

OSAWATOMIE CITY COUNCIL
WORK SESSION / MEETING AGENDA

Thursday, October 22, 2009
7:00 p.m., Memorial Hall

WORK SESSION

1. Telephone Franchise Agreement
2. Discussion of Ideas from LKM Conference
3. Discussion of Alternative Methods to Fund Osawatomie Chamber of Commerce
4. Continued Discussion of Green initiatives

REGULAR MEETING – 7:30 p.m.

- A. Call to Order
- B. Roll Call
- C. Approval of Agenda
 1. Approve Ordinance No. 3670 Telephone Franchise Agreement
 2. Award Proposal for CDBG Administrative Services for Library
- D. Adjournment of Regular Meeting

WORK SESSION – continued

ORDINANCE NO. 3670

AN ORDINANCE GRANTING TO UNITED TELEPHONE COMPANY OF KANSAS d/b/a CENTURYLINK A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF OSAWATOMIE, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION 1. DEFINITIONS.

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

- a. "Access Line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access Line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access Line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access Line Count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access Line Fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access Line Remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access Line Fee, as determined in the City, by the number of Access Lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Osawatome, Kansas.
- f. "Contract Franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide Telecommunications Services within the City.

- g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunications Services.
- h. "Grantee" – means United Telephone Company of Kansas d/b/a CenturyLink, a Telecommunications service provider providing service and/or operating Facilities within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the Contract Franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange Access Line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/busy interrupt revenue; (5) Local operator assistance revenue; and (6) Nonrecurring local exchange service revenue, which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues are excluded from gross receipts, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local Exchange Service" - means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission ("KCC"), regardless of the medium by which the local telecommunications service is provided. The term Local Exchange Service shall not include wireless communication services.
- k. "Public Works Director" – means the Public Works Director for the City.
- l. "Right-of-Way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

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

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. There is hereby granted to Grantee this nonexclusive Contract Franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Right-of-Way for the purpose of any Telecommunications Services or system, including but not limited to, supplying Telecommunications Services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract Franchise, subject to the terms and conditions of this Contract Franchise.
- b. The grant of this Contract Franchise by the City shall not convey title, equitable or legal, in the Right-of-Way and shall give only the right to occupy the Right-of-Way for the purposes and for the period stated in this Contract Franchise. This Contract Franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facilities or related appurtenance on property owned by the City outside of the Right-of-Way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC. Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Right-of-Way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract Franchise and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract Franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open

video system without payment of fees permitted by 47 U.S.C. § 573(c) (2) (B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

- e. This authority to occupy the Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF THE RIGHT-OF-WAY.

- a. Right-of-Way Regulation. Grantee's use of the Right-of-Way shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to the public health, safety and welfare and to the construction and use of the Right-of-way. Provided, however, that nothing in this Contract Franchise shall constitute a waiver of or be construed as waiving the right of Grantee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulations, policy, resolution, or ordinance proposed, adopted, or promulgated by the City.
- b. Subordinate to City Use. Grantee's use of the Right-of-Way shall in all matters be subordinate to the City's use or occupation of the Right-of-Way. The City may also reserve sufficient space within the Right-of-Way for future public improvements.
- c. Impact on Others. Grantee's Facilities shall be located so as to not cause unreasonable interference with the proper use of the Right-of-Way and any public lands or with the rights and reasonable convenience of persons owning property that adjoins the Right-of-Way. Further, Grantee's Facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, electrical and power Facilities, other utility Facilities, or other structures or public improvements already installed. Grantee shall participate in the Kansas One Call utility location program.
- d. Permit and Notice of Work. Prior to commencing any work in the Right-of-Way or other public places of the City, Grantee shall provide to the City all necessary notice and information concerning such work and abide by any city permitting requirement. Provided, in the event of an emergency, Grantee may commence any necessary work without any required permit or providing such notice or information, but shall submit the same the next business day.
- e. Repair of Right-of-Way. Grantee shall, in doing any work in connection with its Facilities, avoid so far as may be practical, interfering with any other use of the Right-of-Way. If during the course of Grantee's construction, operation or maintenance of its Facilities there occurs a material disturbance of any Right-of-Way, Grantee shall, at its expense, and in a manner and within a time frame as reasonably agreed to by the parties, repair or replace the Right-of-Way to a condition reasonably comparable to or better than the condition existing immediately prior to such disturbance. If Grantee fails to properly or timely repair

or replace the Right-of-Way, the City may at its option serve written notice that, unless within five (5) days of Grantee's receipt of such notice a satisfactory arrangement can be made for proper restoration of the Right-of-Way, the City may make any repair or replacement at Grantee's expense, and Grantee will reimburse the City for the reasonable, actual and documented costs of such repair or replacement. Notwithstanding the foregoing in this Section 3 e, upon a determination by the Public Works Director that such repair or replacement is necessitated by a public safety matter, such repair or replacement shall commence within twenty-four (24) hours of such notice or the City may then make such repair or replacement at Grantee's expense.

- f. Safety and Technical Requirements. All construction, operation and maintenance of Grantee's Facilities shall be performed in an orderly and workmanlike manner and in accordance with industry standards, and shall meet or exceed the most stringent technical standards of any regulatory bodies having jurisdiction. All such work shall be performed in accordance with any applicable federal, state, and local laws and regulations, including permitting requirements. Said Facilities shall not unreasonably endanger or interfere with the safety of any person or property in the City.
- g. Aerial and Underground Construction. In those areas where all of the Facilities of the electric services public utility are underground, Grantee likewise shall construct, operate, and maintain its Facilities underground. In those areas where the Facilities of the electric services public utility are both aerial and underground, Grantee may construct, operate, and maintain its Facilities or any part thereof aerially or underground; provided, the City may prohibit the installation of new aerial pole routes. To the extent possible, Grantee shall make use of existing poles and pole locations for the installation of its aerial Facilities. Upon request, Grantee shall move aerial Facilities underground in conjunction with City capital improvement projects and/or at specific locations required by the City, provided that such placement is practical, efficient and economically feasible. Nothing contained in this Section 3 g shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding the provisions of this Section 3g, in the event that the Facilities of the electric services public utility are placed underground after the Effective Date of this Contract Franchise, Grantee shall only be required to relocate its Facilities underground if it is given reasonable prior notice of the electric services public utility's intention to place its Facilities underground and given access to the electric services public utility's Facilities at such time they are placed underground.
- h. Exclusion of Certain Locations. The City may restrict Grantee from using specific portions of the Right-of-Way if the City determines that any proposed use is: (1) intended to be located upon or across Facilities or locations which, in the reasonable judgment of the Public Works Director, cannot safely bear the weight or wind loading thereof, or would otherwise be rendered unsafe or unstable by

the installation; (2) intended to be located upon or across Facilities or locations which, in the reasonable judgment of the Public Works Director, do not have electrical service adequate or appropriate for Grantee's Facilities; (3) intended to be located upon or across Facilities or locations which, in the reasonable judgment of the Public Works Director, is incompatible with the existing Facilities or locations or would be inappropriate or inconsistent with the prevailing city aesthetic standards; or (4) inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with its present use. The Public Works Director may further exclude specific Facilities or locations that have been designated or planned for other use or are not otherwise available for use by Grantee due to engineering, technological, proprietary, aesthetic, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of Grantee, the City will cooperate in good faith with Grantee to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for Grantee. Any such exclusion identified in this Section 3h shall not be applicable to or prohibit any of Grantee's existing Facilities or the replacement thereof.

- i. Mapping. Grantee shall keep and maintain accurate records and as-built drawings depicting accurate locations of its Facilities in the Right-of-Way or other public property. Within ten (10) days of a request by the City, Grantee shall provide the City information concerning such Facilities as may be reasonably requested. When available, such information will be submitted electronically in a format compatible with the City's Geographic Information System showing and describing the exact locations, both horizontal and vertical, of Grantee's Facilities. Underground Facilities shall be differentiated from overhead Facilities. Such mapping and identification shall be at Grantee's sole expense.
- j. Trimming of Trees and Shrubbery. Grantee shall have the authority to trim trees or other natural growth overhanging any of Grantee's Facilities so as to prevent branches from coming in contact with Grantee's Facilities, which shall be done in accordance with industry standards. Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of the construction, operation or maintenance of Grantee's Facilities. Such replacement shall satisfy any and all obligations Grantee may have to the City or property owner pursuant to the terms of this Section.
- k. Signage. Grantee shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Grantee or any other person, except such necessary minimal markings as approved by the City as reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by application of law or regulation.

I. Relocation at City Request.

- (1) Upon receipt of reasonable advance notice, not to be less than 30 days, Grantee shall, at its own expense, promptly remove, relocate or adjust any of its Facilities located in the Right-of-Way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare.
- (2) Upon receipt of reasonable advance notice, not to be less than 30 days, Grantee shall, at the City's expense, promptly remove, relocate or adjust any of its Facilities located in private easement, as directed by the City, for a public improvement by moving such Facilities to areas within the expanded Right-of-Way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. Grantee shall disclaim those parts of its easements which lie within the expanded Right-of-Way. Should the City in the future elect to require Grantee to again relocate said Facilities to other areas within the expanded Right-of-Way, the cost of any such future relocation shall be borne by the City.
- (3) When relocating under either Sections 6 I (1) or 6 I (2), Grantee shall certify to the City in writing that its Facilities have been removed, relocated or adjusted to clear construction in accordance with project plans provided by the City. If Grantee fails to accurately, sufficiently or timely remove, relocate or adjust its Facilities when requested, Grantee shall be responsible to the City and its contractors for all damages, including but not limited to, delay damages, repair costs, down time, construction delays, penalties, or other expenses of any kind arising out of Grantee's failure to accurately, sufficiently or timely remove, relocate or adjust its Facilities. Further, Grantee shall have no claim for costs or damages against the City and its contractors unless the costs or damages arise due to the negligent or intentional conduct of the City or its contractors.

m. Relocation at Request of Third Party. Grantee shall, on the request of any entity or person holding a building or moving permit issued by the City, temporarily raise, lower or relocate its wires or other Facilities as may be required to permit said entity or person to exercise its rights under said permit, provided: (a) the expense of such action is paid by such entity or person, including, if required by Grantee, making such payment in advance; and (b) Grantee is given not fewer than ten (10) business days advance written notice to arrange for such action.

n. Subcontractors. All provisions of this Contract Franchise shall apply to any subcontractor or other person performing any work or services on behalf of Grantee pursuant to this Contract Franchise. Grantee shall be responsible and liable for all actions or inactions of said subcontractor or persons. Grantee shall

not permit any subcontractor or person to perform any work or services without being adequately insured in the manner required by this Contract Franchise.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract Franchise, Grantee agrees to remit to the City a franchise fee of \$2.50 per Access Line per month. Thereafter, subject to Section 4 b hereafter, compensation for each calendar year of the remaining term of this Contract Franchise shall continue to be based on a sum equal to \$2.50 per Access Line per month, unless the City notifies Grantee at least ninety (90) days prior to the end of the then current calendar year that it intends to switch to a Gross Receipts fee in the following calendar year; provided, such Gross Receipts fee shall not exceed 5% of Gross Receipts. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee at least ninety (90) days prior to the end of the then current calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m) and amendments thereto, may elect to adopt an increased Access Line fee or Gross Receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001 and amendments thereto, or may choose to decline all or any portion of any increase in the Access Line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies, franchise fees due and payable to the City. If any franchise fee or any portion thereof is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section 4 shall be resolved in the manner set forth in K.S.A. 12-2001 and amendments thereto.
- f. The City shall have the right to examine those records reasonably necessary to verify the correctness of the franchise fees paid by Grantee as provided for by Kansas Statute.

- g. Unless previously paid, within sixty (60) days of the Effective Date of this Contract Franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract Franchise.
- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902 and amendments thereto. The franchise fee is compensation for use of the Right-of-Way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an Access Line franchise fee or a Gross Receipts franchise fee to the City on those Access Lines that have been resold to another telecommunications Local Exchange Service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance. Such Access line (franchise) fee or gross receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4 a. hereinabove.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

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

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

The indemnity provided by this subsection does not apply to any liability resulting from the negligence or intentional misconduct of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of

the state of Kansas without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This Section 5 is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

- a. During the term of this Contract Franchise, Grantee shall obtain and maintain insurance coverage at its sole expense with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall obtain and maintain the following types and amounts of insurance coverage:
- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed, with an employers' liability limit equal to the amount required by law.
 - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of Section 6 a, Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such has the ability to provide coverage in an amount not less than one millions dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- c. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal of this Contract Franchise, deliver to the City a certificate of insurance or evidence of self-insurance satisfactory in form and content to the City evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice.

- d. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work or any renewal of this Contract Franchise and when deemed necessary by the Public Works Director, deliver to the City a performance bond in the amount of \$5,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if Grantee anticipates that it will be engaged in the construction and/or maintenance of its Facilities in the Right-of-Way multiple times during the course of a year, the Grantee may choose to meet the bond requirements by providing a single bond of \$50,000 annually.

SECTION 7. REVOCATION AND TERMINATION.

In case of a failure on the part of Grantee to comply with any of the provisions of this Contract Franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise (each a "Grantee Default"), Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract Franchise shall be deemed terminated, provided that said termination shall not take effect until the City has completed the following procedures: Before the City proceeds to terminate this Contract Franchise, it shall first serve written notice upon Grantee setting forth in detail the Grantee Default, and Grantee shall have sixty (60) days after its receipt of such notice within which to cure the Grantee Default. If at the end of such sixty (60) day period the City deems that the Grantee Default has not been cured to its reasonable satisfaction, the City may take action to terminate this Contract Franchise by an affirmative vote of the City Council present at a meeting and voting, setting out the grounds upon which this Contract Franchise is to be terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's meeting in which the termination of this Contract Franchise will be considered, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy for a Grantee Default that may otherwise exist at law. Upon any determination by the City Council to terminate this Contract Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract Franchise shall be deemed terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such termination shall remain pending and subject to the court's final judgment. A Grantee Default shall not be a ground for termination of this Contract Franchise when such Grantee Default is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

In case of failure on the part of the City to comply with any of the provisions of this Contract Franchise, or if the City should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise, Grantee may resort to any right or remedy to which it is entitled under this Contract Franchise, at law or in equity.

SECTION 8. RESERVATION OF RIGHTS.

- a. The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications Service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, or any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract Franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract Franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or in equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

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

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract Franchise shall be effective for a term beginning on the Effective Date of this Contract Franchise and ending on December 31, 2011 (the "Term"). Thereafter, this Contract franchise will automatically renew for up to three (3) additional five (5) year terms (each a "Renewal Term"), unless either party notifies the other party of its intent to terminate the Contract Franchise at least one hundred and eighty (180) days before the expiration of the Term or relevant Renewal Term. Each Renewal Term shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

- b. Upon written request of either the City or Grantee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee under this Contract Franchise, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001 and amendments thereto shall be held to be invalid by a court or administrative agency of competent jurisdiction, then provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Any amendment to this Contract Franchise that might arise under this Section 10 shall be made by contract franchise ordinance as prescribed by statute. This Contract Franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this Section 10.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination or expiration date of this Contract Franchise, the parties by written agreement may extend the termination or expiration date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Emergency notice by the City to Grantee may be made by telephone, fax or e-mail (with confirmation required). Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone, fax or e-mail to the City Clerk or the Public Works Director. The City shall provide Grantee with the City Clerk's and Public Works Directors' name, address, telephone number, fax number and e-mail address.

All non-emergency notice and any demand, consent, approval, request or other communication required or permitted to be given to either party with respect to this Contract Franchise shall be in writing and shall be delivered in person, by a reputable overnight delivery service or by U.S. certified mail, postage prepaid, return receipt requested (collectively, "Notice") to the appropriate address as set forth below:

If Notice to the City:

City of Osawatomie, Kansas
Attn: City Manager
P.O. Box 37
Main at Fifth
Osawatomie, Kansas 66064

If Notice to Grantee:

CenturyLink
100 CenturyTel Drive
Monroe, LA 71203

With a copy of any Grantee default Notice only (which will not constitute proper notice to Grantee) to:

CenturyLink Law Department
100 CenturyTel Drive
Monroe, LA 71203

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

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract Franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City, which approval shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing sentence, Grantee may transfer or assign this Contract Franchise in whole or in part without the prior written consent of the City to: (a) any entity controlling, controlled by or under common control with Grantee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Grantee; or (c) the purchaser of all or substantially all of Grantee's assets or located in the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall timely notify the City of the transfer or assignment and of the successor entity; provide a point of contact for the successor entity and advise the City of the date the transfer or assignment was effective. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume such obligations and replace the bond and insurance policies, the intent being that there shall be no lapse in any bond or insurance coverage as a result of the transfer or assignment.

SECTION 13. CONFIDENTIALITY.

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

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract Franchise by the City to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract Franchise, which acceptance shall be evidenced by the signing of this Contract Franchise by an authorized representative of Grantee, which signature will be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract Franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract Franchise ("Effective Date").

SECTION 15. PAYMENT OF PUBLICATION COSTS.

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract Franchise and any amendments thereof.

SECTION 16. SEVERABILITY.

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

SECTION 17. FORCE MAJEURE.

If either party is delayed from performing an obligation under this Contract Franchise because of strikes, lockouts, labor troubles, power failure, restrictive governmental laws or regulations, riots, insurrection, storms, hurricanes, earthquakes or other natural disasters, war or other reason which is not the fault of or is beyond the reasonable control of the party delayed, then performance of the obligation will be excused for the period of the delay.

SECTION 18. REPEAL.

Grantee's prior franchise ordinance, as adopted by City Ordinance No. 3440, is hereby repealed; provided, however, that the repeal of said franchise ordinance shall not affect any rights of either party regarding any unpaid consideration thereunder, if any, and said franchise ordinance repealed is hereby continued in force and effect after the passage, approval and publication of this Ordinance for the sole purposes of preserving such rights.

PASSED by the Governing Body this 22nd day of October, 2009.

APPROVED by the Mayor this 22nd day of October, 2009.

Philip A. Dudley, Mayor

ATTEST:

APPROVED AS TO FORM:

Ann Elmquist, City Clerk

Richard S. Wetzler, City Attorney

(SEAL)

SUMMARY OF CITY SUPPORT TO LOCAL CHAMBERS' OF COMMERCE - OCTOBER 22, 2009

<u>City (approx. population)</u>	<u>\$ of Support</u>	<u>In Kind Support</u>	<u>Other Information</u>
Wellington (7,812)	25,000		Promote tourism, other special events -- Transient Guest Tax.
Larned (3,675)	\$0	Undermarket Rent	City provides undermarket rent/space for Chamber of Commerce of a city-owned building. City provides maint., etc. - receives rental income.
Goddard (3,697)	\$5,000	Sponsor/reimb.	City also sponsors/reimburses events throughout the year and some staff serve as ex-officios on the chamber's board of directors.
Hays (20,106)	\$0		
DeSoto (5,369)	\$0	Free Office Space	
Augusta (8,683)	\$0	Undermarket Rent	City provides undermarket rent, utility service credit, in-kind service & support for chamber events, \$4,000 for Convention/Tourism Bureau.
Kingman (3,056)	\$0	Free Office Space	Also available are monies in Convention/Tourism Fund that Chamber can request funds from for events that would bring people to town.
Russell (4,281)	\$0		City's chamber dues are currently \$2,000/yr, will go to \$5,000/yr in 2010.
Girard (2,753)	\$25,000		\$25K/yr from City's ED fund. Reducing by \$5K/yr through 2015 - after that, \$0 funding.
Salina (46,458)	Approx. \$200 K		In addition to providing \$200,000 to chamber for ED services, approx. half of TGT goes to Chamber for CVB functions.
Ellsworth (2,881)	\$5,000		General Fund.
Ulysses (5,630)	\$10,000		Natural Gas Revenues.
Gardner (16,462)	\$20,000		Transient Guest Tax.

SUMMARY OF CITY SUPPORT TO LOCAL CHAMBERS' OF COMMERCE - OCTOBER 22, 2009

<u>City (approx. population)</u>	<u>\$ of Support</u>	<u>In Kind Support</u>	<u>Other Information</u>
Clay Center (4,365)	\$0		City dues are \$2,000. Also provide city employees/equipment to help chamber events at no charge (law enforcement, trash, setup, take down, etc.) All support comes from Special Parks/Rec Fund and General Fund.
Ellinwood (2,048)	\$0	Assist w/flyers/ads	City provides assistance for miscellaneous items - helping with flyers, advertising, etc. Estimate is approximately \$3,000 cost to city/year. Money comes from ED Fund.
Tonganoxie (4,156)	\$7,500		Cash Support. No source provided.
Newton (18,017)	Approx. \$120K		Money goes to help chamber promote convention/tourism/historic preservation/other community promotion functions.
Hillsboro (2,666)	\$0		
Edwardsville (4,463)	\$4,000		To support Chamber's Annual Festival in Edwardsville.
Andover (9,898)	\$0	Free Office Space	City's dues are \$5,000 (beginning this year).
Clearwater (2,337)	\$7,500		General Fund.
Lindsborg (3,262)	\$0	In Kind Services	City use to provide approx. \$23,000 from TGT until too much money was going to operational expenses instead of promotional events. Money was pulled. City is a member and provides in kind services.
Sterling (2,539)	\$25,000		\$5,000 to Chamber and \$20,000 to Main Street Sterling. Source of funds is electric revenue.