

APPENDIX B - FRANCHISES

ORDINANCE NO. 430

AN ORDINANCE, GRANTING TO THE KANSAS POWER AND LIGHT COMPANY, (ALSO KNOWN AS KPL GAS SERVICE), A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS A NATURAL GAS FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Udall, Kansas, and its inhabitants, there is hereby granted to The Kansas Power and Light Company, a Kansas corporation, hereinafter sometimes designated as "company", the company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, and also operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority for a period of 20 years from the 20th day of January, 1987 to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of the city for the placing and maintaining of pipelines and other equipment necessary to carry on the business of selling and distributing natural gas for all purposes to the City of Udall, Kansas, and its inhabitants; and through the city and beyond the limits thereof; to obtain the natural gas from any source available, and to do all things necessary or proper to carry on the business in the city.

Section 2. As further consideration for the granting of this franchise, and in lieu of any city occupation; license, or revenue taxes, the company shall pay to the city during the first 120 months of the term of this franchise five percent, the next 60 months four percent, and each month thereafter three percent of its gross revenue from the sale of natural gas within the corporate limits of the city, such payments to be made monthly for the preceding monthly period.

Upon request of the city or company, the franchise rate as set out in this ordinance may be reviewed, the review shall be no sooner than five years after the effective date of this franchise and no more often than once every five years after any review of the rate.

Section 3. That all mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed.

Section 4. Use of any street, alley, avenue, or other public thoroughfare, and where company disturbs the surface of a street, alley, avenue or other public thoroughfare, it shall at its own expense and in a manner satisfactory to the duly authorized representatives of the city replace such paving or surface in substantially as good condition as before the work was commenced.

Section 5. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas quantity and for such length of time, limited by the terms hereof, as the sources and the pipelines are reasonably capable of supplying.

Section 6. That company, its successors and assigns, 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 and property, and shall hold and save harmless the city from any and all damage, injury and expense caused by the sole negligence of the company, its successors and assigns, or its or their agents or servants.

Section 7. That within 10 days approval of this ordinance, company shall file the same with the State Corporation Commission for the commission's approval.

Section 8. That within 60 days from and after the approval of this ordinance by the State Corporation Commission, company shall file with the city clerk of the city, its unconditional written acceptance of this ordinance. The ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after its passage, approval and publication as required by law, and acceptance by the company.

Section 9. That this ordinance, when accepted as above provided shall constitute the entire agreement between the city and the company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

Section 10. This franchise is granted pursuant to the provisions of K.S.A. 12-824.

Section 11. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

Section 12. Should the State Corporation Commission take any action with respect to this franchise ordinance, which could or may preclude The Kansas Power and Light Company from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Corporation Commission's ruling.

(01-20-87)

ORDINANCE NO. 531

AN ORDER GRANTING WHEAT STATE TELECABLE, INC., ITS SUCCESSORS AND ASSIGNS, A CABLE TELEVISION FRANCHISE, PRESCRIBING THE TERMS AND CONDITIONS THEREOF, AND REPEALING ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR CONFLICTING WITH THE TERMS THEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Udall, Kansas, and its inhabitants, there is hereby granted to Wheat State Television, Inc. (hereafter "Grantee"), said Grantee being a Kansas Corporation, the right, privilege and authority for a period of 5 years from the effective date of this Ordinance, to occupy and use the present and future streets, avenues, alleys and other public places of said City, and such future annexed areas for the placing and maintaining of a Community Antenna Television System, together with all necessary and desirable appurtenances, including underground cable and conduits, poles, towers, wires and other appurtenances necessary to carry on the business of a Community Antenna Television operation and render CATV services to the City of Udall, Kansas, and its inhabitants; and to do all things proper to carry on said business.

(a) To construct and install and thereafter operate and maintain a Community Antenna Television System consisting of, without limitation, conduits, cables, poles, wires, voice radio circuits, amplifiers, and all fixtures and appurtenances necessary or desirable for the construction, operation and maintenance of the system within the corporate limits of the City of Udall, Kansas, as said limits are presently or may in the future be extended.

(b) The facilities of the system, wherever practicable, shall be laid or erected in the alleys of the City and they shall be located, placed, or relocated without expense to the City or the abutting property owners. Said wires and cables, where overhead, shall be constructed and maintained in accordance with the Wirestringing Rules of the State Corporation Commission.

Section 2. It is expressly understood and agreed by and between the Grantee and the City, that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its Community Antenna Television System in the City. The City shall notify the Grantee's representative within 30 days after the presentation any claim or demand, either by suit or otherwise, make against the City on account of any negligence as aforesaid on the part of the Grantee. The Grantee shall carry sufficient insurance against liability to property damage of not less than \$100,000.00, as to any 1 accident, and, not less than \$300,000.00 as to any 1 accident, as it may relate to personal injury, and such insurance shall inure to the benefit of the City on all claims against the City, arising from the negligence of the Grantee.

Section 3. The Grantee shall have the right to prescribe reasonable service rules and regulations for the conduct of the Community Antenna Television System, not inconsistent with the provisions of this Ordinance, and complete copy of such service

rules and regulations, together with full and complete plats, maps and record showing the exact location of such facilities located within the public ways of the City, shall be kept on file at all times with the City Clerk.

Section 4. All rates and charges enacted by the Grantee shall be fair, reasonable and just.

Section 5. This franchise is granted on the following terms and conditions:

That Grantee shall pay to the City of Udall, an amount equal to 2 percent of the gross revenues from the operation of said Community Antenna Television System in said City, with "gross revenues" being defined as the gross rentals received by Grantee from its CATV customers in the City including "premium" channels. Said payments will be made by Grantee to the City on a monthly basis with each payment to be made within 10 days after the close of each month. Grantee's books and records will be made available to the City for auditing purposes at any time.

(a) The Community Antenna Television facility shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public, and the Grantee shall hold and save harmless said City from any and all damages, injury and expense caused by the sole negligence of the Grantee, its agents or servants.

(b) All poles, wires, anchors, anchor rods and other appurtenances which are located on, over, along, under or across the public streets, roads, alleys or other public thoroughfares of the said City of Udall, shall be so placed as to not interfere with traffic on the travel portions of such thoroughfares; and the Grantee, after the construction or re-construction of its facilities will restore to their original condition the streets, roads, alleys or other thoroughfares on which such facilities have been constructed insofar as this is practical.

(c) The Grantee will comply with all reasonable rules and regulations of the said City of Udall, and with all ordinances now in effect, or which may hereafter be passed insofar as they do not conflict with the terms or the purposes of the franchise herein granted.

(d) In the event Cable Television Service to be furnished by the Grantee shall be interrupted by accident, act of God or other cause beyond the control of the Grantee, Grantee shall restore its services within a reasonable time and as quickly as may be reasonably possible.

(e) The Grantee, in the interest of the City, shall provide without charge, 1 connection to each elementary and high school, public or parochial, and to each public library.

(f) The Grantee shall undertake actions required to obtain all necessary approvals to provide the service and shall be providing such service 1 year from the receipt of the final required approval.

Section 6. This Ordinance and the franchise herein granted shall be accepted by the Grantee in writing, filed with the City Clerk within 30 days from the date and passage and approval of the same; provided, however, that the time for such acceptance may be extended by the governing body of the said City.

Section 7. Immediately after passage, this franchise Ordinance shall be published in the official City paper, once a week for 3 consecutive weeks, and the same shall not take effect and be in force until after the expiration of 60 days from the date of its approval and final passage.

Section 8. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.
(03-07-00)

ORDINANCE NO. 586

AN ORDER GRANTING WHEAT STATE TELE-CABLE, INC., IT'S SUCCESSORS AND ASSIGNS, A CABLE TELEVISION FRANCHISE, PRESCRIBING THE TERMS AND CONDITIONS THEREOF, AND REPEALING ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR CONFLICTING WITH THE TERMS THEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Udall, Kansas, and its inhabitants, there is hereby granted to Wheat State Television, Inc. (hereafter "Grantee"), said Grantee being a Kansas Corporation, the right, privilege and authority for a period of five years from the effective date of this Ordinance, to occupy and use the present and future streets, avenues, alleys and other public places of said City, and such future annexed areas for the placing and maintaining of a Community Antenna Television System, together with all necessary and desirable appurtenances, including underground cable and conduits, poles, towers, wires and other appurtenances necessary to carry on the business of a Community Antenna Television operation and render CATV services to the City of Udall, Kansas, and its inhabitants; and to do all things proper to carry on said business.

(a) To construct and install and thereafter operate and maintain a Community Antenna Television System consisting of, without limitation, conduits, cables, poles, wires, voice radio circuits, amplifiers, and all fixtures and appurtenances necessary or desirable for the construction, operation and maintenance of the system within the corporate limits of the City of Udall, Kansas, as said limits are presently or may in the future be extended.

(b) The facilities of the system, wherever practicable, shall be laid or erected in the alleys of the City and they shall be located, placed, or relocated without expense to the City or the abutting property owners. Said wires and cables, where overhead, shall be constructed and maintained in accordance with the Wire Stringing Rules of the State Corporation Commission.

Section 2. It is expressly understood and agreed by and between the Grantee and the City, that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its Community Antenna Television System in the City. The City shall notify the Grantee's representative within 30 days after the presentation any claim or demand,

either by suit or otherwise, make against the City on account of any negligence as aforesaid on the part of the Grantee. The Grantee shall carry sufficient insurance against liability to property damage of not less than \$1,000,000.00, as to any 1 accident, and, not less than \$1,000,000.00 as to any 1 accident, as it may relate to personal injury, and such insurance shall inure to the benefit of the City on all claims against the City, arising from the negligence of the Grantee.

Section 3. The Grantee shall have the right to prescribe reasonable service rules and regulations for the conduct of the Community Antenna Television System, not inconsistent with the provisions of this Ordinance, and complete copy of such service rules and regulations, together with full and complete plats, maps and record showing the exact location of such facilities located within the public ways of the City, shall be kept on file at all times with the City Clerk.

Section 4. All rates and charges enacted by the Grantee shall be fair, reasonable and just.

Section 5. This franchise is granted on the following terms and conditions:

(a) That Grantee shall pay to the City of Udall, an amount equal to 3% percent of the gross revenues from the operation of said Community Antenna Television System in said City, with "gross revenues" being defined as the gross rentals received by Grantee from its CATV customers in the City including "premium" channels. Said payments will be made by Grantee to the City on a monthly basis with each payment to be made within 20 days after the close of each month. Grantee's books and records will be made available to the City for auditing purposes at any time.

(b) The Community Antenna Television facility shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public, and the Grantee shall hold and save harmless said City from any and all damages, injury and expense caused by the sole negligence of the Grantee, its agents or servants.

(c) All poles, wires, anchors, anchor rods and other appurtenances which are located on, over, along, under or across the public streets, roads, alleys or other public thoroughfares of the said City of Udall, shall be so placed as to not interfere with traffic on the travel portions of such thoroughfares; and the Grantee, after the construction or re-construction of its facilities will restore to their original condition the streets, roads, alleys or other thoroughfares on which such facilities have been constructed insofar as this is practical.

(d) The Grantee will comply with all reasonable rules and regulations of the said City of Udall, and with all ordinances now in effect, or which may hereafter be passed insofar as they do not conflict with the terms or the purposes of the franchise herein granted.

(e) In the event Cable Television Service to be furnished by the Grantee shall be interrupted by accident, act of God or other cause beyond the control of the Grantee, Grantee shall restore its services within a reasonable time and as quickly as may be reasonably possible.

(f) The Grantee, in the interest of the City, shall provide without charge, 1 connection to each elementary and high school, public or parochial, and to each public library.

(g) The Grantee shall undertake actions required to obtain all necessary approvals to provide the service and shall be providing such service 1 year from the receipt of the final required approval.

Section 6. This Ordinance and the franchise herein granted shall be accepted by the Grantee in writing, filed with the City Clerk within 30 days from the date and passage and approval of the same; provided, however, that the time for such acceptance may be extended by the governing body of the said City.

Section 7. Immediately after passage, this franchise Ordinance shall be published in the official City paper, once a week for 3 consecutive weeks, and the same shall not take effect and be in force until after the expiration of 60 days from the date of its approval and final passage.

Section 8. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

Section 9. This franchise is granted pursuant to the provisions of K.S.A. 12-2001 *et seq.*
(11-15-05)

ORDINANCE NO. 587

AN ORDINANCE GRANTING TO WHEAT STATE TELEPHONE, INC. A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF UDALL, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

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

(b) "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

(c) "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001, and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

(d) "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in tint calendar quarter.

(e) "City" - means the City of Udall, Kansas.

(f) "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

(g) "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

(h) "Grantee" - means Wheat State Telephone, Inc. a telecommunications local exchange service provider providing local exchange service within the City. Reference to Grantee shall also include as appropriate any and all successors and assigns.

(i) "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from within the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange service line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, re-connection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, non-regulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

(j) "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

(k) "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications

or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(l) "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Section 2. Grant of Contract Franchise. (a) There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

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

This Contract franchise does not:

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

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

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

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

(d) Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Telecommunications Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. 8522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. 8 573.(c) (2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. 8573.

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

Section 3. Use of Public Right-of-Way. (a) Pursuant to K.S.A. 17-1902, and amendments thereto and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon

and under the Public right-of-way, Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

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

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

Section 4. Compensation to the City. (a) Compensation made pursuant to this Contract franchise shall be paid on a quarterly basis without invoice or reminder from the City and paid no later than forty-five (45) days after the end of the remittal period. For the first year of this Contract franchise, said compensation shall be a sum equal to \$2.00 per access line per month. Thereafter, compensation for each calendar of the remaining term of the Contract franchise shall continue to be based on a sum equal to \$2.00 per access line per month; unless the City notifies Grantee prior to ninety (90) days before the end of the calendar year that it intends to increase or decrease the applicable franchise fee or that it intends to switch to an access line or a gross receipts fee (said gross receipts fee shall be at a rate of five (5) percent) for the following calendar year. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

(b) Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K. S .A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

(c) If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

(d) Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a gross receipts or access lines statement showing the manner in which the franchise fee was calculated.

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

(f) The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

(g) The franchise fee required herein shall be in addition to, not in lieu of all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments

thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

(h) Grantee shall remit a franchise fee to the City on those Access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

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

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

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

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

Section 9. Insurance Requirement and Performance Bond. (a) During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

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

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

(b) As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self insured by filing with the City a copy of the State of Kansas Approval for Self-Insurance per K.S.A. 40-3104 subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

(c) Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(d) Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

Section 7. Revocation and Termination. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract 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 Contract franchise by an affirmative vote of the City council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City council's consideration, and shall have the right to address the City council regarding such matter. Nothing herein

shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to a court of competent jurisdiction. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by the Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof which such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

Section 8. Reservation of Rights. (a) The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

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

(c) In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the Laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

(d) In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assess, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. The City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

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

Section 10. Term and Termination Date. (a) This Contract franchise shall be effective for a term of three (3) years beginning on November 15, 2005 and ending on

November 15, 2008. Thereafter, this Contract franchise will automatically renew for up to three (3) additional three (3) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

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

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

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

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

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

The City:
The City of Udall, KS
110 S. Main
Udall, KS 67146
(620)782-3474 fax

Grantee:
Wheat State Telephone, Inc.
106 W. First
Udall, KS 67146
(620)782-3302 fax

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

Section 12. Transfer and Assignment. This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon notice to the City.

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

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

Section 15. Payment of Costs. In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

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

Section 17. Force Majeure. Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(11-15-05)

