

FRANCHISE AGREEMENTS

ORDINANCE NO. 955

AN ORDINANCE AMENDING ORDINANCE NO. 704

WHEREAS, the Governing Body of the City of Edgerton, Kansas (hereinafter called the City) passed Ordinance No. 704 on June 10, 1999, and

WHEREAS, the City has decided to amend SECTION FIVE of Ordinance No. 704 applicable to Kansas City Power & Light Company (hereinafter called the Company) with the language provided below.

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

Section 1. That SECTION FIVE of City Ordinance No. 704 is hereby amended as follows:

- A. Payments shall be made on or before the last day of each quarter, and shall be based upon said gross receipts charged and collected for the preceding month.
- B. Payments shall be made to the City independent of any monies or credits due the Company from the City for street lighting and traffic signal service, for which service the Company shall bill the City and the City shall pay the same in cash to the Company.
- C. During the remaining term of Ordinance No. 704, and any amendments thereto, the City shall provide a listing of customers that are exempt from franchise fees. The City shall also be responsible for providing notification of any changes to the list of exempt customers.

Section 2. All provisions of this Ordinance shall be binding upon the Company and successors and assigns from and after the date of written acceptance hereof by the Company, and shall insure to the benefit of the Company, its grantees and its successors and assigns.

Section 3. SECTION FIVE of Ordinance No. 704 is hereby amended as of January 1, 2014.

Section 4. This Ordinance is made under and in conformity with the laws of the State of Kansas, and shall take effect and be in force as of January 1, 2014.

PASSED by the Governing Body and Signed by the Mayor this 14th day of November, 2013.

ORDINANCE NO. 814

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., 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 EDGERTON, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF EDGERTON, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

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

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

- (A) The Company shall mean Kansas Gas Service, a division of ONEOK, Inc., its successors and assigns.
- (B) City shall mean the City of Edgerton, Kansas.
- (C) Facilities shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either on, 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) Public Right-of-way shall mean only the area of real property in which the city has a dedicated or acquired right-of-interest in the real property as defined by K.S.A. 17-1902. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.
- (H) Revenues shall mean those amounts of money which the Company receives from its customers within the City from the sale of gas and from the transportation of gas to customers within the City and for the use of its utility facilities by others within the City under rates, temporary or permanent, and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. "Revenues" shall also include all fees or rentals received by the Company for the lease or use of pipeline capacity within the corporate limits of the City. Included within "Revenues" shall be all amounts paid to the Company by the City. Revenues shall not include other revenues received by the Company, which are not related to the sale or transportation of natural gas. These include, but are not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, and returned check charges as such terms are used in tariffs filed and approved.

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. Notwithstanding the foregoing, the Company shall comply in all respects with Article 3 of Chapter XII of the City Code governing use and excavation of the public right-of-way. Provided, however, the Company's agreement to comply with Article 3 of Chapter XII of the City Code shall not be construed as waiving the

Company's right to contest, object to, or challenge, any requirement therein as provided pursuant to applicable Kansas or federal law.

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

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

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to Article 3 of Chapter XII of the City Code, and all other 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 public right-of-way, provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulations, policy, resolution, or ordinance proposed, adopted, or promulgated by the City.

Section 5. Franchise Fee.

- (A) In consideration for the grant of this franchise, the Company shall pay the City a sum equal to five percent (5%) of all revenues per annum received

from the sale of gas within the City and from revenues received by the Company from the use of its utility facilities by others within the City. In addition, the Company shall pay to the City a sum equal to five percent (5%) of all revenues received by the Company from the transportation of gas for delivery only (not sale of gas) to customers within the City.

- (B) The franchise fee shall be paid monthly by a method approved by the City and Company. An accounting by the Company shall be submitted with the monthly franchise fee to enable the City to determine that all gas distributed, sold, or transported within the City has been properly assessed a franchise fee and such fee has been paid to the City. The Company shall pay the applicable fee to the City within thirty (30) 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 equivalent to the statutory rate of interest on the unpaid amount. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge equivalent to the statutory rate of interest on the unpaid amount; 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.
- (C) The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property taxes, sales and excise taxes, and any permit fees and charges for working in the right-of-way, pavement cuts or other permit fees and charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with the natural gas business, as such, will be imposed on the Company and are not covered by the payments herein. For any such permit fees that Company is not exempt from paying by virtue of this Franchise, City agrees to make arrangements and cooperate with Company in accepting payments in a form or manner that minimizes delay or disruption to Company's day-to-day activities.
- (D) The City shall provide copies of annexation ordinances to the Company on a timely basis. The City shall provide to Company a copy of the annual boundary resolution adopted by the City. The fees provided for in this Section 5 shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date the City provides Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

- (E) Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in August 2006. Prior to that date, payments shall continue to be calculated and paid in the manner previously provided in Ordinance No. 540.

Section 6. 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 7. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. 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 8. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which 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.

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

Section 9. Assignment of Franchise. 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. If the Company intends to assign this franchise, the Company shall notify the City in writing at least 60 days prior to the proposed assignment of the franchise.

Section 10. 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 11. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Clerk, 404 East Nelson, P.O. Box 255, Edgerton, Kansas 66021. For the purpose of this Agreement, notice to the Company will be to: President, Kansas Gas Service, 7421 West 129th Street, Overland Park, Ks. 66213. 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 12. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of ten (10) years from the effective date thereof.

Section 13. 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, but not the obligation, unless necessary for the protection of the public health and safety, 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. 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 14. 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 shall carry out the following proceedings.

- (B) Before the City 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 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 Johnson 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 15. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Edgerton, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 19, 2) the ordinance has been adopted by the governing body, and 3) the ordinance has been published in the official city newspaper, all as provided by K.S.A. 12-2001. The Company shall pay for the required publication of this ordinance.

Section 16. 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 17. 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 18. Repeal. To the extent of its validity on the date of effectiveness of this ordinance, Ordinance No. 540 is hereby repealed.

Section 19. 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.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE
MAYOR OF EDGERTON, KANSAS ON THE 8th DAY OF June, 2006.

ORDINANCE NO. 755

AN ORDINANCE ACCEPTING A TELECOMMUNICATIONS FRANCHISE
CONTRACT BETWEEN UNITED TELEPHONE OF EASTERN KANSAS D/B/A
SPRINT AND THE CITY OF EDGERTON, KANSAS, COUNTY OF JOHNSON ,
STATE OF KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON,
KANSAS, COUNTY OF JOHNSON, KANSAS, AS FOLLOWS:

United Telephone of Eastern Kansas d/b/a Sprint, Grantee, a corporation organized under the laws of the State of Iowa, with a license to do business in the State of Kansas, and its successors and assigns, and the City of Edgerton hereby enter into a Telecommunications Franchise Contract pursuant to K.S.A. 12-2001 and 17-1902. The Telecommunication Franchise Contract shall be effective upon final passage of this Ordinance and shall continue for a term of ten years from its effective date. Compensation for the Telecommunications Franchise Contract, shall be established pursuant to K.S.A. 12-2001(j). Pursuant to K.S.A. 12-2001(j)(2), the City requires Sprint to collect and remit to it a fee of five percent (5%) of gross receipts as defined by K.S.A.

12-2001(c)(6). The compensation shall be made twice yearly during the term of this ordinance. The City agrees the compensation pursuant to K.S.A. 12-2001(j) shall be in lieu of any general, or special license tax, occupation tax, or any other such tax for the term of this ordinance.

Nothing herein shall affect any prior or existing rights of Sprint to maintain a telecommunication company within the City. All ordinances and agreements or parts of ordinances and agreements in conflict with this Ordinance are hereby repealed.

If this Telecommunications Franchise Contract expires and the City and Sprint are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance acknowledging a Telecommunications Franchise Contract, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

The grantee shall abide by all other city ordinances that do not conflict with this franchise contract.

Passed by the Governing Body of Edgerton, Kansas, this 23rd day of October, 2003 and published on this 5th day of November, 2003.

ORDINANCE NO. 704 (See also Ord. 955 partially amending)

AN ORDINANCE GRANTING KANSAS CITY POWER & LIGHT Company, its grantees, successors and assigns, the right and franchise to construction and maintain all works and plants necessary or proper for supplying consumers with electric or other energy, granting to said company the right to use the streets, alleys and all other public places, prescribing the terms of and relating to such franchise, and repealing inconsistent ordinances or part thereof.

WHEREAS, Kansas City Power & Light Company (herein called the Company) is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and admitted to do business under the laws of the State of Kansas as a foreign corporation for the purposes of generating and distributing electric energy, and

WHEREAS, the Company is operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas and has heretofore built, or proposed to build its transmission lines into or through the City of Edgerton, Kansas (herein called the City), under a twenty (20) year Franchise Ordinance with the City of Edgerton, to wit, Ordinance No. 467, which expires November 13, 1999, and

WHEREAS, the parties hereto desire that the Company continue furnishing electric energy to consumers in said City and expand said services as necessary to serve the needs of the Edgerton community.

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

SECTION ONE: In consideration of the benefits to be derived by the City and the inhabitants thereof from the construction, operation and maintenance of an electric light and power transmission and distribution system and the supplying of electric energy to the public, there is hereby granted to the Company and to its successors and assigns, for the term of twenty (20) years from the effective date hereof, a Franchise and authority to construct, operate and maintain in the existing and any future extended corporate limits of the City all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of supplying the City and outlying areas with electric or other energy in such forms as may be reasonably required for domestic, commercial, industrial, municipal and other purposes and to produce and supply such energy by manufacture, generation, purchase or otherwise, and to transmit and distribute same by means of underground or overhead lines or otherwise, and for any of all of said purposes it is authorized to (i) construct, install, replace and remove conduits or other underground facilities for the installation and protection of its underground wire and cables, (ii) place poles, lamp posts, guys, and anchors for its overhead wires, cables and street lights on all streets, alleys avenues, bridges, parks, parking and other public places or thoroughfares, (iii) construct, erect and maintain all buildings, machinery and attachments of any and every kind for any and all of said purposes, and (iv) enter upon any and all of said public places within the corporate limits of the City as they now exist or may hereafter be opened, widened, extended, laid out and established, including any other territory hereafter added thereto or coming under its jurisdiction, and to trim trees upon and overhanging such places and make such excavations thereon as may be appropriate for the construction, repair and renewal of its overhead and underground facilities and plants.

SECTION TWO: Any pavements, sidewalks or curbing taken up or any and all excavations made shall be done under the supervision and direction of the governing body of said City under all necessary permits issued for the work, and shall be made and done in such manner as to give the least inconvenience to the inhabitants of the City and the public generally, and pavements, sidewalks, curbing and excavations shall be replaced and repaired in as good condition as before with all convenient speed, all at the expense of the Company.

SECTION THREE: During the continuance of this Franchise, the Company shall construct, maintain and operate its transmission and distribution system within the City and shall furnish electric energy to the City and its inhabitants in accordance with the

terms of this Franchise, the rates, charges, rules and regulations now on file with the State Corporation Commission of the State of Kansas, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas. Nothing contained herein shall be construed as a guarantee upon the part of the Company to furnish uninterrupted service, and interruptions due to acts of God, fire, strikes, civil or military authority, orders of court and other causes reasonably beyond the control of the Company are specifically exempt from the terms of this Section.

SECTION FOUR: The Company shall, at all times, in the construction, maintenance and operation of its electric transmission, distribution and street lighting system, use all reasonable and proper precautions to avoid damage or injury to persons or property, and shall hold and save harmless said City from any and all damage, injury and expense caused by the sole negligence of the Company, its successors and assigns.

SECTION FIVE: In consideration of the premises, the Company agrees to pay to the City of Edgerton, Kansas, and the City of Edgerton agrees to accept as adequate compensation and consideration for the Franchise hereby granted and in lieu of occupation, license, privilege and all other taxes and fees, five percent (5%) of the total of the gross receipts charged and collected for electric energy sold for domestic, commercial and industrial consumption by the Company to all consumers located in the present or future corporate boundaries of the City of Edgerton during the term of this Franchise. Any consideration hereunder shall be reported and paid to the City by the Company on a semiannual basis on or before each June 30 and December 31 for the years in which this Franchise remains in effect, reflecting such electric energy sold for the six months' period ending at the last meter reading preceding each May 31 and November 30, respectively. Such payments shall first be applied to the amount due to the Company from the City for street lighting and traffic signal service billed for the applicable said six months period (the "SLTS Billings Amount") and by paying the remainder, if any, to the City. If in any applicable said six months' period the SLTS Billings Amount exceeds the gross receipts amounts due to the City, the Company shall for such excess bill the City and the City shall pay the same to the company. The term "gross receipts", as used in this Section shall not include (1) the electric energy sold to the United States or the State of Kansas or to any agency or political subdivision thereof, (2) the electrical energy sold for other use which cannot be classified as domestic, commercial, or industrial, such as the electrical energy used by public utilities, telephone, telegraph, and radio communications companies, railroads, pipe line companies, educational institutions not operating for profit, churches and charitable institutions, (3) the electrical energy sold for resale, and (4) the amounts paid to the City pursuant to this Section.

SECTION SIX: That this Ordinance shall not take effect and be in force until after the expiration of sixty (60) days from the date of this final passage and acceptance by the Company, within said sixty (60) days, in writing; if not acceptance as hereinbefore provided has been filed, then this Ordinance shall be ipso facto, absolutely, null and void.

SECTION SEVEN: All provisions of this Ordinance shall be binding upon the Company from and after the date this Ordinance takes effect, and shall inure to the benefit of the Company, its grantees, successors and assigns.

SECTION EIGHT: This Franchise is granted pursuant to the provisions of K.S.A. 12-2001, and shall take effect and be in force as therein provided.

Passed by the Governing Body this 10th day of June, 1999.

ORDINANCE NO. 701

AN ORDINANCE GRANTING TO FRANCHISEE, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF EDGERTON, KANSAS AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, CABLES AND ANCILLARY FACILITES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING CABLE SERVICE FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY OF EDGERTON, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF CITY OF EDGEROTN, KANSAS, U.S.A.

SECTION I – DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- A. “Basic Cable Television Service” means the service tier which includes the retransmission of local broadcast signals.
- B. “Grantor” is the City of Edgerton, Kansas.
- C. “Council” is the City Council of the City of Edgerton, Kansas.
- D. “System” means a facility that uses any public right-of-way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers

within a community is a system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband telecommunications services.

- E. "Cable Service" means the provision of Cable Television Service.
- F. "Cable Television Service" the one-way transmission of video programming or other programming services and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- G. "FCC" shall mean the Federal Communications Commission.
- H. "Franchisee" is MEDIACOM SOUTHEAST LLC or its successors or assigns.
- I. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- J. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Franchisee.
- K. The "Term" of this Ordinance shall have the meaning as defined in Section XVII of this Ordinance.

SECTION II.- GRANT OF NON-EXCLUSIVE AUTHORITY

- A. For the Term of this Ordinance, there is hereby granted by Grantor to Franchisee and its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, rights-of-ways, easements dedicated for compatible uses and other public places located within the boundaries of the City of Edgerton, Kansas including subsequent additions thereto, towers, poles, lines, cable, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation of a System for the purpose of transmission and distribution of cable services, information services, data services and broadband telecommunication services.
- B. Grantor shall not permit any person to provide services similar to those provided by Franchisee without first having secured a non-exclusive franchise from Grantor that shall impose the same costs, obligations and restrictions imposed by this Ordinance.
- C. In the event that a multi-channel video programmer provides service to residents of the community using facilities that occupy the streets and rights of way of the Town, including the delivery of video programming using the facilities of a common carrier (e.g., Open Video Systems), and that provider operates under either no franchise or under a franchise that imposes lesser burdens, Grantee shall have the following rights. Grantee may, upon 30-day written notice to Grantor, unilaterally adopt the less burdensome provisions imposed on the competing provider.

SECTION III. - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Franchisee shall during the Term, be subject to all lawful exercise of the police powers of Grantor except as those powers are limited by federal law, including the Communications policy Act of 1984, as amended and the regulations of the FCC.

SECTION IV - FRANCHISE AREA.

This Ordinance permits the provision of service to the present boundaries of Grantor and to any area annexed thereto during the Term. Franchisee shall not be required to service residents of areas within the present boundaries of Grantor and any areas annexed by Grantor after the effective date of this Ordinance that are more than four hundred feet (400') from a point of connection to existing distribution lines or where there is present a density of less than 20 residences per mile except upon payment by such residents of the capital costs incurred by Franchisee in bringing service to such residents.

SECTION V - LIABILITY AND INDEMNIFICATION

Franchisee shall indemnify, protect, and save harmless Grantor from and against losses and physical damage to property and bodily injury or death or persons, including payments made under any Worker's Compensation law which may arise out of the erection, maintenance, use or removal of said attachments or poles within the boundaries of Grantor, or by any act of Franchisee, its agents or employees. Franchisee's obligation to indemnify Grantor shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

Franchisee shall, at all times, keep in effect the following types of coverage:

- A. Worker's Compensation
- B. Property Damage Liability Insurance to the extent to Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and Personal Injury Liability Insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess Bodily Injury and Property Damage of One Million Dollars, (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile Bodily Injury and Property Damage Liability combined One Million Dollars (\$1,000,000.00) each occurrence.
- C. Franchisee shall maintain policies of insurance in the above described amounts to protect the parties hereto from and against all actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Franchisee shall also maintain policies of insurance in amounts it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be

applicable to Franchisee Grantor shall keep on file Certificates evidencing such insurance coverage

SECTION VI. - GENERAL SYSTEM SPECIFICATIONS

The facilities used by Franchisee shall have a minimum capacity of 550 MHz and have at least 38 activated channels.

SECTION VII - TECHNICAL STANDARDS

Franchisee shall comply with the technical standards established by the FCC.

SECTION VIII - CUSTOMER SERVICE STANDARDS/OPERATION AND MAINTENANCE OF SYSTEM.

A. Franchisee shall render service and make repairs in a commercially reasonable manner, and interrupt service only for good cause, including as required by federal law for the shortest time possible, such interruptions, insofar as possible, shall occur during periods of minimum use of the System.

B. Under normal operating conditions, Franchisee shall respond to service requests within two business days following receipt.

C. Failure by Franchisee to restore any service to a customer to service within two business days after receipt of notification of complete disruption of service will, upon request by the customer, result in the issuance of a credit to that customer's account for the portion of a month they were without cable service.

SECTION IX - LOCAL BUSINESS AGENT.

During the term of this franchise, and any renewal thereof, Franchisee agrees to maintain a local or toll free telephone number to be used by customers of the Franchisee to contact Franchisee and to place requests for service or inquiries.

SECTION X. - SERVICE TO SCHOOLS AND CITY

Franchisee shall, subject to the line extension provisions of Section IV, provide Basic Cable Television Service at no separate charge to public elementary and secondary schools, at one terminal junction for educational purposes upon request of the school system. Franchisee shall, subject to the line extension provisions of Section IV, provide Basic Cable Television Service at no separate charge to one public library facility, at one terminal junction for educational purposes upon request of the city council. Franchisee shall, subject to the line extension provisions of Section IV, also provide without charge, at one building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council, one junction terminal to said building and shall also furnish to the building, without charge, Basic Cable Television Service to the building's terminal junction.

SECTION XI. – EMERGENCY ALERT SYSTEM

Franchisee shall provide emergency alert facilities as required by federal law. Grantor or its designee shall have the capability of disseminating emergency messages over the cable system provided that Grantor or its designee acquires, at its own cost, all necessary interface and encoding equipment.

SECTION XII. – SAFETY REQUIREMENTS

Franchisee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

SECTION XIII. - LIMITATIONS ON RIGHTS GRANTED

- A. All transmission and distribution structures, lines and equipment erected by Franchisee within Grantor shall be located as to cause minimum interference with the proper use of streets, alleys and the public ways and places, and to cause minimum interference with the rights and reasonable convenience or property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or tower shall be removed by Franchisee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places within Grantor and Grantor concurrently requires relocation of similarly situated utilities
- B. Construction and maintenance of the System shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of Grantor, affecting electrical installations, which are presently in effect at the time of construction.
- C. In case of disturbance of any street, sidewalk, alley, public way or paved area, Franchisee shall, at its own cost and expense and in a manner approved by Grantor, replace and restore such street, sidewalk, alley, public way or paved areas in at least as good a condition as before the work involving such disturbance was done.
- D. If at any time during the period of this Ordinance Grantor shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, Franchisee, upon reasonable notice by Grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense provided Grantor concurrently imposes identical requirements on similarly situated utilities.
- E. Franchisee shall on the request of any person holding a building moving permit or any person who wishes to remove trees or structures from their

property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same; the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than fourteen (14) days advance notice to arrange for such temporary wire changes.

- F. Subject to Grantor approval, Franchisee shall have the authority to trim trees that overhang the streets, alleys, sidewalks and public ways and places so as to prevent the branches of such trees from coming in contact with the wires and cables of Franchisee.
- G. Franchisee, shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Franchisee when required by Grantor by reason of traffic conditions, change of establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Franchisee shall in all cases have the privileges and be subject to the obligations to abandon any property of Franchisee in place as hereinafter provided.
- H. In all sections of Grantor where Grantor designates an area where all presently above ground services are to be placed underground, Franchisee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- I. In the event that the use of any part of the System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such System or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been subject to the rights of the Grantor to acquire or transfer the system as specified in Section XV, promptly remove from the streets, or public places, all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other areas from which such satisfactory to Grantor.
- J. Any property of Franchisee to be abandoned in place shall be abandoned in such a manner as Grantor may prescribe. Upon permanent abandonment of the property of Franchisee in place, it shall submit to Grantor an instrument to be approved by Grantor, transferring to Grantor the ownership of such property.

SECTION XIV. - OWNERSHIP AND REMOVAL OF FACILITIES

- A. All cable and equipment for cable service including cable television reception service installed by Franchisee at a subscriber's location shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment. Upon termination of all service to any subscriber, Franchisee shall promptly remove all its above ground facilities and equipment from the premises upon the request of such subscriber.
- B. At the end of the Term of this franchise, the Company at its sole cost and expense and upon direction of the Grantor, shall remove the above-ground cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless the Company, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an Open Video System or any other federal or state certification to provide telecommunication services.

SECTION XV. - TRANSFER OF ORDINANCE

All right, title and interest of Franchisee in this Ordinance and the Non-exclusive Franchise granted herein shall be freely assignable without consent of Grantor.

SECTION XVI. - PAYMENT TO THE CITY.

The Franchisee shall pay Grantor three percent (3%) of gross monthly receipts for Basic Cable Television Service provided to all subscribers located within Grantor. Such payment shall be made annually within ninety (90) days after the end of each calendar year. All other license fees or taxes levied upon Franchisee by Grantor shall be credited against the payment required herein.

SECTION XVII. – DURATION AND RENEWAL OF ORDINANCE

The rights granted to Franchisee herein shall become effective upon the passage of this Ordinance and shall continue for a period of fifteen (15) years, unless terminated earlier in accordance with this Ordinance (“Term”). Franchisee shall have the option to renew this franchise for an additional fifteen (15) years at any time before the expiration of the Term under the same terms and conditions by providing notice as required under Section XXVII.

SECTION XVIII. – ERECTION, REMOVAL AND COMMON USE OF POLES

- A. No poles or other wire-holding structures shall be erected by Franchisee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which approval

shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of Franchisee shall create a vested interest.

- B. Where poles or other wire-holding structures already existing in use in serving Grantor are available for use by Franchisee, but it does not make arrangements for such use, the Council may require Franchisee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to Franchisee are just and commercially reasonable.

SECTION XIX. – RATES AND CHARGES

The Grantor reserves the right to regulate such rates and charges to the extent permitted by and using methodologies prescribed by Federal law.

SECTION XX. - BOOKS AND RECORDS

The Franchisee shall keep full, true, accurate, and current books of accounts, which books and records shall be made available for inspection at reasonable times by authorized representatives of Grantor as may be reasonably necessary for the administration of this Ordinance. To the extent Grantor obtains any personally identifiable information or other information protected under federal, state or local privacy laws, Grantor shall assume all of the obligations of a cable operator with respect to protecting the confidentiality of that information. Grantor shall indemnify and hold Franchisee harmless from any costs, losses or damages arising from the disclosure of any protected information to or by Grantor.

SECTION XXI. - FORCE MAJEURE

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

SECTION XXII. – MISCELLANEOUS

Franchisee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the

Council after consideration in a full public proceeding affording due process to all interested persons.

SECTION XXIII. – MODIFICATION OF OBLIGATIONS

In additional to any other remedies provided by law or regulations, Franchisee’s obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

SECTION XXIV. - SEVERABILITY

If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or amended by the United States Congress or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION XXV. - PUBLICATION

Franchisee shall assume the costs of any required publication of this Ordinance.

SECTION XXVI. - NOTICES

All notices and other communication hereunder this Ordinance shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage paid to the following respective address:

To Grantor:

The City of Edgerton, Kansas
P.O. Box 255
404 E. Nelson
Edgerton, KS 66021

To the Franchisee:

MEDIACOM SOUTHEAST LLC
LEGAL DEPT; BRUCE GLUCKMAN
100 Crystal Run Road
Middletown, NY 10941

With a copy to:
MEDICOM SOUTHEAST LLC
155 North Industrial Park Rd.
Excelsior Springs, Mo 64024

Either of the foregoing parties to this Ordinance may change the address to which all communications and notice may be sent to it by addressing notices of such change in the manner provided hereunder.

SECTION XXVII. – CONTRACT RIGHTS

Acceptance of the Ordinance by Franchisee shall create enforceable contract rights between Franchisee and Grantor with respect to the terms of this Ordinance.

SECTION XXVIII – PRIOR ORDINANCES

All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

SECTION XXIX. – EFFECTIVE DATE

This Ordinance shall take effect after its passage, approval, and publication as provided by law.

Notice published prior to passage on the 31st day of March, 1999.

Read and approved on the first reading on this 8th day of April, 1999.

Read and approved on the second reading on this 22nd day of April, 1999.

Read and adopted by the Governing Body on this 13th day of May, 1999.