

APPENDIX B – FRANCHISES

NOTE: The franchise ordinances included herein are for information only. Each of them contains the substance as adopted by the governing body but enacting clauses, repealers and signatures have been omitted. Complete copies of each ordinance as adopted are on file in the office of the city clerk. Date of adoption of each franchise ordinance is shown in parentheses at the end of the text.

ORDINANCE NO. 623

AN ORDINANCE, GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., 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 Glen Elder, Kansas, ("City"), and its inhabitants, there is hereby granted to Kansas Gas Service, a Division of ONEOK, Inc. ("Company"), said Company operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority of a period of twenty (20) years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parking areas, and public places of said City, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business.

Section 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or permit fees, or revenue taxes, the Company shall pay to the City during the term of this franchise five percent (5%) of the gross cash receipts from the sale of natural gas for consumption in the City for all purposes within the corporate limits of the City, such payments to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the Company, which are not related to the "sale of natural gas". These include, but are not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, and returned check charges as such terms are used in tariffs or in the natural gas industry.

Section 3. The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property 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.

Section 4. The use of Right of Way under this franchise by the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation or policy proposed, adopted, or promulgated by the city and, further provided other than the items enumerated in Section 3 herein, that such rules, regulations or policies shall not require the payment of additional fees or additional costs for the use of the Right of Way. In any event, the Company is granted an offset for such fees and costs against the franchise fees required to be paid hereunder.

Section 6. Company shall, in doing the work in connection with its said gas mains, pipes, and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare. It shall, without expense to the City, 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 said work was commenced.

Section 7. 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 in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

Section 8. 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 person and property, and shall hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of said Company, its successors and assigns, or its or their agents or servants.

Section 9. Within twenty (20) days after the passage and approval of this ordinance, Company shall file the same with the Kansas Corporation Commission.

Section 10. After the approval of this ordinance by the City, Company shall file with the City Clerk of the City its written acceptance of this ordinance. Said ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, no later than the first cycle of the monthly billing cycle which begins no later than sixty (60) days after its passage and approval by the City, acceptance by the Company, and publication in the official City newspaper. In its letter of acceptance, Company shall

identify the effective date as set forth above and Company shall begin charging its customers those fees set forth in Section 2 above on that date.

Section 12. I. Upon written request of either the City or the Company, this franchise may be reviewed after five (5) years from the effective date of this ordinance, and every five (5) years thereafter to review the rate set forth in Section 2 above. Said request must be served upon the other party at least one hundred twenty (120) days prior to the end of each period set forth above, and shall state specifically the amendments desired. The City and the Company shall negotiate in good faith in an effort to agree upon mutually satisfactory amendments.

Amendments under this section, if any, shall be made by ordinance as prescribed by statute. Except as provided within this section the franchise shall remain in effect according to its terms pending completion of any review or renegotiation provided by this subsection.

II. 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:

(a) Change in federal, state, or local law, regulation, or order 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.

(b) 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.

(c) Any other material and unintended change or shift in the economic benefit to the City or the Company relied upon and anticipated upon entering into this franchise.

III. The compensation provision of this franchise shall be reopened and renegotiated at any time if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines, and use the public rights of way or public property franchise fee established herein, which results in a material and unfair disadvantage to the Company. The use of right of provision of this franchise shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines which use the public rights of way or public property of the City, and to have requirements on the use of the public ways substantially equivalent to the requirements of this franchise, which results in a material and unfair disadvantage to the Company. Upon any such event, the City shall have up to ninety (90) days after written request of the Company to restore competitive neutrality. Following notice to the City, Company may suspend collection and payment of the franchise fee to the City for the affected customers until the City resolves the competitive disadvantage. After the last above referred ninety (90) day period expires without resolution of the competitive disadvantage, the Company shall have no liability to the City for any uncollected franchise fees suspended as provided in the subsection.

Section 13. The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

Section 14. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed or considered as having no effect as of the first cycle of the monthly billing cycle as referenced in Section 10 of this ordinance.

Section 15. Should the Kansas Corporation Commission take any action with respect to this franchise ordinance and any amendment thereto which precludes Company from recovering from its customers any costs or fees provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Commission's ruling.

(4-7-08)

ORDINANCE NO. 656

AN ORDINANCE GRANTING PRAIRIE LAND ELECTRIC COOPERATIVE, INC., ITS LESSEES, SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN, AN ELECTRIC DISTRIBUTION SYSTEM TO FARMWAY CO-OP INC LOADOUT FACILITY, AND GRANTING THE RIGHT TO USE THE RIGHT OF WAYS ALONG WACONDA DRIVE AND RAILROAD STREET OF THE CITY OF GLEN ELDER, KANSAS.

Section 1. The governing body of the City of Glen Elder, Kansas (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Prairie Land Electric Cooperative, Inc., (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, maintain and operate an electric distribution system along the south side of Waconda Drive from Vine Street to Glen Elder Dam Road and along the south side of Railroad Street from Vallette Avenue west to Mill Street. Such facilities shall include, but not be limited to, poles, distribution lines, anchors, guy wires, conduits, transformers and all other apparatus and appliances necessary or incident thereto for all purposes for which it may be used, and to do all other things necessary and proper in providing electric service to the Farmway Coop Inc. loadout facility and in carrying on such business.

Section 2. The rights and privileges granted hereunder shall remain in effect for a period of twenty (20) years from the effective date of this ordinance.

Section 3. In exchange for the franchise granted herein, Grantee shall collect from Farmway Co-Op, Inc., its successors and assigns within the boundaries of Vallette Avenue west to Mill Street, north of the railroad track to the south side of Railroad Street of Grantor and pay to Grantor an amount equal to five percent (5%) of gross receipts Grantee derives from the sale, distribution or transportation of electricity delivered within said boundaries of Grantor. The Grantor may make further adjustments in the franchise fee, from time to time. Gross receipts as used herein are revenues received from the sale, distribution or transportation of electricity, after adjustment for the new write-off of uncollectible accounts and corrections of bills theretofore rendered. The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other fees, charges, taxes or assessments which the Grantor may impose for the privilege of doing business within the present or future corporate limits of Grantor, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in

the event the Grantor imposes any such fee, charge, tax or assessment, the payment to be made by Grantee in accordance with this section shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property boundaries set forth of Grantor shall not be deemed to affect Grantee's obligations under this section.

Grantee shall report and pay any amount payable under this section on a monthly basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this ordinance.

Grantee shall list the franchise fee collected from Farmway Co-Op Inc. as a separate item on bills for utility service issued to its customers. If at any time the Kansas Corporation Commission or other authority having proper jurisdiction prohibits such recovery, Grantee will no longer be obligated to collect and pay the franchise fee. In addition, Grantee may reduce the franchise fee payable for electricity delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

Grantor shall have access to and the right to examine, during normal business hours, such of Grantee's books, receipts, files, records and documents as is necessary to verify the accuracy of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days or recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by Grantee to Grantor.

Section 4. The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the boundaries set forth of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this ordinance in accordance with the action taken so as to allow Grantee to be made economically whole. In determining the rights and duties of the Grantee, the terms of this ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

Section 5. If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or the supply of energy, and withholding the supply of energy to new customers, provided that such rules and regulations shall be

uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

Section 6. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee a sufficient length of time in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

Section 7. Grantor grants Grantee the right, permission and authority to trim and remove trees upon, over, across and along the public right of ways of Waconda Street from Vine Street to Glen Elder Dam Road of Grantor.

Section 8. Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the specified boundaries of Grantor; provided however, that nothing in this ordinance shall require Grantee to install new facilities underground. In the event that Grantor shall order or request Grantee to install facilities underground along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing new facilities underground. No obligation shall extend to, or be binding upon, Grantee to install new facilities underground unless Grantee is able to obtain an easement for such facilities on private property adjacent to the public right-of-way.

Section 9. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference and is not merely for the convenience of the Grantor; provided however, that nothing in this ordinance shall require Grantee to relocate facilities underground. In the event that Grantor

shall order or request Grantee to install facilities under ground along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing facilities underground. No obligation shall extend to or be binding upon Grantee to install facilities underground unless Grantee is able to obtain an easement for such facilities on private property adjacent to the public right-of-way. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and is not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of-way until it receives the reasonable cost of relocating the same and Grantor provides a reasonable alternative location for such facilities.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense of moving Grantee's facilities and equipment in such location, and any damages incident thereto.

Section 10. Grantor acknowledges that certain information it might request from Grantee pursuant to this ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

Section 11. It shall not be breach or default under this ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each

party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 12. Grantee, during the term of this ordinance, agrees to save harmless Grantor, from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or appliances; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

Section 13. All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

Section 14. This ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

Section 15. If any clause, sentence or section of this ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

Section 16. Any waiver of any obligation or default under this ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 17. This ordinance shall become effective and be a binding contract between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon Grantee's acceptance by written instrument, within sixty (60) days of passage by the Grantor and filing with the Clerk of the City of Glen Elder, Kansas. The Clerk of the City of Glen Elder, Kansas, shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

(2-6-12)

ORDINANCE NO. 682

AN ORDINANCE GRANTING CUNNINGHAM TELEPHONE COMPANY, INC., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF GLEN ELDER, KANSAS.

Section 1: Pursuant to K.S.A. 2013 Supp. 12-2001 and amendments thereto, a contract franchise ordinance is hereby granted to Cunningham Telephone Company, Inc., a telecommunications local exchange service provider providing local exchange service within the City of Glen Elder, Kansas ("City"), subject to the provisions set forth hereafter. The initial term of this contract franchise ordinance shall be for a period of three (3) years beginning November 1, 2014, and ending October 31, 2017. Thereafter, this contract franchise ordinance will automatically renew for seven (7) additional one (1) year terms (hereinafter the "renewal term"), unless either party notifies the other party of its intent to terminate the contract franchise ordinance at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 2013 Supp. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the initial term of the contract franchise ordinance.

Section 2: For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

"Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

"Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

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

Section 3: As a condition of this contract franchise ordinance, Cunningham Telephone Company, Inc. is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the

Federal Communications Commission (FCC) and/or the Kansas Corporation Commission (KCC), subject to Cunningham Telephone Company, Inc.'s right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. Cunningham Telephone Company, Inc. shall also comply with all applicable laws, statutes and/or ordinances, subject to Cunningham Telephone Company, Inc.'s right to challenge in good faith such laws, statutes and/or ordinances.

Section 4: Nothing stated or contained herein shall be construed as giving Cunningham Telephone Company, Inc. any exclusive privileges, nor shall it affect any prior or existing rights of Cunningham Telephone Company, Inc. to maintain a telecommunications system within the City.

Section 5: Any required or permitted notice under this contract franchise ordinance shall be made in writing. Notice upon the City shall be delivered to the city clerk by first class United States certified mail, return receipt requested. Notice upon Cunningham Telephone Company, Inc. shall be delivered by first class, United States certified mail, return receipt requested, to: Brent Cunningham, Cunningham Telephone Company, Inc., P.O. Box 108, Glen Elder, KS 67446.

Section 6: Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

Section 7: Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Cunningham Telephone Company, Inc.'s or the City's control.

Section 8: Most Favored Nation. Pursuant to K.S.A. 17-1902, City represents and warrants that all benefits, terms and conditions in this Contract franchise are and, during the term of this Contract franchise, will continue to be no less favorable to Grantee than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, video services provider, competitive infrastructure provider or Internet Protocol services provider, regardless of the form or nature of the agreement with any other carrier or provider.

Section 9: Cunningham Telephone Company, Inc. has entered into this contract franchise ordinance as required by the City and K.S.A. 2013 Supp. 12-2001 and amendments thereto. If any clause, sentence, section, or provision of K.S.A. 2013 Supp. 12-2001 and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or Cunningham Telephone Company, Inc. may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates K.S.A. 2013 Supp. 12-2001 and amendments thereto, if Cunningham Telephone Company, Inc. is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

Section 10: In entering into this contract franchise ordinance, neither the City's nor Cunningham Telephone Company, Inc.'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 ordinance, neither the City nor Cunningham Telephone Company, Inc. waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Cunningham Telephone Company, Inc. may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and Cunningham Telephone Company, Inc. entering into this contract franchise ordinance.

Section 11: The parties agree that in the event of a breach of this contract franchise ordinance by either party, the non-breaching party has the right to terminate the contract franchise ordinance. Prior to terminating the contract franchise ordinance, the non-breaching party shall first serve a written notice upon the breaching party, setting forth in detail the nature of the breach, and the breaching party shall have thirty (30) days thereafter in which to cure the breach. If at the end of such thirty (30) day period the non-breaching party deems that the breach has not been cured, the non-breaching party may take action to terminate this contract franchise ordinance.

(11-3-14)

ORDINANCE NO. 683

AN ORDINANCE GRANTING CUNNINGHAM COMMUNICATIONS, INC., OF GLEN ELDER, KANSAS, A TEN (10) YEAR NONEXCLUSIVE RIGHT, AUTHORITY, POWER AND FRANCHISE TO ESTABLISH, CONSTRUCT, ACQUIRE, MAINTAIN AND OPERATE A CABLE SYSTEM WITHIN THE CITY OF GLEN ELDER, KANSAS; TO RENDER, FURNISH AND SELL CABLE SERVICE FROM SUCH SYSTEM TO THE INHABITANTS OF THE CITY OF GLEN ELDER, KANSAS; AND TO USE AND OCCUPY THE RIGHT-OF-WAY, AS DEFINED BY SAID ORDINANCE, AND OTHER PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF SAID CITY FOR ITS CABLE SYSTEM, AS BY SAID ORDINANCE PROVIDED.

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

(a) "Cable Service" shall mean:

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

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

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

(c) "City" shall mean the City of Glen Elder, Kansas

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

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

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

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

(h) "Grantee" shall mean Cunningham Communications, Inc. and any other divisions or affiliates providing services over the Cable System.

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

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

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

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

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

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

Section 2: GRANT OF FRANCHISE.

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

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

Section 3: EFFECTIVE PERIOD. Upon compliance with Section 19, this Agreement shall be effective for ten (10) years from November 1, 2014 to October 31, 2024. Upon request by the City, the Grantee and the City may periodically conduct a meeting to review this Ordinance, and related performance and cooperation issues. Pursuant to K.S.A. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the contract franchise ordinance.

Section 4: USE OF RIGHT-OF-WAY. In the use of the Right-of-way under this Ordinance, the Grantee shall be subject to all applicable local, state and federal law and regulations. In addition, Grantee shall comply with the following:

(a) The Grantee's use of Right-of-way shall in all matters be subordinate to the City's use of Right-of-way for any public purposes. The Grantee shall coordinate the placement of its Facilities in a manner which minimizes adverse impact on Public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public improvements so as not to impact or be impacted by such public improvement. The Grantee shall pay the City a \$1.00 per pole annual fee for each pole owned by the City that is used for attachments of the Grantee. Such payment is to be made annually, in advance, on the 15th day of April of each year of this agreement.

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

(c) The Grantee shall keep and maintain accurate records and as-built drawings depicting accurate location of all facilities constructed, reconstructed, or relocated in the Right-of-way after the date hereof and provide location information regarding specific future project locations to the City upon request. Where such information is available electronically, upon request from the City, Grantee agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this section only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection

(11-3-14)