

## 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 is 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. 814

AN ORDINANCE TO SOUTH CENTRAL WIRELESS, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND A TELECOMMUNICATIONS SYSTEM [N THE CITY OF MEDICINE LODGE, KANSAS, PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

#### SECTION 1 DEFINITIONS

For purposes of this ordinance, the following words and phrases shall have the meanings given herein:

(a) "Access Lines" shall mean the following billed main lines and trunks, whether provided on a retail or wholesale basis: residential lines; business lines, ISDN lines (channels); PBX trunks, Centrex or Centrex-like stations; unbundled loop facilities special access services, simulated exchange access provided by central office switching arrangement where all stations are served by such simulated exchange access lines are used by a single customer of the provider of such arrangement; where stations are served by simulated exchange access lines provided by central office bases switching arrangement and the stations served are not used by a single arrangement, each station shall constitute and access line, and pay phone lines. "Access Line" shall include wireless telecommunication services subject to 47 C.F.R. Part 24.

(b) "City" shall mean the City of Medicine Lodge, Kansas

(c) "Cable Service" means the one way transmission to subscribers of video programming service, and subscriber interaction, if any, which is required for selection and use of such video programming or other programming service. Cable Service does not include point to point, point to multi-point, and switched video services that Telephone Company has historically offered or other similar services that Telephone Company may in the future offer.

(d) "Facilities" shall mean telephone and telecommunication lines, conduits, fiber optic cables, wires, cables, pipes, poles, towers, vaults, and appliances, either under or above around.

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

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

(g) "Rights-of way" shall mean present and future streets, alleys, rights-of way, and public easements dedicated in plats of the City of Medicine Lodge, Kansas.

(h) "Street rights-of way" shall mean the entire width between property lines of land, property or an interest therein of every way publicly maintained where any part thereof is open

to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley or any other public way for vehicular travel by whatever name.

(i) "Telecommunications" - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(j) "Telecommunications Service" - The offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used.

(k) "Telephone Company" shall mean South Central Wireless, Inc, its successors and assigns

**SECTION 2  
GRANT**

(a) There is hereby granted to Telephone Company the right, privilege and franchise to construct, maintain, extend and operate its facilities, in, through and along the rights-of-way for the purpose of supplying Telecommunications Services to the City and the inhabitants thereof for the full term of this franchise subject, however, to the terms and conditions herein set forth.

(b) This franchise does not provide the Telephone Company the right to provide "Cable Service" to City and inhabitants thereof. For purposes of this ordinance, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service; but "Cable Service" does not include point to point to multi-point, and switched video services that Telephone Company has historically offered or other similar services that Telephone Company may in the future offer. Nothing in this franchise is intended to preclude the City from seeking, or authorize the City to seek a franchise from any subsidiary, affiliate, or third party providing "Cable Services". Telephone Company and City agree that nothing in this franchise is intended to authorize the City to seek from Telephone Company nor to require Telephone Company to obtain a franchise to offer "Open Video Systems: as that term is used in Section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). Telephone Company and City further agree, however, that this ordinance does not authorize Telephone Company to offer "Open Video Systems" without paying the fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573 (2) (b) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. 573.

(c) Upon written request from Telephone Company, the City agrees to begin Negotiations in good faith with Telephone Company within thirty (30) days to provide Telephone Company a franchise to provide "Cable Service" to the City and inhabitants thereof on terms no more burdensome than the franchises granted to other providers of "Cable Service" with the City.

**SECTION 3  
USE OF RIGHTS-OF-WAY**

In the use of rights-of-way under this franchise, the Telephone Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Telephone Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits and fees,

sidewalk and pavement cuts, utility locations, construction coordination, beautification, and other requirements on the use of rights-of-way and shall comply with the following:

(a) The Telephone Company's use of rights-of-way shall in all matters be subordinate to the City's use of rights-of-way for any public purpose. The Telephone Company shall coordinate 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, facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

(b) All earth materials, sidewalks, paving, crossings utilities, public improvements or improvements of any kind, injured or removed by the Telephone Company in its activities under this franchise, shall be fully repaired or restored promptly by the Telephone Company at its sole expense and to the reasonable satisfaction of the City or owner thereof

(c) All facilities constructed, replaced, or relocated in the right-of-way after the date hereof shall be placed underground unless otherwise agreed to by the City. Where there are obstructions in the right-of-way such as trees, shrubs, other utilities, commercial signs, man-made structures, or other like obstructions which may make the cost of such underground burial unreasonable, the Telephone Company may request waiver of this requirement, in which event the City will not unreasonably withhold consent. Any vaults, boxes, pedestals, and similar facilities placed above ground in street right-of-way shall be located behind the sidewalk where feasible.

(d) The Telephone Company shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical location of all facilities constructed, reconstructed, or relocated in the street 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, Telephone Company agrees to provide such information in an electronic format. (City agrees to use information only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Telephone Company and City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Telephone Company and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Telephone Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Telephone Company to safeguard such information. The Telephone Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Telephone Company, of the City at the written request of the Telephone Company, in seeking to safeguard the confidentiality of information provided by Telephone Company to City under this section. In the event such information is required by force of law to be publicly disclosed, the Telephone Company shall have no further obligation under this section to provide the City with such information). Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change. All points of facilities shall be horizontally located from street centerline, or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(e) All work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guideline for Work Zone Traffic Control, unless otherwise agreed to by the City.

(f) The Telephone Company shall notify the City not less than three (3) working days in advance (such notice to be adequate for timely notice on the governing body agenda under City procedures) of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic to less than two lanes of moving traffic. Except in the event of an Emergency, as reasonably determined by the Telephone Company, no such closure shall take place without prior authorization from the City.

(g) The Telephone Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its facilities located within rights-of-way when requested by the City of its authorized agents for a public project. Such location and identification shall be at the sole expense of the Telephone Company without expense to the City, its employees, agents, or authorized contractors. The Telephone Company shall designate and maintain a local agent, familiar with the facilities, who is responsible for satisfying information needs of the City and other users of the rights-of-way.

The Telephone Company shall promptly remove, relocate, or adjust any facilities located in rights-of-way if reasonably necessary and directed by the City for any publicly funded improvement or project. Such removal, relocation, or adjustment for a particular public project shall be performed by the Telephone

(h) Company once 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 pertaining to such. If additional removal, relocation, or adjustment is the result of the inaccurate or mistaken information of the Telephone Company, the Telephone Company shall be responsible for such at its sole expense.

(i) It shall be the responsibility of the Telephone Company to take adequate measures to protect and defend its facilities in the rights-of way from harm or damage. If the Telephone Company fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the City and its authorized contractors unless such party is solely responsible for the harm or damage by its negligence or intentional conduct. Telephone Company shall be responsible to the City and its agents, representatives, and 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 the Telephone Company to perform any of its obligations under this agreement unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm. However, 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 Telephone Company facilities.

(j) 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 the wires shall be paid by the party or parties requesting the same, and the Telephone Company shall be given not less than fifteen (15) days' written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

(k) Permissions 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 of said trimming to be done under the supervision and direction of any City official to whom said duties have been or may be designated in accordance with Medicine Lodge City code.

(l) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the rights-of-way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this ordinance may be additional to or stricter than such minimum standards.

(m) The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by Federal or State law, the Telephone Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Telephone Company. All said agreements and installations shall be the subject to all-existing and future ordinances and regulations of the City. Telephone Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City. Nothing in this section shall be construed as requiring Telephone Company to provide City notice when it provides Telecommunications Services to any entity.

#### SECTION 4

##### **INDEMNITY AND HOLD HARMLESS**

The Telephone Company shall hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability and costs including attorney fees, to the extent occasioned in any manner by the Telephone Company's occupancy of rights-of-way, except to the extent otherwise specified in section 3 (i). In the event a claim shall be instituted against the City growing out of such occupancy of the right-of-way by facilities of the Telephone Company, then upon notice by the City to the Telephone Company, the Telephone Company will assume liability for the defense of such actions at the cost of the Telephone Company, subject to the option of the City to appear and defend, at its own cost, any such case.

#### SECTION 5

##### **PAYMENTS AND CHARGES**

The payments herein provided shall be in lieu of all other licenses, taxes, charges, fees or impositions, except that the usual general property taxes and special ad valorem property taxes, and any charges for pavement cuts or other charges based on restoring premises to their same conditions, or charges made for privileges which are not in any way connected with telephone business, as such, will be imposed on the Telephone Company, and are not covered by the payments herein. The Telephone Company shall have the privilege of crediting such sums payable hereunder with any unpaid balance due said Telephone Company for telephone service rendered or facilities furnished to said City; provided, that said balance due is liquidated and uncontested.

**SECTION 6  
COMPENSATION TO CITY**

(a) In consideration of the franchise granted to Telephone Company by City, a sum of One dollar (\$ 1.00) per month for each access line served by Telephone Company for local service within the city limits of City. Compensation required by this franchise shall be paid on a quarterly basis. The number of access lines as of year-end shall be used to calculate payments to the City for the following year.

(b) If during the term of this ordinance any entity provides Local Service in City and provides compensation to City at an amount less than the Telephone Company is required to pay under section 6 (a) per month for each access line within the City or provides no compensation to City for each such access line, this ordinance shall require compensation no greater than such amounts, if any, during such time remaining of the term of this ordinance that the lesser compensation, if any, is paid by such other entity.

(c) The parties agree that if federal law or state law is enacted setting forth a maximum allowable level of compensation for franchise rights and if such maximum allowable level is less than the level of compensation required by this ordinance, this ordinance shall require Telephone Company to pay the reduced level required by law the remainder of the term of this ordinance.

(d) If during the term of this ordinance, Telephone Company believes that it is entitled to reduction in compensation pursuant to subsections (b) and (c) above, Telephone Company agrees to notify City in writing and agrees that it will continue to pay City a monthly rate set forth in section 6 (a) for each access line served by Telephone Company for Local Service within the city of City until final agreement is reached with the City sixty (60) days following such notice to City.

(e) The Telephone Company shall correctly code all customers that are located within the corporate limits of the City, provided that the City shall give Telephone Company notice of boundary changes as provided below. Coding shall be updated to reflect annexation and other changes in City boundaries, and the associated changes in customers and access lines, within thirty (30) days of the date City provides Telephone Company written notice of the annexation or other changes in boundaries and a listing of addresses affected by such changes.

Such notice shall be sent to South Central Wireless, Inc., 101 S. Main, Medicine Lodge, Kansas 67104. In the event of annexations, Telephone Company may request additional time in writing to re-code customers, which request will not be unreasonably denied.

**SECTION 7  
COLLECTION OF COMPENSATION**

This franchise may be terminated by the Telephone Company if authority to collect the amounts of such payments or part of such payments, from its customers within the City shall be removed, canceled or withdrawn by legislative, judicial or regulatory act. City and Telephone Company acknowledge and agree that Telephone Company has collected and paid City all amounts due and owing for Telephone Company's use and occupancy of City rights-of-way at all times prior to June 1, 2005.

Compensation for each calendar year during the term of the contract franchise ordinance shall continue to be based on a sum equal to \$1.00 per month for each access line unless the City notifies telephone company prior to 90 days before the end of the calendar year that it intends to increase or decrease the amount for access lines for the following calendar year or that it intends to switch to a gross receipt fee for the following calendar year. In the

event City elects compensation based on a gross receipt fee, nothing herein precludes City from switching back to an access line fee provided City notifies telephone company prior to 90 days before the end of the calendar year that it intends to elect an access line fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in Subsections (l) and (m) of K.S.A. 2002 Supp. 12-200 1.

**SECTION 8  
TERMINATION OF FRANCHISE**

In case of failure on the part of Telephone Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if Telephone Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Telephone Company, its successors and assigns, shall forfeit all rights and privileges and granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Medicine Lodge shall carry out the following proceedings. Before the City of Medicine Lodge proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice upon the manager of South Central Wireless, Inc. at its principal office in the City of Medicine Lodge, and upon the trustee or trustees in any deed of trust securing bonds of Telephone Company of record in Barber County, Kansas, by mailing notice to such trustee or trustees to the address designated in such trust deed, setting forth in detail in such notice the neglect or failure complained of, and Telephone Company shall have ninety days thereafter in which to comply with the conditions of this franchise. If at the end of such ninety-day period the City of Medicine Lodge deems that the conditions of such franchise have not been complied with by Telephone Company and that such franchise is subject to cancellation by reason thereof, the City of Medicine Lodge, in order to terminate such franchise, shall enact an ordinance setting out the grounds upon which said franchise or agreement is to be canceled or terminated. If within thirty days after the effective date of said ordinance, Telephone Company shall not have instituted an action, either in the District Court of Barber County, Kansas, or some other court of competent jurisdiction to determine whether or not Telephone Company has violated the terms of this franchise and the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty-day period Telephone Company does not institute action, as above provided, to determine whether or not Telephone Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to cancellation by reason of the violations of its terms, this franchise shall terminate thirty days after such final judgment is rendered.

PROVIDED, however, that the failure of Telephone Company to comply with any of the provisions of this ordinance or the doing or causing to be done by Telephone Company of anything prohibited by or in violation of the terms of this ordinance shall not be a ground for the forfeiture thereof when such act or omission on the part of Telephone Company, its successors and assigns, or to bona fide legal proceedings.

**SECTION 9  
RIGHTS AND DUTIES OF GRANTEE UPON EXPIRATION OF FRANCHISE**

Upon expiration of this franchise, whether by lapse of time, by agreement between the Telephone Company and the City of Medicine Lodge, or by forfeiture thereof, the Telephone

Company shall have the right to remove from public property any and all of its lines, poles, towers and other appurtenances and equipment used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of the Telephone Company, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which said lines, poles, towers, and other appurtenances and other equipment are removed to as good condition as the same was before said removal was effected.

**SECTION 10**  
**TERM AND TERMINATION DATE**

The term of this franchise shall be five (5) years commencing June 1, 2005

The Telephone Company or City, at its option, shall have the right to extend this franchise upon the same terms and, conditions of a subsequent term of five (5) years, by providing written notice of its desire to extend the franchise not later than one hundred and eighty (180) days prior to the expiration of the initial term. The Telephone Company or City may reject the additional term by providing written notice within ninety (90) days of receipt of written notice of its desire to extend the franchise. The additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

**SECTION 11**  
**ACCEPTANCE OF TERMS BY THE TELEPHONE COMPANY**

The Telephone Company shall have sixty (60) days after the final passage and approval of this ordinance to file with the City Clerk of the City of Medicine Lodge 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 City of Medicine Lodge and the Telephone Company subject to the provisions of the laws of the State of Kansas.

**SECTION 12**  
**RIGHT TO ASSIGN**

This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

**SECTION 13**  
**CONDITIONS OF FRANCHISE**

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Telephone Company's control. This franchise shall not be exclusive.

**SECTION 14**  
**INVALIDITY OF ORDINANCE**

If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

**SECTION 15**

**VENUE**

This agreement shall be construed under and in accordance with the laws of the State of Kansas, and all obligations of the parties hereunder are performable in Barber County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this agreement, the same shall be brought in Barber County, Kansas limited to state court action. Nothing in Section 16 shall be construed to limit or restrict Telephone Company's right to initiate action in federal court (Kansas District) or to remove a state court action to federal court (Kansas District).

**SECTION 16**

**NOTICE**

For the purpose of this agreement, notice to the City will be to:

City Manager  
City of Medicine Lodge 114 W. First  
Medicine Lodge, Ks. 67104

Notice to the Telephone Company will be to:

South Central Wireless, Inc. 101 S. Main  
Medicine Lodge, Ks. 67104

Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Telephone Company notifies the other, in writing, of a change in address.

**SECTION 17**

**PUBLIC PURPOSE**

All of the regulations provided in this ordinance are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or City official or employee charged with enforcement of this ordinance, acting for the City in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties. Neither the City nor the Telephone Company by accepting this ordinance waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this ordinance, including seeking injunctive relief in a court of competent jurisdiction.

(6-20-2005)

**ORDINANCE NO. 827**

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 I. That in consideration of the benefits to be derived by the City of Medicine Lodge, 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 for 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 three percent (3%) 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 5. 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. Company shall provide, prior to commencing

work, information to the City concerning work to be performed in the streets, avenues, bridges, parks, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, Company shall have the right to commence work without having first providing such form(s).

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 persons 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 11. 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, shall be binding upon the parties, including their successors and assigns, and shall not be amended or further obligations imposed without mutual consent of the parties hereto.

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 of the City without paying a franchise fee or other payment substantially equivalent to the franchise fee established herein, which results in a material and unfair disadvantage to the Company. The use of right of way 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 do not 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.  
(8-20-2007)

## **ORDINANCE NO. 839**

AN ORDINANCE GRANTING SOUTHERN PIONEER ELECTRIC COMPANY, A KANSAS CORPORATION AND DIVISION OF MID-KANSAS ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS THEREOF

SECTION 1. That in consideration of the benefits to be derived by the City of Medicine Lodge, Kansas, and its inhabitants, there is hereby granted Southern Pioneer Electric Company, a Kansas Corporation, hereinafter sometimes designated as "Company", said Company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, into and through which it has built transmission lines, the right, privilege, and authority for a period of twenty (20) years from the 2 day of August, 2010, to occupy and use the several streets, avenues, alleys, bridges, parks, 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 electricity to the City of Medicine Lodge, Kansas, its inhabitants and additions thereto, and through said City and beyond the limits thereof; to obtain said electricity from any source available; and to do all things necessary or proper to carry on said business in the City of Medicine Lodge, Kansas. The City provides that the term of the franchise is twenty (20) years but that the various provisions may be reviewed by the City and Southern Pioneer every five (5) years during the twenty (20) year period.

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 term of this franchise five percent (5%) of its gross revenue from all sales of the electric energy within the corporate limits of said City. Payment to be made monthly, on or about the last day of the month, for the preceding monthly period.

SECTION 3. That the Company, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of Medicine Lodge, Kansas, from any and all damage, injury and expense caused by the operations of said Company, its successors and assigns, or its or their agents, servants or contractors.

SECTION 4. That within sixty (60) days from and after the passage and approval of this ordinance, said Company shall file with the City Clerk of said City of Medicine Lodge, Kansas, its unconditioned written acceptance of this ordinance.

SECTION 5. That any and all ordinances in conflict with terms hereof are hereby repealed.

SECTION 6. That this 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, publication as required by law, and acceptance by Company.

SECTION 7. 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 8. This franchise is granted pursuant to the provisions of K.S.A. 12-2001.

SECTION 9. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude Southern Pioneer Electric 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.  
(8-2-2010)