

## **APPENDIX**

### **SECTIONS:**

**SUBDIVISION APPENDIX**

**TELEPHONE EXCHANGE INSPECTION FEE AND SERVICE CHARGE**

**NATURAL GAS FRANCHISE**

**TULSA CABLE TELEVISION PERMIT**

**ELECTRICITY FRANCHISE**

**CABLE TELEVISION SYSTEM MERGER AND CHANGE IN OWNERSHIP**

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## **SUBDIVISION APPENDIX**

### **OPTION TO REQUIRE DEDICATION OF PARKLAND IN-LIEU-OF PAYMENT OF THE PARK AND RECREATION FEE**

As land is developed for residential use, the need for park land is created. In order to provide land for this need, there is hereby established, a procedure whereby land may be required in-lieu-of payment of a Park and Recreation Fee as otherwise described in the body of these Regulations. The administration of this optional procedure is as follows:

1. Applicability and Option to Require Dedication of Land.
  - a. All residential subdivision plats, having a dwelling unit density greater than one (1) dwelling unit per acre shall adhere to the provisions set forth in this Appendix if and only if it is determined by the City Council of Sand Springs based upon the recommendation and advice of the Park Board (as to the desirability of the tract) and the Planning Commission (as to the appropriateness of the intended land use), that the requirement for park land dedication shall be acceptable to the City of Sand Springs in-lieu-of payment of the Park and Recreation Fee.
  - b. All person, firms, or corporations subdividing land under the provisions of these Regulations for residential purposes within the incorporated boundaries of the City of Sand Springs shall, prior to the signing and release of the final plat and subject to other provisions hereinafter set out, dedicate land to be used for park and/or open space as an alternative to payment of a Park and Recreation Fee.
2. Standards for Park Land to be dedicated.
  - a. Each dedication shall be of suitable size, dimension, topography and general character, and have adequate road access for park and recreation purposes. The area to be dedicated shall be designated on the preliminary and final plat as "Public Park and Recreation Purposes." The location of the land to be dedicated shall be approved by the City of Sand Springs prior to the signing and release of the final plat.
  - b. The amount of land to be dedicated shall be determined on the basis of either one acre per one-hundred (100) dwelling units or five (5) percent of the area contained within the subdivision plat (excluding therefrom only streets and reserve areas) whichever is greater. All calculations of the area to be dedicated and the area in streets and reserve areas shall be initially provided by the subdivider for review by the City. The dedication requirements for multi-family development shall be based on the maximum number of dwelling units per acre as permitted by the existing zoning of the site, regardless as to what intensity the tract is developed.
  - c. Private parks may be accepted as credit toward the park land dedication option only when included within an approved Planned Unit Development and only upon approval of the City Council after review and recommendation by the Park Board and Planning Commission.

3. Location and Character of Land to be Dedicated.

a. Any land to be dedicated to meet the requirements of this section shall be suitable, reasonably located and adaptable for use as land for a park and recreation facility. Such determination shall be subject to the final approval of the City Council based upon the review and recommendation of the Park board and Planning Commission.

b. The City Council may require that the land to be dedicated to be located on the edge of the subdivision so additional land may be added to the tract at a future date.

c. Existing features which add value to residential development or to the City as a whole, such as trees, watercourses, historic sites and similar irreplaceable natural assets, shall be preserved in the design of the subdivision and be considered as land to be dedicated for park purposes.

4. Form of the Dedication of Park Land.

Land required for dedication under this optional procedure shall be conveyed by any of the following methods:

a. Be dedication within the plat filed for record in the of the County Clerk of Tulsa or Osage County; or

b. By warranty deed transferring the property in fee simple title to the City of Sand Springs; or

c. By credit for private park and/or open space.

Where a private park and/or open space for park and recreational purposes is provided in a proposed subdivision that is included within an approved Planned Unit Development and such area is to be privately owned and maintained by the future residents of the subdivision, these areas may be credited against the requirement for dedication of park land and/or open space as set forth in this appendix provided that the City Council, upon the review and recommendation of the Park Board and Planning Commission, finds it is in the public interest to grant such credit. The following standards must be met:

(1) That yards, setbacks and other open areas required to be maintained by the zoning and building regulations shall not be included in the computation of such private park and /or open space area; and

(2) That the private ownership and maintenance of said park area is provided for by recorded covenants that have been approved by the City and to which the City is a party at interest; and

(3) That the use of the private park and/or open space is restricted to park and recreational purposes by the recorded covenants which run with the land in favor of the future owners of property within the tract and the City of Sand springs and said covenants cannot be eliminated without the consent of owners of all property within the subdivision and the City Council; and

(4) That the proposed private park and/or open space adds value to the residential development or to the City as a whole and is suitable and reasonably adaptable for use for park and recreational purposes taking into consideration such factors as size, shape, topography, geology, access, trees, watercourses, historic sites and similar irreplaceable natural assets, and location; and

(5) That facilities proposed for park and open space are in substantial accordance with the provisions of the recreational element of the Comprehensive Plan and are approved by the City council, and, further, that the installation, maintenance and replacement of any planned improvements is guaranteed to the satisfaction of the City of Sand Springs.

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## **TELEPHONE EXCHANGE INSPECTION FEE AND SERVICE CHARGE**

### **Sections:**

- Section 1. Inspection Fee**
- Section 2. Fee in Lieu of Other Fees and Taxes**
- Section 3. Repeal**
- Section 4. Emergency**

### **SECTION 1. INSPECTION FEE.**

That from and after the effective date of this ordinance there is hereby levied an annual inspection fee and service charge upon each and every person, firm and corporation operating a telephone exchange in the City of Sand Springs, Oklahoma, in an amount equal to two percent (2%) of the gross revenues for each current year for exchange telephone transmission service rendered wholly within the limits of the City of Sand Springs, to compensate said City for the expenses incurred and services rendered incident to the exercise of its police power, supervision, police regulation and police control of the construction of lines and equipment of the telephone company in the City of Sand Springs. The said inspection fee and service charge shall be due and payable to the said City of Sand Springs on or before the 1st day of May, of each year, commencing with the 1st day of May 1937, and shall be paid into and appropriated and expended from the general revenue fund of said City.

### **SECTION 2. FEE IN LIEU OF OTHER FEES AND TAXES.**

During continued substantial compliance with the terms of this ordinance by the owner of any telephone exchange, the charge levied hereby shall be and continue to be in lieu of all concessions, charges, excise, franchise, license, privilege and permit fees or taxes or assessments except ad valorem taxes; provided, however, that it is not intended hereby to extinguish or abrogate any existing arrangement whereby the said City is permitted to use underground conduit, duct space or pole contracts of said company for the fire alarm and/or police call systems of said City.

### **SECTION 3. REPEAL**

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

### **SECTION 4. EMERGENCY.**

That an emergency exists for the preservation of the public peace, health and safety, by reason whereof this ordinance shall take effect from and after its passage, approval and publication.

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## **Section 98.01.020 NATURAL GAS FRANCHISE**

### **Sections:**

- Section 1. Definitions**
- Section 2. Grant of Franchise**
- Section 3. Franchise Assignment, Sale or Lease**
- Section 4. Use and Repair of the Public Ways**
- Section 5. Regulation of Service**
- Section 6. Depth of Pipeline**
- Section 7. Duty to Move or Alter Lines**
- Section 8. Indemnification of Grantor**
- Section 9. Grantee' s Rules and Regulations**
- Section 10. Maintenance and Inspection of Records**
- Section 11. Consideration for Franchise: Franchise Fee**
- Section 12. Election Required**
- Section 13. Acceptance and Effective Date**
- Section 14. Right of First Refusal**
- Section 15. Severability**

### **SECTION 1. DEFINITIONS**

As used in this Ordinance, the following words and phrases shall have the following meanings:

A. "Consumer" shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality or public corporation served by the Grantee through any use of the public ways.

B. "Distribution system" shall mean a system of works, pipes, pipelines, apparatus, machinery, structures, appliances and appurtenances as are reasonably necessary for the transportation, distribution or sale of gas to consumers.

C. "Franchise" shall mean the rights and privileges granted by Grantor to Grantee under Section 2A of this Ordinance.

D. "Grantee" shall mean the Oklahoma Natural Gas Company, a division of ONEOK Inc., a corporation, its successors and assigns.

E. "Grantor" shall mean the City of Sand Springs, Oklahoma, a municipal corporation.

F. "Gross cash receipts" shall mean cash, cash equivalents, or other considerations actually received by Grantee from a Consumer.

G. "Install, operate and maintain" shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.

H. "Public ways" shall mean any street, alley, avenue, boulevard, lane, park, parkway, sidewalk, driveway, utility easement, right of way, and any other public ways, places, areas, or grounds within the corporate limits of the City of Sand Springs as now constituted or as may be added or extended hereafter.

## **SECTION 2. GRANT OF FRANCHISE**

A. The Grantor hereby grants to Grantee for the term of twenty-five (25) years from the passage of this Ordinance and the filing of a written acceptance by the Grantee, the right to enter upon the public ways to install, operate and maintain a distribution system along, across, over and under the public ways for the privilege of transporting, distributing and selling gas to consumers and the public generally within the corporate limits of the City of Sand Springs. The previous franchise held by Grantee shall be null and void from and after the acceptance of this new franchise by Grantee.

B. This Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.

C. The franchise granted by this Ordinance is not exclusive and nothing herein shall be construed to divest the Grantor of its control and regulation of the public ways.

## **SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE**

A. Grantee shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever either the rights and privileges granted under this Ordinance or the distribution system installed, operated and maintained hereunder, except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Grantee of the franchise granted herein or the distribution system installed, operated and maintained hereunder shall be a breach of this franchise by the Grantee, ineffective and void unless:

- (1) The proposed assignment, sale, lease or transfer shall be in writing; and
- (2) The prospective assignee, buyer, lessee or other transferee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this Ordinance; and
- (3) Such writing shall be submitted to the City Clerk in writing and approved by the City Council of the City of Sand Springs.

This Section 3A shall not apply to any lease or other arrangement which is in full compliance with the provisions of Section 3B hereof. This Section 3A shall not apply to any use of any portion of Grantee's distribution system for the transportation, distribution or sale to any consumer purchasing, receiving and using natural gas outside the corporate limits of the City of Sand Springs.

B. After the operative date of this Ordinance, Grantee shall not have the right to enter into or continue to operate pursuant to any lease of capacity in any portion of its distribution system or to enter into or continue any arrangement by which natural gas owned by any party other than Grantee shall be transported, distributed or sold through any portion of Grantee's distribution system for delivery to any consumer within the corporate limits of the City of Sand Springs, unless Grantee is specifically authorized to conduct such transactions by written document signed by the Mayor and approved by the City Council of the City of Sand Springs. Absent such written permission, the following shall be required:

- (1) The lessee or other party transporting the gas shall have obtained a license from the Grantor for use of the public ways in connection with such transportation, distribution or sale of gas; and

(2) Grantee, if requested by Grantor, shall agree to act as Grantor's agent to collect from the lessee or other party transporting the gas, any and all fees paid pursuant to such license, and to remit such fees so collected, to Grantor on a monthly basis; and

(3) All volumes transported, distributed or sold through Grantee's distribution system for delivery to any consumer within the corporate limits of the City of Sand Springs pursuant to any such lease or arrangement shall be reported by Grantee to Grantor on a monthly basis.

Termination of operations pursuant to any lease or other arrangement is existence on the effective date of this Ordinance, but not in compliance with this Section 3B shall be effected by Grantee only upon written notice by Grantor to Grantee.

#### **SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS**

A. Grantee's distribution system shall be erected, placed, laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, least interfere with other public uses of the public ways.

B. Before Grantee shall excavate or disturb the surface of any public way, except in the case of emergency, at least forty-eight (48) hours notice shall be given to the City Engineer or other proper authority designated in writing by the Grantor. After such excavation or disturbance the Grantee shall, with due diligence and dispatch place the public ways in a condition in compliance with the Grantor's reasonable standards and specifications.

C. Upon Grantee's failure to commence or complete any construction, maintenance or restoration work required by this ordinance with due diligence and dispatch, the Grantor may cause such work to be done after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such construction, maintenance or restoration incurred by Grantor upon Grantee's failure shall then be charged and collected from the Grantee.

D. Grantor reserves the right to make and enforce reasonable regulations concerning the construction, operation and maintenance of Grantee's distribution system located along, across, over, or under the public ways and to reasonably designate where the distribution system's works and pipelines shall be placed.

E. Nothing in this ordinance shall be construed to authorize Grantee to lay any main gas line in any city park without obtaining an easement, right-of-way or other special permission.

#### **SECTION 5. REGULATION OF SERVICE**

A. The distribution system of the Grantee shall at all times be installed; operated and maintained in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Corporation Commission of Oklahoma or other regulatory authority having jurisdiction.

B. In the event that the Corporation Commission of Oklahoma or other state regulatory authority should be deprived of the authority to regulate Grantee, then

Grantor shall have the authority to set rates, terms and conditions of service for transportation, distribution or sale of natural gas by Grantee within the corporation limits of the City of Sand Springs.

C. Upon application by any bona fide applicant for service, Grantee shall at its own expense, but subject to the applicable regulations of the Oklahoma Corporation Commission, furnish and install service pipe of suitable capacity to the property line or other delivery point agreed to between Grantee and the property owner with respect to property abutting upon any public way.

## **SECTION 6. DEPTH OF PIPELINE**

A. After the operative date of this franchise, Grantee's main or lateral lines installed, replaced or repaired in public ways shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

B. Subject to Corporation Commission rules and regulations, Grantee shall maintain and repair company-owned service lines, whether or not such service lines lie on public or private property. Placement of gas meters shall be in accordance with Corporation Commission Rules No. 7 and 8 and Commission Order No. 334855 exempting Oklahoma Natural Gas on Rule 8(b) or successor regulations.

## **SECTION 7. DUTY TO MOVE OR ALTER LINES**

A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the public ways. In permitting such work to be done the Grantor shall not be liable to the Grantee for any damages so occasioned nor shall the Grantor in doing such work be liable to the Grantee for any damages not willfully and unnecessarily occasioned.

B. Whenever by reason of establishing a grade or changes in the grade of any street or in the location or manner of construction of any public way, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by the Grantor to alter, change, adapt or conform the distribution system of the Grantee, such alterations or changes shall be made within a reasonable time by the Grantee, as ordered in writing by the Grantor, without claim for reimbursement or compensation for damages against Grantor.

C. If Grantor shall require the Grantee to adapt or conform its distribution system, or in any way to alter, relocate or change its property to enable any other person, firm or corporation or entity (whether public or private), other than the Grantor, to use the public ways, the Grantee shall be reimbursed by the person, firm, corporation or entity desiring or occasioning such alteration, relocation or change for any and all loss, cost or expense occasioned thereby.

D. "Person", "firm", "corporation", and "entity" as used in the preceding Section 7C shall not include regular departments of the Grantor, or any trust or authority formed by or for the benefit of Grantor for public utility purposes, but shall include any

other agency or authority of the City of Sand Springs, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the city limits and relocates citizens for the purpose of urban development or similar aims.

#### **SECTION 8. INDEMNIFICATION OF GRANTOR**

The Grantee shall indemnify, become responsible for and forever save harmless the Grantor from any and all damages, judgments, reasonable costs and expenses, including attorney fees, which the Grantor may suffer or incur, or which may be legally obtained against the Grantor, for or by reason of the negligent use, repair or occupation of any public way within the corporate limits of the City of Sand Springs by the Grantee pursuant to the terms of this Ordinance or resulting from the negligent exercise of the Grantee of any of its privileges or by reason of its carrying on its business in said City; provided, however, that in the event of such claim or claims being prosecuted against the Grantor, the Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the Grantor shall give prompt written notice to the Grantee of the presentation or prosecution of such claims.

#### **SECTION 9. GRANTEE'S RULES AND REGULATIONS**

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the prudent conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Oklahoma, with the orders, rules or regulations of the Corporation Commission of Oklahoma or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Corporation Commission of Oklahoma or such other regulatory authority.

#### **SECTION 10. MAINTENANCE AND INSPECTION OF RECORDS**

A. Grantee shall at all times make and keep full and complete plats, maps and other records showing the nature, location and size of all elements comprising Grantee's distribution system within the corporate limits of the City of Sand Springs.

B. Grantee agrees to maintain an office in the City of Sand Springs in which to keep all books, papers and records kept in the ordinary course of business and pertaining to the gas business carried on by it in the City of Sand Springs, for the purpose of affording Grantor the opportunity to enforce the terms of this Ordinance and particularly to collect its franchise fee.

C. Grantee shall permit Grantor to inspect and audit during regular business hours the relevant books, records, plats and maps kept by Grantee pursuant to this Section.

#### **SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE**

A. In consideration for the rights and privileges enjoyed under the franchise, Grantee agrees to pay Grantor, as a franchise fee, a sum equal to three percent (3%) of Grantee's gross cash receipts from the transportation, distribution, or sale of gas for

domestic, commercial or industrial consumption within the corporate limits of the City of Sand Springs. Such fee so levied shall be in lieu of all other franchise, license or occupation taxes or fees, which may be levied or attempted to be levied by Grantor.

B. Grantee's franchise fee shall be payable monthly on or before the 25th day of each month, on its gross cash receipt of the preceding calendar month.

C. Should Grantee accept any franchise from any city in the State of Oklahoma and Grantee's service territory, and should such franchise provide for the payment of compensation to such city at a rate in excess of three percent (3%) of the gross cash receipts from the transportation, distribution or sale of gas for a specific class of service, whether domestic, commercial or industrial, then, at Grantor's option, such increased rate shall likewise apply to the same class of service furnished in the City of Sand Springs, and the Grantee shall thereafter pay to the City of Sand Springs the amount arising from the increased rate, at Grantor's option.

## **SECTION 12. ELECTION REQUIRED**

This ordinance shall not become effective until it shall be approved by a majority of the qualified electors voting thereon residing within the corporate limits of the City of Sand Springs at an election called for that purpose, and a special election is hereby called for the purpose of submitting to the qualified electors residing in said City of Sand Springs, the question of approval or disapproval of this Ordinance, which election shall be held on the 7th day of August, 1990, between the hours prescribed by law. The Mayor of the City of Sand Springs is hereby authorized and directed to issue a proper and lawful call and proclamation of such special election to be held on such date as aforesaid for said purpose, and the executive officers of said City are hereby directed to give due and lawful notice of such election and submission of said question to the electors of said City, prescribing in said proclamation and notice of the proposition to be voted upon, the time of opening and closing the polls, the number and location of the polling places and the names of the precinct election officers who shall conduct said election, and all other things prescribed by law, or the ordinances of the City of Sand Springs, Oklahoma.

## **SECTION 13. ACCEPTANCE AND EFFECTIVE DATE**

In the event this Ordinance is approved by a majority vote of said electors voting thereon at said election, the Grantee shall file with the City Clerk of said City of Sand Springs within ten (10) days after the official canvass of the votes and declaration by the City Council of the results thereof, a written acceptance. This Ordinance shall become operative on the date of filing of such acceptance.

## **SECTION 14. RIGHT OF FIRST REFUSAL**

A. Grantee agrees to grant to Grantor the right, option, and privilege of purchasing Grantee's distribution system located within the corporate limits of the City of Sand Springs for the identical price, and upon the identical terms and conditions at which Grantee desires to sell such system to any third party not affiliated with Grantee. Grantee agrees to forward by registered mail to the Mayor of Sand Springs notice in writing of any offer for purchase of such system which Grantee wishes to accept,

together with a copy of the offer or an exact report of the details thereof and the name and address of the offeror; and Grantee further agrees that it will not sell or convey any part of such system until it has complied with the requirements of this provision and Grantor has refused or failed to purchase said system within sixty (60) days of the day on which Grantor received such notice. In the event an offer of any third party covers the purchase of more than the distribution system of Grantee located within the City of Sand Springs and a price is not specified by the third party for the Sand Springs distribution system alone, this option agreement shall be void with respect to such offer.

B. This option agreement shall continue in force and effect for the term of this ordinance and shall expire upon the expiration of said term or upon the effective date of any other franchise agreement between Grantor and Grantee, whichever first occurs.

#### **SECTION 15. SEVERABILITY**

If any section of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof.

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## **Section 98.01.030 TULSA CABLE TELEVISION PERMIT**

### **Sections:**

**Section 100. Short Title**

**Section 101. Definitions**

**Section 102. Grant of Permit**

**Section 103. Rules of Grantee**

**Section 104. Service Standards**

**Section 105. Regulation by City**

**Section 106. Use of System by City**

**Section 107. Conditions on Use of Public Ways**

**Section 108. Erection, Removal and Joint Use of Poles**

**Section 109. Permit Fee**

**Section 110. Rates to Subscribers**

**Section 111. Liability of Grantee, Insurance and Indemnification**

**Section 112. System Rebuild**

**Section 113. System Rebuild Schedule and Extension**

**Section 114. Operational Standards**

**Section 115. Services to Subscribers**

**Section 116. Governmental and Educational Uses**

**Section 117. Services to City**

**Section 118. Compliance and Monitoring**

**Section 119. Default of Grantee, Penalties and Revocation**

**Section 120. Assignability**

**Section 121. Right of City to Purchase System**

**Section 122. Non-Discrimination**

**Section 123. Modification**

**Section 124. Miscellaneous Provisions**

**Section 125. Acceptance by Grantee**

### **Section 100. Short Title**

This Chapter shall be known and may be cited as the "Tulsa Cable Television Permit Ordinance".

### **Section 101. Definitions**

For the purposes of this Permit, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not directory.

A. Affiliate. Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

B. Basic Cable Service. Any service tier which includes the retransmission of local television broadcast signals and includes educational and government access channels.

C. Cable Act. The Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act (Public Law No. 102-385, 1992) and as the same may hereafter be amended.

D. Cable Channel or Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable Television System and which is capable of transmitting a television channel as defined by the FCC.

E. Cable Service. The one-way transmission to Subscribers of video and audio programming or other programming services and Subscriber interaction, if any, which is required for the selection of video and audio programming or other programming services provided through electric or electronic signals, or which utilizes any facility or equipment of the Cable System.

F. Cable Television System or Cable System or System. Facilities consisting of antennae, coaxial cables, fiber optic cables, wave guides, conductors or other closed transmission paths and associated signal generation, reception and control equipment, and other equipment designed to provide Cable Service or Other Lawful Service to Subscribers and users.

G. City. The City of Sand Springs, Oklahoma, a municipal corporation in its present incorporated form or in any other reorganized or changed form.

H. Completion of System Rebuild. The reconstruction and upgrade of the Cable System or part thereof as required by Section 113 hereof, including above and underground trunk and feeder cables, amplifiers, power supplies, connectors, splitters and tap installations, headend and hub rebuild or upgrade and any and all other construction necessary for the Cable System or part thereof to be ready to deliver Cable Service to Subscribers.

I. Council. The City Council of the City or any body constituting in the future the legislative body of the City.

J. FCC. The Federal Communications Commission or its successor.

K. Fiber Trunk Cable. Any part of the Cable System which utilizes fiber optic cable for the purpose of transmitting video, audio or other lawful signals.

L. Grantee. Tulsa Cable Television, Inc., now doing business as TCI Cablevision of Tulsa or its lawful successor, transferee or assignee.

M. Gross Operating Revenues. Any and all fees, charges, cash, credits, property of any kind or nature, consideration, compensation or receipts derived directly or indirectly by Grantee, it's Affiliates, subsidiaries, parents, or arising from or attributable to the operation of the Cable Television System, except that the term shall not include:

1. The amount of any refunds, corrective billing credits or other re-payments made to Subscribers or users;

2. Any taxes on service furnished by Grantee, imposed directly or indirectly on any Subscriber or user by any municipal corporation, political subdivision, state or other governmental unit and collected by Grantee for the governmental unit;

3. Receipts for the sale or transfer of tangible property;

4. Receipts for the sale or transfer of the system;

5. Receipts from the installation or reconnection of Cable Service, the transfer of an existing connection, the moving of a cable television outlet, or other non-recurring charges to a Subscriber or user for technical or installation services; and,

6. Charges, credits, compensation, or payments on a commercially reasonable basis to an Affiliate, subsidiary or parent for services rendered to Grantee.

N. Other Lawful Service. Any service other than Cable Service provided through electric or electronic signals or which utilizes any facility or equipment of the Cable System.

O. Person. An individual, corporation, partnership, association, joint stock company, trust corporation or governmental entity.

P. Permit. The rights and privileges granted by City to Grantee to construct, operate, maintain and upgrade a Cable Television System utilizing Public Ways within the corporate limits of the City of Sand Springs, Oklahoma, for the purpose of offering Cable Service or Other Lawful Service to Subscribers.

Q. Public Way. The surface of and the space above and below any public street, highway, freeway, bridge, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including but not limited to, public utility and communication easements, dedicated utility strips or rights-of-way dedicated for compatible public uses, and any temporary or permanent fixtures or improvements located within or held by City in the Service Area which entitles City or Grantee to its use for the purpose of installing, operating, repairing and maintaining the Cable Television System.

R. Service Area. The present corporate limits of the City and any additions caused by annexation or other lawful means.

S. State-of-the-art. The most current technology which is economically feasible, has been performance tested and is commonly accepted by industry standards for cable television systems or comparable size.

T. Subscriber. Any Person lawfully receiving Cable Service or Other Lawful Service from the Cable Television System.

U. System Rebuild. The reconstruction and upgrade as required by Section 112 hereof of the Cable Television System existing in the Service Area utilizing fiber optic cable and technology which is the State-of-the-art as of the date of the approval of this Permit.

## **Section 102. Grant of Permit**

A. City hereby grants to Grantee a Permit to enter upon the Public Ways to install, construct, operate, maintain, rebuild and upgrade in, upon, along, across, above and under the Public Ways a Cable Television System for the purpose of providing Cable Service and Other Lawful Services to Subscribers subject to the terms, conditions and provisions contained in this Permit, the Charter and applicable laws and regulations of Oklahoma and the United States of America.

B. This Permit shall be the measure of the rights, privileges and liabilities of City as well as the Grantee. In any court proceeding involving any claim against the City or other governmental entity, or any official, member, employee, or agent of the City or entity, arising from the regulation of the Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Permit, any relief, to the extent such relief is required by any provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

C. This Permit shall not be exclusive and nothing herein shall be construed to divest City of its control and regulation of the Public Ways.

### **Section 103. Rules of Grantee**

The Grantee shall have the authority to promulgate and enforce such reasonable rules, regulations, terms and conditions governing the conduct of its business as it shall deem necessary to enable Grantee to exercise its rights and perform its obligations under this Permit and to assure uninterrupted Cable Service to each and all of its Subscribers. Such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Permit, the rules and regulations of the FCC or any other body having lawful jurisdiction. The rules of Grantee shall become effective only upon or after, if a later effective date is specified therein, the filing of copies of such rules with the City Clerk and the Secretary to the Council.

### **Section 104. Service Standards**

Grantee shall maintain and operate the Cable System and render efficient Cable Service in accordance with such rules and regulations as shall be promulgated by the FCC. Wherever it is necessary to interrupt Cable Service for the purpose of making repairs, adjustments or installments, Grantee shall do so at such time as will cause the least inconvenience to Subscribers, and unless necessary, Grantee shall give reasonable notice to Subscribers.

### **Section 105. Regulation by City**

A. Grantee in the installation, maintenance and operation of the Cable Television System shall, at all times, be subject to the terms and provision of the general ordinances of the City and to the lawful exercise of the police power of the City.

B. Grantee shall be subject to the lawful exercise by City of all other powers, functions, rights, privileges and immunities of regulation of the Cable System, Cable Service or Other Lawful Service granted or delegated to City by the Charter, by the Constitution and the laws of Oklahoma or the laws and regulations of the United States of America.

### **Section 106. Use of System by City**

A. City shall have the right, at no cost, to locate equipment upon and make attachments to the Cable Television System owned by Grantee in connection with City systems. Attachments shall be installed and maintained in accordance with the requirements of the Electrical Code of City and only after written notice to Grantee. Upon request by City, Grantee agrees to construct attachments to the System for exclusive use by the City, its departments, boards, authorities, commissions and agencies for governmental purposes, other than the operation of a Cable Television System at the incremental cost of such attachments at the time of construction. Grantee shall assume no liability or expense in connection with any City attachment to or use of the Cable Television System. City use shall be in such manner as not to interfere with the use and maintenance of the Cable Television System by the Grantee.

B. City, in its use and maintenance of such equipment and fixtures, shall at all times comply with the rules and regulations of Grantee in order that there be a minimum danger of contact or conflict between the equipment and fixtures of Grantee and the equipment and fixtures used by City.

C. City shall be solely responsible and save Grantee harmless for all claims and demands for damages to Persons or property arising out of the use by the City of the Cable Television System.

### **Section 107. Conditions on Use of Public Ways**

A. All transmission and distribution structures, lines and equipment erected by Grantee within the Service Area shall be located so as not to obstruct or interfere with the property use of the Public Ways and other public places, and to cause minimum interference with the rights of property owners who abut any of the Public Ways and places, and not to interfere with existing public utility installments. In all areas of the Service Areas where all cables, wires or other like facilities of public utilities are placed underground, Grantee shall place its cables, wires, or other like facilities underground to the maximum extent existing technology reasonably permits by a method approved by City's Department of Public Works. Upon request, Grantee shall furnish to and file with City maps, plats and permanent records of the location and character of all facilities constructed including underground facilities. Such maps, plats, and permanent records shall be updated as required by City.

B. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own expense, replace and restore all paving, sidewalk, driveway or other surface of any Public Way disturbed in accordance with the standards and specifications of the City.

C. If at any time during the period of this Permit City shall elect to alter or change the grade or location of the water line, sewer line, street, alley or other Public Way, Grantee shall, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures at its own expense, and in each instance comply with the standards and specification of the City.

D. Grantee shall not place poles, conduits, or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrant or other utility, and all such poles, conduits or other fixtures placed in any Public Way shall be so placed as to comply with all requirements of the City.

E. Grantee shall, on request of any Person holding a house moving permit issued by City, temporarily move its cables, equipment or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same. Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary changes.

F. Grantee shall have the authority to trim any trees upon and overhanging the Public Ways of City so as to prevent the branches of trees from coming in contact with the equipment and cables of Grantee, except that at the option of City such trimming may be done by City, or under its supervision and direction, at the expense and liability of Grantee and other franchise and permit grantees.

G. City shall not be liable to Grantee for any injury to Grantee's Cable Television System caused by any City employee while performing emergency repairs

within the Public Ways. In all other circumstances when City employees negligently injure Grantee's Cable System, City shall only be liable to Grantee for the Grantee's actual cost of materials, equipment and labor necessary to effect repairs, with no allowance for interruption to service or loss of revenues, subject to any applicable limits of liability established by the Oklahoma Governmental Tort Liability Act. Grantee, no later than January 1 of each year, shall file with the City Clerk a schedule of the current cost of materials, equipment and labor necessary to make repairs.

### **Section 108. Erection, Removal and Joint Use of Poles**

A. No poles, conduits or other structures shall be erected or installed by Grantee without prior approval of City with regard to location, height, type and other pertinent aspects. Grantee shall not have a vested right to retain the location of any pole, conduit or structure installed by Grantee. Such poles, conduits or structures shall be removed or modified by Grantee at its own expense when necessary for the convenience of City.

B. Where poles, conduits or other structures of any public utility company are available for use by Grantee, City may require Grantee to use such poles, conduits and structures if the permission and consent of such public utility company may be obtained by Grantee and if the terms of the use available to Grantee are just and reasonable.

C. Where a public utility serving City desires to make use of the poles, conduits or other structures of Grantee but an agreement with Grantee cannot be reached, City may require Grantee to permit such use for such consideration and upon such terms as the Council shall determine to be just and reasonable if the use would not unduly interfere with use of the Cable Television System.

D. Where City owned utility poles are available for use by Grantee, Grantee shall pay City the same pole rental per annum as paid by Grantee for the use of poles owned by public utilities.

### **Section 109. Permit Fee**

A. Grantee shall pay to City as compensation for the rights and privileges enjoyed under this Permit an annual fee on a calendar year basis equal to five percent (5%) of the Gross Operating Revenues from the Cable System in the Service Area. The fee, together with any accumulated interest, shall be payable monthly on or before the 45th day after the end of each month on Gross Operating Revenues received for that month. If the payment is not timely made, interest upon any unpaid portion shall accrue at the rate of one and on-half percent (1.5%) per month until paid.

Grantee shall file a complete and accurate verified statement of all Gross Operating Revenues within the Service Area during the Operating Revenues within the Service Area during the period for which the monthly payment is made and an annual statement of such Gross Operating Revenues, verified by the Grantee's external certified public accountant, within sixty (60) days after the end of each calendar year. Grantee's first annual statement shall include the months of the calendar year that preceded the first month in which this Permit is effective. If Grantee fails or refuses to pay such fee, City may maintain an action against Grantee for the amount of such fee and interest and all expenses of collecting same, including reasonable attorneys fee.

B. If permitted by federal law, in the event Grantee or an Affiliate accepts a franchise, permit, license, authorization or other agreement of any kind with any municipal corporation or other governmental subdivision wholly or partially within Tulsa County, Oklahoma, for the purpose of constructing or operating a Cable System or providing Cable Services to any part of a city or other governmental subdivision which provides for the payment as compensation for the rights and privileges enjoyed thereunder of an annual fee in excess of five percent (5%) of the Gross Operating Revenues from governmental subdivision, then this Permit shall be deemed amended as of the effective date of the other franchise, permit, license, authorization or other agreement and Grantee shall thereafter pay to City as compensation for the rights and privileges enjoyed hereunder an annual fee equal to the same percentage of Gross Operating Revenues in the Service Area as is paid by Grantee under such other franchise, permit, license, authorization or other agreement.

#### **Section 110. Rates to Subscribers**

Subject to the provision of the Constitution and laws of the United States of America, the Cable Act and the Constitution and laws of Oklahoma, and the provisions of the Code of Ordinances of the City of Sand Springs, Oklahoma, the Council may regulate the rates of Grantee of the Basic Cable Service to be furnished by Grantee under this Permit. No rates shall be adopted or changed by the Council except after notice to the public and to Grantee and after a public hearing.

#### **Section 111. Liability of Grantee, Insurance and Indemnification**

Grantee shall defend and hold City harmless from all loss sustained by City by reason of any suit, judgment, execution, claim or demand resulting from the construction, operation or maintenance by Grantee of the Cable Television System in the Service Area. Grantee shall maintain in full force and effect for the term of this Permit, at Grantee's sole expense, a general comprehensive liability insurance policy, in protection of City, the Council, the City officers, boards, commissions, agents and employees, issued by a company protecting City and all Persons against liability for loss or damage for personal injury, death and property damage occasioned by the operations of Grantee under this permit in the minimum amount of three million dollars (\$3,000,000.00); provided, if the maximum liability of City under the Oklahoma Governmental Tort Liability Act should be increased to more than three million dollars (\$3,000,000.00), the amount of liability insurance required hereunder shall be increased to that amount. Grantee shall file with the City Clerk certificates of the insurance required hereunder in a form satisfactory to the City Attorney.

#### **Section 112. System Rebuild**

The Cable Television System now owned and operated by Grantee within the Service Area provides a maximum of forty (40) video channels and consists of coaxial cables, amplifiers, conductors and other equipment and facilities which represented the State-of-the-art at the time of construction. Upon acceptance of this permit, and in reliance thereon, Grantee, in accordance with Section 113, shall rebuild and upgrade

the Cable Television System utilizing fiber optic cables, coaxial distribution cables and State-of-the-art technology. Upon completion of the System Rebuild, the System shall have an available Channel capacity of at least seventy-two (72) video channels.

Grantee shall not charge a Subscriber any direct fee or assessment for the System Rebuild, including the upgrade of drops required for service to a subscriber.

### **Section 113. System Rebuild Schedule and Extension**

A. Grantee shall review the System Rebuild's design and schedule with City in order that City may elect to make attachments to the System during construction. Construction of the System Rebuild shall be completed by February 2, 1999.

B. Construction of the System Rebuild shall provide for upgraded Cable Service to all residences and properties in developed areas within the corporate limits of the City. Thereafter, the System shall be extended and Cable Service provided to any area where there are then existing thirty-five (35) homes within one (1) mile of the existing Cable System or ten (10) homes within one-quarter (1/4) miles of the existing Cable System. In other areas, Grantee may charge for extension of the Cable System based upon the cost of labor and materials.

C. The time for Completion of the System Rebuild may be extended or excused by the Council for any period during which Grantee experience delays or interruptions due to circumstances reasonably beyond it's control including, but not limited to, necessary utility changes or re-arrangements, governmental or regulatory restrictions or requirements, major strikes, litigation, lock-outs, war (declared or undeclared), national emergency, economic conditions, fire, earthquakes and acts of God.

### **Section 114. Operational Standards**

A. Grantee shall maintain and operate the Cable System so as to provide video, audio and other signals to be delivered with signal strength and quality levels which meet the parameters specified by the FCC and any other normally accepted industry standards. Grantee shall construct the System Rebuild and operate and maintain the System in a manner consistent with all ordinary care and all applicable laws, ordinances, construction standards, and FCC technical standards. Upon request, Grantee shall provide City a report of the results of any FCC required proof of performance test conducted by Grantee.

B. Grantee shall maintain equipment capable of providing standby battery owner for trunk amplifiers for a minimum period of four (4) hours.

C. Grantee shall, as part of the System Rebuild, provide capacity for interactive services which may be added to the System as such services become technically and economically feasible.

D. Grantee may interconnect the Cable Television System within the Service Area with cable television systems owned or operated by Grantee within adjacent cities.

E. Upon request, Grantee shall provide Subscribers with a parental control locking device or digital code capable of blocking or otherwise preventing a television set from receiving a Channel or audio signal, for which Grantee imposes a separate charge.

F. Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time on an annual basis:

1. Standard installations shall be performed within seven (7) business days after an order has been placed; and,

2. Except when beyond the control of Grantee, Grantee shall respond to Cable Service interruptions promptly and in no event later than twenty-four (24) hours.

G. Grantee shall establish procedures for receiving, acting upon and resolving Subscriber complaints which shall be subject to the approval of the City Council.

H. City shall notify Grantee in writing of any complaint from Subscribers or of any failure of Grantee to comply with the terms and conditions of this Permit. Grantee, upon receipt of such notice, shall promptly investigate the complaint and take such action as is necessary to provide Cable Service to Subscribers and to operate the System as required.

### **Section 115. Services to Subscribers**

A. Grantee shall provide to Subscribers as a part of its Basic Cable Service local television broadcast signals as required by the Cable Act and FCC regulations subject to obtaining the consent of the local broadcast stations as required by law, and educational and public affairs programming including local educational and governmental programs.

B. Upon completion of the System Rebuild, Grantee shall offer to Subscribers programming on at least fifty (50) video channels including the video channels offered as a part of the Basic Cable Service.

C. Grantee shall provide audio services.

D. Upon request, and at a reasonable charge, Grantee shall provide to Subscribers an input selector switch to permit broadcast television reception from an antenna.

### **Section 116. Governmental and Educational Uses**

A. Until the completion of the System Rebuild, Grantee shall provide to state accredited public, private and parochial schools and institutions of higher learning in the Service Area for educational services at no cost to the school or institution one (1) free service outlet to the Cable Television System to all public, private and parochial schools and institutions of higher learning, with additional service outlets to be provided at the cost of labor and materials, and with no monthly service charge for service outlets or for services which are not offered on a premium or pay-per-view basis.

Grantee shall provide maintenance, at no cost, of cables, amplifiers and other distribution equipment owned by Grantee and used for educational programming, and shall provide, at no cost, technical assistance required for the use of Channels for educational use.

B. Upon Completion of the System Rebuild, Grantee shall provide for governmental and educational use and for networking among governmental or educational users, at no cost to such users, the following:

1. One (1) Channel on the System for the exclusive use of Sand Springs School District of Tulsa County, Oklahoma, lying within the corporate limits of Grantor or outside the corporate limits of Grantor and not within the corporate limits of an adjoining community if in the referenced school district as well as within an area served by Grantee;
2. One (1) Channel on the System for the exclusive use of Tulsa Junior College;
3. One (1) Channel on the System for shared use, under the coordination of Independent School District Number One of Tulsa County, Oklahoma, for the exclusive use of Independent School District Number One of Tulsa County, Oklahoma, and Tulsa Junior College, and other state accredited elementary and secondary schools within the Service Area and service areas of other cable television systems owned by the Grantee and interconnected with the Cable System within Tulsa County, which develop, staff and operate facilities and equipment to provide programming on a continuing basis; and,
4. Three (3) Channels on the System for joint and cooperative use by the City, other cities which have granted the Grantee a permit or franchise to provide Cable Service and are interconnected with the Cable Television System, state accredited elementary and secondary schools and institutions of higher learning within the Service Area, and service areas of other cable television systems owned by the Grantee and interconnected with the Cable System, including Independent School District Number One of Tulsa County, Oklahoma, and Tulsa Junior College.

If potential users are unable to agree on the allocation of Channels provided in this subsection B.4 and subsection D. of this section, the Council may promulgate rules, regulations and procedures governing the allocation of governmental and educational use Channels. The Council shall resolve any disputes between any user of the Channels and shall approve all allocations of educational and governmental Channels provided in this subsection B.4 and subsection D. of this Section.

C. Grantee shall provide one (1) free service outlet to the System with additional service outlets to be provided at the cost of labor and materials, and with no monthly service charge for service outlets or for services which are not offered on a premium or pay-per-view basis for each state accredited school and institution of higher learning for the Channels allocated for educational use. Grantee shall provide, at no cost, connections for video origination from the Sand Springs School District Administration Building and, upon Completion of the System Rebuild, from one point at each institution of higher learning. Grantee shall provide, at no cost, connections for governmental video and audio origination from City Hall. Upon request from a governmental or educational user, Grantee shall provide, at the direct cost to the Grantee of labor and materials, additional connections for video origination from other points. Grantee shall maintain, at no cost, cable television Channels used for governmental and educational use and shall provide, at no cost, technical assistance required for the use of Channels for governmental and educational use.

D. Grantee shall have the right to temporarily use any unused portion of the Channel allocated under subsection B.4 and subsection D. of this Section for governmental and educational use which is not being fully utilized, as defined herein, provided such use shall not interfere with any educational or governmental use. If the

Channels provided under this Section for governmental and educational use are being fully utilized, Grantee shall provide at no cost to the user for additional governmental and educational use the first Channel added to the Cable Television System above the seventy-two (72) Channels which shall be available upon Completion of the System Rebuild. Thereafter, Grantee shall provide at no cost to the user for governmental and educational use the first Channel added to the Cable Television System above eight-four (84) Channels, above ninety-six (96) Channels, above one hundred and eight (108) Channels, and added to the Cable Television System. Use of such additional Channels shall be allocated as provided in subsection B.4 of this Section. Generally, a Channel shall be considered as being fully utilized if more than an average of forty-eight (48) hours per week over a six (6) month period of programming other than character generated programming is offered. School terms, seasonal and special concerns shall be considered in determining whether a Channel is fully utilized. If a Channel allocated shall have the right to require the return of the Channel or portion thereof by a written statement to Grantee that the institution is prepared to fully utilize the Channel or portion thereof in which event the Channel or portion thereof shall be returned to such institution within three (3) months after receipt by Grantee of the statement.

E. Grantee shall not make any separate or premium charge to a Subscriber for access to educational or governmental Channels.

F. All Channels allocated for governmental and educational use shall be of the same quality as the Channels on the Cable System for Cable Service. All Channels allocated for educational use shall be available to Subscribers in the Service Area and the service areas of other cable television systems interconnected with the Cable System.

G. When a Channel allocated for governmental or educational use has been assigned a Channel number or position by the Grantee, such Channel number or position shall not be changed until at least six (6) months written notice has been given to the user of such channel.

### **Section 117. Services to City**

Grantee shall provide the following services to City:

A. Channel space as provided in Section 116 at no charge for the dissemination of information to the public;

B. A service outlet, at no cost to City, to each City facility within the Service Area including, but not limited to, City Hall, the Community Center, fire stations, public libraries, City-County Health Department, William Pogue Municipal Airport, Police and Fire Training Centers, recreation centers, and maintenance facilities. Additional service outlets shall be provided at the cost of labor and materials with no monthly service charge for connections, service outlets or non-premium services; and,

C. A means of simultaneously interrupting all Channels other than local broadcast Channels on the Cable Television System to present emergency audio and, upon Completion of the System Rebuild, moving character generated video messages by local public safety, civil defense and other public officials. Grantee shall install City purchased equipment, at no cost to City, in the City Hall, for the use of the emergency information system.

### **Section 118. Compliance and Monitoring**

A. Grantee will provide written notification to the City prior to offering any other Lawful Service and Grantee shall file with the City a copy of its authority to provide such service, if any has been obtained.

B. City may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of Grantee or the Cable System in order to determine whether or not Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof and providing a representative of Grantee an opportunity to be present during such test. In the event that such testing demonstrates that Grantee has requirement hereof, the reasonable costs of such test shall be borne by Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by City. Except in emergency circumstances, such testing shall be undertaken no more than two (2) times in a calendar year and the results thereof shall be made available to Grantee. Upon request, Grantee shall furnish to and file with City the results of technical tests that Grantee conducts for itself or others.

C. On or after September 1, 1998 and every five (5) years thereafter, Council may commence proceedings, which afford public notice, public participation and open meetings, for the purpose of identifying future Cable System community needs and interest, including channel capacity and customer service, and reviewing Grantee's performance during the preceding five (5) years. Upon request by the Council, Grantee shall cause to be conducted a survey, as approved by the Council, to determine community needs, desires and ratings of Grantee's performance. The survey shall be made available to the public and shall specifically address, among other items, the demand for new services in relation to the cost of providing such services so as to ascertain the overall need for channel expansion.

D. Upon completion of any five (5) year review provided for in this section, Grantee and City shall meet, confer and, if deemed necessary by either, renegotiate in good faith the terms and conditions of this Permit relating to community needs, channel capacity and customer service.

### **Section 119. Default of Grantee, Penalties and Revocation**

A. The rights and privileges granted by the City to Grantee under this Permit shall continue and remain in full force and effect until revoked by the Council. In the event that City or the Council believes that Grantee has not complied with the terms of this Permit, city or the Council shall notify Grantee in writing of the exact nature of the alleged default.

B. Grantee shall have thirty (30) days from receipt of a written notice of default to: (a) respond contesting the alleged assertion of a default, or (b) cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify City or the Council of the steps being taken and the projected date that they will be completed.

C. In the event that Grantee contest that assertion of a default or fails to respond to a notice of default or the alleged default is not remedied within thirty (30) days after Grantee is notified thereof, the Council shall schedule a hearing to investigate the default. The council shall notify Grantee of the time and place of such hearing and provide Grantee with an opportunity to be heard.

D. In the event the Council, after such hearing, determines that Grantee is in default of any provision of this Permit, the Council may:

1. Assess liquidated damages to City caused by the default by Grantee as follows:

a. For default in the Completion of the System Rebuild as required by Section 112 and 113 hereof, the sum of one thousand dollars (\$1,000.00) per day for the first thirty (30) days after the expiration of the time for the Completion of the System Rebuild or part thereof as required by Sections 112 and 113 hereof, two thousand five hundred dollars (\$2,500.00) per day for each day more than thirty (30) days past the expiration of the time for the Completion of the System Rebuild or part thereof as required by Sections 112 and 113 hereof and thirty-five hundred dollars (\$3,500.00) per day after each day more than sixty (60) days past the expiration of the time for Completion of the System Rebuild or part thereof as required by Section 112 and 113 hereof, provided that the total amount of liquidated damages assessed under this subsection shall not exceed two hundred thousand dollars (\$200,000.00);

b. For knowingly failing to provide data, documents or information as required in this Permit, two hundred fifty dollars (\$250.00) per day for each day the failure occurs or continues; and,

c. For knowingly failing to comply with the service and operation standards of this permit, five hundred dollars (\$500.00) per day for each day the failure occurs or continues.

Amounts of liquidated damages in this Section are deemed appropriate as of the effective date of this Permit. Such damages, at the time of any Council assessment, will be adjusted to equivalent values. Damages identified in this Section shall be adjusted in accordance with the changes in the United States Department of Labor, Bureau of Statistics Consumer Price Index City Average for Urban Wage Earners and Clerical Workers ("C.P.I.") measured from the effective date of this Permit to the date of assessment by the Council. In the event a substantial change is made in the method of establishing the C.P.I., or the C.P.I. or successor is not available, a reliable governmental or other independently determined publication, evaluating information used in determining the C.P.I., shall be used in lieu of the C.P.I.

2. In the case of a default of a provision of this Permit which is not cured by Grantee or the subject of damages assessed as provided herein, the Council may revoke this Permit in it's entirety; or,

3. Seek specific performance of any provision, which reasonably lends itself to such remedy, or injunctive relief as an alternative to damages or termination of this Permit.

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Permit by reason of any failure of City to enforce prompt compliance.

E. Grantee shall not be held in default with the provision of this Permit, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by strikes, acts of God, power outages or other events reasonably beyond the ability of Grantee to control.

### **Section 120. Assignability**

If Grantee shall at any time assign, sell, lease or otherwise transfer in any manner whatsoever its rights and privileges under this Permit to any Person, such action shall be in writing and a duly authenticated copy shall be filed with the City Clerk. Such action shall not become effective until the transferee shall have agreed in writing with City to become responsible for the full performance of all the conditions, liabilities, covenants and obligations contained in this Permit and until such action shall have been approved by the Council, provided such approval shall not be unreasonably withheld. The Council may require evidence that the transferee possesses the financial, technical and legal capability to perform all of the conditions, liabilities, covenants and obligations contained in this Permit. If the Council fails to act upon a proposed transfer within sixty (60) days after the transferee shall have agreed in writing to become responsible for the full performance of all the conditions, liabilities, covenants and obligations of this Permit, then such action shall be deemed to have been approved.

No approval of City shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of Grantee in this Permit or the Cable Television System in order to secure indebtedness of Grantee.

### **Section 121. Right of City to Purchase System**

A. City shall have the right at any time after fifteen (15) years after the effective date of this Permit granted herein to purchase the Cable Television System of Grantee located within the Service Area and to terminate this Permit, if the purchase is approved by a majority of the qualified electors of City voting at a special or general election. At any time after the right to purchase the Cable Television System of Grantee shall have accrued under the terms hereof, the question of the purchase of the Cable Television System may be submitted by the Council to the qualified electors of the City for approval. The question of the purchase of the Cable Television System of Grantee shall be submitted at the next succeeding election of the City upon petition to the Council of twenty-five percent (25%) of the qualified electors of the City. Grantee shall be compensated for the fair market value of the Cable Television System located within the Service Area with such value to be determined by the majority of three (3) appraisers, one to be appointed by the Mayor of the City, one by Grantee, and the third by the first two appraisers. The appraisers shall be persons of recognized skill, ability and experience with respect to the appraisal and valuation of cable television systems. If Grantee shall refuse to select an appraiser for thirty (30) days after approval by the qualified electors of the City of the purchase, the value of the Cable Television System located within the Service Area shall be fixed by the vote of a majority of the Council. If the two (2) appraisers appointed by the Mayor and by Grantee shall fail to agree upon the third appraiser within thirty (30) days after their appointment, the third appraiser, upon the application of either City or Grantee, shall be appointed by the Presiding Judge of the District Court of Tulsa County, Oklahoma.

B. The fair market value of the Cable Television System shall be determined by the majority of the appraisers within ninety (90) days after the appointment of the third appraiser. City shall have ninety (90) days from the receipt of written notice of the decision of the appraisers within which to pay Grantee in cash the appraised value of the Cable Television System. Until such payment, Grantee shall continue to operate the Cable Television System pursuant to the terms of this Permit, provided, that if between the date of the appraisal of the Cable Television System and the date of payment therefor, reasonable and necessary additions, betterments and replacements shall have been made by Grantee to the Cable Television System, City shall pay in addition to the value established by the appraisers the reasonable cost of such additions, betterments and replacements.

### **Section 122. Non-Discrimination**

A. Grantee shall not deny any Person or group of potential cable Subscribers access to Cable Service because of race, color, religion, national origin, age, gender, physical handicap or the income of residents in the local area in which a Person or group resides.

B. Grantee shall not discriminate in the rates or charges for Cable Services or in making available Cable Services or facilities of the System. Grantee shall not extend any preference of advantage to any Subscriber or potential Subscriber to the System or to any user or potential user of the System. Grantee may conduct promotional campaigns to stimulate subscriptions to Cable Services or other lawful uses of the System and Grantee may establish bulk billing rates and rate schedules for different classes of Subscribers and Cable Service which any Subscriber coming within such bulk billing group, rate or service classification shall be entitled.

C. Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, age, gender or national origin. Grantee shall comply with all applicable laws and regulations of the United States and of Oklahoma with respect to employment and personnel practices.

### **Section 123. Modification**

The City, after notice and public hearing, may modify this Permit to provide for such standards and exercise such powers, functions, rights or privileges as may now or hereafter be permitted, delegated or mandated by federal or state law, rules or regulation regarding the Cable System, Cable Service or other lawful service.

### **Section 124. Miscellaneous Provisions**

A. Grantee shall keep books and records for periods of time reasonably established by the City to determine compliance with the terms of this Permit. City, after reasonable notice, shall have the right to review the books and records, including any complaints, of Grantee during normal business hours as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by Grantee pursuant to the rules and regulations of the FCC. Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature; provided this exception shall not be construed to include financial records necessary to enable the City to

determine compliance with Grantee's fee payment obligations. Subject to open meeting and record disclosure laws of the State of Oklahoma, City agrees to treat any information disclosed by Grantee to it on a confidential basis and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Council may inspect the books and records of Grantee as necessary to determine compliance with the terms of this Permit, compel attendance of witnesses and may by ordinance revoke this Permit as provided in Section 119 hereof for failure or refusal of Grantee or any officer, employee or agent thereof to testify or to produce such books or records.

B. Copies of all petitions, applications and communications submitted by Grantee to the FCC, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Permit, shall be submitted to the City Clerk upon request.

C. Grantee shall pay the cost of publication of this Ordinance.

D. In the event City enters into a franchise, permit, license, authorization or other agreement of any kind with any Person other than Grantee or City for the purpose of constructing or operating a Cable Television System or providing Cable Service or Other lawful Service within the same Service Area, which contains terms more commercially or economically favorable with regard to government and educational Channels and service, System operational service standards, fees to the City or rates to Subscribers and users, or in the event City enters into a franchise, permit, license, authorization or other agreement of any kind with any Person other than Grantee for the purpose of constructing or operating a Cable Television System or providing Cable Service or Other Lawful Service within the same Service Area, which contains terms more favorable to City with regard to government and educational Channels and service, System operational service standards fees to the City or rates to Subscribers and users, then Grantee and City shall meet, confer and, if deemed necessary by either, renegotiate in good faith the terms and conditions of this Permit relating to government and educational standards, fees to the City or rates to Subscribers and users.

E. Notices or responses served upon City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

All notice or responses between City and Grantee shall be addressed and delivered by certified or registered mail as follows: if to the City, City Clerk, City of Sand Springs, P.O. Box 338, Sand Springs, Oklahoma 74063, with copies to the Mayor, the Chairman of the City Council and the City Attorney at the same address; if to Grantee, Tulsa Cable Television, Inc., d/b/a/ TCI Cablevision of Tulsa, 6650 East 44th Street, Tulsa, Oklahoma 74145-4642. Any notice given by Grantee to the City Clerk shall be accompanied by instructions to the Clerk referencing this section and directing the Clerk to file and maintain such notice with the original of this Ordinance. City and Grantee may designate other addressees or addresses from time to time by giving notice to the other.

**Section 125. Acceptance by Grantee**

A. Grantee shall file with the City Clerk of the City within twenty (20) days after passage, approval by the Mayor and prior to publication of this Ordinance a written acceptance, approved by parent corporations, of this Permit and the terms and conditions thereof as set out herein.

B. Grantee by the acceptance of this Permit shall be deemed to have waived and released any claim the Grantee might have against the City by reason of a declaration, ruling or judgment by a court as to the invalidity of this Permit or any part thereof.

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## **Section 98.01.040 ELECTRICITY FRANCHISE**

### **Sections:**

- Section 1. Definitions**
- Section 2. Grant of Franchise**
- Section 3. Term of Franchise**
- Section 4. Assignment, Sale or Lease**
- Section 5. Enforceability of Rules and Regulations of Grantee**
- Section 6. Standard of Service - Indemnification of City**
- Section 7. Duty to Move or Alter Lines**
- Section 8. Location of Plants and Systems and Transmission of Energy and Related Services**
- Section 9. Use and Repair of the Public Ways**
- Section 10. Reasonable Rates Authorized**
- Section 11. Sale of Power to City**
- Section 12. Fees**
- Section 13. Maintenance and Inspection of Records**
- Section 14. Right of City to Purchase Property**
- Section 15. Election Required - Acceptance by Grantee**
- Section 16. Repeal of Previous Franchise Agreement**
- Section 17. Emergency Clause**

### **SECTION 1. DEFINITIONS**

As used in this ordinance and franchise, the following words and phrases shall have the following meanings:

- A. CABLE SERVICE shall mean the
  - (i) One-way transmission to subscribers of video programming or other programming service; and,
  - (ii) Interaction, if any, which is required by the receiver of such programming for the selection or use of such video programming or other programming service.
- B. CONSUMER shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality or public corporation served by the Grantee through any use of the public ways.
- C. CONTROL of electricity shall mean regulation of the current and/or voltage or use of such electricity.
- D. FRANCHISE shall mean the rights and privileges granted by Grantor to Grantee under this ordinance and franchise agreement.
- E. GRANTEE shall mean Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns.
- F. GRANTOR shall mean the City of Sand Springs, a municipal corporation of the State of Oklahoma.
- G. INFORMATION SERVICE shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.

H. INSTALL, OPERATE AND MAINTAIN (and other forms of such words) shall mean to acquire, erect, build, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.

I. PLANTS AND SYSTEMS shall mean plants, systems, poles, wires, conduits, substations, meters, structures, equipment, facilities appliances and apparatus as are reasonably necessary for the control, transmission, distribution and sale in and to Grantor and to the public, generally.

J. PUBLIC WAYS shall mean the public rights-of-way, including streets, alleys, avenues, boulevards, parkways and public utility easements within the corporate limits of the City of Sand Springs as now constituted or as may be added to hereafter.

K. TELECOMMUNICATIONS shall mean the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

L. ULTIMATE CONSUMER shall mean a consumer which receives electric energy other than for resale to another consumer.

M. UNDERGROUND INSTALLATION shall mean the installation, operation and maintenance or replacement of any portion of Grantee's plants and systems underground or beneath the surface of any public way.

## **SECTION 2. GRANT OF FRANCHISE**

There is hereby granted by the Grantor to Grantee, its successors and assigns, the right, power and authority to use the public ways of Grantor for the purpose of owning, installing, operating and maintaining plants and systems for the control, transmission, distribution and sale in and to the Grantor and to the public, generally, of electricity for lighting, heating, cooling and power purposes as well as for such other purposes as electric energy may be put, and to transmit and provide electric energy and related services, over distribution and transmission lines throughout the City and to connections and systems in other localities, with plants and systems upon, across, over and under each and any of said public ways. The rights and privileges granted by this ordinance shall include the right, power and authority for Grantee to install, operate and maintain the plants and systems described herein for the purpose of providing telecommunications, telecommunications services, cable services and information services to the extent that such are related to and used solely in connection with Grantee's manufacture, control, transmission, distribution and sale of electric energy and related services, and not for the purpose of selling or providing such telecommunications, telecommunications services, cable services and information services to the public, generally.

## **SECTION 3. TERM OF FRANCHISE**

All rights and privileges granted by this ordinance shall extend and be in force between Grantor and Grantee for a term of twenty-five (25) years from and after the date of acceptance of this ordinance, except as hereinafter provided.

#### **SECTION 4. ASSIGNMENT, SALE OR LEASE**

A. All provisions of this ordinance and franchise which are obligatory upon or which inure to the benefit of the Grantee shall also be obligatory upon and shall inure to the benefit of its successors and assigns, and the word "Grantee" as used in this ordinance shall include and be taken to mean not only Public Service Company of Oklahoma, but also its successors and assigns. Subject to the provisions of this subsection and Subsection 4(B), below, Grantee may assign all or a portion of its rights and/or obligations under the provisions of this ordinance and franchise. Any assignment by Grantee shall be in writing, and the assignee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this ordinance and franchise to the extent such are the subject of such assignment. Upon notifying Grantor of any such assignment or proposed assignment, Grantee and/or the assignee shall provide Grantor with such information as is reasonably necessary to enable Grantor to make an informed determination of such assignee's financial status and capabilities. Any such assignment shall be deemed approved by Grantor unless within thirty (30) days of receiving written notice of such assignment Grantor notifies Grantee in writing that it objects to such assignment on the ground that the assignee is not financially able to perform the conditions, covenants, obligations, and liabilities in this ordinance and franchise which the assignee will be responsible for as a result of such assignment. Any such objection by Grantor must be based upon reasonable and generally recognized financial standards, and upon the information provided by Grantee and/or the assignee or verified by another generally recognized source of financial information. In the event such an objection is timely made by Grantor, Grantee and the assignee shall have a reasonable opportunity to address and, if necessary, provide appropriate remedies with respect to the grounds for such objection. Any assignments by Grantee of a portion of its rights and/or obligations hereunder, shall, unless provided otherwise in such assignment, be effective until the end of the term provided in Section 3, above, notwithstanding the termination of any other rights and obligations under the provisions of this ordinance and franchise prior to the end of such term.

B. Grantor and Grantee agree that as of the effective date of this ordinance, there are ongoing public discussions concerning the potential restructuring of the electric utility industry. In some cases, such discussions contemplate that as part of such restructuring, a person or entity other than an incumbent electric utility (referred to hereafter as a "Third Party"), may use the plants and systems of incumbent electric utilities, or portions thereof, for sales to ultimate consumers. It is the intent of the parties that in the event of such restructuring, Grantee shall make reasonable efforts to ensure that any Third Party which uses Grantee's plants and systems for the sale of electric energy to ultimate consumers within the City of Sand Springs shall first obtain all applicable permits and agree to pay any and all applicable taxes and fees to the Grantor.

C. If after the date of acceptance of this ordinance, by reason of law or otherwise, a Third Party shall lease or otherwise make use of Grantee's plants and systems for the distribution and/or transmission of electric energy which is to be sold to an ultimate consumer within the City of Sand Springs, the following requirements shall apply:

1. Prior to permitting such use of Grantee's plants and systems, Grantee shall make reasonable efforts to ensure that such Third Party has secured any applicable permits to furnish electric energy to ultimate consumers within the City of Sand Springs.

2. The parties understand that Grantor may require, as a condition of any such permit, that such Third Party pay applicable permit fees to Grantor. In such cases, if requested by Grantor, Grantee agrees to act as Grantor's agent, at cost, for the collection and remittance of such fees to Grantor.

3. On a monthly basis, Grantee shall report to Grantor estimates of electric energy distributed and/or transmitted by and through Grantee's plants and systems for sale to ultimate consumers within the City of Sand Springs.

This Subsection 4(B) shall not apply to any use of Grantee's plants and systems for the distribution and/or transmission of electric energy to any party purchasing, receiving and using such electric energy outside the corporate limits of the City of Sand Springs.

#### **SECTION 5. ENFORCEABILITY OF RULES AND REGULATIONS OF GRANTEE**

Grantor shall not adopt any ordinance or regulation which has the effect of prohibiting Grantee from making and enforcing reasonable rules and regulations for the sale, delivery, control and metering of its electric energy and related services and the conduct of its business, including rules and regulations which reserve in Grantee the right to disconnect service to customers where any portion of Grantee's plants and systems are found to have been tampered with, or who have failed to pay for electricity or services, and to enter upon the premises of its customers at all reasonable times for the purpose of inspecting, repairing or reading meters or for removing any portion of its plants and systems. Provided that any such rules and regulations of Grantee shall not be in conflict with law or the rules and regulations from time to time adopted by the Corporation Commission of the State of Oklahoma, the Federal Energy Regulatory Commission, or by any other regularly constituted regulatory authority.

#### **SECTION 6. STANDARD OF SERVICE - INDEMNIFICATION OF CITY**

A. Grantee covenants and agrees in consideration hereof, that it will maintain electric service in and to Grantor under the rules and regulations imposed upon it by the Corporation Commission of the State of Oklahoma or by any other regularly constituted regulatory authority. In accepting this franchise and contract, Grantee does not guarantee continuous service at all times and shall be relieved temporarily from its obligation to furnish such services in case of any disability caused by an act of God or by the elements, or terrorism, or strikes, or lock-outs, or by any temporary breakdown or failure of its plants and systems, or any portion thereof, or by any other causes beyond the control of Grantee; provided Grantee does agree in such cases to exercise due diligence in repair of such plants and systems, and to resume operation of same without unnecessary delay.

B. The Grantee covenants and agrees that it will indemnify and hold the City of Sand Springs free and clear of any claims for damages or otherwise caused by the negligence of Grantee in the installation, operation or maintenance carried on hereunder. It is understood and agreed that in the event of claims being presented or

prosecuted against the City of Sand Springs which are alleged by the claimant or Grantor to have resulted from the negligence of Grantee, the Grantee shall have the right to defend against the same and to settle and discharge same in such manner as it may see fit. And to this end the City of Sand Springs agrees to notify the Grantee of such claims and to furnish to it such information and assistance as may be necessary in the defense thereof.

#### **SECTION 7. DUTY TO MOVE OR ALTER LINES**

A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, fiber optic conduits, or other pipelines and to do or permit to be done any underground work deemed necessary and proper by Grantor, along, across, over or under the public ways. If Grantor determines that any such work may cause damage to Grantee's plants and systems, or the installation, operation and maintenance thereof, Grantor shall, except in the case of emergency, provide Grantee with written notice that such work is to be performed before it is commenced. In permitting such work to be done and in doing such work, Grantor shall not be liable to Grantee for any damages unless they are negligently, willfully or unnecessarily occasioned by Grantor.

B. Whenever by reason of establishing a grade or changes in the grade of any street, or in the location or manner of construction of any public way, cables, electric conduits, fiber optic conduits, water, gas or other underground structures, it shall be deemed necessary by Grantor to alter, change, adapt or conform the plants and systems of Grantee, or any part thereof, such alterations or changes shall be made within a reasonable time by Grantee, as directed in writing by Grantor, without any claim for reimbursement or compensation for damages against Grantor, or any agency, trust or authority formed for, by, or for the benefit of Grantor.

C. If Grantor shall require Grantee to adapt or conform its plants and systems, or any part thereof, or to in any way alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than Grantor, to use the public ways, Grantee shall be entitled to reimbursement by the person, firm, corporation or entity desiring or occasioning such change, alteration or relocation. "Person," "firm," "corporation," and "entity," as used in this section, shall not include regular departments of Grantor, or any trust or authority formed by or for the benefit of Grantor for public utility purposes, or whose revenues are subsidized by or contribute to the general funds of Grantor, but shall include any other agency or authority of the City of Sand Springs, whether acting in a governmental or non-governmental capacity, including, but not limited to any agency or authority which as a part of its program clears whole tracts of land within the city limits and relocates citizens for the purpose of urban development or similar aims.

D. In the event Grantee ceases completely to use its plants or systems, or any portion thereof, for any of the purposes for which a franchise is granted herein, and Grantee is not required by law or by provisions of a legally-imposed contract to make the use of such plants and systems available to any other person or entity, Grantee will, within ninety (90) days of the date when it and any other such persons or entities cease all such use, remove any such plants and systems located upon the public ways of Grantor.

## **SECTION 8. LOCATION OF PLANTS AND SYSTEMS AND TRANSMISSION OF ENERGY AND RELATED SERVICES**

In performing the terms and provisions of this ordinance, franchise and contract, Grantee is hereby given the continuing right, privilege and option to manufacture, control and store electric energy within the corporate limits of Grantor, and/or to transmit such electric energy over transmission lines from other plants and wholesale suppliers and to distribute same from some central location or locations at proper voltage; together with the right to transmit electric energy from any source to, from and through said City to other localities. Grantee is also given the continuing right to use its plants and systems to provide transmission and distribution services to other wholesale suppliers of electrical energy as Grantee is authorized or required to provide under applicable law. Grantee is hereby authorized to allow others, having a permitted right granted by the City of Sand Springs, or as may otherwise be authorized or required by applicable law, to attach telecommunications and cable facilities to its poles and structures or to place such telecommunications and cable facilities within, upon or adjacent to its underground ducts and conduits, on such conditions as it deems just and reasonable and in compliance with applicable law; provided, to the extent that applicable law does not establish such conditions and should the parties be unable to agree to such conditions, the City Council of the City of Sand Springs shall determine such conditions as are just and reasonable, which shall be binding upon all parties.

## **SECTION 9. USE AND REPAIR OF THE PUBLIC WAYS**

A. Grantee's plants and systems shall be installed, operated and maintained in such a manner as will, consistent with reasonable necessity, least interfere with other public uses of the public ways, including those prescribed by the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.).

B. Before Grantee commences any installation, operation or maintenance work which may interfere with normal public use of a public way, Grantee shall, except in the case of emergency, give at least forty-eight (48) hours written notice thereof, together with a schedule of activity, to the Public Works Director of the City of Sand Springs, or any other proper authority designated in writing by Grantor to receive such notice. After such work is completed, Grantee shall, with due diligence and reasonable dispatch, place the public ways where such work was performed in a condition in compliance with Grantor's reasonable standards and specifications; provided, that Grantor shall not impose standards and specifications which are in conflict with any standards and specifications of the Corporation Commission of the State of Oklahoma or by any other regularly constituted regulatory authority, which are applicable to Grantee, within this jurisdiction.

C. In the event Grantee fails to commence or complete any construction, maintenance, installation, restoration or repair work required by this Ordinance with due diligence and reasonable dispatch and in accordance with any mutually agreed upon schedule of activity, Grantor may cause such work to be performed after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such work incurred by Grantor upon Grantee's failure to perform shall then be charged and collected from Grantee.

D. To the extent that they are not in conflict with applicable state or federal law, Grantor reserves the right to make and enforce reasonable regulations and construction standards concerning the installation, operation and maintenance of Grantee's plants and systems located along, across, over, or under the public ways of Grantor and to reasonably designate where such plants and systems shall be placed.

E. Grantor agrees that in the event it requires installation of any portion of Grantee's plants and systems contrary to Grantee's current urban installation, operation and maintenance or replacement procedures ("procedures"), Grantor shall pay and reimburse Grantee for the difference between the reasonable cost of such required procedures and the reasonable cost of Grantee's current procedures. Provided, however, that Grantor shall not be required to reimburse Grantee for such expenses to the extent that Grantee is allowed to include such expenses as an element to be considered by the Corporation Commission of the State of Oklahoma or other regularly constituted regulatory authority in establishing the rates which Grantee may charge its ultimate consumers.

#### **SECTION 10. REASONABLE RATES AUTHORIZED**

During the life of this franchise and for and in consideration of the acceptance hereof by Grantee, it is agreed that Grantee may charge and collect from Grantor, its inhabitants and the consumers therein, a rate or rates, which shall at all times be compensatory and reasonable, subject to such rules, regulations and orders as are now in effect or that may hereafter be lawfully made by the Corporation Commission of the State of Oklahoma, or by any other regularly constituted regulatory authority.

#### **SECTION 11. SALE OF POWER TO CITY**

During the life of this franchise, Grantee shall provide plants and systems for all electric energy required by Grantor for municipal purposes, including wastewater treatment, water and stormwater pumping, and lighting of its streets, and shall sell and deliver to Grantor, and Grantor shall have the option to purchase and receive from Grantee, all electric energy requested by Grantor for municipal purposes.

#### **SECTION 12. FEES**

A. From and after the date of acceptance of this Ordinance, as consideration for the granting of this franchise, for use of the public ways, and as a compensation for the rights and privileges enjoyed hereunder, Grantee agrees to pay to Grantor a franchise fee that is equal to two percent (2%) of Grantee's gross receipts from the retail sale of electric energy within the City of Sand Springs, including any revenues, fees or payments received by Grantee for the lease or use of its plants and systems for the distribution and/or transmission of electric energy which is sold to an ultimate consumer by any other person or entity within the City of Sand Springs.

B. The franchise fee shall be payable monthly on or before the 20th day of each month, on receipts of Grantee for the preceding calendar month, and shall be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes and any fees approved by the voters of the City of Sand Springs in accordance with the provisions of Subsection 12(D), below.

C. Should Grantee accept a franchise from any other city or town in which it agrees to pay a franchise fee that is a higher percentage of gross revenues than the percentage provided for in Subsection 12(A), above, or any revision of the franchise fee provided for in Subsection 12(D) of this ordinance, then and in that event Grantee shall forthwith and without demand inform Grantor's governing body of such occurrence. Thereafter, at the sole discretion of Grantor's governing body and pursuant to such process as it deems appropriate, Grantee may be directed by Grantor's governing body to increase the percentage of gross receipts to be paid to Grantor hereunder to such higher percentage to the extent such increase is allowed by the City Ordinance of the City of Sand Springs or other applicable law.

D. At the end of the fifth, tenth, fifteenth and twentieth years from the date of acceptance of this franchise, Grantor shall have an option to present to the voters of the City of Sand Springs the issue of whether the franchise fee provided for in Subsection 12(A) should be revised. In order to exercise such option, Grantor must, within the thirty (30) day period immediately preceding the end of the fifth, tenth, fifteenth and twentieth years from the date of acceptance of the franchise, provide Grantee written notification of Grantor's intent to submit the issue of revision of the franchise fee for election. If Grantor provides such written notification to Grantee in a timely manner, Grantor is then responsible for taking all action necessary to present the issue of revision of the franchise fee for election by the qualified voters of the City of Sand Springs to be held not less than two (2) months nor more than six (6) months from the date of such written notification. Grantor shall be responsible for all costs of such election. If either the above- described written notification is not provided or the above-described election is not held within the periods set forth in this Subsection 12(D), Grantor will be deemed to have waived its right to exercise the option to which such notification and election apply. Any proposed revision of the franchise fee shall be for fees that in their total amount are not less than two percent (2%) and not more than four percent (4%) of the gross receipts from the retail sale of electric energy by Grantee and the sale by other persons or entities to ultimate consumers within the City of Sand Springs to the extent that such electric energy is transmitted over the plants and systems of Grantee which are located within the City of Sand Springs, with such gross receipts determined and paid in the manner provided in Subsections 12(A) and [B], above. Such franchise fee, as revised, shall continue to be in lieu of all concessions charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes. If the issue of revision of the franchise fee is submitted for election in accordance with the provisions of this Subsection 12(D) and a majority of the qualified electors of the City of Sand Springs voting thereon vote in favor of such revision, the franchise fee shall be revised accordingly at the end of the calendar year in which such election is held. If a majority of the qualified electors of the City of Sand Springs voting thereon vote against revision of the franchise fee, the franchise fee then in effect will continue in full force and effect until the end of the term provided for in Section 3, above, or until such franchise fee is revised in accordance with the provisions of this Subsection 12(D).

E. Grantor shall have the option, at any time during the term of this franchise, to present to the voters of the City of Sand Springs the issue of whether in addition to the franchise fee provided for in Subsection 12(A), above, Grantee should also pay to Grantor a facilities fee that is equal to one percent (1%) of Grantee's gross receipts from the retail sale of electric energy within the City of Sand Springs, including any revenues, fees or payments received by Grantee for the lease or use of its plants and systems for the distribution and/or transmission of electric energy which is sold to an ultimate consumer by any other person or entity within the City of Sand Springs. The facilities fee provided for in this Subsection 12(F), if approved by the voters, will be for the purpose of providing Grantor a source of revenue that shall be used by Grantor to pay costs it occurs in connection with these purposes, namely (1) the underground installation of Grantee's plants and systems required by Grantor pursuant to the provision of Subsection 9(E) above, (2) the relocation at Grantor's expense of facilities which are necessary due to the construction or expansion of the public streets, and (3) for the construction of public infrastructure which is necessary or helpful in promoting economic development with the City of Sand Springs. In order to exercise such option, Grantor must provide Grantee written notification of Grantor's intent to submit this issue for election by the qualified voters of the City of Sand Springs to be held not less than two (2) months nor more than six (6) months from the date of such written notification. Grantee shall be responsible for all costs of the election in which this issue may first be presented to the voters for decision. Subsequent elections on the same issue, if any, shall be at Grantor's expense. If the issue of whether a facilities fee of the type described in this Subsection 12(F) is submitted for election in accordance with the provisions hereof and a majority of the qualified electors of the City of Sand Springs voting thereon vote in favor of such facilities fee being paid by Grantee to Grantor, such facilities fee shall go into effect at the end of the calendar year in which such election is held, to be thereafter paid by Grantee in accordance with the provisions of Subsection 12(B), above, and shall be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements, ad valorem taxes and the fees provided for in Subsection 12(A), above, and any revisions thereof approved pursuant to Subsection 12(D), above. If a majority of the qualified electors of the City of Sand Springs voting thereon vote against the fee, the franchise fee provided for in Subsection 12(A), above, together with any revisions thereof made in accordance with Subsection 12(D), above, will continue in full force and effect until the end of the term provided for in Section 3, above.

F. Grantor agrees that the total of the percentage rates used to calculate the fee paid by Grantee to Grantor, including any revision of such franchise fee, shall in no event exceed the percentage rate used to calculate any fee or tax paid to Grantor by any other person or entity if such fee or tax paid to Grantor by such other person or entity if such fee or tax is based in any way on the amount of revenues from sales of electric energy by such other person or entity to ultimate consumers within the City of Sand Springs.

### **SECTION 13. MAINTENANCE AND INSPECTION OF RECORDS**

A. Grantee shall at all times make and keep full and complete plats, maps and other records showing the location, nature and size of all of Grantee's plants and systems within the corporate limits of the City of Sand Springs. This expressly includes current maps of the City Limits of Sand Springs, as those limits are changed from time

to time hereafter, and Grantee will update its billing and collection procedures not less often than quarterly to assure the collection and remittance of appropriate fees from customers in recently annexed territory.

B. For the purpose of affording Grantor the opportunity to enforce and collect the franchise fee imposed by this ordinance and franchise, Grantee shall further permit Grantor to inspect and audit, during regular business hours and at Grantor's expense, the relevant books and records kept by Grantee in the ordinary course of business.

### **SECTION 14. RIGHT OF CITY TO PURCHASE PROPERTY**

A. Grantor shall have the right any time after twenty-four (24) years after the date of acceptance of this franchise to purchase all, but not less than all, of the properties of Grantee which comprise the plants and systems of Grantee that are used for or related to the manufacture, transmission, distribution, sale and control of electricity which are located within the corporate limits of the City of Sand Springs at the time such right to purchase is exercised and to terminate this franchise if such purchase and termination are approved by a majority of the qualified electors of the City of Sand Springs voting thereon at a special or general election held in accordance with the provisions of this Section 14. At any time after the right to purchase such properties of Grantee shall have accrued under the terms of this Subsection 14[A], and the fair market value of such properties has been determined in accordance with Subsection 14(B), below, the question of the purchase of such properties and termination of this franchise may be submitted by the City Council of the City of Sand Springs to the qualified electors of the City for approval. The question of the acquisition of such properties and the termination of this franchise may also be submitted to the qualified electors of the City of Sand Springs upon the petition to the City of twenty-five percent (25%) of the qualified electors of the City presented after the right to purchase such properties of Grantee shall have accrued under this Subsection 14 [A]. In the event such a petition is so presented, the question of the acquisition of such properties and the termination of the franchise may also be submitted at the next succeeding election in the City of Sand Springs after the fair market value of such properties has been determined in accordance with Subsection 14(B), below, or at a special election called for such purpose.

B. Grantee shall be compensated by Grantor for the purchase of the above-described properties by payment to Grantee of the fair market value of such properties located within the City of Sand Springs, which shall include consideration of the services provided by means of such properties and any legal obligations or commitments which Grantee has which are directly related to such properties. Such value shall be determined by the majority of three (3) appraisers, one (1) to be selected by the Mayor of the City of Sand Springs, one (1) by Grantee, and the third by the first two appraisers. The appraisers shall be persons of recognized skill, ability and experience with respect

to the appraisal and evaluation of properties of the character and type which City is entitled to purchase pursuant to this section and of services provided by means of such properties. If Grantee shall refuse to select an appraiser for thirty (30) days after an appraiser has been selected by the Mayor, the fair market value of the properties described above, taking into consideration the services provided by means of such properties, shall be fixed by the vote of a majority of the City Council. If the two (2) appraisers appointed by the Mayor and by Grantee shall fail to agree upon the third appraiser within thirty (30) days after their appointment, the third appraiser, upon the application of either Grantor or Grantee, shall be appointed by the Presiding Judge of the District Court of Tulsa County, Oklahoma, or if such Judge shall fail or refuse to make such appointment for any reason, then the Corporation Commission of the State of Oklahoma, upon ten (10) days notice to the adverse party, may appoint such third appraiser. The fair market value of the properties described above shall be determined by the appraisers within ninety (90) days after the appointment of the third appraiser.

C. After the fair market value of the properties described above has been determined by the appraisers in accordance with the provisions of Subsection 14(B), above, the question of the acquisition of such properties by payment to Grantee of the fair market value of such properties as so determined and termination of this franchise shall be submitted to the qualified electors of the City of Sand Springs at the next succeeding special or general election. In the event a majority of such qualified electors voting thereon approve the question of such acquisition and termination, Grantor shall have ninety (90) days from its receipt of the official results of such election within which to pay Grantee in cash the fair market value of all of such properties as determined by the appraisers and submitted to the qualified electors at the election. Until such payment, Grantee may continue to operate its plants and systems and provide services pursuant to the terms of this franchise; provided, that if between the date of the appraisal of such properties and the date of payment therefor, reasonable and necessary additions, betterments and replacements shall have been made by Grantee to its plants and systems or services within the City of Sand Springs, Grantor shall pay in addition to the value established by the appraisers, the reasonable cost of such additions, betterments, and replacements. If Grantor fails to pay the appraised amount plus any additions, betterments and replacements thereto as provided for herein to Grantee within the ninety (90) day period set forth above, then the right of purchase granted to Grantor by this section shall expire and become void.

D. For the purpose of aiding the appraisers in determining the fair market value of the properties described above, including consideration of the services provided and obligations and commitments directly related to such properties, all of the relevant books, records, contracts and other information in the possession of the Grantee shall be open and accessible to the appraisers during the time their appraisal is being made, and the appraisers may take into consideration any other factors appropriately presented to them in determining said fair market value.

E. In the event City purchases properties of Grantee pursuant to this section, City agrees that it will, for a reasonable fee, make the use of such properties available to Grantee as is necessary for the efficient operation by Grantee of the remaining portions of its plants and systems for the transmission, distribution, provision and sale of electric energy and related services.

**SECTION 15. ELECTION REQUIRED - ACCEPTANCE BY GRANTEE**

This ordinance and franchise shall be in full force and effect from and after the date of its acceptance as hereinafter provided, upon its passage and approval by a vote of a majority of the qualified electors residing within the City of Sand Springs, who shall vote thereon at a special election called under or pursuant to the provisions hereof. If this ordinance fails to be so approved at said election, it shall be wholly void and of no effect.

The Mayor of the City of Sand Springs is hereby authorized to sign a proclamation calling for such election in the manner and form provided by the laws of the State of Oklahoma for the calling of special elections, to be held on November 9, 1999, giving such notice and preparing such proclamation, ballot title and call therefor as provided by law, for the purpose of submission to the qualified electors residing within the City of Sand Springs the proposition of approval or refusal of this ordinance and the franchise hereby granted; and the proper officers of said City are hereby directed to do all things that may be necessary for the holding of said election and for the submission of said question, and shall, in all things, comply with the laws of the State of Oklahoma, in designating November 9, 1999, as the day, month and year of said election, the hours of opening and closing the polls, the voting places within said City in which said election shall be held and the proper persons within the respective precincts of said City for the purpose of holding said election.

It is understood and agreed that in the event said franchise be approved at such election the Grantee shall, within thirty (30) days after the result of such election is declared as provided by law, file with the City Clerk of the City of Sand Springs an acceptance in writing duly executed according to law, accepting this ordinance and franchise.

**SECTION 16. REPEAL OF PREVIOUS FRANCHISE AGREEMENT**

Upon the filing by the Grantee of the acceptance of this ordinance as hereinabove provided, all rights, privileges and obligations of any other ordinance and franchises, or portions thereof, under which said Grantee may now be exercising its privileges of use of the public ways in the City of Sand Springs and particularly Ordinance No. 420 of the City of Sand Springs, as published October 13, 1977, and all other ordinances and parts of ordinances in conflict herewith, shall be and thereafter remain canceled, annulled and repealed.

**SECTION 17. EMERGENCY CLAUSE**

Whereas an immediate necessity exists in order that the inhabitants of Grantor may be provided an adequate supply of electricity for heating, lighting, cooling and power purposes and for the purpose of providing light, heat, cooling and power for the streets, alleys, public grounds, parks and other public places and institutions of Grantor, and for the preservation of the public health, peace and safety, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage, approval and publication; and same shall be submitted at a special election.

## **Section 98.01.050 CABLE TELEVISION SYSTEM MERGER AND CHANGE IN OWNERSHIP**

**Section 1:** The City hereby consents to the Transactions, all in accordance with the terms of the Permit.

**Section 2:** The City confirms that (a) the Permit was properly granted or transferred to Permit Holder, (b) the Permit represents the entire understanding of the parties and Permit Holder has no obligations to the City other than those specifically stated in the Permit, and (c) Permit Holder is materially in compliance with the provisions of the Permit and there exists no fact or circumstance known to the City which constitutes or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Permit or would allow the City to cancel or terminate the rights thereunder, except upon the expiration of the full term of the permit.

**Section 3:** Following the Transactions, the Permit Holder may transfer the System and/or the Permit, or control related thereto, to any entity controlling, controlled by, or under common control with Cox.

**Section 4:** The City hereby consents to and approves the assignment, mortgage, pledge, or other encumbrance, if any, of the Permit, the System, or assets relating thereto, as collateral for a loan.

**Section 5:** This Resolution shall be deemed effective for purposes of the Transactions upon the consummation of the transactions contemplated by the Reorganization Agreement (the "Closing"). Effective as of the Closing, the City releases Permit Holder and its affiliates from all obligations and liabilities with respect to the Permit that relate to the period from and after the Closing; provided, that New Permit Holder shall be responsible for all such obligations and liabilities that relate to the period from and after the Closing.

**Section 6:** This Resolution shall have the force of a continuing agreement with Permit Holder and Cox, and the City shall not amend or otherwise alter this Resolution without the consent of Permit Holder and Cox.

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