

APPENDIX B – FRANCHISES

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ORDINANCE NO. 1238

AN ORDINANCE DEFINING THE MANNER AND PLACE OF CONSTRUCTION OF THE LINES OF SOUTHWESTERN BELL TELEPHONE COMPANY AND PROVIDING FOR AN ANNUAL PAYMENT TO BE MADE TO THE CITY OF BONNER SPRINGS, KANSAS.

Section 1. Southwestern Bell Telephone Company, its successors and assigns (herein referred to as "telephone company") shall continue to operate its telephone system and all business incidental to or connected with the conducting of a telephone business and system in the City of Bonner Springs, State of Kansas (herein referred to as "city"). The plant construction and appurtenances used in or incident to the giving of telephone service and to the maintenance of a telephone business and system by the telephone company in said City shall remain as now constructed; subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and by the telephone company in the conduct of its business, and said telephone company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public streets, avenues, alleys, bridges, and the public grounds and places within the limits of said City as the same from time to time may be established.

Section 2. That for the period January 1, 1981, to December 31, 1981, inclusive, the telephone company shall pay the City on January 1, 1981, a sum equal to 6.24 percent of the class of service revenues for local exchange telephone communication service rendered wholly within the corporate limits of the City of Bonner Springs during the 12 months period immediate preceding January 1, 1981, and annually thereafter on the 1st day of January for the same period beginning each January 1, a like sum based upon 6.24 percent of the class of service revenues derived from local exchange telephone communication service during the 12 months immediately preceding the 1st day of January of the year for which such payment is made, being a term of five years ending December 31, 1985, and for three successive terms of like duration, unless within four months prior to the expiration of the initial term or of the successive terms ending on each five year anniversary following the expiration of the initial term 60 days written notice is given one party to the other of its intention to terminate the same at the expiration of the then current five term; it being expressly understood that each five year term provides for five annual payments; said payments to be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the City under authority conferred by law. This agreement may also be terminated forthwith by the telephone company if authority to collect the amounts of such payments from its customers within the City shall be removed, canceled, or withheld by legislative or regulatory act. The telephone company shall also have the privilege of crediting such sums with any unpaid balance due said company for telephone service rendered or facilities furnished to said City.

Section 3. The telephone company on the request of any applicant shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the telephone company may require such payment in advance. The telephone company shall be given no less than 15 days written notice from the applicant detailing the time and location of the moving operations, and not less than 24 hours advance notice from the applicant advising of the actual operation.

Section 4. Permission is hereby granted to the telephone company to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of the telephone company, all the said trimming to be done under the supervision and direction of any City official to whom said duties have been or may be delegated.

Section 5. Nothing in this ordinance shall be construed to require or permit any telephone, electric light, or power wire attachments by either the City or the telephone company on the poles of the other. If such attachments are desired by the City or the telephone company, then a separate non-contingent agreement shall be a prerequisite to such attachments.

Section 6. Nothing herein contained shall be construed as giving to the telephone company any exclusive privileges, nor shall it affect any prior to existing rights of the telephone company to maintain a telephone system within the City.

Section 7. All other ordinances and agreements and part of ordinances and agreements relating to the operation of a telephone system within said City are hereby repealed. (1-5-81)

ORDINANCE NO. 1489

AN ORDINANCE GRANTING TO KANSAS CITY CABLE PARTNERS (A COLORADO GENERAL PARTNERSHIP), FOR A TERM OF 15 YEARS, THE RIGHT, AUTHORITY, POWER, PRIVILEGE AND PERMISSION TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF BONNER SPRINGS, KANSAS, AND TO USE AND OCCUPY THE STREETS AND OTHER PUBLIC PLACES AND WAYS OF THE CITY FOR SUCH CABLE TELEVISION SYSTEM, AND PROVIDING FOR PAYMENT OF A FEE FOR SUCH USE AND OCCUPANCY.

Section 1. That there is hereby granted to Kansas City Cable Partners (Colorado) a general partnership duly authorized to do business in the State of Kansas, and doing business as American Cablevision of Bonner Springs, (hereinafter called "grantee") for a full term of 15 years from the date hereof, the right, authority, power, and permission to establish, acquire, maintain and operate a cable television system within the City of Bonner Springs (hereinafter called the "city") and to furnish, render and sell cable television services to the residents of the City, and to use and occupy the streets and other public places within the corporate limits of the City, as the same may now exist or hereafter exist, for its cable system, including the right to enter and construct, erect, locate, repair and rebuild on, in, under, along, over and across the streets, alleys, avenues, parkways, lanes, bridges and other public places of City, all towers, poles, cables, amplifiers, conduits and other facilities owned, leased and otherwise used by grantee for the furnishing of a cable system.

Section 2. The right to use and occupy the streets and other public places and ways of the City shall not be exclusive and the City reserves the right to grant a similar use of the streets and other public places and ways at any time during the term of this ordinance or any extensions or renewals thereof.

Section 3. The City reserves the right, either administratively or by ordinance, to establish regulations from time to time on the erection, construction or installation of any facilities by the grantee and the right to designate where such facilities are to be placed within the streets and other public places and ways, so long as such requirements constitute a reasonable exercise of the City's general police power.

Section 4. Whenever because of public necessity or the welfare of the public generally, a change of grade, regrading or widening of streets, alleys and avenues, construction or reconstruction of water lines, sanitary and storm sewers, conduits, drainage ditches, watercourses, playgrounds, traffic control devices or other public improvements are made by the City. Grantee shall, at its own expense and upon written request from the City, remove, relay and relocate its poles, wires, cables, conduits and other fixtures which interfere with or obstruct such public improvements.

Section 5. In consideration for the rights, powers, privileges, permission and authority hereby granted, and as compensation to the City for use of its streets and other public places and ways, grantee shall pay to the City an annual amount equal to five percent of its gross annual revenue in the manner provided in the franchise agreements between City and grantee.

Section 6. The franchise agreement between City and grantee is hereby incorporated into this ordinance by reference.

Section 7. Grantee shall not transfer this license to another person without prior approval of the City.
(12-21-87)

ORDINANCE NO. 1670

AN ORDINANCE, GRANTING TO THE GREELEY GAS COMPANY, A DELAWRE CORPORATION, DULY AUTHORIZED TO ENGAGE IN BUSINESS IN THE STATE OF KANSAS, ITS TRUSTEES, SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THE TERMS THEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Bonner Springs, Kansas, and its inhabitants, there is hereby granted to the Greeley Gas Company, a Delaware Corporation, hereinafter sometimes designated as "company," the right, privilege and authority for a period of 20 years from the effective date of this ordinance, subject to the conditions hereinafter stated, the lawful rules and regulations of the State Corporation Commission, and any other regulatory agency having jurisdiction over the company, and the laws of the State of Kansas, to occupy and use the present and future several streets, alleys, avenues, roads, bridges and other public places in said City, including any territory hereafter added thereto or coming under City's jurisdiction, for the placing and maintaining of pipelines and all other equipment necessary to carry on the business of selling and distributing natural gas for all purposes to the City and its inhabitants, and through the City and beyond the limits thereof; to obtain the natural gas from any source available; to do all things necessary or proper to carry on the natural gas business in the City.

Section 2. That all mains, services, pipes and all other equipment necessary to carry on the business of selling and distributing natural gas, which shall be laid or installed under this grant, shall be so located and laid as not to unnecessarily obstruct or interfere with any public or private drains, sewers, water pipes, or other public improvements already installed, and with the lawful use of the streets, alleys, avenues, roads and other public places of the City.

Section 3. In consideration of the premises, the company agrees to pay to the City and the City 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, three percent of the total of the gross receipts for gas sold by the company to all consumers in the corporate boundaries of the City during the term of this franchise. Provided, however, the City reserves the right to review and adjust, upward and downward, the adequacy of the compensation effective upon the 5th, 10th and 15th anniversary of the effectiveness of this ordinance. Any consideration hereunder shall be reported and paid to the City by the company no less frequently than semi-annually, and if paid semi-annually shall be paid on the last day of June and December of each year.

Section 4. In the event the City should propose to construct, change or repair any water mains, sewers, pipes, drains or other public improvements or change the grade of any of its streets, alleys, roads or public grounds where the company is using the streets, alleys, roads or public grounds for its mains or other pipes, or equipment, then the City shall give reasonable notice in writing of such contemplated changes or repairs to the company and the company shall raise, lower or relocate at company's own expense unless funds are available for reimbursing company for any such expenses by reason of any laws, rules or regulations, State or federal, applicable to the project necessitating such construction, changes or repairs. The company shall furnish the City with a map showing the size and location of its gas distribution system, and, upon written request of the City, company shall make any changes or additions necessary to update the map.

Section 5. That the company, in the construction, maintenance and operation of its natural gas system shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and the company shall be liable for all losses, injuries or damages which may result to the City or to its inhabitants, by reason of the sole negligence of the company, its agents or servants, in the construction or maintenance of its system and shall at all times hold and save the City harmless from any and all liability of the City arising from claims for damages or injuries to others due to the sole negligence of the company, its agents or

servants, in the construction, maintenance and operation of the system in the streets, alleys, roads and public places of the City.

Section 6. During the continuance of this franchise, the company shall furnish natural gas 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.

Section 7. It is recognized that the natural gas to be delivered hereunder is to be supplied from company's pipeline system transporting natural gas from various sources of supply; and the company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the sources of supply and the pipelines are reasonably capable of supplying.

Section 8. The company shall have the right to make reasonable rules and regulations for the protection of its property, for the prevention of loss and waste in the conduct and management of its business, and for the sale and distribution of gas, including rules and regulations with reference to extensions or additions to its gas distribution system, as from time to time is deemed necessary.

Section 9. 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 of the State of Kansas, or any other body having jurisdiction over such assignment, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. All such assignments shall be in writing and authenticated copies thereof shall be filed with the Clerk of the City.

Section 10. That in the event any other ordinances of the City conflict with this ordinance, the terms and conditions set out herein shall prevail and the conflicting portions of other ordinances shall be deemed inapplicable.

Section 11. In the event that the Kansas Corporation Commission takes any action which is within its jurisdiction and authority over the company, which would preclude company from recovery from its customers any cost or fee provided for herein, the parties hereto agree to renegotiate this ordinance in accordance with any lawful ruling of the corporation commission.

Section 12. 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. (8-16-93)

ORDINANCE NO. 2278

AN ORDINANCE GRANTING TO KANSAS CITY POWER & LIGHT COMPANY (“KCP&L”) AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF BONNER SPRINGS, KANSAS, AND REPEALING ORDINANCES 1724 AND 1726.

Section 1. Definitions. for the purpose of this Franchise Ordinance, the following words and phrases and their derivations shall have the following meaning:

“City” means the City of Bonner Springs, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Bonner Springs as now constituted or as shall hereafter exist.

“Customer” means any person, partnership, association, firm, public or private corporation or governmental agency applying for or using electric service supplied by KCP&L.

“Facilities” means 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 selling and distributing within the City electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes.

“Franchise Ordinance” means this ordinance passed to grant the franchise to Franchisee. This ordinance shall operate as a grant of permission by the City for Franchisee to utilize the City’s public right-of-ways and to operate its facilities in the City as defined herein. Such grant shall at all times be subject to the laws of the State of Kansas.

“Franchisee” means KCP&L, and its successors, transferees, or assigns.

“Franchise Fee” means the fee imposed by the City on Franchisee solely because of its status in accordance with Article 12, Section 5 of the State Constitution and K.S.A. 12-2001. It shall not include: (a) any tax, fee, or assessment of general applicability including any which are imposed on Franchisee, (b) requirements or charges incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any permit fee or other fee imposed under any valid right-of-way ordinance, or (d) any other fee imposed by federal, State or local law.

“Gross Receipts” means those receipts, less uncollectibles, derived from the sale of electricity for domestic, residential, commercial or industrial purposes used within the City’s corporate limits as they now exist and may be extended during the term of the franchise granted by this Franchise Ordinance not including sales for resale or Franchise Fees paid to the City pursuant to this Section.

“KCC” means the Kansas Corporation Commission.

“KCP&L” means Kansas City Power & Light Company.

“Person” means any natural, governmental or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

“Right-of-Way” means any area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways, boulevards or areas that are dedicated as right-of-way.

“Service” means the provision of electricity to the public and provided through Franchisee’s Facilities.

“State” means the State of Kansas.

“Utility Easement” means, for the purpose of this Franchise Ordinance, an easement in favor of or dedicated to the City for the purpose of providing Franchisee and other utilities access to customers and users of any utility service.

Section 2. Grant. Franchisee is hereby granted the right, privilege and franchise to provide Service to the residents of the City, and in connection therewith, to construct, operate, and maintain its Facilities in, through and along the City’s Right-of-Way and Utility Easements on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee’s right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.

Section 3. Use of Public Right-of-Way and Utility Easements. Franchisee’s Facilities may be located in the Right-of-Way and Utility Easement as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Placement, changes, additions, replacements, maintenance and repairs for the Facilities shall be conducted in compliance with any applicable ordinance and/or permit requirements, except in an emergency when necessary to preserve life, property or to restore electrical service. In the case of emergency work, Franchisee shall use all reasonable attempts as soon as practical to come into full compliance with this requirement following resolution of the emergency. Franchisee and its contractors and agents shall be responsible for obtaining all necessary permits as required by the City for work performed in the Right-of-Way and Utility Easements, as well as paying any associated permit fee. In its use of the Right-of-Way and Utility Easements within the City, Franchisee shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to, the City in the reasonable exercise of its police powers. Such police powers specifically, but not exclusively, referred to are as follows:

(a) Franchisee’s use of Right-of-Way shall in all matters be subordinate to the City’s use of the Right-of-Way. Franchisee shall coordinate with the City or its designee regarding the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City. Such placement, as it relates to City parking lots, area lighting and street lighting shall include, but not be limited to, the installation, removal and/or the relocation of power and light wires and poles in the City, whether or not they are in use or usable in the Franchisee’s Facilities.

(b) All earth, materials, trees, flowers, shrubs, landscaping, sidewalks, paving, crossings, pavement markings, utilities, public improvements or improvements of any kind damaged or removed by Franchisee in its activities under this franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense and to the reasonable satisfaction of the City. However, nothing in this Franchise Ordinance shall require Franchisee to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with Franchisee’s access to any of its Facilities located in a Utility Easement.

(c) All new utility lines shall be placed underground within designated easements in all residential subdivisions, commercial and industrial developments, including infill development on existing lots of

record, as required by City ordinances, regulations or plans within the City of Bonner Springs that are approved after the effective date of this franchise. The subdivider, developer, or owner of the property being developed shall make the necessary arrangements with the Franchisee for the installation of underground electric lines. The difference in cost between placing electric facilities underground and placing electric facilities aboveground shall be borne by the party requesting underground placement of electric facilities or, in the case of a request made by the City, pursuant to the provisions outlined in Franchisee's tariffs.

(d) The provisions of Subsection (c) shall not apply to any of the following:

- (1) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or service to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with this requirement.
- (2) Electric distribution or transmission lines with capabilities of three thousand (3,000) kVA or more.
- (3) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
- (4) Transformers, transformer pads, junction cabinets, or other aboveground facilities normally used with and as a part of an underground distribution system.
- (5) Underground installation of wiring or electrical power equipment shall not be required in flood plain areas, drainage easements, or other drainage ways.

(e) Franchisee shall keep and maintain accurate maps, records and as-built drawings showing the location of all electric facilities installed in the streets, alleys, and other public Right-of-Ways and places within the City. Upon request, or in the event of any significant modification to Franchisee's facilities, Franchisee shall provide to the City maps of Franchisee's distribution system within the corporate limits of the City, subject to the Homeland Security Act and other confidentiality protections under State and federal law, provided Grantee is satisfied that the City will use the maps solely for planning purposes. With respect to such distribution maps provided to the City, the City hereby acknowledges and agrees that: (i) the maps are only current as of their posted revision date; (ii) the City will use the maps exclusively for planning purposes; (iii) the maps are subject to the Homeland Security Act and other confidentiality protections under State or federal law; (iv) the City, its employees, agents and representatives will ensure the confidentiality of the maps is maintained; (v) the City, its employees, agents, and representatives, will not use the maps to circumvent the use of the Kansas One-Call System; and (vi) the City will not provide the maps to any third party. Franchisee shall designate a knowledgeable person(s) familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the Right-of-Way. Such person or such person's designee shall be available on an as needed basis to talk to City officials, as well as attend such meetings as are necessary for the coordination of electric services within the City.

(f) Any pavements, sidewalks or curbing taken up or any and all excavations made shall be done under the supervision and direction of the Bonner Springs Codes Administration Department pursuant to nationally recognized construction codes and local ordinances adopted by the 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.

(g) Franchisee shall relocate or adjust any Facilities in the Right-of-Way for any public improvement project paid for with public funds which causes a need for Franchisee to relocate or adjust any facilities. Such relocation or adjustment shall be performed by Franchisee at its sole expense without expense to the City, its

employees, agents, or authorized contractors and shall be specifically subject to the City's Right-of-Way Usage Code, Adopted by Ordinance No. 2199. In the case of any public improvements which cause a need for Franchisee to relocate or adjust any facilities, Franchisee shall be allowed to relocate or adjust the Franchisee's Facilities within the existing Right-of-Way, or any newly-acquired Right-of-Way. Franchisee will consult with the City on its new proposed location.

For any public improvements initiated by the City, the City bears responsibility to provide a place for Franchisee to relocate its Facilities, either within the City's existing Right-of-Way or a City-acquired Utility Easement, in order for Franchisee to be able to continue to maintain Facilities in conjunction with public improvement projects. Franchisee shall not be required to relocate or adjust any Facilities which are not solely for public use and paid for with public funds and may require the entity or individual requesting the relocation to bear the costs of relocation of facilities. Franchisee shall not be required to relocate or adjust any Facilities more often than once in any five (5) year period without being reimbursed for the costs of such relocation by the City. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time deadline to be mutually agreed upon by the City and Franchisee. Any unavoidable damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its facilities shall be borne by the Franchisee except due to circumstances beyond the control of Franchisee, including due to an emergency situation at another location that requires Franchisee to reallocate personnel and/or resources to address the emergency. All underground facilities relocated or adjusted shall remain underground following the relocation or adjustment of such facilities. All aboveground facilities relocated or adjusted shall remain aboveground following the relocation or adjustment of such facilities. The difference in cost between placing electric facilities underground and placing electric facilities aboveground shall be borne by the party requesting underground placement of electric facilities, or in the case of a request by the City pursuant to the provisions outlined in Franchisee's tariffs.

(h) It shall be the sole responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the Right-of-Way from harm or damage. All issues relative to the locating and identification of Franchisee's Facilities shall be governed by the applicable provisions of K.S.A. 66-1801, et seq. (the "Kansas Underground Utility Damage Prevention Act"). All claims for damages arising out of the Franchisee's alleged violation of the provisions of K.S.A. 66-1801, et seq. shall be resolved in accordance with K.S.A. 66-1811 and Franchisee's applicable Kansas tariff regarding Franchisee's liability for damages.

(i) Franchisee shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair or relocation of Facilities that would require any street closure that reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed or withheld. In addition, all work performed in the travel way or which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.

(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 the applicable present and future federal, State and City laws and regulations, including but not limited to, the most recent editions of the National Electric Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated.

(k) Any request for the moving of buildings or structures on streets, alleys, roads and highways having transmission lines and aerial facilities shall be made in accordance with the provisions of K.S.A. 17-1914, et

seq. Franchisee will, upon a request properly submitted in accordance with K.S.A. 17-1914, et seq., furnish competent workmen or linemen to remove, raise or cut such wires, cables or other aerial equipment. The estimated necessary expense which is anticipated to be incurred by or on behalf of Franchisee for cutting, raising, removing or otherwise facilitating such moving operations person requesting such work to be performed shall be paid to Franchisee by the party requesting that such work be performed before Franchisee performs any such work.

(l) Permission is hereby granted to the Franchisee to trim trees upon and overhanging the Right-of-Way and Utility Easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel certified to perform the work and in accordance with ANSI Z-133.1-2006 and ANSI 300 (Standard Practices for Trees Shrubs and Other Woody Plant Maintenance). for routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. During large storm restoration efforts, Franchisee will use reasonable efforts to keep the City informed concerning the status of its repair operations.

(m) Street Lighting System Repairs: All Street Lighting System repairs shall be conducted in accordance with the Franchisee's then applicable tariffs on file with the KCC. The City shall notify Franchisee of the need for any repairs or replacement of any light fixture, installation or item in that part of the Facilities which serve as a part of the City's street, parking or area lighting system, Franchisee shall initiate such necessary repairs or replacements. All Franchisee initiated repairs shall be completed within a reasonable time, but not to exceed thirty (30) days, except in the event of an emergency situation where federal or State regulation require providing priority to other entities.

(n) Installation of New Street Lighting:

- (1) The Franchisee shall promptly, upon written notice from the Developer, provide street lighting fixtures and services to newly platted subdivisions, in conformance with the City's policies on placement/location of street lights, and in accordance with Franchisee's KCC approved Street Lighting Rate Schedule. In accordance with Franchisee's approved Kansas tariffs, Franchisee's Street Lighting System, as that term is defined in the tariff, now in existence and together with all additions, changes, and removals, shall be owned by Franchisee.
- (2) The Franchisee shall promptly, upon written notice from the City, relocate and/or add street lighting, when necessary to comply with City regulations or policies and for the safety of the public, and in accordance with Franchisee's KCC-approved Street Lighting Rate Schedule.

(o) Power Outage Repairs: the Franchisee shall adhere to the Electric Reliability Requirements established by the KCC in Docket No. 02-GIME-365-GIE for the scope of the Franchisee's entire Electrical System Operations, including, but not limited to:

- (1) The Franchisee shall make reasonable efforts to avoid and prevent interruptions of service.
- (2) When interruptions occur, the Franchisee shall first eliminate any conditions that are hazardous to public safety. The Franchisee shall then restore service within the shortest time practicable, consistent with safety.
- (3) When addressing multiple service interruptions, once free from known hazards, the Franchisee shall give priority to restoring service to critical public service facilities without an operable alternative power supply and restoring the greatest number of customers in the shortest time.

- (4) The Franchisee shall carry on an effective preventative maintenance program and shall be capable of emergency repair work on a scale that is appropriate to its entire scope of operations and to the physical condition of its entire system.

Section 4. Franchise Fee.

(a) Effective for billings by Franchisee for Service from the first day of February 2010 through January 31, 2011, Franchisee shall pay to the City an amount which will be equal to six percent (6%) of its Gross Receipts. Thereafter, for the remaining term of this franchise or until changed by the City, Franchisee shall pay to the City an amount which will be equal to five percent (5%) of its Gross Receipts. The payments herein provided shall be in addition to, not in lieu of all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Such fee shall be payable on or before the last day of each month without invoice or reminder from the City, and shall be based on the Gross Receipts from the previous month. The payments herein provided shall be in lieu of all other taxes, charges, assessments, fees and impositions of general applicability.

(b) The percentage of Gross Receipts payable to the City as provided herein shall be subject to revision at the option of the City on February 1, 2020. Notwithstanding the revision authority contained herein, the percentage of Gross Receipts payable to the City shall not exceed any applicable statutory maximum rate.

(c) The City shall provide copies of annexation ordinances to Franchisee on a timely basis to ensure appropriate Gross Receipts collection from customers within the City's corporate limits. Franchisee's obligation to collect and pay Gross Receipts from customers within an annexed area shall not commence until the later: (i) of sixty (60) days after Franchisee's receipt of the annexation ordinance pertaining to such area, or (ii) such time as is reasonably necessary for Franchisee to identify the customers in the annexed area obligated to pay Gross Receipts.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the Finance Director of the City of Bonner Springs a Gross Receipts report regarding all applicable monthly revenues. The City agrees that such information is confidential and proprietary and agrees that such information shall remain the sole property of Franchisee and agrees that pursuant to K.S.A. 45-221 (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event the City is required by law to disclose such information, the City will provide Franchisee seven (7) days advance notice of its intent to disclose such information and will take such action as may be reasonably required to cooperate with the Franchisee to safeguard such information. The City shall also have access to and the right to examine, within two (2) years of payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records and documents, of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, if the City's acceptance of any payment as determined herein, is found to be deficient, said payments shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition, upon request to access the records of Franchisee for audits, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance.

Section 6. Term. This Franchise Ordinance shall be effective upon its passage by the Governing Body of the City, acceptance by the Franchisee, and its publication in the official City newspaper and continue to be in effect until February 1, 2020. Thereafter, this Franchise Ordinance will renew automatically for ten (10) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

Section 7. Franchise Information. Franchisee shall, at its own expense, annually submit to the City information as to the number of Customers in the City in digital format. However, it is understood and agreed that Franchisee will not be required to provide the identification of the customers.

Section 8. Customer Rates. Franchisee's charges to customers shall comply with all applicable federal and State statutes, regulations, and KCC tariffs in effect on the date of the execution of this Franchise Ordinance or as may be changed by an Order of the KCC. Upon request, Franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. If authorized by State or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

Section 9. Transfer of Franchise. Upon written approval of the KCC, the Franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to a third party, by accepting such assignment, shall be bound by the terms and provisions hereof. 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. Provided, however, assignment of this franchise is subject to the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use such service provider's existing poles and to relocate its services underground, all other service providers using the same poles, including Franchisee when applicable, shall also relocate their Facilities underground at that time; provided, however, that such placement is economically reasonable. The City will not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement will be timely provided to Franchisee.

Section 11. Notification Procedures. Any required or permitted notice under this Franchise Ordinance shall be in writing. Notice to the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice to the Franchisee shall be delivered by first class United States mail or by personal delivery to:

Kansas City Power & Light Company
Community Business Manager
P.O. Box 418679
Kansas City, MO 64141-9679

Any notice concerning a change in the above shall be in writing delivered by first class United States mail or by personal delivery to the City.

City Clerk
City of Bonner Springs
P.O. Box 38
Bonner Springs, KS 66012

Section 12. Indemnification. In providing electric service and in the construction, installation, repair, operation and maintenance of its facilities, Franchisee shall use every reasonable and proper precaution to avoid damage or injury to persons or property. Upon notice by the City, Franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, losses, costs, and expenses, including reasonable costs of litigation and attorney fees, to the extent caused by Franchisee's actions or operations rendered or offered in accordance with this ordinance. Provided, however, that (a) Franchisee shall have no obligation to indemnify the City in cases where (i) a court of competent jurisdiction determines both that the Franchisee is free of causal fault and that the City is causally at fault, or (ii) a claim asserted against both the Franchisee and the City is fully and finally settled with the City, but not the Franchisee, making payment on account of such claim, and (b)

Franchisee's obligations under this Section shall be limited to the proportion of Franchisee's fault (including negligence) for such damage, injury, cost or expense. The City agrees to immediately notify Franchisee via certified mail of any claim, demand, suit, proceeding, and/or action.

Section 13. Liability Insurance Requirement. Franchisee is self-insured and will provide the City proof reasonably acceptable to the City regarding its ability to self-insure.

Section 14. Performance Bond Requirement. Franchisee shall at all times when it does not qualify to be self-insured maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, and filed with the City Clerk in an amount of fifty thousand dollars (\$50,000) for a term consistent with the term of this Franchise Ordinance plus one additional year, conditioned upon Franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period or evidence of self insurance as required by Section 13 hereof shall satisfy this requirement.

Section 15. Reservation of Rights. The City shall have the right to waive any provision of the franchise, except those required by federal or State law, if the City determines: (a) that it is in the public interest to do so, and (b) that the waiver of such provision will not impose undue hardship on Franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver or any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and other right to power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein. Nothing herein shall be deemed to prevent the City or any Person from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Franchisee from its duties to defend against liability or pay any judgment entered against the City or its officers, employee, agents and authorized contractors.

Section 16. Forfeiture of Franchise. In case of a material failure of Franchisee to comply with any of the provisions of this Franchise Ordinance, or if Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Franchisee shall forfeit all rights and privileges granted by this franchise 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:

(a) For violations concerning the use of the Right-of-Way and/or Utility Easements as described in Section 3 of this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. The City's ordinance to terminate this franchise shall be final and binding against Franchisee unless Franchisee files an action in the Wyandotte County District Court, Wyandotte County, Kansas within thirty (30) days after passage of the Ordinance to determine whether the ordinance is effective to terminate the franchise. If the Franchisee does file such an action, then the court's final determination on the action shall determine the Ordinance's effective date for

termination. If Franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.

(b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee 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 a period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 90-day period set forth above, nothing contained herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.

In addition to any other remedy available herein or and at law or equity, Franchisee and the City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such Franchise Ordinance and/or to abate nuisances maintained in violation thereof.

Section 17. Revocation of Franchise. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the Franchisee as a result of and in response to any of the following events or reasons.

(a) Any provision of this Franchise Ordinance is adjusted by a Court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise as to cause the same to become null and void; or

(b) Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or after or upon being granted, Franchisee commits such an act against the City.

To revoke this franchise in accordance with the provision of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance.

Section 18. Miscellaneous Provisions.

(a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide services within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other Persons. However, no such additional franchise shall in any way affect the rights or obligations of Franchisee.

(b) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof or any administrative agency thereof, having jurisdiction and in effect on the effective date the Franchise Ordinance. In addition, Franchisee shall meet or exceed the most stringent

technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the franchise in accordance with the provisions of this Franchise Ordinance.

(c) Special Lighting Agreements. Franchisee shall promptly, upon written notice from the City, negotiate the establishment of special lighting agreements within the City's boundaries which may require, among other things, painted light or power poles, special and/or additional power receptacles and lighting fixtures for special occasions. All such agreements shall provide for the reasonably agreed upon additional expense, if any, to be paid for by the City.

(d) Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided hereto.

(e) Force Majeure. No provision within this Franchise Ordinance shall be construed as a guarantee on the part of Franchisee 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 Franchisee shall not be deemed a waiver or forfeiture of the rights and obligations of the parties hereto.

(f) Severability. If any section, subsection, sustenance, clause, phrase, or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Repeal of Other Ordinances. Ordinance Nos. 1724 and 1726 are hereby repealed, and set aside; provided, that this Franchise Ordinance shall not take effect or become in force until the requirements for adopting a Franchise Ordinance under Kansas statutes have occurred.

Section 20. Effective Date and Acceptance. 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 the first day of the first month after written acceptance by the Company.

(01-10 2010)

ORDINANCE NO. 1762

AN ORDINANCE AMENDING ORDINANCE NO. 1489, A CABLE TELEVISION FRANCHISE AGREEMENT, TO ALLOW THE CITY OF BONNER SPRINGS, KANSAS ("CITY") AND KANSAS CITY CABLE PARTNERS, A COLORADO GENERAL PARTNERSHIP DOING BUSINESS AS AMERICAN CABLEVISION ("AMERICAN CABLEVISION"), TO INCORPORATE TECHNICAL ADVANCEMENTS IN THE CABLE INDUSTRY.

Section 1. The agreement between the City and American Cablevision modifying certain provisions the franchise granted by Ordinance No. 1489 is approved in its entirety. The agreement shall be effective upon passage and execution of the agreement by both parties, and American Cablevision shall have the right, authority, power and permission to establish, acquire, maintain and operate a cable communications system within the City and to furnish, render and sell cable service and additional services to the residents of the City, for a term through December 31, 2011, subject to compliance with all the requirements of Ordinance No. 1489 as they existed as of this date and as modified herein.

(12-16-96)

ORDINANCE NO. 2078

AN ORDINANCE GRANTING TO WESTAR ENERGY, INC. AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF BONNER SPRINGS, KANSAS, AND REPEALING ORDINANCES 1362, 2063 and 2074.

Section 1. Definitions. for the purpose of this Franchise Ordinance, the following words and phrases and their derivations shall have the following meaning:

"City" means City of Bonner Springs, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Bonner Springs as now constituted or as shall hereafter exist.

"Facilities" means 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 selling and distributing within the City electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes.

"Franchise Ordinance" means this ordinance passed to grant the franchise to Franchisee. This ordinance shall operate as a grant of permission by the City for Franchisee to utilize the City's public right-of-ways and to operate its facilities in the City as defined herein. Such grant shall at all times be subject to the laws of the State

"Franchisee" means Westar Energy, Inc., and its successors, transferees, or assigns.

"Franchise Fee" means the fee imposed by the City on Franchisee solely because of its status in accordance with Article 12, Section 5 of the State constitution and K.S.A. 12-2001. It shall not include: (a) any tax, fee, or assessment of general applicability including any which are imposed on Franchisee: (b) requirements or charges incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any permit fee or other fee imposed under any valid right-of-way ordinance, or (d) any other fee imposed by federal, State or local law.

"Gross Receipts" means those receipts, less un-collectibles, derived from the sale of electricity for domestic, residential, commercial or industrial purposes used within the City's corporate limits as they now exist and may be extended during the term of the franchise granted by this Franchise Ordinance.

"KCC" means the Kansas Corporation Commission.

"Person" means any natural, governmental or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

"Right-of-way" means any area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways, boulevards or areas that are dedicated as right-of-way.

"Service" means the provision of electricity to the public and provided through Franchisee's Facilities.

"State" means the State of Kansas.

"Subscriber" means any person who receives Service from Franchisee.

"Utility Easement" means, for the purposes of this Franchise Ordinance, an easement owned by or dedicated to the City for the purpose of providing Franchisee and other utilities access to customers and users of any utility service.

Section 2. Grant. Franchisee is hereby granted the right, privilege and franchise to provide Service to the residents of the City, and in connection therewith, to construct, operate, and maintain its Facilities in, through and along the City's Right-of-Way and Utility Easements on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee's right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.

Section 3. Use of Public Right-of-Way and Utility Easements. Franchisee's Facilities may be located in the right-of-way and Utility Easement as now constructed and as further authorized by the City in accordance with all applicable laws statutes and/or ordinances. Placement, changes, additions, replacements, maintenance and repairs for the Facilities shall be conducted in compliance with any applicable ordinance and/or permit requirements. Franchisee and its contractors and agents shall be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and Utility Easements, as well as paying any associated permit fee. In its use of the right-of-way and Utility Easements within the City, Franchisee shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any; appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers. Such police powers specifically, but not exclusively, referred to are as follows:

(a) Franchisee's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. Franchisee shall coordinate with the City or its designee the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City. Such placement, as it relates to City parking lot, area lighting and street lighting shall include, but not be limited to, the installation, removal and/or the relocation of power and light wires and poles in the City, whether or not they are in use or usable in the Franchisee's Facilities.

(b) All earth, materials, trees, flowers, shrubs, landscaping, sidewalks, paving, crossings, pavement markings, utilities, public improvements or improvements of any kind damaged or removed by Franchisee in its activities under this franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense and to the reasonable satisfaction of the City. However, nothing in this Franchise Ordinance shall require Franchisee to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with Franchisee's access to any of its Facilities located in a Utility Easement.

(c) All utility lines shall be placed underground within designated easements in all residential subdivisions, commercial and industrial developments, including infill development on existing lots of record, as required by City ordinances, regulations or plans within the City of Bonner Springs that are approved after the effective date of this franchise. The subdivider, developer or owner of the property being developed shall make the necessary arrangements with the Franchisee for the installation of underground electric lines. Upon reasonable request of the City, Franchisee shall provide maps, records and drawings showing the accurate location of its Facilities.

The provisions of this Subsection shall not apply to any of the following:

- (1) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or service to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with this requirement.
- (2) Electric distribution or transmission lines with capabilities of three thousand (3,000) kVA or more.
- (3) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
- (4) Transformers, transformer pads, junction cabinets, or other above-ground facilities normally used with and as a part of an underground distribution system.
- (5) Underground installation of wiring or electrical power equipment shall not be required in flood plain areas, drainage easements, or other drainage ways.

(d) Franchisee shall keep and maintain accurate maps, records and as-built drawings showing the location of all electric facilities installed in the streets, alleys, and other public right of ways and places within the City. Annually, Franchisee shall provide to the City a current set of plans / maps showing Franchisee's equipment and Facilities used in the transmission and distribution of electric energy within the right-of-way or easements of the City in a commonly agreed upon industry standard format including showing all street light locations with pole numbers. Franchisee shall designate a knowledgeable person familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the right-of-way. Such person or such person's designee shall be available on a scheduled and as needed basis in the City to talk to City officials and citizens, including regular City scheduled utility coordinating and development review team and staff meetings, as well as attend other such meetings as are necessary for the coordination of electric services within the City.

(e) Except in the case of an emergency, not less than three (3) working days prior to construction or relocation of any Facilities in the right of way, Franchisee shall obtain a Right of Way permit from the City in accordance with City ordinances and regulations.

(f) Franchisee shall relocate or adjust any Facilities in the right-of-way for any public improvement which causes a need for Franchisee to relocate or adjust any facilities. Such relocation or adjustment shall be performed by Franchisee 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. In the case any public improvement causes a need for Franchisee to relocate or adjust any Facilities. Franchisee shall be allowed to relocate or adjust the Franchisee's Facilities within the existing right - of - way, or any newly acquired right-of-way, unless such relocation or adjustment within the said right-of-way is deemed impractical by the City. In the event of such determination by the City, Franchisee may relocate or adjust its facilities to lie within other existing right-of-way, or may obtain private easement, all at the Franchisee's cost. Franchisee shall not be required to relocate or adjust any Facilities more often than once in any five (5) year period without being reimbursed for the costs of such relocation by the City. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time deadline set forth in any request by the City for such relocation or adjustment. Said time deadline will be mutually agreed upon by the City and Franchisee. Any damages suffered by the City, or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities shall be borne by Franchisee.

(g) It shall be the sole responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the right-of-way from harm or damage. All issues relative to the locating and identification of Franchisee's Facilities shall be governed by the applicable provisions of K.S.A. 66-1801, et seq. (the "Kansas Underground, Utility Damage Prevention Act"). Franchisee shall be responsible to the City and its authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Franchisee to perform its obligations under this Franchise ordinance except to the extent the damaged party is responsible for the harm or damage resulting from its negligence or intentionally caused harm.

(h) Franchisee shall notify the City not less than three (3) working 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 (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.

(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 the applicable present and future federal, State and City laws and regulations, including but not limited to, the most recent editions of the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated.

(j) Franchisee will, upon a request properly submitted in accordance with K.S.A. 17-1914, et seq., furnish competent workmen or linemen to remove, raise or cut such wires, cables or other aerial equipment as will be necessary to facilitate moving of any house, building, derrick or other structure, the height of which when loaded for movement equals or exceeds sixteen (16) feet from the surface of the roadway. The estimated necessary expense which is anticipated to be incurred by or on behalf of Franchisee for cutting, raising, removing or otherwise facilitating such moving operations person requesting such work to be performed shall be paid to Franchisee by the party requesting that such work be performed before Franchisee performs any such work. Additionally, Franchisee may require the requesting party to furnish Franchisee with appropriate bond or other surety agreement insuring the payment of all expenses incurred as a result of such moving operations.

(k) Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel certified to perform the work and in accordance with ANSI Z-133.1.1994 and ANSI 300 (Standard Practices for Trees Shrubs and Other Woody Plant Maintenance). for routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. Franchisee or its contractor will obtain a ROW permit to do the work. During large storm restoration efforts, Franchisee will use reasonable efforts to keep the City informed concerning the status of its repair operations.

(l) Street Lighting System Repairs: Within thirty (30) days of notification of the need for any repairs or replacement of any light fixture, installation or item in that part of the Facilities which serves as a part of the City's street, parking or area lighting system, Franchisee shall initiate such necessary repairs or replacements. Such time frame shall commence upon the receipt by Franchisee of written notice from the City that repairs are required. All Franchisee initiated repairs shall be completed within a reasonable period of time. In the event the Franchisee fails to adhere to such time frame, subject to KCC Tariff requirements

and limitations, the Franchisee shall credit or rebate to the City the equivalent value of the daily cost to the City, if any, from the date of notification by the City, of the unrepaired lighting system fixture or installation.

(m) Installation of New Street Lighting:

- (1) The Franchisee shall promptly, upon written notice from the Developer, provide street lighting fixtures and service to newly platted subdivisions, in conformance with the City's policies on placement / location of street lights, and in accordance with Franchisee's KCC-approved Street Lighting Rate Schedule.
- (2) The Franchisee shall promptly, upon written notice from the City, re-locate and or add street lighting, when necessary or requested by the City, so long as these changes are necessary to comply with City regulations or policies and for the safety of the public, and in accordance with Franchisee's KCC-approved Street Lighting Rate Schedule.

(n) Power Outage Repairs: the Franchisee shall adhere to the Electric Reliability Requirements established by the KCC, including, but not limited to:

- (1) The Franchisee shall make reasonable efforts to avoid and prevent interruptions of service.
- (2) When interruptions occur, the Franchisee shall first eliminate any conditions that are hazardous to public safety. The Franchisee shall then restore service within the shortest time practicable, consistent with safety.
- (3) When addressing multiple service interruptions, once free from known hazards, the Franchisee shall give priority to restoring service to critical public service facilities without an operable alternative power supply and restoring the greatest number of customers in the shortest time.
- (4) The Franchisee shall carry on an effective preventive maintenance program and shall be capable of emergency repair work on a scale that is appropriate to its scope of operations and to the physical condition of its system.

Section 4. Franchise Fee.

(a) Effective for billings by Franchisee for Service from the first day of March 2005 through December 31, 2005, Franchisee shall pay to the City an amount which will be equal to five and nine-tenths percent (5.9%) of its Gross Receipts. Thereafter, for the remaining term of this franchise or until changed by the City, Franchisee shall pay to the City an amount which will be equal to five percent (5%) of its Gross Receipts. The payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Such fee shall be payable on or before the last day of each month without invoice or reminder from the City, and shall be based on the Gross Receipts of the previous month.

(b) The percentage of Gross Receipts payable to the City as provided herein shall be subject to revision at the option of the City on March 1, 2015. Notwithstanding the revision authority contained herein, the percentage of Gross Receipts payable to the City shall not exceed any applicable statutory maximum rate.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the Finance Director of the City of Bonner Springs a Gross Receipts Report regarding all applicable monthly revenues. The City agrees that such information is confidential and proprietary and agrees that such information shall remain the sole property of Franchisee and agrees that pursuant to K.S.A. 45-221(18), as amended, such

information does not constitute public records subject to K.S.A. 45-218., as amended. In the event the City is required by law to disclose such information, the City will provide Franchisee seven (7) days advance notice of its intent to disclose such information and will take such action as may be reasonably required to cooperate with the Franchisee to safeguard such information. The City shall also have access to and the right to examine, within two (2) years of and payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records and documents, of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, if the City's acceptance of any payment as determined herein, is found to be deficient, said payment shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition, upon request to access the records of Franchisee for audits, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance.

Section 6. Term. This Franchise ordinance shall be effective upon its passage by the Governing Body of the City, acceptance by the Franchisee, and its publication in the official City newspaper and continue to be in effect until March 1, 2015. Thereafter, this Franchise ordinance will renew automatically for ten (10) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

Section 7. Franchisee Information. Franchisee shall, at its own expense, annually submit to the City the following reformation:

(a) Bonner Springs Gross Receipts Report (as referenced by Section 5 herein);

(b) A summary of the previous year's development of Facilities, including but not limited to the location of Facilities during the year and Franchisee's plan of development of Facilities for the next year. This requirement may be met by a meeting in person between Franchisee's designated representative and the City's Public Works Director, Utility Director and Plans and Codes Department to discuss these issues: and

(c) Information as to the number and address of subscribers in the City in digital format. Note: this requirement does not include giving the identification of the subscribers.

Section 8. Subscriber Rates. Franchisee's charges to subscribers shall comply with all applicable federal and State statutes and regulations in effect on the date of the execution of this Franchise Ordinance. Upon request, Franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. If authorized by State or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

Section 9. Transfer of Franchise. Upon written approval of the KCC, the Franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any Person, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. 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. Provided, however, assignment of this franchise is subject to the prior written consent of the City, which consent shall not be unreasonably withheld.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use such service provider's existing poles and to relocate its services underground, all other service providers using the same poles, including Franchisee when applicable, shall also relocate their Facilities underground at that time; provided, however, that such placement is economically reasonable.

The City will not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement will be timely provided to Franchisee.

Section 11. Notification Procedure. Any required or permitted notice under this Franchise Ordinance shall be in writing. Notice to the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice to the Franchisee shall be delivered by first class United States mail or by personal delivery to: Westar Energy Inc., Director of Operations, 2720 2nd Avenue, Leavenworth, KS 66048

Any notice concerning a change in the above shall be in writing delivered by first class United States mail or by personal delivery to the City. City Clerk, City of Bonner Springs, P.O. Box 38, Bonner Springs, KS 66012

Section 12. Indemnification. Upon notice by the City, Franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgments by other Persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by Franchisee's actions or operations rendered or offered in accordance with this ordinance, the City agrees to immediately notify Franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to Franchisee. Nothing herein shall be deemed to prevent the City or any Person from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City or its officers, employee, agents and authorized contractors.

Section 13. Liability Insurance Requirement. Franchisee is self-insured and will provide the City proof reasonably acceptable to the City regarding its ability to self-insure.

Section 14. Performance Bond Requirement. Franchisee shall at all times when it does not qualify to be self-insured maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, and filed with the City Clerk in an amount of fifty thousand dollars (\$50,000) for a term consistent with the term of this Franchise Ordinance plus one additional year, conditioned upon Franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period or evidence of self insurance as required by Section 13, hereof shall satisfy this requirement.

Section 15. Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or State law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will not impose undue hardship on Franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

Section 16. Forfeiture of Franchise. In case of a material failure of Franchisee to comply with any of the provisions of this Franchise Ordinance, or if Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Franchisee shall forfeit all rights and

privileges granted by this Franchise 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:

(a) For violations concerning the use of the right-of-way and/or Utility Easements as described in Section 3 of this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such Franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such Franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.

(b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee 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 period the City deems that the conditions of such Franchise have not been complied with by Franchisee and that such Franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such Franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 90-day period set forth above, nothing contained herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.

(c) If within thirty (30) days after the effective date of an ordinance to terminate the franchise in accordance with Section 16(a) or 16(b) herein, the Franchisee shall not have instituted an action in the District Court of Wyandotte County, Kansas to determine whether or not the Franchisee has violated the terms of such Franchise and that the Franchise is subject to cancellation by reason thereof, such Franchise shall be cancelled and terminated at the end of such 30-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such Franchise is subject to cancellation by reason of the violation of its terms, such Franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, the City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such Franchise Ordinance and/or to abate nuisances maintained in violation thereof.

Section 17. Revocation of Franchise. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this Franchise and all rights and privileges of the Franchisee as a result of and in response to any of the following events or reasons.

(a) Any provision of this Franchise Ordinance is adjudged by a Court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this Franchise as to cause the same to become null and void:
or

(b) Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this Franchise herein conferred, or after or upon being granted, Franchisee commits such an act against the City.

To revoke this Franchise in accordance with the provisions of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such Franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate such Franchise, the Franchisee shall not have instituted an action in the District Court of Wyandotte County, Kansas to determine whether or not the Franchise was appropriately terminated in accordance to the provisions of this Section and is subject to cancellation by reason thereof, such Franchise shall be cancelled and terminated at the end of such thirty-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then if the court finds that such Franchise is subject to cancellation by the reason addressed by this Section, such Franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Section 18. Miscellaneous Provisions.

(a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other Franchises to other Persons. However, no such additional Franchise shall in any way affect the right or obligations of Franchisee.

(b) Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this Franchise Ordinance, or for the failure of the City to have the authority to grant all, or any part of the Franchise Ordinance granted. In the event Franchisee accepts the provisions of this ordinance in writing, the Franchisee:

- (1) Expressly acknowledges that it accepts the Franchise Ordinance granted in reliance on its independent and personal investigation and understanding of the power and authority of the City to grant the Franchise conferred upon Franchisee,
- (2) Expressly acknowledges by its acceptance of this Franchise Ordinance that it has not been induced to enter into this Franchise upon an understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise Ordinance not expressed herein, and (iii) expressly acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions of this Franchise Ordinance and is willing to and does accept, all of the risk directly or indirectly attendant to its provisions, terms, and conditions.

(c) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof or any administrative agency thereof, having jurisdiction and in effect on March 1, 2005. In addition, Franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Unless authorized in writing by the KCC and the City, Franchisee

shall not adopt or utilize a rate structure for City parking lots and area lighting that differs from the rate structure adopted or utilized for the City's street lighting. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the Franchise in accordance with the provisions of this Franchise Ordinance.

(d) Special Lighting Agreements. Franchisee shall promptly, upon written notice from the City, negotiate the establishment of special lighting districts within the City's boundaries which may require, among other things, painted light or power poles, special and/or additional power receptacles and lighting fixtures for special occasions. All such agreements shall provide for the reasonably agreed upon Franchisee's additional expense, if any, to be incorporated in and paid for by the City by a modification in the City's street lighting rate structure unless forbidden by ruling from the KCC.

(e) Attachment to Poles. Nothing in this Franchise Ordinance shall be construed to require or permit any telephone, television cable, electric light or power wire attachments by either the City or Franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments. However, notwithstanding any provision in this Franchise and subject to Franchisee approval that the proposed City activity does not violate the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated. Franchisee authorizes the City to affix, at the City's cost, but with no charge assessed by the Franchisee to the City, signs, flags, bunting, decorations, cables and all necessary paraphernalia on Franchisee's light or power poles which give notice to or are, in the City's sole opinion, appropriate for City sponsored or authorized events, such as seasonal decorations or for general decorative or informational purposes. In the event the City utilizes the authority granted hereto, it will give Franchisee seven (7) days notice of its intent to do so, describing the paraphernalia in general terms along with its locations and time period in which they will remain on the poles.

(f) Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this Franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided hereto.

(g) Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods war and other disasters beyond Franchisee's or the City's control.

(h) Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Repeal of Other Ordinances. Ordinance Nos. 1362, 2063 and 2074 are hereby repealed, and set aside; provided, that this Franchise Ordinance shall not take effect or become in force until the requirements for adopting a Franchise Ordinance under Kansas Statutes have occurred.

Section 20. Effectiveness. This Franchise Ordinance shall take effect upon its final passage by the Governing Body and its publication in the official City newspaper.

Section 21. Acceptance. In the event the Franchise granted by this Franchise Ordinance becomes effective as provided in Section 20 herein, and the Franchisee accepts its terms in writing within sixty (60) days after its effective date, this Franchise shall become a contract between the City and the Franchisee. In the event this Franchise is not timely accepted in writing by the Franchisee, the Franchisee shall be bound by its requirements for as long (during its Term) as the Franchisee provides its Services to the residents of the City.

(2-14-2005)

ORDINANCE NO. 2376

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF BONNER SPRINGS, COUNTY OF WYANDOTTE, KANSAS TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

Be it Ordained by the Governing Body of the City of Bonner Springs, Wyandotte County, Kansas:

ARTICLE I - Definitions

For the purpose of this Franchise, the following words and phrases shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "CCF" shall mean a measurement of natural gas equal to one hundred (100) cubic feet. It is assumed for purposes of this Franchise Ordinance that one CCF equals one hundred thousand (100,000) British Thermal Units.

1.2 "City" refers to and is the City of Bonner Springs, Wyandotte County, Kansas, and includes the territory as currently is or may in the future be included within the boundaries of the City of Bonner Springs.

1.3 "Company" refers to and is Atmos Energy Corporation and its successors and assigns.

1.4 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the City.

1.5 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the City and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

1.6 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured or any mixture thereof.

1.7 "Governing Body" refers to and is the Governing Body of the City of Bonner Springs.

1.8 "Gross Receipts" shall mean all cash, credit refunds, property rights in exchange for gas service, late charges and forfeited discounts, and all fees, or other consideration derived directly or indirectly by the Company for natural gas sold, transported, or delivered within the present or future corporate boundaries of the City of Bonner Springs. Gross Receipts shall be adjusted or reduced by any uncollectible sales or bad debt expenses. Gross Receipts shall also include all fees and charges received by the Company for transportation and delivery within its distribution system of natural gas purchased by non-residential consumers within the City from sources and suppliers other than the Company.

1.9 "Kansas Corporation Commission" and/or "KCC" refers to and is the State Corporation Commission of the State of Kansas or other authority succeeding to the regulatory powers of the KCC.

1.10 "MCF" shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units. Further, for purposes of this Franchise Ordinance, the City will accept Franchise fee payments from Franchisee expressed by converting MCF of natural gas to comparable CCF of natural gas.

1.11 "Right-of-Way" shall mean present and future streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said City.

1.12 "Settlement Prices" shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth (15th) day of each month as published daily in the *Wall Street Journal* (WSJ), or other nationally recognized publication, on the following business day (or the next day in which a Settlement Price is published).

1.13 "Transport Gas" shall mean all natural gas transported by the Company, but not sold by the Company, to any consumer or user within the City through the Facilities of the Company in the Right-of-Way.

1.14 "Volumetric Rate" shall mean that sum measured in cents per CCF as determined by the Company (and confirmed by the City) as may be hereafter adjusted according to the provisions of this Section. The Volumetric Rate Calculation Form incorporated herein as Attachment A 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 preceding year and ending in June of the preceding year. For the fifteenth (15th) day of each month during said twelve (12) month period, the Settlement Prices for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by 5% to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rate shall be calculated by the Company in accordance with the procedures in Attachment A and filed with the City Clerk by July 31 of each year.

ARTICLE II - Grant of Franchise

2.1 Grant of Franchise. The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the right to furnish, sell and distribute gas to the City and to all persons, businesses and industries within the City, the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide gas to the City and to all persons, businesses and industries within the City and in the territory adjacent thereto; and the right to make reasonable use of Right-of-Way as may be necessary to carry out the terms of the Ordinance.

2.2 Term of Franchise.

A. The term of this Franchise shall be for a period of five (5) years from the date of its final passage and approval; provided, this Franchise and all rights and privileges herein provided shall be extended for three (3) successive periods of five (5) years unless the City by notice given to the Company and by Ordinance duly enacted and approved at least ninety (90) days before the end of each such term of five (5) years, shall declare such termination effective.

B. Upon written request of either the City or the Company, the Franchise shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, State or local law, regulation, or order which materially affects any rights or obligation of either the City or Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City.

2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City.

3. Action by the KCC with respect to this Franchise Ordinance and any amendments thereto, which precludes Company from recovering from its customers any costs or fees provided for hereunder.

4. Any other material and unintended change or shift in the economic benefit the City or the Company relied upon and anticipated upon entering into this Franchise.

5. The expiration of any five year period as measured from the date of final passage and approval.

ARTICLE III - Franchise Fee

3.1 Franchise Fee. In consideration for the grant of this Franchise, the Company shall collect and remit to the City:

A. A sum equal to five percent (5%) of the Gross Receipts received from the distribution of natural gas in the City; and

B. A sum equal to the Volumetric Rate multiplied by the number of CCF of Transport Gas.

The sums in A and B above shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

The Franchise fee prescribed herein shall be paid to the City quarterly on or before the 30th day after the end of each calendar quarter after the effective date of the Franchise. Payments at the beginning and end of the Franchise shall be prorated. Concurrent with submission of the payment described herein, the Company shall also submit an itemized report that shall detail the Gross Receipts and the volume of Transport Gas as defined herein, along with the calculation of the payment. Payments received after the due date shall be Subject to interest charged at the minimum interest rate paid on security deposits authorized by K.S.A. 12-822, its successor statute or any amendments thereto, as ordered and published by the Commission at the time the payment is made. Payments due and owing as the result of an audit of Franchise fee payments shall be Subject to interest charged at the minimum interest rate paid on security deposits authorized by K.S.A. 12-822, its successor statute or any amendments thereto, as ordered and published by the Commission at the time the payment is made; 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 accounting rendered to the City by the Company is found to be incorrect, 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 by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, and documents and all of its contracts and agreements as may be reasonably necessary for an effective compliance review of this Franchise Ordinance shall at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting, or for any other lawful purpose. Notwithstanding the obligations herein, the Company shall have

the right to request the reasonable protection of proprietary information of the Company so long as such request does not unreasonably frustrate the purposes of this Subsection. The Company shall have no obligation, however, to make payment upon Transport Gas for which the Company has not been paid. The Company shall provide notice to the City of such delinquent accounts within ninety (90) days and the City shall hold the Company harmless from the cost or liability for the collection of Franchise fees and late payment charges on such delinquent accounts.

3.2 Franchise Fee Payment in Lieu of Other Fees. The payments and compensation herein provided shall be in lieu of all other bonds, licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales, and excise taxes or charges made for privileges, which are not connected with the natural gas business, will be imposed on the Company and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Company by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to any street, alley, or other public place shall be deemed a part of the compensation paid in Section 2 and shall not be separately assessed or collected by the City; in no event, however, shall this provision be interpreted to waive the requirement of notice to the City and the procedural requirements of such ordinance.

ARTICLE IV - Conduct of Business

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Kansas.

4.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the KCC. Said tariffs shall be available for inspection by the public.

4.3 Compliance with KCC Regulations. The Company shall comply with all rules and regulations adopted by the KCC.

4.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the KCC.

4.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the KCC are controlling over any inconsistent provision in this Franchise dealing with the same subject matter.

ARTICLE V - Construction, Installation & Operation of Company Facilities

5.1 Location of Facilities. Subject to the provisions of this Contract Franchise, Company shall have the right to construct, maintain, and operate its Facilities along, across, upon and under the public Right-of-Way. Such facilities shall be so constructed and maintained as to not obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of the public Right-of-Way by other utilities, Company facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. The Company's use of the public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The Governing Body acknowledges that as of the date of this Ordinance, the Company and its facilities are in compliance with the provisions of this Section 5.1.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable State and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City.

5.3 Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense that were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the City. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

5.4 Service to New Areas. If during the term of this Franchise the boundaries of the City are expanded, the Company may, subject to the terms of Company's applicable tariff provisions for main extensions, extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this Franchise agreement. The City will promptly notify Company in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Company may reasonably require in ascertaining whether there exist any customers of Company receiving natural gas service in said annexed area. To the extent there are such Company customers therein, then the Gross Receipts of Company derived from the sale and distribution of natural gas to such customers shall become Subject to the Franchise fee provisions hereof effective on the first day of Company's billing cycle immediately following Company's receipt of the Annexation Notice. the failure by the City to advise Company in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Company from any obligation to remit any Franchise fees to City based upon Gross Receipts derived by Company from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Company in accordance with the terms hereof.

5.5 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

5.6 Supply and Quality of Service. The Company shall make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the City.

5.7 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the City, including but not limited to, Sections 12.08 and 12.16 of the Bonner Springs Municipal Code.

5.8 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times at Company's principal offices where said records are kept and maintained. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

ARTICLE VI - Assignment: Saving Clause

6.1 Assignment. Nothing in this Ordinance shall prevent the Company from assigning its rights under this Franchise.

6.2 Saving Clause. If any portion of this Franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby.

ARTICLE VII - Force Majeure

7.1 This non-exclusive Franchise, grant, and privilege is granted 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. However, Company shall not be required to perform any covenant or obligation in this Ordinance, or to be liable in damages to City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party. An "act of God" or "force majeure" is defined for purposes of this Ordinance as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Company or which by the exercise of due diligence Company is unable wholly or in part, to prevent or overcome.

ARTICLE VIII - Indemnity & Hold Harmless

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

8.2 City Indemnity. Company 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 Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public Right-of-Way.

8.3 City Negligence. The indemnity provided by this Subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company

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

8.4 Notice. Company and City shall promptly advise the other in writing of any known claim or demand against Company or the City related to or arising out of Company's or the City's activities in the public Right-of-Way.

ARTICLE IX - Insurance Requirements

9.1 Minimum Insurance. During the term of this Contract Franchise, Company shall obtain and maintain insurance coverage at its sole expense, with insurers maintaining an AM Best rating of A-:X or higher and which are authorized or permitted to do business in the State of Kansas. Should Company elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Company shall provide not less than the following insurance:

a) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed equal to the amount required by Kansas law;

b) Employers' liability limit with a limit of \$1,000,000 each accident/disease/policy limit law; and

c) 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 Six Million Dollars (\$6,000,000) combined single limit per occurrence for bodily injury and property damage liability, including personal Injury, the City shall be included as an additional insured as its interest may appear with respect to liability arising from Company's operations under this Contract Franchise.

9.2 Self Insurance. As an alternative to the requirements of Subsection 9.1, Company may demonstrate to the satisfaction of the City that it is self-insured and as such Company has the ability to provide coverage in an amount not less than Ten Million Dollars (\$10,000,000) 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 Company, or alleged to so have been caused or occurred. The Company's self-insurance of its obligations and risks undertaken pursuant to this Franchise will be under a Company approved plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

9.3 Insurance Certificate. Company shall, as a condition of this Contract Franchise, prior to the commencement of any work and within ten (10) days of any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force. The Company shall endeavor to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change to City. Upon request by the City, Company shall make Company's policies or parts thereof as requested available for the City's review. Upon completion of such review, the policies will be returned to the Company.

ARTICLE X - Revocation & Termination

10.1 In case of failure on the part of Company to comply with any of the material provisions of this Franchise, or if Company should do or cause to be done any act or thing prohibited by or in violation of the material terms of this Franchise, Company shall forfeit all rights, privileges and Franchise granted herein,

and all such rights, privileges and Franchise hereunder shall cease, terminate and become null and void, and this Franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Franchise, it shall first serve a written notice upon Company, setting forth in detail the neglect or failure complained of, and Company shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Franchise by an affirmative vote of the Governing Body present at the meeting and voting, setting out the grounds upon which this Franchise is to be revoked and terminated; provided, to afford Company due process, Company shall first be provided reasonable notice of the date, time and location of the Governing Body's consideration, and shall have the right to address the Governing Body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the Governing Body believes the Company has in good faith timely commenced its cure and is diligently pursuing the completion of the same, Company shall be given a reasonable additional period of time to complete its cure. Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the Governing Body to revoke and terminate this Franchise, Company shall have thirty (30) days to appeal such decision to the District Court of Wyandotte County, Kansas. This Franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Company has instituted such an appeal. If Company does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Company to comply with any of the provisions of this Franchise or the doing or causing to be done by Company of anything prohibited by or in violation of the terms of this Franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Company is due to any cause or delay beyond the control of Company or to bona fide legal proceedings.

ARTICLE XI - Rights and Duties of Company Upon Expiration of Franchise

11.1 Upon expiration of this Franchise Ordinance, whether by lapse of time, by agreement between the City and the Company, or by forfeiture thereof, the Company shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business within a reasonable time and after such expiration, but in such event, it shall be the duty of the Company, immediately upon and during such removal, to restore the streets, avenues, alleys, parks, and other public ways and grounds from which said pipes, laterals, and other equipment have been removed, to the equivalent condition as the same were before said removal was effected.

ARTICLE XII - Failure to Enforce

12.1 The failure of either the City or the Company to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Ordinance shall not be construed as a waiver or relinquishment of 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 Company unless said waiver or relinquishment is in writing and signed by both the City and the Company subject to the provisions of the laws of the State of Kansas.

ARTICLE XIII - Payment of Costs

13.1 The Company shall be responsible for payment of all costs and expense of publishing this Franchise Ordinance and any amendments thereof.

ARTICLE XIV - Point of Contact and Notices

14.1 Company shall at all times maintain with the City a point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said contact's name, address, telephone number, fax number and email address. Emergency notice by Company to the City may be made by telephone to the City Clerk. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

The City:

City of Bonner Springs, Kansas
Attn: City Clerk
Fax: 913-441-1366 Phone: 913-667-1716
Email: bonnercityclerk@bonnersprings.org

Company:

Atmos Energy Corporation
Attn: Manager Public Affairs

or, to replacement addresses that may be later designed in writing.

ARTICLE XV - Acceptance of Terms by Company

15.1 Within thirty (30) days after the final passage, approval, and publication of this ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance 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 Company and the City.

ARTICLE XVI - Repeal of Conflicting Ordinances

16.1 Ordinance No. 1670, which heretofore granted a non-exclusive Franchise to the Company, and which became a contract between the City and the Company in accordance with its terms and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled repealed and set aside as of the effective date of this Franchise Ordinance.

ARTICLE XVII - Effective Date of Ordinance

17.1 This Franchise Ordinance shall take effect and be in force from and after its passage and approval by the Governing Body of the City, conditioned upon its acceptance by the Company and publication in the official City newspaper

(10-14-201)