

**TABLE OF SPECIAL ORDINANCES**

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## **TABLE I: CHARTER ORDINANCES**

NOTE: The charter ordinances included herein are for information only. Each of them contains the substance as adopted by the governing body but enacting clauses, publication clauses and signatures have been omitted to conserve space. Complete copies of each charter ordinance as adopted are on file in the office of the City Clerk and with the Kansas Secretary of State. Date of passage by the governing body of each charter ordinance is shown in parentheses at the end of the text.

### **CHARTER ORDINANCE NO. 1**

A charter ordinance exempting the City of WaKeeney, Kansas, from § 79-1953 of the 1961 supplement to the general statute of Kansas, 1949; and providing substitute and additional provisions of the same subject, authorizing and limiting tax levies in any one year on each dollar of assessed tangible valuation; and prescribing an aggregate for all city-wide tax levies. (Repealed by Charter Ord. 6, passed -)

### **CHARTER ORDINANCE NO. 2**

A charter ordinance exempting the City of WaKeeney, Kansas, from the provisions of § 15-602 of the General Statutes of 1949 relating to powers and duties of the City Marshal and Assistant Marshal, providing substitute and additional provisions on the same subject.

Section 1. The City of WaKeeney, Kansas, under the authority of Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and to make inapplicable to it §§ 15-601 and 15-602 of the general statutes of 1949, which apply to said city but the provisions of which do not apply uniformly to all cities, and to provide substitute and additional provisions on the same subject.

Section 2. The City Marshal shall be Chief of Police and shall at all times have power to make or order an arrest with proper process for any offense against the laws of the state or of the city, and to arrest without process in all cases where any such offense shall be committed or attempted to be committed in his or her presence. The City Marshal shall have power and it shall be his or her duty to keep all such persons arrested in the city prison or place to prevent their escape until a trial can be had before the proper office except as otherwise provided in Section 3 of this ordinance. The City Marshal shall execute all processes issued by the Police Judge and delivered to him or her for that purpose.

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Section 3. Whenever any person is arrested for any violation of a traffic ordinance for which a written notice to appear and a cash appearance bond is by ordinance authorized and provided and such person is not given an immediate hearing before the Police Judge, the City Marshal shall prepare and make such disposition of such written notice to appear as shall be provided by ordinance. The City Marshal may also require any person arrested for any such violation and under such circumstances to post a cash bond in the manner and in the amount for the offenses prescribed by such ordinance. Where any person shall have given his or her written promise to appear upon the written notice to appear and shall have posted the required cash bond, if any, the City Marshal shall forthwith release the person arrested from custody.

Section 4. The Assistant Marshal of the city shall have the same power as is conferred upon the Marshal in Sections 2 and 3 of this ordinance. (Charter Ord. 2, passed 2-1-1965)

### **CHARTER ORDINANCE NO. 3**

A charter ordinance exempting the City of WaKeeney, Kansas, from the provisions of § 15-209, General Statutes of Kansas, relating to qualifications of city offices and providing substitute and additional provisions on the same subject.

Section 1. The City of WaKeeney, Kansas, under authority of Article 12, Section 5, of the constitution of the State of Kansas, hereby elects to exempt itself from and to make inapplicable to it § 15-209 of the General Statutes of Kansas, 1949, which apply to said city but the provisions of which do not apply uniformly to all cities, and to provide substitute and additional provisions on the same subject.

Section 2. All elective officers of the City of WaKeeney, Kansas, shall be qualified electors of said city under the constitution and laws of this state, but all appointive offices of the city need only be qualified electors of Trego County, Kansas. The removal from said city of any elective officer shall occasion a vacancy in such office. The removal from Trego County, Kansas, of any appointive officer shall occasion a vacancy in such office. All vacancies in office, except in the offices of Mayor, Council member, Justice of the Peace, and Constable, may be filled until the next regular city election by appointment by the governing body. Every appointment to office, and the date thereof, shall be entered on the journal of proceedings of the Council. (Charter Ord. 3, passed 4-5-1965)

### **CHARTER ORDINANCE NO. 4.**

A charter ordinance exempting the City of WaKeeney, Kansas, from K.S.A. 12-1640, relating to demand deposits of public moneys and certain duties of the City Treasurer.  
(This charter ordinance has been abrogated by the repeal of K.S.A. 12-1640)

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### **CHARTER ORDINANCE NO. 5**

A charter ordinance exempting the City of WaKeeney, Kansas, from K.S.A. 15-201 and K.S.A. 15-210, and providing substitute and additional provisions on the same subject, providing for the election of Mayor and five Council members, tie vote, their terms of office, qualifying, failure to qualify or accept office, filling vacancies and certificates of election.

(Repealed by Charter Ord. 7, passed - -)

### **CHARTER ORDINANCE NO. 6**

A charter ordinance exempting the City of WaKeeney, Kansas, from K.S.A. 79-1953, and providing substitute and additional provisions on the same subject, authorizing and limiting tax levies in any one year on each dollar of assessed tangible valuation and prescribing an aggregate for all city-wide tax levies and repealing Charter Ord. 1.

(Repealed by Charter Ord. 10, passed - -)

### **CHARTER ORDINANCE NO. 7**

A charter ordinance exempting the City of WaKeeney, Kansas, from § 44 of chapter 274, laws of 1968, which section amended K.S.A. 1967 supplement 15-201, and exempting said city for K.S.A. 15-210, and providing substitute and additional provisions on the same subject, providing for the election of Mayor and five Council members, tie vote, their terms of office, qualifying, failure to qualify or accept office, filling vacancies and certificates of election.

Section 1. The City of WaKeeney, Kansas, a Mayor-Council city of the third class, by the power invested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it Section 44 of Chapter 274, Laws of 1968, which section amended K.S.A. 1967 Supplement 15-201, and also exempting said city from the provisions of K.S.A. 15-210 as amended, which apply only to Mayor-Council cities of the third class and applying to said city, and to provide substitute and additional provisions as hereinafter provided.

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Section 2. A regular city election shall be held on the first Tuesday in April of each odd-numbered year. On the first Tuesday in April 1969, an election shall be held for a Mayor and five Council members. The Mayor first elected shall hold office for two years and until his or her successor is elected and qualified. At the election in 1971 and each four years thereafter, the Mayor shall be elected to hold office for four years and until his or her successor is elected and qualified. At the election in 1969, two Council members shall be elected to hold office for two years and three Council members shall be elected to hold office for four years. At the election in 1969, the candidates for Council members receiving the highest, second highest and third highest number of votes shall be elected for four years and the candidates receiving the fourth and fifth highest number of votes shall be elected for two years. Thereafter, whenever a tie shall occur in the vote on any of the aforesaid offices, the result shall be decided by lot by the Board of Canvassers. The City Clerk shall, within three days after the canvass of the returns and determination by the Board of Canvassers of the person selected, deliver to each such person a certificate of election, signed by him or her with the seal of the city, and such certificate shall constitute notice of election. The terms of the officers shall begin at the first regular meeting of the Council in May following their election in April and they shall qualify at any time before or at the beginning of said meeting. If any person elected to the office of Council member does not qualify within the required time, he or she shall be deemed to have refused to accept the office and a vacancy shall exist and thereupon the Mayor shall, with the consent of a majority of the remaining Council members, appoint a suitable elector of the city to fill the vacancy for the term to which the refusing person was elected. In case of a vacancy in the office of Council member occurring by reason of resignation, death, or removal from office or from the city, the Mayor, by and with the consent of a majority of the remaining Council members, shall appoint some suitable elector of the city to fill the vacancy until the next election for that office. In case of a vacancy in the office of Mayor occurring by reason of resignation, death, removal from office or from the city, the President of the Council shall become Mayor until the next regular election for that office and a vacancy shall occur in the office of the Council member becoming Mayor. (Ord. 7, passed 11-4-1968)

### CHARTER ORDINANCE NO. 8

A charter ordinance exempting the City of WaKeeney, Kansas from K.S.A. 79-5011; providing substitute and additional provisions on the same subject and authorizing the levying of taxes to create a special fund for the purpose of paying public safety costs.

Section 1. The City of WaKeeney, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby elects to exempt itself from and make inapplicable to it K.S.A. 79-5011, and to provide substitute and additional provisions as hereinafter set forth in this charter ordinance. K.S.A. 79-5011 is a part of an enactment of the legislature establishing an aggregate tax levy limitation applicable to this city but not applicable uniformly to all cities, and the legislature has not established classes of cities for the purpose of imposing aggregate limitations under said constitutional provision.

Section 2. The provisions of K.S.A. 79-5001 to 79-5016, inclusive, shall not apply to or limit the levy of taxes by the City of WaKeeney for the payment of:

- (a) Principal and interest upon bonds and temporary notices;

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- (b) No-fund warrants issued with the approval of the State Board of Tax Appeals;
- (c) Legal judgment rendered against the city;
- (d) Rent due under any lease with a public building commission;
- (e) Special assessments charged against the city at large; or
- (f) Public safety costs whether paid from a separate property tax levy fund of the city or from any other tax supported fund.

Section 3. The provisions of K.S.A. Chapter 79, Article 50 shall not apply to any taxes levied by the City of WaKeeney, levied under the provisions of K.S.A. 40-2305, 74-4920, (74-4967), (12-11a03), (13-1441 or 12-1617h) or 12-14,100 and K.S.A. 1977 Supp. 13-14a92, (14-10a02), or for any tax levies required for the payment of employer contributions to any pension and retirement program or to any other taxes authorized by state law to be levied in addition to or exempt from the aggregate levy limitation of the City of WaKeeney.

Amounts produced from any levy specified or authorized in this charter ordinance, including any levy or purpose authorized to be levied in addition to or exempt from the aggregate levy limit of the city shall not be used in computing any aggregate limitation under K.S.A. Chapter 79, Article 50.

Section 4. The City of WaKeeney is hereby authorized to levy a tax for the purpose of paying public safety costs. As used in this charter ordinance, **PUBLIC SAFETY COSTS** shall mean the city's cost for salaries, services, commodities, equipment and all other operating expense necessary for the provision of police and fire protection services to the City of WaKeeney. (Ord. 8, passed 3-24-1980)

### CHARTER ORDINANCE NO. 9

A charter ordinance exempting the City of WaKeeney, Kansas from K.S.A. 79-1953, as amended, and repealing Charter Ord. 6.

Section 1. The City of WaKeeney, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 79-1953, as amended, which is an enactment of the legislature applicable to this city but which is not uniformly applicable to all cities.

Section 2. The provisions of K.S.A. 79-1953, as amended, shall not apply to any taxes levied by the City of WaKeeney, Kansas.

Section 3. Charter Ord. 6 of the City of WaKeeney, Kansas is hereby repealed in its entirety. (Ord. 9, passed 9-26-1983)

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### CHARTER ORDINANCE NO. 10

A charter ordinance exempting the City of WaKeeney, Kansas from the provisions of K.S.A. 12-4112 so as to allow said to assess court costs in City of WaKeeney Municipal Court cases.

Section 1. The City of WaKeeney, Kansas, a city of the third class, who and by virtue of the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and does hereby exempt itself from the provisions of K.S.A. 12-4112 and makes said statutes inapplicable to said city insofar as said statutes require the City of WaKeeney, Kansas, to not assess Municipal Court costs. (Ord. 10, passed 1-14-1985)

### CHARTER ORDINANCE NO. 11

A charter ordinance exempting the City of WaKeeney, Kansas, from the provisions of K.S.A. 12-1696 to 12-16,101, inclusive, and providing substitute and additional provisions on the same subject, relating to the levy of the transient guest tax for tourism and conventions.

Section 1. The City of WaKeeney, Kansas, a city of the third class by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and makes inapplicable to it the provisions as hereinafter set forth in this ordinance. The referenced provisions are either enactments or parts thereof which are applicable to this city, but are not applicable uniformly to all cities.

Section 2. As used in this ordinance, the following words and phrases shall be defined as follows.

**LODGING.** Any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests.

**LODGING BUSINESS.** Any person engaged in the business of renting, leasing or letting quarters, sleeping accommodations, rooms or a part thereof in connection with any lodging business;

**PERSON.** An individual, firm, partnership, corporation, joint venture or other association of persons.

**TOURING.** A trip, excursion or circular journey for business, recreation or education.

**TOURISM.** The practice of touring or traveling for recreation, business or education;

**TRANSIENT GUEST.** A person who occupies a room in a lodging for business for not more than 28 consecutive days;



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Section 3. There is hereby levied, effective on January 1, 2013, a transient guest tax of five percent (5%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services and facilities in any hotel, motel or tourist court located within the City of WaKeeney, Kansas. The tax hereby levied shall be administered and collected by the Kansas Department of Revenue, and the revenue therefrom shall be distributed in accordance with the provisions of K.S.A. 12-1696 et seq. All moneys received from such tax shall be credited to a Tourism and Convention Promotion Fund of the city.

Section 4. The transient guest tax levied pursuant to this ordinance shall be based upon the gross rental receipts collected by any lodging business.

Section 5. The tax levied pursuant to this ordinance shall be paid by the consumer or user to the lodging business and it shall be the duty of each and every such business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly possible or practicable to the average equivalent thereto. Each lodging business collecting the tax levied hereunder shall be responsible for paying it over to the State Department of Revenue in the manner prescribed by K.S.A. 12-1696, and any amendments thereto, and the state Department of Revenue shall administer and enforce the collection of such tax as provided therein.

Section 6. The tax levied and collected pursuant to Section 3 of this ordinance shall become due and payable in a manner prescribed by K.S.A. 12-1696 and amendments thereto, except that all taxes remaining after the two percent (2%) deduction for expenses of the Department of Revenue in administration and enforcement of the collection thereof shall be remitted to the City of WaKeeney, and shall be credited to the Travel and Tourism Fund hereinafter established and shall only be expended out of said Fund as hereinafter provided.

Section 7. A Travel and Tourism Fund shall only be expended as follows.

(a) The Convention and Tourism Committee hereinafter established shall annually consider all requests for expenditure of transient guest tax funds and shall prepare a budget of expenditures for each year to be submitted to the governing body for its approval and action.

(b) The governing body shall consider the expenditures proposed from the Travel and Tourism Fund by the Travel and Tourism Committee and shall adopt a budget of such expenditures which may vary from the proposal of the Travel and Tourism Committee in the discretion of the governing body. The governing body may at any time seek further advice and recommendations from the Travel and Tourism Committee regarding such expenditures but reserves the exclusive authority to make final decision on them.

(c) Such funds may be used:

(1) To contact with any agency, organization or group of firms to promote travel and tourism within the city and its environs;

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(2) To provide for the operation, maintenance, expansion or development of city facilities connected with travel and tourism; and

(3) To work with other local organizations to assist in the creation of innovative projects and activities promoting travel and tourism.

Section 8. Smoky Valley Scenic Byway Committee is hereby established to be a part of the WaKeeney Travel and Tourism Committee. WaKeeney Travel and Tourism shall advise the governing body and make recommendations concerning programs and expenditures for the Smoke Valley Byway. Expenditures will fall under the travel and tourism annual budget.

Section 9. A Travel and Tourism Committee is hereby established to advise the governing body and make recommendations concerning programs and expenditures for travel and tourism. This Committee shall replace the committee of the same name created by Resolution No. 4-23-84 which is hereby abolished. The above created Committee shall consist of five members appointed by the Mayor and confirmed by the City Commission. Initially, three members shall be appointed for terms ending 12-31-1989; two members shall be appointed for terms ending 12-31-1990. The Travel and Tourism Committee shall consist of seven members appointed by the Mayor and confirmed by the City Council. Initially, four members shall have terms ending December 31, 2022. Three members shall have terms ending December 31, 2023. Thereafter, at the expiration of the terms of the original members, their successors shall be anointed for terms of two years each, and each shall serve until a successor is appointed and qualified. Any vacancies in the membership of the Committee shall be filled by the appointment of a new member as in the case of the original appointment, to fill the unexpired term of the member whose office is vacant.

Section 10. Each member of the Travel and Tourism Committee shall be a representative of one of the following groups:

(a) Owner, operator or employees of persons engaged in the lodging business within the city and its environs, whether such members reside inside or outside the city;

(b) Representatives from agencies or organizations actively engaged in promoting tourism, or from facilities or organizations of historic or cultural attractions in the city or its environs;

(c) Members of the general public;

(d) Retail business representative from City of WaKeeney; and

(e) Representatives from commerce and/or promotion along the Smokey Valley Scenic byway.

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In making appointments to the Committee, the Mayor shall designate which group the appointed member is to represent. No more than two representatives from any one of the above groups shall be members of the Committee at any time. If a particular sect cannot be represented, the Travel and Tourism Committee must ask the governing body for a variance upon providing documentation that all parties were asked and declined to serve on the Committee.

The Committee shall hold regular meetings at a time and place to be established by it. All meetings shall be open to the public. No member of the Committee shall receive any compensation for service thereof. Any member who is absent for three consecutive regular meetings shall be deemed to have resigned, and a successor shall be appointed. The Travel and Tourism Committee shall hire, qualify and supervise a part-time Director for WaKeeney Travel and Tourism.

Section 11. The City of WaKeeney, Kansas, having previously adopted Resolution No. 4-23-84, authorizing the levy of a transient guest tax, shall have authority to contract for the expenditure of moneys from the Travel and Tourism Fund. (Ord. passed 11-15-1988; Ord. 1427, passed 10-16-2012)

### CHARTER ORDINANCE NO. 12

A Charter Ordinance exempting the City of WaKeeney, Kansas, from provisions of K.S.A. 1992 Supp. 79-5028, as amended, and providing substitute and additional provisions on the same subject  
Be it ordained by the governing body of the City of WaKeeney, Kansas:

Section 1. The City of WaKeeney, be the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas and as provided by K.S.A. 1992 Supp. 79-5036(a), hereby elects to exempt itself from the provisions of K.S.A. 1992 Supp. 79-5028, as amended, part of an enactment commonly known as the Kansas Property Tax Lid Law, which enactment applies to this city but does not apply uniformly to all cities.

Section 2. The following is hereby substituted for the provisions of K.S.A. 1992 Supp. 79-5028, as amended: The provisions of K.S.A. 1992 Supp. 79-5021 to 79-5034 inclusive, and amendments there to shall not limit the levy of taxes by the governing body of the City of WaKeeney.

Section 3. This charter ordinance shall be published once each week for two consecutive weeks in the official newspaper.

Section 4. This charter ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this charter ordinance shall become effective upon approval by a majority of the electors voting thereon. (Ord. 12, passed 1-18-1994)

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## **TABLE II: 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. 1337**

An ordinance of the City of WaKeeney, Kansas, establishing franchise payments, pursuant to the City of WaKeeney Ord. 1284, concerning a community antenna and close circuit electronic system operated by Kays, Inc., its successors, lessees and assigns.

Section 1. Pursuant to Section 11 of Ord. 1284 of the City of WaKeeney, adopted by the governing body of the City of WaKeeney, Kansas, on July 19, 1988, the franchise payments to be paid by the franchise, as defined in said ordinance, shall be for the remaining years in which said franchise is effective, unless sooner changed, a sum equal to two percent (2%) of the receipts on basic cable, three and five tenths percent (3.5%) of the receipts for non-basic cable television services, as defined by Subsection 1k of Ord. 1284, but not including services offered by the franchisee for data transmission, interactive video and other services sold by franchisee, and for all other services, including data transmission, interactive video and like services sold by franchisee, a sum equal to three and five tenths percent (3.5%) of the receipts for said services. All other provisions of Section 11 of Ord. 1284 shall continue in full force and effect.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. (Ord. 1337, passed 9-3-1996)

### **ORDINANCE NO. 1374**

An ordinance of the City of WaKeeney, Trego County, Kansas, granting to Eagle Communications, Inc., a Kansas corporation, its successor and assigns, for a term of seven (7) years, the right, authority, power and franchise to use the streets, avenues, boulevards, alleys and other public places in the City of WaKeeney, Kansas, to conduct the business of constructing, installing, maintaining, managing and operating a telecommunications system in the City of WaKeeney.

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Section 1. Eagle Communications, Inc., a Kansas Corporation, duly authorized to do business in the State of Kansas, and its successors, lessees and assigns (hereinafter called the “grantee”), is hereby granted, pursuant to K.S.A. 12-2001 et seq. as amended from time to time hereinafter, in the operation of grantee’s telecommunication system, and its business and service incidental to or connected therewith, including, but not limited to, all telecommunications business, systems and/or service to be defined hereafter so as not to be in conflict or competition with what is commonly referred to as a telephone system and/or telecommunication services that require a Certificate of Convenience and Authority by the Kansas Corporation Commission. All telecommunication services, as heretofore defined, will be subject to or hereafter authorized by the Kansas Corporation Commission or the Federal Communications Commission (hereinafter called the “system”), within the City of WaKeeney, Kansas (hereinafter called the “city”), the franchise and right to use and occupy the streets and other public places within the corporate limits of the city, as the same now or may hereafter exist, for the grantee’s system, including, but not limited to, the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, sidewalks, alleys, avenues, parkways, lanes, bridges, utility and other easements, rights-of-way and other public places of the city, all towers, poles, cables, amplifiers, conduits, pole and wire fixtures, telecommunications plant and apparatus of whatsoever kind and nature and any and all other associated and related facilities owned, leased or otherwise used by the grantee for the ownership and operation of the system within the city and environs thereof during the continuance of the franchise hereby granted (hereinafter called the “franchise”), but expressly subject to the restrictions and conditions hereinafter set forth.

Section 2. This franchise is non-exclusive and shall take effect and be in force from and after the expiration of sixty (60) days from the date of its final passage by the governing body of the city and shall be for a term of seven (7) years from the effective date hereto and for successive terms of five (5) years unless written notice of termination is given by the city or the grantee at least 365 days prior to the expiration of the then existing term thereof.

Section 3. The grantee shall operate the system in such a manner as shall be to the benefit of the city and its inhabitants and in a manner in accordance with quality of services that are in conformance with the Federal Communications Commission rules, regulations and proof of performance test provisions. Subject to those powers reserved and granted to the city pursuant to K.S.A. 12-2001 et seq. and amendments thereof, the grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable the grantee to exercise its rights and operate the system under this franchise; and that the grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the telecommunications services provided for hereunder as authorized by the Kansas Corporation Commission and any other governmental agency charged by law with the power to regulate telecommunications public utilities.

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Section 4. All newly constructed permanent wires, cables and fiber used in connection with the system in the city shall follow the electric utilities route, in the event the electric utility buries its cables, wires and appurtenances, the grantees shall be required to construct its facilities underground. In the event the electric utility constructs its facilities overhead, grantee shall be permitted to construct its facilities overhead to be placed on utility poles. Any and all such construction shall be located so as not to injure unnecessarily any drains, sewers, catch basins or other public improvements and, if such injured, the grantee shall repair any damages so caused to the satisfaction of the city. The city reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the grantee and to reasonably designate where such facilities are to be placed within the public ways and places of the city.

Section 5. The grantee shall, on the request of any person holding a building moving permit issued by the city or any other agency empowered to issue the same, temporarily move, raise or lower its cables, wires and other plant to permit the moving of any such building or buildings. The expense of such moving of wires, cables and plant shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance.

The grantee shall be given not less than forty-eight (48) hours' advance notice of any such anticipated moving of a building or buildings.

Section 6. The grantee shall have the authority to trim trees, shrubs and other vegetation located on any streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees, shrubs and vegetation from coming in contact with the wires, cables and plant of the grantee, all trimming to be done under the supervision and direction of the city and at the expense of the grantee.

Section 7. In consideration for the rights, privileges and franchise hereby granted, and as compensation to the city for the use of its public ways and places by the grantee and further as compensation to the city for administration of this franchise, and in lieu of all city occupation and license fees and taxes, the grantee shall pay to the city, in arrears, an amount equal to three percent (3%) of the annual gross receipts derived from monthly telecommunications services (installation, one time charges and internet services are not included) rendered wholly within the corporate limits of the city. Payments shall be made semiannually as follows: (i) for the period of January 1 through June 30 of each year, or part thereof, during the term of the franchise, the payment shall be made no later than October 1 of the same year; (ii) for the period of July 1 through December 31 of each year, or part thereof, during the term of the franchise, the payment shall be made no later than April 1 of the following year. In the event of the termination of the franchise, payment of franchise fees for the final reporting period shall be made on the applicable payment date above even though the franchise is no longer in effect. All franchise and copyright fees shall be itemized as separate charges and shall be charged back to grantee's customers.

Section 8. It shall be the policy of the city to amend this franchise upon application of the grantee, when deemed advisable or necessary by the city, to enable the grantee to take advantage of any developments in the field of telecommunications systems and services which will afford the grantee an opportunity to more effectively, efficiently or economically serve its customers, and to enable the grantee to conform to the rules and regulation of any and all governmental agencies charged by law with regulation of telecommunications public utilities.

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Section 9. Grantee shall maintain service personnel on call on a 24-hour, seven day a week basis to respond to customer service request calls. So long as grantee has the majority of cable subscribers within the corporate limits of WaKeeney, it shall maintain an office having usual business hours Monday through Friday, staffed with personnel residing in the City of WaKeeney with the exception of the present part-time employee living outside the city. In addition, grantee shall provide a drop box at a convenient location at its office.

Section 10. The grantee shall hold and save the city harmless from all cost and damage, expense or liability which may be occasioned solely by the grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said city, and in the event an action shall be instituted against the city and the grantees jointly or against the city separately arising out of injury or damage or both, occasioned solely by the grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said city, then upon notice by the city to the grantee, the grantee will assume liability for the defense of such action at the cost of the grantee subject to the option of the city to appear and defend at its owns costs, any such case.

Section 11. The grantee, its successors and assigns, in the construction, maintenance and operation of its telecommunication system shall use all reasonable and proper precautions to avoid damage or injury to persons or property and shall hold and save harmless the City of WaKeeney, Kansas, from any and all damages, injury, claims, causes of action or expense caused by the grantee, its successors and assigns, or its or their agents or servants.

Section 12. The city's failure to enforce and remedy any noncompliance by the grantee of the terms and conditions of this franchise ordinance shall not constitute a waiver of the city's rights hereunder, and the grantee shall continue to perform its obligation as herein provided.

Section 13. The grantee shall have no remedy or recourse whatsoever against the city for any loss, cost, expense or damage arising from any of the provisions or requirements of the franchise ordinance or because of the enforcement thereof by the city of any loss, cost, expense or damage arising from any of the provisions or requirements of the franchise ordinance, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant all, or any part, of the franchise herein granted; provided that the grantee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the city to grant the franchise herein conferred upon the grantee; provided further that the grantee acknowledges by its acceptance of the franchise that it has not been induced to enter into this franchise upon any understanding or promise, whether given verbally or in writing by or on behalf of the city, or by any other person concerning any term or condition of this franchise not expressed herein; provided further that the grantee acknowledges by the acceptance of this franchise that is has carefully read the provisions, terms and conditions hereof.

Section 14. Nothing herein contained shall be construed as giving to the grantee any exclusive privileges, nor shall this franchise affect any prior or existing rights of the grantee to maintain telecommunications service within the city.



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Section 15. The franchise and all rights hereunder may not be assigned by the grantee, without the written consent of the governing body of the City of WaKeeney, which will not be unreasonably withheld, and the successors and/or assigns shall succeed to all rights, duties and liabilities of the grantee hereunder.

Section 16. If any portion of this ordinance, for any reason whatsoever, is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

Section 17. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance.

Section 18. All provisions of this ordinance shall be binding upon the grantee and all successors, lessees and assigns of the grantee, whether expressly stated herein or not, and all the rights, authorities, power, grants and privileges secured by this ordinance to the grantee shall be held to inure to the benefit of the grantee and all successors, lessees and assigns of the grantee. (Ord. 1374, passed 9-30-2003)

### ORDINANCE NO. 1377

An ordinance granting to the Kansas Corporation of Rural Telephone Service Company, Inc., its subsidiaries (namely Nextech, Inc.), successors, transferees and assigns, a nonexclusive franchise to erect, maintain and operate a communications system within the City of WaKeeney, Kansas, prescribing the terms and conditions thereof and providing for payments to be made to the City of WaKeeney, Kansas.

#### ARTICLE I: DEFINITIONS

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein.

**CITY.** The City of WaKeeney, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of WaKeeney, Kansas, as they now or shall hereafter exist.

**COMMUNICATIONS SYSTEM.** All equipment used to transport audio and video signals (voice, video, data, radio and cable television) to consumers including, but not limited to, any cable, electronics, fiber optics or other types of necessary equipment.

**COUNCIL.** The present governing body of the City of WaKeeney, Kansas, or any successor to the legislative powers of the present City Council.

**FACILITIES OF GRANTEE or COMMUNICATIONS FACILITIES.** Property of the grantee used in operation of the communications system.

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**FRANCHISE.** The permission, license or authority given hereunder to conduct and operate a communications system in the City of WaKeeney, Kansas, pursuant to the ordinance passed by the City Council.

**GRANTEE.** Rural Telephone Service Company, Inc., its subsidiaries, successors, transferees or assigns of the franchise granted herein.

**GROSS REVENUE.** The monthly revenues received by grantee for the basic service rates from subscribers of the grantee's local telephone service and basic cable television service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the communications system; (ii) revenues from optional calling features; (iii) any taxes on communications service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency; or (iv) any revenues derived from installation charges.

**PERSON.** Any individual or association of individuals, or any firm, corporation or other business entity.

**PROPERTY OF GRANTEE.** All property owned and installed or used by the grantee in the conduct of its communications business in the City of WaKeeney and under the authority of the franchise granted herein.

**STREET.** The surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of WaKeeney, Kansas, for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City of WaKeeney, which shall within their proper use and meaning entitle the City of WaKeeney and its grantee to use for the purpose of installing or transmitting communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a communications system.

**SUBSCRIBER.** Any person or entity receiving for any purpose all or one of the services offered within the grantee's communications system.

### ARTICLE II: GRANT OF FRANCHISE

Section 1. General Grant. The city hereby grants to grantee the right and privilege to construct, erect, operate and maintain a communications system within the city and in so doing to use the streets of the city by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a communications system within the City of WaKeeney, Kansas.

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Section 2. Conditions for Grant. Grantee must be authorized by the State of Kansas to provide telephone service within the boundaries of the state and shall provide the city with a copy of its State Certificate. In addition, the Telephone Company will maintain an office in the city for the duration of this franchise staffed with personnel residing in the city.

Section 3. Non-exclusivity. The authority given to grantee in the above section is not and shall not be deemed to be an exclusive right of permission. The city expressly reserves the right to grant similar non-exclusive franchises to other persons, firms or corporations and allow them to use the streets of the city within the same or other areas of the city as grantee at any time; provided, however, that such other franchises do not interfere or create interference with grantee's communications system already established and said other franchisees shall not be extended preferential treatment over grantee.

Section 4. Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the communications system.

Section 5. Modifications. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this franchise within one year of the adoption of the modification, or at the time of renewal, whichever occurs first. It shall also be the policy of the city to amend this franchise, upon application of grantee, when necessary to enable grantee to take advantage of any developments in the field of telecommunications which would afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

### **ARTICLE III: TERM**

The term of this ordinance shall be for seven (7) years and successive terms of five (5) years unless written notice is given by either the city or the grantee to the other, 365 days or more prior to the expiration of the initial term, or any successive term, of its intention to terminate the same at the expiration of the then current term.

### **ARTICLE IV: FORFEITURE**

In addition to all other rights and powers reserved or pertaining to the city, the city reserves as an additional and as a separate and distinct remedy the right to revoke this franchise and all rights and privileges of the grantee hereunder for any of the following reasons:

1. Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the ordinance granting this franchise or has, by act or omission, violated any term or condition thereof.

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2. Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable, and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the franchise granted herein;
3. The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
4. The grantee attempts to or does practice any fraud or deceit in its conduct or relations with the city or subscribers, under this franchise; or
5. The city condemns all of the property of the grantee within the city by lawful exercise of eminent domain.

### ARTICLE V: ORDINANCE OF REVOCATION

No revocation provided for in the previous paragraph except for reasons of condemnation, shall be effective unless or until the City Council provides written notice to grantee, and grantee is given at least 30 days to cure any alleged breach of Article IV herein. If after the expiration of the time to cure, City Council believes grantee has failed to cure, the City Council must adopt an ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. Such ordinance shall not be adopted without thirty (30) days prior written notice thereof to the grantee and an opportunity for the grantee to be heard on the proposed adoption of said proposed ordinance. If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by the grantee.

### ARTICLE VI: COMPENSATION

In consideration of the grant of the franchise to the grantee, the grantee shall pay to the city, in arrears, an amount equal to three percent (3%) of the annual Gross Revenue from the operation of the business in said city. Such payment shall be made in one (1) payment, on or before the first day of February of each year during the terms of this ordinance. The city agrees to accept this sum as full and fair compensation.

### ARTICLE VII: INDEMNIFICATION

The grantee shall, concurrently with the filing of the acceptance of this franchise, furnish to the city and file with the City Clerk a liability insurance policy in the amount of one million dollars (\$1,000,000) with a company approved by the City of WaKeeney and in a form satisfactory to the City Attorney indemnifying and defending the city, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expense or damages resulting therefrom, arising out of the exercise or enjoyment of this franchise.

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### ARTICLE VIII: USE AND INSTALLATION

Section 1. Degree of care. The grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the property of the grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

Section 2. Location of facility. All communications facilities shall be located so as to cause minimum interference with the proper use of streets and the rights and reasonable convenience of property owners abutting the streets, in no event shall such facilities be located so as to substantially interfere with the usual public travel on any street of the city.

Section 3. Damage to public property. Whenever grantee or any person on its behalf causes any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the communications facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Superintendent.

Section 4. Tree trimming. Grantee shall have authority to trim trees upon and over the streets of the city so as to prevent the branches of such trees from coming in contact with wires, cables and other facilities of grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the grantee.

Section 5. Facilities upgrades/changes. Grantee shall exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances as the business and purposes for which may from time to time require along, across, on, over, through, above and under any public right of way including, but not limited to, streets, avenues, alleys, bridges and the public grounds and places within the limits of the city.

### ARTICLE IX: REMOVAL AND ABANDONMENT OF PROPERTY

If the franchise is terminated or revoked, the grantee shall promptly, upon ninety (90) days written notice, remove from the streets all its facilities other than that which the City of WaKeeney, Kansas, may permit to be abandoned in place. In the event of such removal, the grantee shall promptly return the street to the like or similar condition which it was in before the facilities were placed.

### ARTICLE X: OPERATION AND MAINTENANCE

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Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to all of its customers. Grantee shall render efficient service, make repairs promptly and only interrupt service for good cause for the shortest time possible. In order to limit failure and malfunctions of the communications system and to enable prompt correction at all times after notice of malfunction or failure, grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day Sunday through Saturday, including holidays.

Grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary action shall be paid by the person requesting the same, and grantee shall have the authority to require advance payment. Grantee shall be given no less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

### **ARTICLE XI: COMPLIANCE WITH THE LAW**

Grantee shall, at all times during the term of this franchise, be subject to all lawful exercises of the police power of the city and to such reasonable regulations as the city shall prescribe for the general conduct of persons providing communications service within the city.

### **ARTICLE XII: SALE OR LEASE OF FRANCHISE**

The franchise shall be deemed a privilege to be held in personal trust by the grantee, it may not be sold, transferred, leased, assigned or disposed of in whole or in part either by force of voluntary sale, consolidation or otherwise without prior notification to the City Council.

### **ARTICLE XIII: GRANTEE WITHOUT RECOURSE**

Grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by the city, nor for the failure of the city to have the authority to grant all or any part of the franchise.

### **ARTICLE XIV: GRANTEE'S RATES AND REGULATIONS**

Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the services it provides through its communications system, provided that such rates shall not be established on a discriminatory basis.

### **ARTICLE XV: NOTICES**

Whenever, under the terms of this franchise, either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served upon the city it shall be delivered by certified mail to the Mayor & City Council c/o City Clerk, 408 Russell Ave., WaKeeney, KS 67672. If

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to the grantee, it shall be delivered by certified mail to CEO/General Manager, 145 N. Main, Lenora, Kansas 67645.

### ARTICLE XVI: MISCELLANEOUS PROVISIONS

Section 1. Supercedes prior ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance. This ordinance specifically supercedes the previously adopted ordinance of #1343 (effective June 3, 1997).

Section 2. Binding effect. All provisions of this ordinance shall be binding upon grantee and all successors, lessees and assigns of grantee whether expressly stated herein or not.

Section 3. Final approval. This ordinance shall be read in full at three regular meetings of the governing body. Immediately after the final passage, it shall be published in the official city newspaper, once a week for two (2) consecutive weeks. It shall not take effect and be in force until after the expiration of sixty (60) days from the date of final passage.

Section 4. Costs. Grantee shall assume the cost of publication of this ordinance. Grantee shall reimburse the city for these costs upon presentation of the publication costs. (Ord. 1377, passed 11-5-2004)

### **ORDINANCE NO. 1390** (Amending Ord. 1374)

An ordinance amending Ord. 1374 of the City of WaKeeney, Trego County, Kansas, granting to Eagle Communications, Inc., a Kansas corporation, its successor and assigns, for a term of seven (7) years, the right, authority, power and franchise to use the streets, avenues, boulevards, alleys and other public places in the City of WaKeeney, Kansas, to conduct the business of constructing, installing, maintaining, managing and operating a telecommunications system in the City of WaKeeney.

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Section 1. Eagle Communications, Inc., a Kansas Corporation, duly authorized to do business in the State of Kansas, and its successors, lessees, and assigns (hereinafter called the “grantee”), is hereby granted, pursuant to K.S.A. 12-2001 et seq., as amended from time to time hereinafter, in the operation of grantee’s telecommunication system, and its business and service incidental to or connected therewith, including, but not limited to, all telecommunications business, systems and/or service to be defined hereafter (amended by deletion of the remaining sentence in Ord. 1374). All telecommunication services, as hereto defined, will be subject to or hereafter authorized by the Kansas Corporation Commission or the Federal Communications Commission (hereafter called the “system”), within the City of WaKeeney, Kansas (hereafter called the “city”), the franchise and right to use and occupy the streets and other public places within the corporate limits of the city, as the same now may hereafter exist, for the grantee’s system, including, but not limited to, the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, sidewalks, alleys, avenues, parkways, lanes, bridges, utility and other easements, rights-of-way and other public places of the city, all towers, poles, cables, amplifiers, conduits, pole and wire fixtures, telecommunications plant and apparatus of whatsoever kind and nature and any and all other associated and related facilities owned, leased or otherwise used by the grantee for the ownership and operation of the system within the city and environs thereof during the continuance of the franchise hereby granted (hereinafter called the “franchise”), but expressly subject to the restrictions and conditions hereinafter set forth.

Section 2. This amended franchise is non-exclusive and shall take effect and be in force for the same term as Ord. 1374, that is for a term of seven (7) years from the effective date of Ord. 1374 (September, 2003) and for successive term of five (5) years unless written notice of termination is given by the city or the grantee at least 365 days prior the expiration of their existing term thereof.

Section 3. The grantee shall operate the system in such a manner as shall be to the benefit of the city and its inhabitants and in a manner in accordance with quality of services that are in conformance with the Federal Communications Commission rules, regulations and proof of performance test provisions. Subject to those powers reserved and granted to the city pursuant to K.S.A. 12-2001 et seq. and amendments thereof, the grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonable necessary to enable the grantee to exercise its rights and operate the system under this franchise and that the grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the telecommunication services provided for hereunder as authorized by the Kansas Corporation Commission and any other governmental agency charged by law with the power to regulate telecommunications public utilities.

Section 4. All newly constructed permanent wires, cables and fiber used in connection with the system in the city shall follow the electric utilities route, in the event the electric utility buries its cables, wires and appurtenances, the grantees shall be required to construct its facilities underground. In the event the electric utility constructs its facilities overhead, grantee shall be permitted to construct its facilities overhead to be placed on utility poles. Any and all such construction shall be located so as not to injure unnecessarily any drains, sewers, catch basins or other public improvements and, if such is injured, the grantee shall repair any damages so caused to the satisfaction of the city. The city reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the grantee and to reasonable designate where such facilities are to be placed within the public ways and places of the city.



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Section 5. The grantee shall, on the request of any person holding a building moving permit issued by the city or any other agency empowered to issue the same, temporarily move, raise or lower its cables, wires and other plant to permit the moving of any such building or buildings. The expense of such moving of wires, cables and plant shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours' advance notice of any such anticipated moving of a building or buildings.

Section 6. The grantee shall have the authority to trim trees, shrubs and other vegetation located on any streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees, shrubs and vegetation from coming in contact with the wires, cables and plant of the grantee, all trimming to be done under the supervision and direction of the city and at the expense of the grantee.

Section 7. In consideration for the rights, privileges and franchise hereby granted, and as compensation to the city for the use of its public ways and places by the grantee and further as compensation to the city for administration of this franchise, and in lieu of all city occupation and license fees and taxes, the grantee shall pay to the city, in arrears, an amount equal to three percent (3%) of the annual gross receipts derived from monthly telecommunications services (installation, one time charges and internet services are not included) rendered wholly within the corporate limits of the city. Payments shall be made semiannually as follows: (i) for the period of January 1 through June 30 of each year, or part thereof, during the term of the franchise, the payment shall be made no later than October 1 of the same year; (ii) for the period of July 1 through December 31 of each year, or part thereof, during the term of the franchise, the payment shall be made no later than April 1 of the following year. In the event of the termination of the franchise, payment of franchise fees for the final reporting period shall be made on the applicable payment date above even though the franchise is no longer in effect. All franchise and copyright fees shall be itemized as separate charges and shall be charged back to grantee's customers.

Section 8. It shall be the policy of the city to amend this franchise upon application of the grantee, when deemed advisable or necessary by the city, to enable the grantee to take advantage of any developments in the field of telecommunications systems and services which will afford the grantee an opportunity to more effectively, efficiently or economically serve its customers, and to enable the grantee to conform to the rules and regulation of any and all governmental agencies charged by law with regulation of telecommunications public utilities.

Section 9. Grantee shall maintain service personnel on call on a 24-hour, seven day a week basis to respond to customer service request calls. So long as grantee has the majority of cable subscribers within the corporate limits of WaKeeney, it shall maintain an office having usual business hours Monday through Friday, staffed with personnel residing in the City of WaKeeney with the exception of the present part-time employee living outside the city. In addition, grantee shall provide a drop box at a convenient location at its office.

Section 10. The grantee shall hold and save the city harmless from all costs and damage, expense or liability which may be occasioned solely by the grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said city, and in the event an action shall be instituted against the city and the grantees jointly or against the city separately arising out of injury or

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damage to both, occasioned solely by the grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said city, then upon notice by the city to the grantee, the grantee will assume liability for the defense of such action at the cost of the grantee subject to the option of the city to appear and defend at its own costs, any such case.

Section 11. The grantee, its successors and assigns, in the construction, maintenance and operation of its telecommunication system shall use all reasonable and proper precautions to avoid damage or injury to persons or property and shall hold and save harmless the City of WaKeeney, Kansas, from any and all damages, injury, claims, causes of action or expense caused by the grantee, its successors and assigns, or its or their agents or servants.

Section 12. The city's failure to enforce and remedy any noncompliance by the grantee of the terms and conditions of this franchise ordinance shall not constitute a waiver of the city's rights hereunder, and the grantee shall continue to perform from its obligation as herein provided.

Section 13. The grantee shall have no remedy or recourse whatsoever against the city for any loss, costs, expense or damage arising from any of the provisions or requirements of the franchise ordinance or because of the enforcement thereof by the city of any loss, cost, expense or damage arising from any of the provisions or requirements of the franchise ordinance, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant all, or any part, of the franchise herein granted; provided, that the grantee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the city to grant the franchise herein conferred upon the grantee; provided further, that the grantee acknowledges by its acceptance of the franchise that it has not been induced to enter into this franchise upon any understanding or promise, whether given verbally or in writing by or on behalf of the city, or by any other person concerning any term or condition of this franchise not expressed herein; provided further, that the grantee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms and conditions hereof.

Section 14. Nothing herein contained shall be construed as giving to the grantee any exclusive privileges, nor shall this franchise affect any prior or existing rights of the grantee to maintain telecommunications service within the city.

Section 15. The franchise and all rights hereunder may not be assigned by the grantee, without the written consent of the governing body of the City of WaKeeney, which will not be unreasonably withheld, and the successors and/or assigns shall succeed to all rights, duties and liabilities of the grantee hereunder.

Section 16. If any portion of this ordinance, for any reason whatsoever, is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

Section 17. All ordinance and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance.

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Section 18. All provisions of this ordinance shall be binding upon the grantee and all successors, lessees and assigns of the grantee, whether expressly stated herein or not, and all the rights, authorities, power, grants and privileges secured by this ordinance to the grantee shall be held to inure to the benefit of the grantee and all successors, lessees and assigns of the grantee. (Ord. 1390, passed 3-2-2006)

### **ORDINANCE 1391**

An ordinance granting to Midwest Energy, Inc., a Kansas corporation, 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. Be it ordained by the governing body of the City of WaKeeney, Kansas:

Section 1. That, in consideration of the benefits to be derived by the City of WaKeeney, Kansas, and its inhabitants, hereinafter called “city”, there is hereby granted to Midwest Energy, Inc., hereinafter called “grantee” or “company”, its successors and assigns, the right to use and occupy the streets, avenues, alleys other public places within the City of WaKeeney, Kansas, for the purpose of constructing, erecting, operating and maintaining electric transmission and distribution lines and all necessary facilities and appurtenances for use in the transmission, distribution and sale of electricity for all purposes to said city and its inhabitants for a period of twenty (20) years from the date of passage of this ordinance through the 30th day of May, 2026.

Section 2. The company is hereby given the right, under the supervision of the governing body of the city, and within the city limits, to trim and cut such trees and foliage as may be reasonably necessary to prevent the same from interfering with the safe and efficient operation and maintenance of its transmission lines, distribution system, street lighting equipment, and to establish reasonable rules and regulations for the conduct of its business.

Section 3. That, in consideration of the rights and privileges hereby granted, said grantee hereby undertakes and agrees to use reasonable effort to maintain good adequate service to the city hereunder, but it is understood that the company does not guarantee that the supply of electrical energy will at all times be continuous and it is agreed that temporary cessation of company’s service hereunder occasioned by fire, explosion, flood, strike, insurrection, mob violence, governmental interference, breakdown or injury to machinery, or transmission or distribution lines or from other accidents or causes not reasonably within its control, shall not constitute a breach of this ordinance or any obligation arising hereunder on the part of the company; and, that grantee shall not be liable to the city or to any other person, firm or corporation for any damages resulting from such temporary cessation of service.

Section 4. That, in consideration of the rights and privileges hereby granted, said grantee, its successors and assigns, shall locate its distribution lines in the streets, avenues, alleys and other public places in such manner as not to interfere with the use of said streets, avenues, alleys and public places. At times when the city causes public improvements to be made to any of the streets, avenues, alleys or other public places within the city that are occupied by the company’s electric facilities, the company shall, at the city’s request, relocate its electric facilities at company’s expense to conform to the city’s planned improvement. If said grantee is required to move, alter or rebuild any of its electric facilities not

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located on public right-of-way, the cost of moving, altering or rebuilding said facilities shall be borne by the requesting party. In the event city vacates or otherwise abandons a city right-of-way on which company facilities are located, or planned to be located, the ordinance vacating or abandoning such city right-of-way shall provide the city's granted easement to the company.

Section 5. It is further agreed by the city and the company, that the rates now in effect or such rates as may be approved by the proper governmental authority having jurisdiction over the company, shall be deemed to be a reasonable schedule of maximum rates charged the city and its inhabitants for the service provided by the company.

Section 6. Subject to any restriction placed on company by regulatory authorities having jurisdiction over the company in consideration of and as compensation for the granting of this franchise by the City of WaKeeney, Kansas, and in lieu of any licenses, fees and occupation or other revenue taxes, the company shall collect from consumers and pay to the city an amount equal to four percent (4%) of the gross revenue derived from the sales of electric power and energy within the corporate limits of said city, such payment to be made to the city monthly for the preceding monthly period.

If and when retail wheeling becomes an option, this ordinance may be opened so that a franchise tax may be collected on such electric energy that is being wheeled through Midwest Energy's local distribution system in the city limits of WaKeeney, Kansas. The option to reopen this provision of Section 6 will not affect the other terms of this ordinance.

The city shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the company necessary to verify the correctness of said payments.

Notwithstanding anything to the contrary in this franchise, the fee provided for in this Section 6 shall not become effective within any area annexed by the city until 30 days after the city provides the company with a certified copy of the annexation ordinance, proof of publication as required by law, and a map of the city detailing the annexed area.

Section 7. Without affecting the other terms of this ordinance, as further consideration for the rights and privileges hereby granted company and subject to any restrictions placed on company by regulatory authorities having jurisdiction over the company, the company agrees that the city will have the option to open the provision of Section 6 relating to the percentage applied to gross receipts derived from applicable electric sales. Six (6) months prior to the end of each five-year period that this ordinance is in existence, the company and the city may renegotiate the percentage to be paid to the city during the succeeding five-year period. If the company and the city cannot reach a mutual agreement on said percentage during such six-month period, this ordinance shall become null and void.

Section 8. That the company, its successors and assigns, in the construction, maintenance and operation of its electric transmission, distribution and street lighting system, under the rights and privileges herein granted, shall exercise all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of WaKeeney, Kansas, 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.

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Section 9. The grantee shall maintain an office in the City of WaKeeney, Kansas at its present size for the duration of the franchise.

Section 10. It is further provided that should any section or sections of this ordinance be held null and void, or void or illegal by any court having jurisdiction in a proper action, such decision by such court shall not affect any other part of this ordinance not passed upon by such court.

Section 11. That all ordinances or parts of ordinances in conflict with or inconsistent with this ordinance are hereby repealed.

Section 12. This franchise is granted pursuant to the provisions of Article 20, Chapter 12, Kansas Statutes Annotated.

Section 13. The ordinance shall take effect and be in force from and after its passage and publication in the Western Kansas World, the official city newspaper. (Ord. 1391, passed 5-30-2006)

### ORDINANCE NO. 1392

An ordinance granting to Midwest Energy, Inc., 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 thereof. Be it ordained by the governing body of the City of WaKeeney, Kansas:

Section 1. That, in consideration of the benefits to be derived by the City of WaKeeney, Kansas, and its inhabitants, hereinafter called "city", there is hereby granted to Midwest Energy, Inc., hereinafter called "grantee" or "company", its successors and assigns, the right to use and occupy the streets, avenues, alleys and other public places within the City of WaKeeney, Kansas, for the purpose of constructing, installing, maintaining and operating a natural gas transmission and distribution system including mains, pipes, conduits, services and other necessary structures and appurtenances, in, under, upon, over, across and along the streets, alleys, bridges and public grounds within the present and future corporate limits of the City of WaKeeney, Kansas, for the furnishing, transmission, distribution and sale of natural gas, for heating, cooling, domestic, industrial and other purposes, and for transmitting natural gas into, through and beyond said city for a period of twenty (20) years from the date of passage of this ordinance through the 30th day of May, 2026.

Section 2. All mains, pipes, conduits and services shall be installed and maintained so as to interfere as little as practicable with traffic over the streets, alleys, bridges and public places of said city. When grantee shall do any work of construction, repair or maintenance of said system in the course of which any pavements, curbing or gutter upon any street, alley, bridge or public place shall be excavated, grantee shall properly protect excavations and shall promptly restore such street, alley, bridge or public place as far as practicable to as good condition as before such work was done.

## WaKeeney - Table of Special Ordinances

Section 3. That, in consideration of the rights and privileges hereby granted, said grantee hereby undertakes and agrees to use reasonable effort to maintain good and adequate service to the city hereunder, but it is understood that the company does not guarantee that the supply of natural gas will at all times be continuous and it is agreed that temporary cessation of company's service hereunder occasioned by fire, explosion, flood, strike, insurrection, mob violence, governmental interference, breakdown or injury to machinery, or transmission or distribution lines or from other accidents or causes not reasonably within its control, shall not constitute a breach of this ordinance or any obligation arising hereunder on the part of the company; and, that grantee shall not be liable to city for any damages resulting from such temporary cessation of service.

Section 4. That, in consideration of the rights and privileges hereby granted, said grantee, its successors and assigns, shall locate its transmission and distribution lines in the streets, avenues, alleys and other public places in such manner as not to interfere with the use of said streets, avenues, alleys and public places. At times when city causes public improvements to be made to any of the streets, avenues, alleys or other public places within the city that are occupied by the company's natural gas facilities, the company shall, at city request, relocate its natural gas facilities at the company's expense to conform to the city's planned improvement. If said grantee is required to move, alter or rebuild any of its natural gas facilities not located on public right-of-way, the cost of moving, altering or rebuilding said facilities shall be borne by the requesting party. In the event city vacates or otherwise abandons city right-of-way on which company facilities are located, or planned to be located, the ordinance vacating or abandoning such city right-of-way shall provide the city's granted easement to the company.

Section 5. It is further agreed by the city and the company, that the rates now in effect or such rates as may be approved by the proper governmental authority having jurisdiction over the company, shall be deemed to be a reasonable schedule of maximum rates charged the city and its inhabitants for the service provided by the company.

Section 6. Subject to any restriction placed on company by regulatory authorities having jurisdiction over the company in consideration of and as compensation for the granting of this franchise by the City of WaKeeney, Kansas, and in lieu of any licenses, fees and occupation or other revenue taxes, the company shall collect from consumers and pay to the city an amount equal to four percent (4%) of the gross revenue derived from the sales of natural gas and of .04 cents per therm for gas transported to any customer within the corporate limits of said city. Payment shall be made to the city monthly for the preceding monthly period.

The city shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the company necessary to verify the correctness of said payments.

Notwithstanding anything to the contrary in this franchise, the fee provided for in this Section 6 shall not become effective within any area annexed by the city until 30 days after the city provides the company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

## Franchises

Section 7. Without affecting the other terms of this ordinance, as further consideration for the rights and privileges hereby granted company and subject to any restrictions placed on company by regulatory authorities having jurisdiction over the company, the company agrees that the city will have the option to open the provision of Section 6 relating to the percentage applied to gross receipts derived from applicable natural gas sales. Six (6) months prior to the end of each five-year period that this ordinance is in existence, the company and the city may renegotiate the percentage to be paid to the city during the succeeding five-year period. If the company and the city cannot reach a mutual agreement on said percentage during such six-month period, this ordinance shall become null and void.

Section 8. That the company, its successors and assigns, in the construction, maintenance and operation of its natural gas transmission and distribution system, under the rights and privileges herein granted, shall exercise all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of WaKeeney, Kansas, 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. The grantee shall maintain an office in the City of WaKeeney, Kansas at its present size for the duration of the franchise.

Section 10. It is further provided that should any section or sections of this ordinance be held null and void, or void or illegal by any court having jurisdiction in a proper action, such decision by such court shall not affect any other part of this ordinance not passed upon by such court.

Section 11. That all ordinances or parts of ordinances in conflict with or inconsistent with this ordinance are hereby repealed.

Section 12. This franchise is granted pursuant to the provisions of K.S.A. Chapter 12, Article 20.

Section 13. The ordinance shall take effect and be in force from and after its passage and publication in the Western Kansas World, the official city newspaper.  
(Ord. 1392, passed 5-30-2006)

## ORDINANCE NO. 1442

### ARTICLE I: DEFINITIONS

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein.

**CITY.** The City of WaKeeney, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of WaKeeney, Kansas, as they now or shall hereafter exist.

**COMMUNICATIONS SYSTEM.** All equipment used to transport audio and video signals (voice, video, data, radio and cable television) to consumers including, but not limited to, any cable, electronics,

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fiber optics or other types of necessary equipment.

**COUNCIL.** The present governing body of the City of WaKeeney, Kansas, or any successor to the legislative powers of the present City Council.

**FACILITIES OF GRANTEE or COMMUNICATIONS FACILITIES.** Property of the grantee used in operation of the communications system.

**FRANCHISE.** The permission, license or authority given hereunder to conduct and operate a communications system in the City of WaKeeney, Kansas, pursuant to the ordinance passed by the City Council.

**GRANTEE.** Rural Telephone Service Company, Inc., d/b/a Nex-Tech, its subsidiaries, successors, transferees or assigns of the franchise granted herein.

**GROSS REVENUE.** The monthly revenues received by the grantee for the basic service rates from subscribers of the grantee's local telephone service and basic cable television service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the communications system; (ii) revenues from optional calling features; (iii) any taxes on communications service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency; or (iv) any revenues derived from installation charges.

**PERSON.** Any individual or association of individuals, or any firm, corporation or other business entity.

**PROPERTY OF GRANTEE.** All property owned and installed or used by the grantee in the conduct of its communications business in the City of WaKeeney and under the authority of the franchise granted herein.

**STREET.** The surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of WaKeeney, Kansas, for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City of WaKeeney, which shall within their proper use and meaning entitle the City of WaKeeney and its grantee to use for the purpose of installing or transmitting communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a communications system.

**SUBSCRIBER.** Any person or entity receiving for any purpose all or one of the services offered within the grantee's communications system.

## ARTICLE II: GRANT OF FRANCHISE



## **Franchises**

Section 1: General Grant. The city hereby grants to the grantee the right and privilege to construct, erect, operate and maintain a communications system within the city and in so doing to use the streets of the city by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a communications system within the City of WaKeeney, Kansas.

Section 2: Conditions for Grant. Grantee must be authorized by the State of Kansas to provide telephone service within the boundaries of the state and shall provide the city with a copy of its state certificate.

Section 3: Non-exclusivity. The authority given to grantee in the above section is not and shall not be deemed to be an exclusive right of permission. The city expressly reserves the right to grant similar non-exclusive franchises to other persons, firms or corporations and allow them to use the streets of the city within the same or other areas of the city as the grantee at any time; provided, however, that such other franchises do not interfere or create interference with grantee's communications system already established and said other franchisees shall not be extended preferential treatment over the grantee.

Section 4: Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the communications system.

Section 5: Modifications. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this franchise within one year of the adoption of the modification, or at the time of renewal, whichever occurs first. It shall also be the policy of the city to amend this franchise, upon application of grantee, when necessary to enable grantee to take advantage of any developments in the field of telecommunications which would afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

### **ARTICLE III: TERM**

The term of this ordinance shall be for five (5) years and successive terms of five (5) years unless written notice is given by either the city or the grantee to the other, 90 days or more prior to the expiration of the initial term, or any successive term, of its intention to terminate the same at the expiration of the then current term.

### **ARTICLE IV: FORFEITURE**

In addition to all other rights and powers reserved or pertaining to the city, the city reserves as an additional and as a separate and distinct remedy the right to revoke this franchise and all rights and privileges of the grantee hereunder for any of the following reasons:

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1. Grantee fails after thirty (30) days' prior written notice to comply with any of the provisions of the ordinance granting this franchise or has, by act or omission, violated any term or condition thereof;
2. Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable, and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the franchise granted herein;
3. The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
4. The grantee attempts to or does practice any fraud or deceit in its conduct or relations with the city or subscribers, under this franchise; or
5. The city condemns all of the property of the grantee within the city by lawful exercise of eminent domain.

#### **ARTICLE V: ORDINANCE OF REVOCATION**

No revocation provided for in the previous paragraph except for reasons of condemnation, shall be effective unless or until the City Council provides written notice to grantee, and grantee is given at least 30 days to cure any alleged breach of Article IV herein. If after the expiration of the time to cure, the City Council believes grantee has failed to cure, the City Council must adopt an ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. Such ordinance shall not be adopted without thirty (30) days' prior written notice thereof to the grantee and an opportunity for the grantee to be heard on the proposed adoption of said proposed ordinance. If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by the grantee.

#### **ARTICLE VI: COMPENSATION**

In consideration of the grant of the franchise to the grantee, the grantee shall pay to the city, in arrears, an amount equal to three percent (3%) of the basic service rates from subscribers of the grantee's basic cable television service annual gross revenue from the operation of the business in said city. The grantee shall pay zero percent (0%) of the basic service rates from subscribers of the grantee's local telephone service annual gross revenue from the operation of the business in said city. Such payment shall be made in one (1) payment, on or before the first day of February of each year during the terms of this ordinance. The city agrees to accept this sum as full and fair compensation.

#### **ARTICLE VII: INDEMNIFICATION**

## Franchises

The grantee shall, concurrently with the filing of the acceptance of this franchise, furnish to the city and file with the City Clerk a liability insurance policy in the amount of one million dollars (\$1,000,000) with a company approved by the City of WaKeeney and in a form satisfactory to the City Attorney indemnifying and defending the city, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expense or damages resulting therefrom, arising out of the exercise or enjoyment of this franchise.

### ARTICLE VIII: USE AND INSTALLATION

Section 1: Degree of café. The grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the property of the grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

Section 2: Location of facility. All communications facilities shall be located so as to cause minimum interference with the proper use of streets and the rights and reasonable convenience of property owners abutting the streets. In no event shall such facilities be located so as to substantially interfere with the usual public travel on any street of the city.

Section 3: Damage to public property. Whenever grantee or any person on its behalf causes any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the communications facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Superintendent.

Section 4: Tree trimming. Grantee shall have authority to trim trees upon and over the streets of the city so as to prevent the branches of such trees from coming in contact with wires, cables and other facilities of grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the grantee.

Section 5: Facilities upgrades/changes. Grantee shall exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances as the business and purposes for which may from time to time require along, across, on, over, through, above and under any public right-of-way including, but not limited to, streets, avenues, alleys, bridges and the public grounds and places within the limits of the city.

### ARTICLE IX: REMOVAL AND ABANDONMENT OF PROPERTY.

If the franchise is terminated or revoked, the grantee shall promptly, upon ninety (90) days' written notice, remove from the streets all its facilities other than that which the City of WaKeeney, Kansas, may permit to be abandoned in place. In the event of such removal, the grantee shall promptly return the street to the like or similar condition which it was in before the facilities were placed.

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### **ARTICLE X: OPERATION AND MAINTENANCE**

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to all of its customers. Grantee shall render efficient service, make repairs promptly and only interrupt service for good cause for the shortest time possible. In order to limit failure and malfunctions of the communications system and to enable prompt correction at all times after notice of malfunction or failure, grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day Sunday through Saturday, including holidays.

Grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary action shall be paid by the person requesting the same, and grantee shall have the authority to require advance payment. Grantee shall be given no less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

### **ARTICLE XI: COMPLIANCE WITH THE LAW**

Grantee shall, at all times during the term of this franchise, be subject to all lawful exercises of the police power of the city and to such reasonable regulations as the city shall prescribe for the general conduct of persons providing communications service within the city.

### **ARTICLE XII: SALE OR LEASE OF FRANCHISE**

The franchise shall be deemed a privilege to be held in personal trust by the grantee. It may not be sold, transferred, leased, assigned or disposed of in whole or in part either by force of voluntary sale, consolidation or otherwise without prior notification to the City Council.

### **ARTICLE XIII: GRANTEE WITHOUT RECOURSE**

Grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by the city, nor for the failure of the city to have the authority to grant all or any part of the franchise.

### **ARTICLE XIV: GRANTEE'S RATES AND REGULATIONS**

Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the services it provides through its communications system, provided that such rates shall not be established on a discriminatory basis.

## Franchises

### ARTICLE XV: NOTICES

Whenever, under the terms of this franchise, either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served upon the city it shall be delivered by certified mail to the Mayor & City Council c/o City Clerk, 408 Russell Ave., WaKeeney, KS 67672. If to the grantee, it shall be delivered by certified mail to CEO/General Manager, 145 N. Main, Lenora, Kansas 67645.

### ARTICLE XVI: MISCELLANEOUS PROVISIONS

Section 1: Supercedes prior ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance. This ordinance specifically supercedes the previously adopted ordinance of #1343 (effective June 3, 1997).

Section 2: Binding effect. All provisions of this ordinance shall be binding upon grantee and all successors, lessees and assigns of grantee whether expressly stated herein or not.

Section 3: Final approval. This ordinance shall take effect and be in full force from and after its passage by the governing body, receipt of grantee's written acceptance of terms, and publication of a summary thereof in the official newspaper of the city. Immediately after its passage by the governing body, it shall be published in the official city newspaper, once a week for two (2) consecutive weeks. It shall be in full force and effect after the expiration of sixty (60) days from the date of final passage.

Section 4: Costs. Grantee shall assume the cost of publication of this ordinance. Grantee shall reimburse the city for these costs upon presentation of the publication costs.  
(Ord. 1442, passed 4-19-2016)

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