calculation form on file with the City Clerk and incorporated herein by reference shall be used for the recalculation of the Volumetric Rate. The recalculation shall be effective each January 1 and shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2nd) preceding year and ending in June of the preceding year. For each fifteenth (15th) day of each month during said twelve (12) month period, the Settlement Prices on the 15th day of each month (or where necessary, for the following business day) for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Price will be multiplied by five and twenty-five ten-thousandths percent (5.0025%) 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 its facilities 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 shall be 1% of the current Volumetric Rate. The Volumetric Rate shall be calculated in August annually by Black Hills Energy and shall be effective on the following January 1st upon filing of the completed Volumetric Rate Calculation Form with the City Clerk without requirement of amendment to the Ordinance. The Volumetric Rate Calculation Form for 2022 is attached hereto as Exhibit A.

Rates until the franchise implementation date will be:

Customer Class	Description	Volumetric Fee
Up to first 50,000 MMBTU	Users who use less than 50,000 MMBtu annually.	\$0.0865 per therm
Volumes over 50,000 MMBtu	Users who use more than 50,000 MMBtu annually	\$0.000865 per therm

Effective on the franchise implementation date, volumetric rates for the remainder of 2022 will be:

Customer Class	Description	Volumetric Fee
Up to first 50,000	Users who use less	\$0.01443 per therm

MMBTU	than 50,000 MMBtu	
Volumes over 50,000 MMBtu	Users who use more than 50,000 MMBtu annually	\$0.0001443 per therm

- (2) Together with five and twenty-five ten-thousandths percent (5.0025%) 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.
  - (3) The sums in subparagraphs (1) and (2) shall be adjusted for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.
- (b) Except as set forth below, the franchise fee paid by Black Hills to the City as set forth in subsection (a) shall be in lieu of all occupation, licenses, excise fees, or taxes which the City may impose for the rights and privileges granted herein. However, Black Hills 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 provision of Gas Services within the City.
  - (c) Black Hills agrees to obtain any and all Right of Way Permits that may be required by Chapter 16, Articles 8, 9, and 9A of the City Code, as amended. However, all fees for said permits, as otherwise required by the City Code, as amended, are specifically included within the Franchise Fee collected hereunder and no separate fee will be assessed or collected for said permits.
  - (d) Black Hills 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 Black Hills will no longer be obligated to collect and pay the franchise fee.
  - (e) Black Hills 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. Black Hills shall obtain a copy of the annual boundary resolution adopted by the City, and Black Hills shall compare the boundaries with Black Hills' existing and planned Gas Services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City.
  - (f) The franchise fee imposed by this franchise ordinance shall not become effective within any area which is annexed by the City and becomes subject to this ordinance until 60 days after the City Clerk provides Black Hills 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. Access to Information.** The City shall have access to and the right to examine, during normal business hours, those of Black Hills' 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 Black Hills shall be paid within thirty (30) days of the recalculation and any over-payment by Black Hills 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 the Public Rights of Way by the sharing of space by all utilities. To the extent required by federal or state law, Black Hills 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 Black Hills. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Black Hills agrees that it will not grant any entity rights to occupy the Public Rights of Way without providing notice to the City.

**SECTION 10. Indemnification.** Black Hills, its successors and assigns, agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, officials, employees, and agents from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including reasonable attorneys' fees, in any way arising from or relating to Black Hills' use of the Public Rights of Way. This indemnification clause shall not apply to any injury or damage to the extent that it is caused by the City's own negligence.

**SECTION 11. Assignment of Franchise.** Pursuant to the written permission of the City, which shall not be unreasonably withheld, Black Hills 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 Black Hills should seek approval to assign this franchise, Black Hills 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.** Under this franchise ordinance, the City grants and Black Hills accepts all rights, privileges, and obligations under and subject to all applicable laws and under and subject to all 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 Black Hills' 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: (a) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, pandemics or epidemics, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; (b) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars;. 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.** All notices, requests, demands, or 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 the City, to:**

City of Lawrence, Kansas  
Attn: City Clerk  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**With a copy to:**

City of Lawrence, Kansas  
Attn: City Attorney  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**If to the Company, to:**

Black Hills/Kansas Gas Utility Company, L.L.C.  
Attn: Operations Manager  
601 N. Iowa Street  
Lawrence, Kansas 66044

**With a copy to:**

Black Hills/Kansas Gas Utility Company, L.L.C.  
Attn: Legal Counsel and Community Affairs  
601 N. Iowa Street  
Lawrence, Kansas 66044

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

**SECTION 14. Term.** This Franchise Contract shall be effective from the Effective Date, as defined in Section 20, *infra*, until 11:59 p.m. on December 31, 2026. Thereafter, this Franchise Contract will automatically renew for three successive additional five-year terms, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Contract, which notification must occur not less than one-hundred-eighty (180) days before the termination of the then-current term. Any successive term shall be deemed a continuation of this Franchise Contract and not a new Franchise Contract or an amendment hereto. Unless otherwise amended or terminated, this Franchise Contract will expire of its own accord at 11:59 p.m. on December 31, 2041, and in no event shall survive that date.

**SECTION 15. Rights and Duties of Black Hills upon Expiration of Ordinance.** Upon expiration, termination, or forfeiture of this franchise ordinance, whether by lapse of time or by agreement between Black Hills and the City, Black Hills shall have the right, in accordance with Section 16-911 of the City Code, as amended, to abandon in place or to remove from the Public Rights of Way and Public Property all of its Facilities used in providing Gas Service within a reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of Black Hills immediately upon such removal, to restore the Public Rights of Way or Public Property from which said Facilities are removed to as good condition as the same were before said removal was effected, without any cost or expense to the City.

**SECTION 16. Termination or Forfeiture of Franchise.**

- (a) In case of failure on the part of Black Hills, its successors and assigns, to comply with any of the provisions of this franchise ordinance, or if Black Hills, 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 franchise ordinance, Black Hills, its successors and assigns, shall forfeit all rights and privileges granted by this franchise 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 complete the following proceedings.
- (b) Before the City proceeds to forfeit said franchise ordinance, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this franchise ordinance, setting forth in detail the conditions of neglect, default, or failure complained of and Black Hills shall have 180 days after the date of mailing of



such notice in which to cure any defect and comply with the terms and conditions of this franchise ordinance. If, at the end of such 180-day period, the City deems that Black Hills has not cured the defect and come into compliance with the terms and conditions of the franchise ordinance and that the 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 30 days after the effective date of said ordinance, Black Hills shall not have instituted an action in the District Court of Douglas County, Kansas, to determine whether or not Black Hills has violated the terms of this franchise ordinance and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such 30-day period.

- (c) If, within such 30-day period, Black Hills does institute an action, as above provided, to determine whether or not Black Hills has violated the terms of this franchise ordinance 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, if the court finds that the franchise is subject to cancellation by reason of the violation of the terms and conditions of this franchise ordinance, then the franchise granted by this franchise ordinance shall terminate 30 days after such final judgment is rendered and all available appeals have been exhausted.

**SECTION 17. Non Waiver.** Any waiver of any obligation or default under this franchise ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

**SECTION 18. Severability.** If any provision, section, or subsection of this franchise ordinance or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect any remaining provisions, sections, subsections, or applications of this franchise ordinance that can be given effect without the invalid provision, section, subsection, or application, and to that end the provisions, sections, subsections, and applications of this franchise ordinance are declared to be severable.

**SECTION 19. Repeal.** To the extent of their validity on the date of effectiveness of this franchise ordinance, Ordinance No. 7155, Ordinance No. 8241, Ordinance 8957 and Ordinance 9822 are hereby repealed, it being the intent of the Governing Body that the terms and conditions of this franchise ordinance supersede them in their entirety.

**SECTION 20. Effectiveness.** This ordinance shall become effective and be in force and shall be a binding contract between Black Hills and the City, their successor and assigns, from and after its publication as required by law. Black Hills shall pay for the required publications of this ordinance.

Exhibit A Volumetric Rate Calculation Form to follow:

**2020 - 2021**  
**Volumetric Rate Calculation Form**  
**For the Transportation of Natural Gas in Pipelines**  
**Based on the NYMEX settlement prices for the dates show, published the following business day**

Month	Last Year 2020						This Year 2021					
	7/15/2020	8/15/2020	9/16/2020	10/15/2020	11/15/2020	12/16/2020	1/15/2021	2/18/2021	3/16/2021	4/15/2021	5/15/2021	6/15/2021
Aug Last Year	1.778	2.356	2.362	2.775	2.687	2.682	2.737	3.129	2.484	2.658	3.109	3.240
Sept Last Year	1.818	2.495	2.741	3.261	2.864	2.680	2.696	2.983	2.523	2.730	3.164	3.256
Oct Last Year	1.917	2.811	3.158	3.356	2.847	2.662	2.724	2.995	2.586	2.805	3.170	3.244
Nov Last Year	2.366	3.104	3.282	3.355	2.795	2.670	2.695	2.985	2.586	2.805	3.170	3.244
Dec Last Year	2.760	3.203	3.156	3.133	2.842	2.682	2.724	2.985	2.586	2.805	3.170	3.244
Jan Current Year	2.888	3.026	2.834	2.934	2.726	2.670	2.695	2.983	2.523	2.730	3.164	3.240
Feb Current Year	2.852	2.732	2.805	2.918	2.728	2.684	2.724	2.985	2.586	2.805	3.170	3.244
Mar Current Year	2.750	2.732	2.805	2.918	2.728	2.684	2.724	2.985	2.586	2.805	3.170	3.244
Apr Current Year	2.476	2.714	2.834	2.967	2.818	2.783	2.856	3.068	2.646	2.832	3.157	3.259
May Current Year	2.443	2.714	2.834	2.967	2.818	2.783	2.856	3.068	2.646	2.832	3.157	3.259
June Current Year	2.480	2.746	2.871	2.982	2.860	2.792	2.879	3.073	2.670	2.833	3.169	3.259
July Current Year	2.524	2.752	2.870	2.982	2.860	2.792	2.879	3.073	2.670	2.833	3.169	3.259
Aug Current Year												
Sept Current Year												
Oct Current Year												
Nov Current Year												
Dec Current Year												
Jan Next Year												
Feb Next Year												
Mar Next Year												
Apr Next Year												
May Next Year												
June Next Year												
Avg Settlement Price	2.421	2.815	2.919	3.052	2.809	2.763	2.854	3.116	2.708	2.856	3.118	3.189

July 2020 through June 2021 settlement price average

\$2.885

x Bundled Franchise Fee Rate

5.0025%

Volumetric Rate/MMBtu for 2022, to be  
 Implemented with first billing cycle in 2022

\$0.1443

>50,000 MMBtu

1%

\$0.001443

**TELECOMMUNICATIONS – MCIMETRO ACCESS TRANSMISSION SERVICES LLC.**

**ORDINANCE NO. 9907**

(adopted 03/08/2022)

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,  
GRANTING TO MCIMETRO ACCESS TRANSMISSION  
SERVICES, LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, D/B/A VERIZON ACCESS TRANSMISSION  
SERVICES, A NON-EXCLUSIVE TELECOMMUNICATIONS  
FRANCHISE AND ESTABLISHING THE TERMS OF THE  
FRANCHISE CONTRACT.**

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

**SECTION 1:** In accordance with K.S.A. 12-2001 *et seq.*, and amendments thereto, the City of Lawrence, Kansas, a municipal corporation, hereby enters, by way of this ordinance, into a nonexclusive telecommunications franchise contract with MCImetro Access Transmission Services LLC, a Delaware limited liability company, d/b/a Verizon Access Transmission Services, the terms of which are as follows:

**FRANCHISE CONTRACT**

**Section 1. Definitions.** For the purposes of this Franchise Contract, the following words and phrases shall have the meanings set forth herein:

- (a)** “**City**” shall mean the City of Lawrence, Kansas, a municipal corporation. References to the City shall also include, as appropriate, any and all successors and assigns.
- (b)** “**Company**” shall mean MCImetro Access Transmission Services, LLC, a Delaware limited liability company, d/b/a Verizon Access Transmission Services. References to the Company shall also include, as appropriate, any and all successors and assigns.
- (c)** “**Facilities**” shall mean any and all electric lines, conduits, wires, cables, pipes, poles, towers, vaults, and appliances, and all appurtenances and improvements thereto, whether above or below ground.
- (d)** “**Gross Receipts**” shall have that meaning ascribed to it at K.S.A. 12-2001(c)(6), and amendments thereto.
- (e)** “**Public Improvement**” shall mean any existing or contemplated public facility, public building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water lines, drainage, Right of Way improvements, or other Public Projects.
- (f)** “**Public Project**” shall mean any project planned or undertaken by the City, or by any other governmental entity, for the construction, reconstruction, maintenance, or

repair of Public Improvements or other public facilities, or for any purpose of a public nature.

- (g) **“Public Right of Way”** shall mean only that area of real property in which the City has a dedicated or has acquired a right-of-way interest in the real property. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.
- (h) **“Telecommunications Local Exchange Provider”** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(8), and amendments thereto.
- (i) **“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 transmitted or received.
- (j) **“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 or means employed.

## **Section 2. Grant of Franchise to the Company.**

(a) Pursuant to K.S.A. 12-2001 *et seq.*, and amendments thereto, in exchange for good and valuable consideration, the terms of which are set forth in more detail below, the City hereby grants to the Company the right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in the City’s Public Rights of Way, for the purpose of providing Telecommunications Service, subject to the Company’s compliance with the terms and conditions established herein.

(b) This franchise is granted and accepted under and subject to all applicable laws and under and subject to all orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. This franchise shall not be exclusive.

**Section 3. Term.** This Franchise Contract shall be effective from the Effective Date, as defined in Section 20, *infra*, until 11:59 p.m. on December 31, 2026. Thereafter, this Franchise Contract will automatically renew for three successive additional five-year terms, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Contract, which notification must occur not less than one-hundred-eighty (180) days before the termination of the then-current term. Any successive term shall be deemed a continuation of this Franchise Contract and not a new Franchise Contract or an amendment hereto. Unless otherwise amended or terminated, this Franchise Contract will expire of its own accord at 11:59 p.m. on December 31, 2041, and in no event shall survive that date.

**Section 4. Compensation to the City.** As compensation for the franchise herein granted to the Company, the Company (a) shall make an accounting to the City on a monthly basis of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month and (b) shall pay to the City a Franchise Fee, which shall be a monthly sum equal to five percent (5%) of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month.

## **Section 5. Payment.**

- (a) The Company shall pay the Franchise Fee to the City monthly by electronic transfer to the City of Lawrence, Kansas, or by any other method approved by the City and the Company. Contemporaneously with each payment, the Company shall submit to the City a report, in substantially the same form as Appendix A to this Franchise Contract, which shall detail revenues from specific sources for the preceding year. The Company shall pay the Franchise Fee to the City within fortyfive days of the last day of the applicable month for which the Franchise Fee is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent per month.
- (b) The Franchise Fee shall be in lieu of all other licenses, charges, fees, or impositions (other than the usual general or *ad valorem* taxes or other Temporary Right of Way Work or Use Permit Fees) which might be imposed upon the Company for the privilege of using the Public Rights of Way to provide Telecommunications Service.

**Section 6. Use of Public Rights of Way.** In using the Public Rights of Way, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to ROW permits, ROW permit fees, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and other requirements affecting the use of the Public Rights of Way. The Company shall also comply with the following:

- (a) The Company's use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. 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 affect or be affected by such Public Improvements.
- (b) To the extent that the Company uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its Facilities, the Company agrees that it will seek City approval and comply with all City requirements before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall be unobtrusive.
- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by the Company while engaging in any activity under this Franchise Contract shall be fully repaired or replaced to their original condition within a reasonable time by the Company at its sole cost and expense and to the reasonable satisfaction of the City.
- (d) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located,

or relocated in the Public Rights of Way after the date hereof and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City the Company agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of the Company, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and the Company agree that such information is confidential and proprietary. The City and the Company also agree that such information shall remain the sole property of the Company. The City and the Company further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to disclose such information, the City shall provide the Company advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company in safeguarding such information.

The Company agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of 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 to the City by the Company under this section.

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

- (e) Except in cases of emergency or routine maintenance, a minimum of forty-eight (48) hours prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, the Company shall submit to the Department of Municipal Services and Operations for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specifications. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.
- (f) Except in cases of emergency, the Company shall notify the City, in compliance with the City's Administrative Regulations of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its Administrative Regulations in the approval or denial of such authority, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, the Company shall comply with the Manual for Uniform Traffic Control

Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to the Company, its employees, agents, or contractors.

- (g) As reasonably necessary, the Company shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90) days prior written notice from the City. Such relocation or adjustment shall be performed by the Company, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City. Upon a showing of good cause, the City Engineer may extend the period of time within which a ROW User must relocate or adjust its Facilities.
- (h) It shall be the sole responsibility of the Company to take adequate measures to protect and to defend its Facilities in the Public Rights of Way from harm and damage. If the Company fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then the Company has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near the Company's Facilities.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be followed at all times work is performed in the Public Rights of Way. Additionally, all work performed in the Public Rights of Way shall be in compliance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
- (j) The City shall have the authority to prohibit the Company's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.

**Section 7. Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, the Company shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

**Section 8. Location of Underground Facilities and Equipment.**

- (a) The Company's Facilities and equipment shall be placed underground as required by City Ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, Kansas, as amended. Consistent with Section 5-1904(B)(iii) of the Code of the City of Lawrence, Kansas, as amended, however, any markers, antennas, and support structures necessary for the Company's purposes hereunder and that are specifically approved by the City in writing shall be exempt from that requirement. Where underground construction is made, the Facilities,

appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by the Company in accordance with City ordinances, regulations, and policies and at the Company's sole cost and expense.

- (b) In excavating within the Public Rights of Way, in addition to complying with City ordinances, regulations, and policies, the Company shall comply with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, and shall, prior to commencing any such excavation, request utility locates. Notwithstanding the provisions of that Act, **no** excavation may be commenced in the Public Rights of Way until such utility locates have been requested **and** performed.
- (c) Nothing in this License Agreement prevents the Company from co-locating its Facilities on existing above-ground facilities with the owner's prior written consent.

**Section 9. Sharing Space.** The City encourages the conservation of the Public Rights of Way by the sharing of space among 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 by the Company. All said agreements and installations shall be subject to all future ordinances, resolutions, rules, regulations, and policies of the City. The Company agrees that it will not grant any entity the right to occupy the Public Rights of Way without first giving written notice to the City and receiving written approval of the City.

**Section 10. No Authority.** This Franchise Contract does not grant the Company the right or the authority to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services. If the Company wishes to use the Public Rights of Way for any other purpose, it shall first negotiate and enter into a separate Franchise Contract or other agreement with the City. If the Company wishes to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services, the City agrees, upon the written request of the Company, to commence negotiations in good faith with the Company within thirty (30) days of the written request therefor.

**Section 11. Access to Information.**

- (a) The Company, in determining the amount of Gross Receipts subject to the Franchise Fee, agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect, due to the Company's failure to use commercially reasonable efforts, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof shall not be deemed a settlement, compromise, or accord and satisfaction, if the amount in dispute is later determined to be incorrect.
- (b) The Company further agrees that all of its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Ordinance, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying the Company's accounting. The City shall bear the costs of any such audit, unless however the audit discloses that the Company owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, the Company shall be responsible to



the City for the reasonable costs of the audit. Notwithstanding the foregoing, the Company shall continue to have the right to require from the City reasonable protection of proprietary information.

**Section 12. Insurance; Performance Bond.**

- (a)** During the initial term, any subsequent additional term, or any other extension of this Franchise Contract, the Company shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should the Company elect to use the services of an affiliated captive insurance company for this purpose, the Company shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. The Company shall provide not less than the following insurance:

  - (i)** Worker's compensation, as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed, with an employers' liability limit equal to the amount required by law.
  - (ii)** Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims-made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from the Company's operations under this Franchise Contract.
- (b)** As an alternative to the requirements of Section 12(a), *supra*, the Company may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by the Company or so alleged to have been caused or to have occurred.
- (c)** The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance showing that the above-described insurance is in force. The Company shall provide to the City thirty (30) days' prior written notice of cancellation of any required coverage. Upon thirty (30) days' written request of the City, the Company shall make copies of insurance policies, including any endorsements thereto, available to the City for review at a local office of the Company, during regular business hours and in the presence of a representative of the Company. The City agrees that it will not photograph or make copies of the Company's policies and endorsements.
- (d)** The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance and maintenance bond in the amount of Seventy-Five Thousand Dollars (\$75,000.00) 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 Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the

State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require the Company to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

### **Section 13. Termination or Forfeiture of Agreement.**

- (a)** In case of failure on the part of the Company to comply with any of the provisions of this Franchise Contract, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Contract, then the Company shall forfeit all rights and privileges granted hereby and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:

  - (i)** Before the City may proceed to terminate this Franchise Contract, it shall first serve a written notice as provided by the Notice provisions of this Franchise Contract, setting forth, in detail, the conditions of neglect, default, or failure complained of, and the Company shall have thirty (30) days after the receipt of such notice in which to comply with the conditions of this Franchise Contract. If, at the end of such thirty-day period, the City deems that the conditions of the Franchise Contract have not been met and that such Franchise Contract is subject to cancellation therefor, then the City, in order to terminate the Franchise Contract, shall by resolution, setting forth the grounds for termination, terminate this Franchise Contract. If within thirty (30) days after the effective date of said resolution, the Company shall not have instituted an action for declaratory judgment in the District Court of Douglas County, Kansas, to determine whether or not the Company has violated the terms of this Franchise Contract, then this Franchise Contract shall be deemed canceled and terminated at the end of such thirty-day period.
  - (ii)** If, within such thirty-day period, the Company does institute an action as above described to determine whether or not it has violated the terms of this Franchise Contract and prosecutes such action to final judgment with due diligence, then, in the event that the court finds that this Franchise Contract is subject to termination by reason of the violation of its terms, then this Franchise Contract shall terminate thirty (30) days after such final judgment is rendered and available appeals have been exhausted.
  - (iii)** Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law.
- (b)** In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have the right, by giving written notice hereunder, to terminate this Franchise Contract.
- (c)** The Company may terminate this Franchise Contract at any time, with or without cause, effective at 11:59 p.m. on December 31 of the then-current year by giving notice to the City of its intent to terminate no later than 11:59 p.m. on June 30 of the then-current year.

**Section 14. Indemnification.** The Company shall indemnify and save and hold harmless the City, its officers, employees, agents, and authorized contractors, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by the Company's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of the Company's occupancy or use of the Public Rights of Way, then, upon notice by the City to the Company, the Company shall assume responsibility for the defense of such claim or action at the cost of the Company, subject to the City's unilateral option to appear and defend itself. The Company's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's negligence, recklessness, or willful misconduct. This indemnifying provision shall survive the termination or expiration of this Franchise Contract.

**Section 15. Transfer and Assignment.**

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, the Company shall have the right to assign this Franchise Contract and the rights and privileges hereby granted to any person, firm, or corporation. If the Company should seek approval to assign this Franchise Contract, then the Company shall notify the City in writing. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Franchise Contract. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Franchise Contract shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (b) Notwithstanding the foregoing subsection, the Company shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with the Company. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, the Company's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment.

**Section 16. Reservation of Rights.** The City specifically reserves its right and authority, as a Customer of the Company and as a governmental entity responsible for its residents, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the efficient provision of Telecommunications Service at reasonable rates and the maintenance of the Company's Facilities in good repair. The Company specifically reserves its right to oppose any such position the City may take.

In granting its consent hereunder, the City does not in any manner waive its regulatory rights, any other rights and powers under the laws of the State of Kansas, as may be amended, nor any of its rights and powers under the ordinances, present or future, of the City.

**Section 17. Notices.** All notices, requests, demands, or 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 the City, to:**

City of Lawrence, Kansas  
Attn: City Clerk  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**With a copy to:**

City of Lawrence, Kansas  
Attn: City Attorney  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**If to the Company, to:**

MCImetro Access Transmission Services LLC,  
d/b/a Verizon Access Transmission Services  
Attn: Franchise Manager  
600 Hidden Ridge  
Irving, TX 75038

**With a copy (except invoices) to:**

General Counsel  
Verizon  
One Verizon Way  
Basking Ridge, NJ 07920

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

**Section 18. Non-waiver.** The failure of either the City or the Company to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Franchise Contract shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Franchise Contract shall be deemed to have been made by the City or the Company, unless said waiver or relinquishment is in writing and signed by both the City and the Company.

**Section 19. Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, pandemic, epidemic, and other disasters or events beyond the City's or the Company's reasonable control.

**Section 20. Effectiveness.** This Ordinance shall become effective and be in full force as a binding contract between the City and the Company from and after the following: **(a)** the ordinance has been approved and accepted by the Company in accordance with Section 24, *infra*; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 21. Publication Costs.** The Company shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 22. Severability.** If any provision, section, or subsection of this Franchise Contract or

the application thereof to any person or circumstances is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this Franchise Contract that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this Franchise Contract are hereby declared to be severable.

**Section 23. Governing Law.** The terms of this License Agreement shall be governed by the laws of the State of Kansas.

**Section 24. Company Acceptance.** The Company shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and the Company. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.

**TELECOMMUNICATIONS-CROWN CASTLE FIBER LLC, A NEW YORK LIMITED LIABILITY CORPORATION**

**ORDINANCE NO. 10032**

(May 7, 2024)

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, GRANTING TO CROWN CASTLE FIBER LLC, A NEW YORK LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AND ESTABLISHING THE TERMS OF THE FRANCHISE CONTRACT.**

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

**SECTION 1:** In accordance with K.S.A. 12-2001 *et seq.*, and amendments thereto, the City of Lawrence, Kansas, a municipal corporation, hereby enters, by way of this ordinance, into a non-exclusive telecommunications franchise contract with Crown Castle Fiber LLC, a New York limited liability company, the terms of which are as follows:

**FRANCHISE CONTRACT**

**Section 1. Definitions.** For the purposes of this Franchise Contract, the following words and phrases shall have the meanings set forth herein:

- (a) **"City"** shall mean the City of Lawrence, Kansas, a municipal corporation. References to the City shall also include, as appropriate, any and all successors and assigns.
- (b) **"Company"** shall mean Crown Castle Fiber LLC, a New York limited liability company. References to the Company shall also include, as appropriate, any and all successors and assigns.
- (c) **"Facilities"** shall mean any and all electric lines, conduits, wires, cables, pipes, poles, towers, vaults, and appliances, and all appurtenances and improvements thereto, whether above or below ground.
- (d) **"Gross Receipts"** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(6), and amendments thereto.
- (e) **"Public Improvement"** shall mean any existing or contemplated public facility, public building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water lines, drainage, Right of Way improvements, or other Public Projects.
- (f) **"Public Project"** shall mean any project planned or undertaken by the City, or by any other governmental entity, for the construction, reconstruction, maintenance, or repair of Public Improvements or other public facilities, or for any purpose of a public nature.
- (g) **"Public Right of Way"** shall mean only that area of real property in which the City has a dedicated or has acquired a right-of-way interest in the real property. It

shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.

- (h) **“Telecommunications Local Exchange Provider”** shall have that meaning ascribed to it at K.S.A. 12-2001(c)(8), and amendments thereto.
- (i) **“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 transmitted or received.
- (j) **“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 or means employed.

## **Section 2. Grant of Franchise to the Company.**

- (a) Pursuant to K.S.A. 12-2001 *et seq.*, and amendments thereto, in exchange for good and valuable consideration, the terms of which are set forth in more detail below, the City hereby grants to the Company the right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in the City’s Public Rights of Way, for the purpose of providing Telecommunications Service, subject to the Company’s compliance with the terms and conditions established herein.
- (b) This franchise is granted and accepted under and subject to all applicable laws and under and subject to all orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. This franchise shall not be exclusive.

**Section 3. Term.** This Franchise Contract shall be effective from the Effective Date, as defined in Section 20, *infra*, until 11:59 p.m. on December 31, 2032. Thereafter, this Franchise Contract will automatically renew for two successive additional five-year terms, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Contract, which notification must occur not less than one-hundred-eighty (180) days before the termination of the then-current term. Any successive term shall be deemed a continuation of this Franchise Contract and not a new Franchise Contract or an amendment hereto. Unless otherwise amended or terminated, this Franchise Contract will expire of its own accord at 11:59 p.m. on December 31, 2042, and in no event shall survive that date.

**Section 4. Compensation to the City.** As compensation for the franchise herein granted to the Company, the Company (a) shall make an accounting to the City on a monthly basis of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month and (b) shall pay to the City a Franchise Fee, which shall be a monthly sum equal to five percent (5%) of all Gross Receipts it has derived from the sale and provision of Telecommunications Service during the preceding month.

## **Section 5. Payment.**

- (a) The Company shall pay the Franchise Fee to the City monthly by electronic transfer to the City of Lawrence, Kansas, or by any other method approved by the City and the Company. Contemporaneously with each payment, the Company shall submit to the City a report, in substantially the same form as Appendix A to this Franchise Contract, which shall detail revenues from specific

sources for the preceding year. The Company shall pay the Franchise Fee to the City within forty-five days of the last day of the applicable month for which the Franchise Fee is due and owing. Payments received after the due date shall be subject to a late payment charge of one percent per month.

- (b) The Franchise Fee shall be in lieu of all other licenses, charges, fees, or impositions (other than the usual general or *ad valorem* taxes or other Temporary Right of Way Work or Use Permit Fees) which might be imposed upon the Company for the privilege of using the Public Rights of Way to provide Telecommunications Service.

**Section 6. Use of Public Rights of Way.** In using the Public Rights of Way, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, the Company shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to ROW permits, ROW permit fees, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and other requirements affecting the use of the Public Rights of Way. The Company shall also comply with the following:

- (a) The Company's use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. 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 affect or be affected by such Public Improvements.
- (b) To the extent that the Company uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its Facilities, the Company agrees that it will seek City approval and comply with all City requirements before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall be unobtrusive.
- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by the Company while engaging in any activity under this Franchise Contract shall be fully repaired or replaced to their original condition within a reasonable time by the Company at its sole cost and expense and to the reasonable satisfaction of the City.
- (d) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way after the date hereof and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City the Company agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of the Company, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized



agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and the Company agree that such information is confidential and proprietary. The City and the Company also agree that such information shall remain the sole property of the Company. The City and the Company further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to disclose such information, the City shall provide the Company advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company in safeguarding such information.

The Company agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of 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 to the City by the Company under this section.

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

- (e) Except in cases of emergency or routine maintenance, a minimum of forty-eight (48) hours prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, the Company shall submit to the Department of Municipal Services and Operations for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specifications. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.
- (f) Except in cases of emergency, the Company shall notify the City, in compliance with the City's Administrative Regulations of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its Administrative Regulations in the approval or denial of such authority, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.  
In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, the Company shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to the Company, its employees, agents, or contractors.
- (g) As reasonably necessary, the Company shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90) days prior written notice from the City. Such relocation or adjustment shall be performed by the Company, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City.

- (h) It shall be the sole responsibility of the Company to take adequate measures to protect and to defend its Facilities in the Public Rights of Way from harm and damage. If the Company fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then the Company has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near the Company's Facilities.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be followed at all times work is performed in the Public Rights of Way. Additionally, all work performed in the Public Rights of Way shall be in compliance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
- (j) The City shall have the authority to prohibit the Company's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.

**Section 7. Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, the Company shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

#### **Section 8. Location of Underground Facilities and Equipment.**

- (a) The Company's Facilities and equipment shall be placed underground as required by City Ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, Kansas, as amended. Consistent with Section 5-1904(B)(iii) of the Code of the City of Lawrence, Kansas, as amended, however, any markers, antennas, and support structures necessary for the Company's purposes hereunder and that are specifically approved by the City in writing shall be exempt from that requirement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by the Company in accordance with City ordinances and at the Company's sole cost and expense.
- (b) In excavating within the Public Rights of Way, in addition to complying with City ordinances, regulations, and policies, the Company shall comply with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, and shall, prior to commencing any such excavation, request utility locates. Notwithstanding the provisions of that Act, **no** excavation may be commenced in the Public Rights of Way until such utility locates have been requested **and** performed.
- (c) Nothing in this License Agreement prevents the Company from co-locating its Facilities on existing above-ground facilities with the owner's prior written consent.

**Section 9. Sharing Space.** The City encourages the conservation of the Public Rights of Way by the sharing of space among 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 by the Company. All said agreements and installations shall be subject to all future ordinances, resolutions, rules, regulations, and policies of the City. The Company agrees that it will not grant any entity the right to occupy the Public Rights of Way without first giving written notice to the City and receiving written approval of the City.

**Section 10. No Authority.** This Franchise Contract does not grant the Company the right or the authority to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services. If the Company wishes to use the Public Rights of Way for any other purpose, it shall first negotiate and enter into a separate Franchise Contract or other agreement with the City. If the Company wishes to use the Public Rights of Way for any other purpose than the provision of Telecommunications Services, the City agrees, upon the written request of the Company, to commence negotiations in good faith with the Company within thirty (30) days of the written request therefor.

**Section 11. Access to Information.**

- (a) The Company, in determining the amount of Gross Receipts subject to the Franchise Fee, agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect, due to the Company's failure to use commercially reasonable efforts, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof shall not be deemed a settlement, compromise, or accord and satisfaction, if the amount in dispute is later determined to be incorrect.
- (b) The Company further agrees that all of its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Ordinance, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying the Company's accounting. The City shall bear the costs of any such audit, unless, however, the audit discloses that the Company owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, the Company shall be responsible to the City for the reasonable costs of the audit. Notwithstanding the foregoing, the Company shall continue to have the right to require from the City reasonable protection of proprietary information.

**Section 12. Insurance; Performance Bond.**

- (a) During the initial term, any subsequent additional term, or any other extension of this Franchise Contract, the Company shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are authorized to do business in the State of Kansas. Should the Company elect to use the services of an affiliated captive insurance company for this purpose, the Company shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. The Company shall provide not less than the following insurance:
  - (i) Worker's compensation, as provided for under any workers' compensation or similar law in the jurisdiction where any work is

performed, with an employers' liability limit equal to the amount required by law.

- (ii) 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 (\$1,000,000.00), each occurrence, and Two Million Dollars (\$2,000,000.00) aggregate for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from the Company's operations under this Franchise Contract.
- (b) As an alternative to the requirements of Section 12(a), *supra*, the Company may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by the Company or so alleged to have been caused or to have occurred.
- (c) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance showing that the above-described insurance is in force and evidence of an endorsement in favor of the City for thirty (30) days' prior written notice of cancellation, except for non-payment of premium. In the event of non-payment of premium, the Company will provide ten (10) days' notice to the City. The Company shall make available to the City, on request, at the City Clerk's Office, the policy declarations page and a copy of the policy in effect so that limitations and exclusions can be evaluated.
- (d) The Company shall, as a material condition of this Franchise Contract, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Seventy-five Thousand Dollars (\$75,000.00) 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 Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require the Company to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

### **Section 13. Termination or Forfeiture of Agreement.**

- (a) In case of failure on the part of the Company to comply with any of the provisions of this Franchise Contract, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Contract, then the Company shall forfeit all rights and privileges granted hereby and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:

- (i) Before the City may proceed to terminate this Franchise Contract, it shall first serve a written notice as provided by the Notice provisions of this Franchise Contract, setting forth, in detail, the conditions of neglect, default, or failure complained of, and the Company shall have thirty (30) days after the receipt of such notice in which to comply with the conditions of this Franchise Contract. If, at the end of such thirty-day period, the City deems that the conditions of the Franchise Contract have not been met and that such Franchise Contract is subject to cancellation therefor, then the City, in order to terminate the Franchise Contract, shall by resolution, setting forth the grounds for termination, terminate this Franchise Contract. If within thirty (30) days after the effective date of said resolution, the Company shall not have instituted an action for declaratory judgment in the District Court of Douglas County, Kansas, to determine whether or not the Company has violated the terms of this Franchise Contract, then this Franchise Contract shall be deemed canceled and terminated at the end of such thirty-day period.
- (ii) If, within such thirty-day period, the Company does institute an action as above described to determine whether or not it has violated the terms of this Franchise Contract and prosecutes such action to final judgment with due diligence, then, in the event that the court finds that this Franchise Contract is subject to termination by reason of the violation of its terms, then this Franchise Contract shall terminate thirty (30) days after such final judgment is rendered and available appeals have been exhausted.
- (iii) Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law.
- (b) In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have the right, by giving written notice hereunder, to terminate this Franchise Contract.
- (c) The Company may terminate this Franchise Contract at any time, with or without cause, effective at 11:59 p.m. on December 31 of the then-current year by giving notice to the City of its intent to terminate no later than 11:59 p.m. on June 30 of the then-current year.

**Section 14. Indemnification.** The Company shall indemnify and save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by the Company's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of the Company's occupancy or use of the Public Rights of Way, then, upon notice by the City to the Company, the Company shall assume responsibility for the defense of such claim or action at the cost of the Company, subject to the City's unilateral option to appear and defend itself. The Company's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's negligence, recklessness, or willful misconduct. This indemnifying provision shall survive the termination or expiration of this Franchise Contract.

**Section 15. Transfer and Assignment.**

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, the Company shall have the right to assign this Franchise Contract and the rights and privileges hereby granted to any person, firm, or corporation. If the Company should seek approval to assign this Franchise Contract, the Company shall notify the City in writing. Any such

assignee shall, by accepting such assignment, be bound by the terms and provisions of this Franchise Contract. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Franchise Contract shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.

- (b) Notwithstanding the foregoing subsection, the Company shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with the Company. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, the Company's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment

**Section 16. Reservation of Rights.** The City specifically reserves its right and authority, as a Customer of the Company and as a governmental entity responsible for its residents, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the efficient provision of Telecommunications Service at reasonable rates and the maintenance of the Company's Facilities in good repair. The Company specifically reserves its right to oppose any such position the City may take.

In granting its consent hereunder, the City does not in any manner waive its regulatory rights, any other rights and powers under the laws of the State of Kansas, as may be amended, nor any of its rights and powers under the ordinances, present or future, of the City.

**Section 17. Notices.** All notices, requests, demands, or 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 the City, to:**

City of Lawrence, Kansas  
Attn: City Clerk  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**With a copy to:**

City of Lawrence, Kansas  
Attn: City Attorney  
6 East 6th Street  
P.O. Box 708  
Lawrence, Kansas 66044

**If to the Company, to:**

Crown Castle Fiber LLC  
c/o Crown Castle  
2000 Corporate Drive

Canonsburg, Pennsylvania 15317  
Attn: DAS Contracts

**With a copy to:**

Crown Castle Fiber LLC  
c/o Crown Castle  
2000 Corporate Drive  
Canonsburg, Pennsylvania 15317  
Attn: Ken Simon, General Counsel  
Attn: Teddy Adams, EVP & General Counsel

**24/7 Emergency Contact information:**

Telephone: (888) 632-0931  
E-mail: SCN.NOC@crowncastle.com

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

**Section 18. Non-waiver.** The failure of either the City or the Company to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Franchise Contract shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Franchise Contract shall be deemed to have been made by the City or the Company, unless said waiver or relinquishment is in writing and signed by both the City and the Company.

**Section 19. Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or the Company's reasonable control.

**Section 20. Effectiveness.** This Ordinance shall become effective and be in full force as a binding contract between the City and the Company from and after the following: **(a)** the ordinance has been approved and accepted by the Company in accordance with Section 24, *infra*; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 21. Publication Costs.** The Company shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 22. Severability.** If any provision, section, or subsection of this Franchise Contract or the application thereof to any person or circumstances is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this Franchise Contract that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this Franchise Contract are hereby declared to the severable.

**Section 23. Governing Law.** The terms of this License Agreement shall be governed by the laws of the State of Kansas.

**Section 24. Company Acceptance.** The Company shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and the Company. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.

**FREESTATE ELECTRIC:**

**ORDINANCE NO. 10067**

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, GRANTING TO FREESTATE ELECTRIC COOPERATIVE, INC., A KANSAS CORPORATION, AND ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, ESTABLISHING THE TERMS THEREOF, PROVIDING FOR A MONTHLY FRANCHISE FEE PAYMENT TO BE MADE TO THE CITY, AND REPEALING ORDINANCE NO. 7147.**

**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 FreeState Electric Cooperative, 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.

**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. However, except in cases where the Company has made a mistake in relocating its equipment hereunder, the Company shall not be required to move the same equipment more than once in any two-year period. 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, including Chapter 5, Article 4A, of the Code of the City of Lawrence, Kansas, and amendments thereto.

**Section 3. Pruning of Trees; Street Tree Ordinance.**

(a) The Company shall have the right to prune trees overhanging the right of way and utility easements. The Company shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269, as amended. All pruning operations shall be performed by personnel qualified to do such work and in accordance with the latest versions of ANSI Z133.1 and ANSI A300 (Part 1), as amended. For the pruning of trees located on private property, customers shall be contacted at least one (1) week in advance of the tree pruning.

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

**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.

**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 -- excluding temporary right of way permit fees or other fees required by Chapter 16, Article 8 of the City Code and any administrative regulations adopted thereunder, as amended -- five percent (5%) of the total gross receipts from the sale of electrical energy to all consumers within the corporate limits of the City. 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. 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.

**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 maps 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.

**Section 7. 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 been altered to reflect the adoption of ordinances annexing territory into the City limits.

**Section 8. 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 for 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 any street lighting systems within the City or outside the City.

**Section 9. 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.

**Section 10. Term of Franchise Agreement.** This Agreement shall be effective as provided in Section 15, *infra*. 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, 2039, this agreement shall be effective until July 1, 2039. 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, 2044, this agreement shall be effective until July 1, 2044.

**Section 11. 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 12. 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 or license 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 13. 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.

**Section 14. Repeal of Expiring Franchise Ordinance.** Ordinance No. 7147, passed by the City on September 28, 1999, and assigned to the Company *via* Resolution No. 7253, adopted June 5, 2018, is repealed upon the effective date of this ordinance.

**Section 15. 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 successor and assigns, from and after its publication as required by law. The Company shall pay for the required publications of this ordinance.

**GOOGLE FIBER:**

**ORDINANCE NO. 10069**

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,  
GRANTING TO GOOGLE FIBER KANSAS, LLC, A KANSAS  
LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE  
BROADBAND INTERNET SERVICES FRANCHISE AND  
ESTABLISHING THE TERMS OF THE FRANCHISE CONTRACT.**

**WHEREAS**, the City of Lawrence, Kansas, a municipal corporation ("City"), a city of the first class, duly organized and existing by virtue of the laws of the State of Kansas, has jurisdiction and control over the use of the Public Rights of Way ("Public ROW") in the City;

**WHEREAS**, Google Fiber Kansas, LLC, a Kansas limited liability company, together with its direct parent, and its direct parent's subsidiaries, successors, or assigns ("Franchisee"), desires to install, own, maintain, operate, and control a fiber optic infrastructure network in the Public ROW ("Network") through which it desires to offer broadband Internet access and voice over Internet protocol services ("Broadband Internet Services") to Customers in the City;

**WHEREAS**, the Network will consist of equipment and facilities that may include underground fiber optic cables, lines, wires or strands, underground conduits, vaults, access manholes and handholes, electronic equipment, power generators, batteries, pedestals, boxes, cabinets, vaults, and other similar facilities ("Network Facilities"); and

**WHEREAS**, in order to facilitate Franchisee's desire, and pursuant to K.S.A. 12-2001 *et seq.* and its home rule powers, the City passes this ordinance granting to Franchisee the right to install, own, maintain, operate, and control its Network in the Public ROW for the provision of Services to its Customers ("Contract Franchise") and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

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

**SECTION 1:** In accordance with K.S.A. 12-2001 *et seq.*, and amendments thereto, the City of Lawrence, Kansas, a municipal corporation, hereby enters, by way of this ordinance, into a non-exclusive broadband internet services franchise contract with Google Fiber Kansas, LLC, a Kansas limited liability company, the terms of which are as follows:

**FRANCHISE CONTRACT**

**Section 1. Grant of Franchise; Use and Occupancy of the Public ROW.**

- (a) Permission to Use and Occupy the Public ROW.** Upon the Commencement Date, the City grants to Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary, removing the Network and the related Network Facilities ("Work") in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (*e.g.*, any City park or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee's use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.
- (b) Restriction.** Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining from the City a separate franchise or license or amending this

Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.

- (c) **Commencement Date.** This Contract Franchise will commence on the Effective Date, as defined herein.
- (d) **Subject to State and Local Law.** This Contract Franchise is subject to the City's valid authority under state and local laws as they exist now or may be amended from time to time, and Franchisee is subject to that authority and to the conditions set forth in this Contract Franchise.
- (e) **Subject to City's Right to Use the Public ROW.** This Contract Franchise is subject and subordinate to the City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, as well as other public utility and municipal uses.
- (f) **Subject to Pre-Existing Property Interests.** The City's grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- (g) **No Grant of Property Interest.** This Contract Franchise does not grant or convey to Franchisee any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant to Franchisee the right to use any facilities or property owned or controlled by a third party without the consent of such third party. Franchisee shall be responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third party.
- (h) **Non-Exclusive.** This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("Person"), as well as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.
- (i) **Reservation of Right.** In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

**Section 2. Franchisee's Obligations.**

- (a) **Use of Public ROW.** Franchisee's use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be competitively neutral and may not be

unreasonable or discriminatory. Franchisee shall be subject to all applicable federal and state laws and regulations and to all City ordinances, resolutions, rules, regulations, and policies – existing now or hereafter adopted or promulgated -- relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities, including, but not limited to:

- (i) the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*
  - (ii) the City's Street Tree Ordinance, codified as amended at Chapter 18, Article 1 of the City Code.
  - (iii) Chapter 5, Article 19 of the City Code, as amended, which requires the underground placement of Franchisees' Network and Network Facilities, except those markers, antennas, and support structures, necessary for the Franchisee's purposes hereunder, that are specifically approved by the City in writing. All such above-ground markers, antennas, and support structures that are installed shall be unobtrusive.
  - (iv) Chapter 16, Articles 8, 9, and 9A of the City Code, as amended, governing the use of the Public ROW and all administrative regulations promulgated by the City in furtherance thereof.
  - (v) the City's Historic Resources Code, found at Chapter 22 of the City Code, as amended, which may govern the design, placement, and location of any above-ground markers, antennas, and support structures.
  - (vi) the City's Building Code, found at Chapter 5, Article 2 of the City Code, as amended.
  - (vii) the City's Electrical Code, found at Chapter 5, Article 4 of the City Code, as amended.
- (b) **Individual Permits Required.** Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before installing or working on its Network Facilities in the Public ROW or other property of the City as may be authorized. Franchisee will pay all lawful processing, field marking, engineering, inspection fees, or other applicable permitting fees associated with the issuance of individual permits by the City.
- (c) **Franchisee's Sole Cost and Expense.** Franchisee will perform the Work at its sole cost and expense.
- (d) **Compliance with Laws.** Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- (e) **Reasonable Care.** Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and

maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.

- (f) **No Nuisance.** Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- (g) **Repair.** Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work (including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under the provisions of the Code of the City of Lawrence. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- (h) **As-Built Drawings and Maps.** Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections. However, the parties recognize that the City is subject to the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.*, and, despite the City's efforts to keep such records confidential, it may be required thereunder to disclose any and all such records; provided, however, to the extent permitted by law, the City will notify Franchisee in advance of releasing any such records.
- (i) **Network Design.** Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- (j) **Protection of Facilities.** Consistent with and pursuant to Code of the City of Lawrence, it shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.

### **Section 3. The City's Obligations.**

- (a) **Emergency Removal or Relocation by the City.** In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- (b) **Relocation to Accommodate Governmental Purposes.** If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the

construction, installation, repair, maintenance, or operation of a new water, sewer, storm drain line, or other utility, or a public road, curb, gutter, sidewalk, park, or recreational facility, then Franchisee shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90 days) prior written notice from the City. Such relocation or adjustment shall be performed by the Franchisee, at its sole cost and expense, without any cost or expense to the City and shall be subject to the rules and regulations of the City. Upon a showing of good cause, the City Engineer may extend the period of time within which the Franchisee must relocate or adjust its Facilities. Any actual, documented, and reasonable damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities will be borne by Franchisee, provided that no such damages will apply so long as franchisee is working in good faith to comply with this Section 3(b). Franchisee will designate one (1) person within its organization by said person's employment position to whom relocation notices may be sent and with whom rests the responsibility to facilitate all necessary communications within Franchisee's various areas.

- (c) **Relocation to Accommodate Non-Governmental Purposes.** If Franchisee's then-existing Network Facilities would interfere with (i) the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (ii) a third party's use of the Public ROW, then Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until it receives adequate funds for such relocation or adjustment.
- (d) **Non-Discrimination.** The City will, at all times, treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Broadband Internet Services.
- (e) **Post-Removal Restoration of the Public ROW.** When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

#### **Section 4. Contractors and Subcontractors.**

- (a) **Use of Contractors and Subcontractors.** Franchisee may retain contractors and subcontractors to perform the Work in Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if applicable, references in this Contract Franchise to "Franchisee" shall include and apply to Franchisee's contractors and subcontractors.
- (b) **Contractors to be Licensed.** Franchisee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- (c) **Authorized Individuals.** Franchisee's contractors and subcontractors may submit individual permit applications to the City in Franchisee's behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act in its behalf *via* a letter of authorization provided to the City in the form affixed hereto as Exhibit A ("Authorized Individuals"). The City will accept permit applications under

this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

**Section 5. Franchise Fee.**

- (a) **Franchisee Agrees to Pay Franchise Fee.** Franchisee agrees to pay to the City a fee ("Franchise Fee") to compensate the City for Franchisee's use and occupancy of the Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee's use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the Commencement Date (as defined herein) and will be calculated as set forth in Section 5(b). Subject to any applicable statute of limitations, Franchisee's payment obligations as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.
- (b) **Franchise Fee.** As the Franchise Fee, Franchisee agrees to pay to the City two percent (2%) ("Revenue Percentage") of Gross Revenues for a calendar quarter, remitted within forty-five (45) days of the end of each calendar quarter, commencing on the Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee's payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.
- (c) **Gross Revenues.** As used herein, "Gross Revenues" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.
- (d) **Exclusions.** Gross Revenues do not include:
  - (i) any revenue not actually received, even if billed, such as bad debt;
  - (ii) refunds, rebates, or discounts made to Customers or the City;
  - (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser's customer;
  - (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
  - (v) any forgone revenue from Franchisee's provision of Broadband Internet Services to Customers at no charge if required by state law;
  - (vi) any revenue derived from advertising;
  - (vii) any revenue derived from VOIP Services;
  - (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;



- (ix) any revenue derived from referral or marketing agreements with third-party providers of online services which Franchisee may make available to Customers;
  - (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users' tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);
  - (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
  - (xii) sales of capital assets or sales of surplus equipment.
- (e) **Pass Through.** To the extent allowed either by federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer of Franchisee, whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's *pro rata* amount of the Franchise Fee.
- (f) **Interest on Late Payments.** Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.
- (g) **No Accord and Satisfaction.** No acceptance by the City of any Franchise Fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount due and owing, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim by the City.
- (h) **Audit.** City may examine the business records of Franchisee as permitted under applicable law, but in any event only: (i) during reasonable times; (ii) following no less than sixty (60) days' prior written notice; (iii) no more often than once in any twelve (12) month period; and (iv) to the extent reasonably necessary to ensure compliance with this Section 5. Franchisee will keep business records reflecting its Gross Revenues for at least two (2) years
- (i) **Change in Franchise Fee.** The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:
- (i) A request by either party to reduce or increase the Franchise Fee.
  - (ii) A change in applicable law.
  - (iii) If, during the term of this the Contract Franchise, the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Broadband Internet Services for a fee

more favorable than the Franchise Fee set forth in Section 5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

**Section 6. Defense and Indemnity.**

- (a) **Franchisee's Indemnification.** Franchisee 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 caused by Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing, maintaining, or operating Facilities in the Public ROW.
- (b) **Exclusions.** The indemnity provided herein does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, then liability shall be apportioned comparatively in accordance with the laws of Kansas without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided herein does not apply to any liability resulting from the negligence of any third party not associated with Franchisee or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- (c) **Notice.** Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

**Section 7. Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

**Section 8. Performance Bond.** If Franchisee has not previously provided the City with a performance bond under any prior agreement, then Franchisee will, promptly after the Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000.00) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph. The parties agree that provision of a Performance Bond under this Section 8 shall be deemed to be in compliance with any Performance Bond requirements established by Chapter 16, Articles 8, 9, and 9A of the City Code, as amended.

**Section 9. Insurance.**

- (a) Franchisee will carry and maintain:

- (i) Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: **(A)** CGL primary insurance endorsement; and **(B)** CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.
- (ii) Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.
- (iii) Business Automobile Policy covering all owned, hired, and non owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- (b) All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.
- (c) The parties agree that the Insurance required under this Section 9 shall be deemed to be in compliance with any Insurance requirements established by Chapter 16, Articles 8, 9, and 9A of the City Code, as amended.

**Section 10. Term.**

- (a) This Contract Franchise is effective on the date on which this ordinance becomes effective in accordance with its terms ("Effective Date") and, unless terminated earlier in accordance with the terms herein, shall expire on the tenth anniversary of the Effective Date. Thereafter, this Contract Franchise will automatically renew for two successive five-year terms unless, at least six months prior to the end of the then-current term, one party provides written notice to the other party of its intent not to renew. In no event, shall this Contract Franchise extend beyond twenty years from the Effective Date.
- (b) Upon written request of either the City or Franchisee, 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, rules, regulations, policies, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract Franchise granted to Franchisee or the compensation to be received by the City hereunder.

**Section 11. Termination.**

- (a) **Termination by City.** The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

**Section 12. Assignment.** Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the prior written consent of the City. Any agreed upon assignee will take the place of the Franchisee and shall

be responsible for all duties and obligations imposed hereby and the Franchisee will be released from all of its rights and obligations upon the completions of the requirements of Subsection 12(c) below; provided, however, that such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may arise from a breach of the Contract Franchise and shall have occurred prior to the date of such assignment.

(a) **Exceptions.** Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:

- (i) to any Affiliate (as defined below) of Franchisee;
- (ii) to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines, after a reasonable investigation, that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or
- (iii) to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines, after a reasonable investigation, that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.

(b) **Assignment to an Affiliate.** Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (i) "Affiliate" means any Person that now or in the future, directly or indirectly, controls, is controlled with or by, or is under common control with Franchisee; and (ii) "control" means, with respect to: (A) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (B) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (C) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

(c) **Notice of Assignment.** Franchisee shall: (i) furnish the City with written notice of the assignment/transfer; (ii) provide a point of contact for the assignee; (iii) and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, performance bond, and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

### **Section 13. Notice and Emergency Contacts.**

(a) **Emergency Contact.** Franchisee shall maintain with the City a point of contact who shall be available to act in behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.

- (i) Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at **(866) 954-1572** or by email to [gfiber-noc-leads@google.com](mailto:gfiber-noc-leads@google.com). (Or to replacement Emergency Contact that is later designated by Franchisee in writing.)

(ii) Emergency notice by Franchisee to the City may be made by telephone to the City's ROW Supervisor at **(785) 832-7800**. If the City's ROW Coordinator is not available, then contact the City Engineer or the Director of Municipal Services and Operations. (Or to replacement Emergency Contact that is later designated by the Franchisee in writing.)

(b) **Notice.** All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (i) when delivered in person, (ii) upon confirmation of a receipt when transmitted by electronic mail, (iii) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (iv) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (v) three (3) days after the date of mailing, whichever is earlier.

(i) Franchisee's e-mail address for notice is: [googlefibernotices@google.com](mailto:googlefibernotices@google.com), with a copy to [legal-notices@google.com](mailto:legal-notices@google.com). (Or to replacement Notice contact that is later designated by Franchisee in writing.)

(ii) City's address for notice is: [mso@lawrenceks.org](mailto:mso@lawrenceks.org) or 785-832-3200 (Or to replacement Notice contact that is later designated by the City in writing.)

#### **Section 14. General Provisions.**

(a) **Governing Law.** This Contract Franchise is governed by the laws of the state of Kansas.

(b) **Force Majeure.** Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

(c) **Non-waiver.** The failure of either party to insist upon the strict performance of any one or more 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.

(d) **Integration.** This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Contract Franchise, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties.

(e) **Counterparts; Electronic Signatures.** The parties may execute this Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures.

(f) **Severability.** If any section, sentence, clause, or phrase of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

**Section 15. Effective Date.** This Ordinance shall become effective and be in full force as a binding contract between the City and Franchisee from and after the following: (a) the ordinance has been

approved and accepted by Franchisee in accordance with Section 17, below; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 16. Publication Costs.** Franchisee shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 17. Franchisee Acceptance.** Franchisee shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and Franchisee. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.

**COMMUNICATIONS: CAMPUS COMMUNICATION GROUP:**

**ORDINANCE NO. 10072**

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,  
GRANTING TO CAMPUS COMMUNICATIONS GROUP, INC., A  
DELAWARE CORPORATION, A NON-EXCLUSIVE  
TELECOMMUNICATIONS FRANCHISE AND ESTABLISHING  
THE TERMS OF THE FRANCHISE CONTRACT.**

**WHEREAS**, the City of Lawrence, Kansas, a municipal corporation ("City"), a city of the first class, duly organized and existing by virtue of the laws of the State of Kansas, has jurisdiction and control over the use of the Public Rights of Way ("Public ROW") in the City;

**WHEREAS**, Campus Communications Group, Inc., a Delaware corporation, together with its subsidiaries, successors, or assigns ("Franchisee"), desires to install, own, maintain, operate, and control a telecommunications network in the Public ROW ("Network") through which it desires to offer telecommunications services ("Services") to Customers in the City;

**WHEREAS**, the Network will consist of equipment and facilities that may include underground fiber optic cables, lines, wires or strands, underground conduits, vaults, access manholes and handholes, electronic equipment, power generators, batteries, pedestals, boxes, cabinets, vaults, and other similar facilities ("Network Facilities"); and

**WHEREAS**, in order to facilitate Franchisee's desire, and pursuant to K.S.A. 12-2001 *et seq.* and its home rule powers, the City passes this ordinance granting to Franchisee the right to install, own, maintain, operate, and control its Network in the Public ROW for the provision of Services to its Customers ("Contract Franchise") and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

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

**SECTION 1:** In accordance with K.S.A. 12-2001 *et seq.*, and amendments thereto, the City of Lawrence, Kansas, a municipal corporation, hereby enters, by way of this ordinance, into a non-exclusive telecommunications franchise contract with Campus Communications Group, Inc., a Delaware corporation, the terms of which are as follows:

## FRANCHISE CONTRACT

### Section 1. Grant of Franchise; Use and Occupancy of the Public ROW.

- (a) **Permission to Use and Occupy the Public ROW.** Upon the Commencement Date, the City grants to Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary, removing the Network and the related Network Facilities ("Work") in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (e.g., any City park or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee's use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.
- (b) **Restriction.** Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining from the City a separate franchise or license or amending this Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.
- (c) **Commencement Date.** This Contract Franchise will commence on the Effective Date, as defined herein.
- (d) **Subject to State and Local Law.** This Contract Franchise is subject to the City's valid authority under state and local laws as they exist now or may be amended from time to time, and Franchisee is subject to that authority and to the conditions set forth in this Contract Franchise.
- (e) **Subject to the City's Right to Use the Public ROW.** This Contract Franchise is subject and subordinate to the City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, as well as other public utility and municipal uses.
- (f) **Subject to Pre-Existing Property Interests.** The City's grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- (g) **No Grant of Property Interest.** This Contract Franchise does not grant or convey to Franchisee any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant to Franchisee the right to use any facilities or property owned or controlled by a third party without the consent of such third party. Franchisee shall be responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third party.
- (h) **Non-Exclusive.** This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("Person"), as well

as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.

- (i) **Reservation of Right.** In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

## **Section 2. Franchisee's Obligations.**

- (a) **Use of Public ROW.** Franchisee's use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Franchisee shall be subject to all applicable federal and state laws and regulations and to all City ordinances, resolutions, rules, regulations, and policies – existing now or hereafter adopted or promulgated -- relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities, including, but not limited to:
  - (i) the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*
  - (ii) the City's Street Tree Ordinance, codified as amended at Chapter 18, Article 1 of the City Code.
  - (iii) Chapter 5, Article 19 of the City Code, as amended, which requires the underground placement of Franchisees' Network and Network Facilities, except those markers, antennas, and support structures, necessary for the Franchisee's purposes hereunder, that are specifically approved by the City in writing. All such above-ground markers, antennas, and support structures that are installed shall be unobtrusive.
  - (iv) Chapter 16, Articles 8, 9, and 9A of the City Code, as amended, governing the use of the Public ROW and all administrative regulations promulgated by the City in furtherance thereof.
  - (v) the City's Historic Resources Code, found at Chapter 22 of the City Code, as amended, which may govern the design, placement, and location of any above-ground markers, antennas, and support structures.
  - (vi) the City's Building Code, found at Chapter 5, Article 2 of the City Code, as amended.
  - (vii) the City's Electrical Code, found at Chapter 5, Article 4 of the City Code, as amended.
- (b) **Individual Permits Required.** Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before installing or working on its Network Facilities in the Public ROW or other property of the City as may be authorized. Franchisee will pay all lawful processing, field marking,



engineering, inspection fees, or other applicable permitting fees associated with the issuance of individual permits by the City.

- (c) **Franchisee's Sole Cost and Expense.** Franchisee will perform the Work at its sole cost and expense.
- (d) **Compliance with Laws.** Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- (e) **Reasonable Care.** Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.
- (f) **No Nuisance.** Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- (g) **Repair.** Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work (including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under the provisions of the Code of the City Code, as amended. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- (h) **As-Built Drawings and Maps.** Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections. However, the parties recognize that the City is subject to the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.*, and, despite the City's efforts to keep such records confidential, it may be required thereunder to disclose any and all such records; provided, however, to the extent permitted by law, the City will notify Franchisee in advance of releasing any such records.
- (i) **Network Design.** Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- (j) **Protection of Facilities.** Consistent with and pursuant to the City Code, as amended, it shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.

**Section 3.     The City's Obligations.**

- (a)     Emergency Removal or Relocation by the City.** In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- (b)     Relocation to Accommodate Governmental Purposes.** If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, storm drain line, or other utility, or a public road, curb, gutter, sidewalk, park, or recreational facility, then Franchisee shall relocate or adjust any of its Facilities located in a Right of Way for a Public Project with no less than ninety (90 days) prior written notice from the City. Such relocation or adjustment shall be performed by the Franchisee, at its sole cost and expense, without any cost or expense to the City and shall be subject to the rules and regulations of the City. Upon a showing of good cause, the City Engineer may extend the period of time within which the Franchisee must relocate or adjust its Facilities. Any actual, documented, and reasonable damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities will be borne by Franchisee, provided that no such damages will apply so long as franchisee is working in good faith to comply with this Section 3(b). Franchisee will designate one (1) person within its organization by said person's employment position to whom relocation notices may be sent and with whom rests the responsibility to facilitate all necessary communications within Franchisee's various areas.
- (c)     Relocation to Accommodate Non-Governmental Purposes.** If Franchisee's then-existing Network Facilities would interfere with **(i)** the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or **(ii)** a third party's use of the Public ROW, then Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until it receives adequate funds for such relocation or adjustment.
- (d)     Non-Discrimination.** The City will, at all times, treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Telecommunications Services.
- (e)     Post-Removal Restoration of the Public ROW.** When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

**Section 4. Contractors and Subcontractors.**

- (a) **Use of Contractors and Subcontractors.** Franchisee may retain contractors and subcontractors to perform the Work in Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if applicable, references in this Contract Franchise to "Franchisee" shall include and apply to Franchisee's contractors and subcontractors.
- (b) **Contractors to be Licensed.** Franchisee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- (c) **Authorized Individuals.** Franchisee's contractors and subcontractors may submit individual permit applications to the City in Franchisee's behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act in its behalf *via* a letter of authorization provided to the City. The City will accept permit applications under this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

**Section 5. Franchise Fee.**

- (a) **Franchisee Agrees to Pay Franchise Fee.** Franchisee agrees to pay to the City a fee ("Franchise Fee") to compensate the City for Franchisee's use and occupancy of the Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee's use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the Commencement Date (as defined herein) and will be calculated as set forth in Section 5(b). Subject to any applicable statute of limitations, Franchisee's payment obligations as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.
- (b) **Franchise Fee.** As the Franchise Fee, Franchisee agrees to pay to the City five percent (5%) ("Revenue Percentage") of Gross Revenues for a calendar quarter, remitted within forty-five (45) days of the end of each calendar quarter, commencing on the Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee's payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.
- (c) **Gross Revenues.** As used herein, "Gross Revenues" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Telecommunications Services that are provided to Customers through Network Facilities located at least in part in Public ROW.
- (d) **Exclusions.** Gross Revenues do not include:

  - (i) any revenue not actually received, even if billed, such as bad debt;
  - (ii) refunds, rebates, or discounts made to Customers or the City;

- (iii) revenue received from the sale of Telecommunications Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser's customer;
  - (iv) revenue derived from the provision of Telecommunications Services to Customers where none of the Network Facilities used to provide such Telecommunications Services are located in Public ROW;
  - (v) any forgone revenue from Franchisee's provision of Telecommunications Services to Customers at no charge if required by state law;
  - (vi) any revenue derived from advertising;
  - (vii) any revenue derived from VOIP Services;
  - (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Telecommunications Services;
  - (ix) any revenue derived from referral or marketing agreements with third-party providers of online services which Franchisee may make available to Customers;
  - (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users' tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);
  - (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Telecommunications Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
  - (xii) sales of capital assets or sales of surplus equipment.
- (e) **Pass Through.** To the extent allowed either by federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer of Franchisee, whose Telecommunications Services are provided by Network Facilities located at least in part in Public ROW, that Customer's *pro rata* amount of the Franchise Fee.
- (f) **Interest on Late Payments.** Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.
- (g) **No Accord and Satisfaction.** No acceptance by the City of any Franchise Fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount due and owing, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim by the City.

- (h) **Audit.** The City may examine the business records of Franchisee as permitted under applicable law, but in any event only: (i) during reasonable times; (ii) following no less than sixty (60) days' prior written notice; (iii) no more often than once in any twelve (12) month period; and (iv) to the extent reasonably necessary to ensure compliance with this Section 5. Franchisee will keep business records reflecting its Gross Revenues for at least two (2) years
- (i) **Change in Franchise Fee.** The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:
  - (i) A request by either party to reduce or increase the Franchise Fee.
  - (ii) A change in applicable law.
  - (iii) If, during the term of this the Contract Franchise, the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Telecommunications Services for a fee more favorable than the Franchise Fee set forth in Section 5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

**Section 6. Defense and Indemnity.**

- (a) **Franchisee's Indemnification.** Franchisee 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 caused by Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing, maintaining, or operating Facilities in the Public ROW.
- (b) **Exclusions.** The indemnity provided herein does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, then liability shall be apportioned comparatively in accordance with the laws of Kansas without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided herein does not apply to any liability resulting from the negligence of any third party not associated with Franchisee or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- (c) **Notice.** Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

**Section 7. Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

**Section 8. Performance Bond.** If Franchisee has not previously provided the City with a performance bond under any prior agreement, then Franchisee will, promptly after the Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000.00) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph. The parties agree that provision of a Performance Bond under this Section 8 shall be deemed to be in compliance with any Performance Bond requirements established by Chapter 16, Articles 8, 9, and 9A of the City Code, as amended.

**Section 9. Insurance.**

- (a) Franchisee will carry and maintain:
  - (i) Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: **(A)** CGL primary insurance endorsement; and **(B)** CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.
  - (ii) Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.
  - (iii) Business Automobile Policy covering all owned, hired, and non owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- (b) All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.
- (c) The parties agree that the Insurance required under this Section 9 shall be deemed to be in compliance with any Insurance requirements established by Chapter 16, Articles 8, 9, and 9A of the City Code, as amended.

**Section 10. Term.**

- (a) This Contract Franchise is effective on the date on which this ordinance becomes effective in accordance with its terms ("Effective Date") and, unless terminated earlier in accordance with the terms herein, shall expire on the tenth anniversary of the Effective Date. Thereafter, this Contract Franchise will automatically renew for two successive five-year terms unless, at least six months prior to the end of the then-current term, one party provides written notice to the other party of its intent not to renew. In no event, shall this Contract Franchise extend beyond twenty years from the Effective Date.
- (b) Upon written request of either the City or Franchisee, 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, rules, regulations, policies, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract

Franchise granted to Franchisee or the compensation to be received by the City hereunder.

**Section 11. Termination.**

- (a) **Termination by the City.** The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.
- (b) **Termination by Franchisee.** Franchisee may terminate this Contract Franchise by giving written notice to the City. Franchisee must give notice the City no less than 120 days prior to the effective date of the termination. In the event of such a termination, Franchisee shall remove all facilities from the Public ROW in accordance with Chapters 8, 9, and 9A of the City Code, as amended.

**Section 12. Assignment.** Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the prior written consent of the City. Any agreed upon assignee will take the place of the Franchisee and shall be responsible for all duties and obligations imposed hereby and the Franchisee will be released from all of its rights and obligations upon the completions of the requirements of Subsection 12(c) below; provided, however, that such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may arise from a breach of the Contract Franchise and shall have occurred prior to the date of such assignment.

- (a) **Exceptions.** Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:
  - (i) to any Affiliate (as defined below) of Franchisee;
  - (ii) to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines, after a reasonable investigation, that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or
  - (iii) to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines, after a reasonable investigation, that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.
- (b) **Assignment to an Affiliate.** Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (i) "Affiliate" means any Person that now or in the future, directly or indirectly, controls, is controlled with or by, or is under common control with Franchisee; and (ii) "control" means, with respect to: (A) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (B) a

non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and **(C)** any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

- (c) **Notice of Assignment.** Franchisee shall: (i) furnish the City with written notice of the assignment/transfer; (ii) provide a point of contact for the assignee; (iii) and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, performance bond, and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

### **Section 13. Notice and Emergency Contacts.**

- (a) **Emergency Contact.** Franchisee shall maintain with the City a point of contact who shall be available to act in behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.
- (i) Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at
- (ii) Emergency notice by Franchisee to the City may be made by telephone to the City's ROW Supervisor at **(785) 233-9530**. If the City's ROW Coordinator is not available, then contact the City Engineer or the Director of Municipal Services and Operations. (Or to replacement Emergency Contact that is later designated by the Franchisee in writing.)
- (b) **Notice.** All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (i) when delivered in person, (ii) upon confirmation of a receipt when transmitted by electronic mail, (iii) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (iv) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (v) three (3) days after the date of mailing, whichever is earlier.
- (i) Franchisee's e-mail address for notice is: [regulatory@pavlovmedia.com](mailto:regulatory@pavlovmedia.com)
- (ii) The City's address for notice is: [mso@lawrenceks.org](mailto:mso@lawrenceks.org) or 785-832-3200 (Or to replacement Notice contact that is later designated by the City in writing.)

### **Section 14. General Provisions.**

- (a) **Governing Law.** This Contract Franchise is governed by the laws of the state of Kansas.
- (b) **Force Majeure.** Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.



- (c) **Non-waiver.** The failure of either party to insist upon the strict performance of any one or more 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.
- (d) **Integration.** This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Contract Franchise, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties.
- (e) **Counterparts; Electronic Signatures.** The parties may execute this Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures.
- (f) **Severability.** If any section, sentence, clause, or phrase of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

**Section 15. Effective Date.** This Ordinance shall become effective and be in full force as a binding contract between the City and Franchisee from and after the following: **(a)** the ordinance has been approved and accepted by Franchisee in accordance with Section 17, below; and **(b)** the passage and publication of the Ordinance as required by law.

**Section 16. Publication Costs.** Franchisee shall be responsible for all publication costs of this Ordinance and Franchise Contract.

**Section 17. Franchisee Acceptance.** Franchisee shall, within sixty days after the final publication of this ordinance in the official City newspaper, file with the City Clerk its written acceptance of all terms, conditions, and provision of this ordinance. The acceptance of this ordinance shall be in writing, shall be acknowledged before an officer authorized by law to administer oaths, and, when accepted by the City, shall constitute a contract between the City and Franchisee. Failure to abide by any terms of this paragraph shall render this ordinance and Franchise Contract null and void.