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BUTLER RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.
Ordinance No. 52-338

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS GRANTING TO BUTLER RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS, A FIBER OPTIC CABLE FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. - Definitions.

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

- (a) "City" shall mean the City of Wichita, Kansas. References to the City shall also include, as appropriate, any and all successors and assigns.
- (b) "Facilities" shall mean fiber optic lines and all appurtenances and improvements thereto, whether existing above or below ground.
- (c) "Franchise" shall mean a grant conveying the right, privilege, and authority to construct, operate and maintain facilities in, through and along the City's right of way for the purposes of supplying communications services.
- (d) "Private party" means a non-governmental entity.

- (e) "Public Improvement" shall mean any existing or contemplated public facility, building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water mains, drainage conduits, telecommunication conduits, rights of way improvements, and other Public Projects.
- (f) "Public Project" shall mean any project planned or undertaken by the City or any other governmental entity for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.
- (g) "Public Rights of Way" shall mean only those areas of real property in which the City has dedicated or acquired rights of way interests in the real property. It shall include the area on, below, or above the present and future streets, sidewalks, alleys, avenues, roads, highways, parkways, boulevards, or bridges dedicated or acquired as rights of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.
- (h) "Telecommunications Services" shall mean providing the means of transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

All definitions not specifically defined herein shall have the meaning ascribed to them by applicable federal, state or local law.

SECTION 2. - Grant of Franchise.

- (a) For and in recognition of the mutual consideration set forth in this Franchise Agreement, the satisfaction of which is hereby acknowledged by both parties, Franchisee is hereby granted a nonexclusive Franchise to construct, place, replace, repair, maintain, extend, and operate its facilities along, across, upon, under, or in the City's Public Rights of Way, for the purpose of providing a fiber optic network to provide digital data and/or voice transport.

The City may, in writing, approve amendments to the locations and to the routes of Franchisee's fiber optic facilities, which approval shall not be unreasonably withheld, conditioned or delayed.

- (b) This Franchise Agreement does not grant Franchisee the authority or right to provide end user "Cable Service." For the purposes of this agreement, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- (c) The grant of this Franchise Agreement shall not convey title, equitable or legal, to Franchisee in the Public Rights of Way of the City and shall only give to Franchisee the right to occupy the Public Rights of Way of the City for the purposes and for the time stated in this Franchise Agreement. The Franchise Agreement does not:
 - (1) Grant Franchisee the right to use Facilities or any other property, telecommunications-related or otherwise, owned or controlled by the City or a third party, without the valid written consent of the City or the third party.

- (2) Grant Franchisee the authority to construct, to operate, or to maintain any Facilities and any related appurtenances and improvements thereto on any property owned by the City outside a Public Right of Way, including but not limited to public parks, City Hall, public works facilities, or other public property. The parties agree that the City and Franchisee shall—if it becomes necessary—enter into separate agreements for the placement of Facilities and any related appurtenances and improvements thereto on any City-owned property not located in a Public Right of Way.
- (3) Excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities and any related appurtenances and improvements thereto on any property or facilities owned or controlled by the City or by any third party.
- (d) As noted in subsection (b), Franchisee shall not provide any additional services for which a separate franchise is required by the City without first obtaining a separate franchise or amending this Franchise Agreement. In particular, this Franchise Agreement does not grant Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City. Franchisee also agrees that this Franchise Agreement does not permit it to operate an open video system without the payment of fees contemplated by 47 U.S.C. § 573(c)(2)(B) and without complying with all FCC regulations promulgated pursuant to 47 U.S.C. § 573. Franchisee shall not knowingly allow the use of its Facilities by any third party in violation of this subsection or of any federal, state, or local laws.
- (e) Nothing in this Franchise Agreement shall be construed as giving Franchisee any exclusive rights or privileges.
- (f) Franchisee or Franchisee's contractor shall, prior to commencing any construction of Franchisee's Facilities in a Public Right of Way, post a payment bond an amount equal to the

estimated construction costs assuring that the construction of Franchisee's Facilities in the Public Right of Way will be constructed without the attachment of any construction liens. Such payment bond will be returned by the City and cancelled upon Franchisee providing reasonable proof of payment for the construction.

- (g) Notwithstanding anything herein to the contrary, Franchisee reserves all rights it may have under applicable federal, state and local laws affecting this Franchise Agreement, including but not limited to K.S.A. 12-2001.

SECTION 3. - Use of Public Rights of Way.

In using Public Rights of Way under this Franchise Agreement, Franchisee shall be subject to all applicable ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having appropriate jurisdiction. As a condition of this Franchise Agreement, Franchisee shall obtain and shall be responsible for obtaining and maintaining any necessary permits, licenses, certifications, grants, registrations, or other authorizations required by any appropriate governmental entity, including but not limited to the FCC, the KCC, or the City, subject to Franchisee's right to challenge in good faith such requirement. In addition, Franchisee shall be subject to all applicable ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of Public Rights of Way, including but not limited to permits, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and

other requirements affecting the use of Public Rights of Way. Franchisee shall also comply with the following:

- (a) Franchisee's use of the Public Rights of Way shall in all matters be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. Franchisee shall coordinate the placement of its Facilities in a manner that minimizes adverse impact on Public Improvements as reasonably determined by the City. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.
- (b) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by Franchisee, while engaging in any activity under this Franchise Agreement, shall be fully repaired or replaced within a reasonable time by Franchisee at its sole cost and expense and to the reasonable satisfaction of the City.
- (c) Franchisee shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way of the City after the date hereof and shall provide that information to the City upon its request. Such location and identification shall be at the sole cost and expense of Franchisee, without any such cost or expense to the City or its authorized agents and contractors.

The City agrees to use any information obtained under this subsection only to locate utility facilities in connection with Public Projects and further agrees not to disclose such

information to anyone other than City employees requiring such information to locate utility facilities in connection with Public Projects, except as may otherwise be required by law. The City and Franchisee agree that such information is confidential and proprietary. The City and Franchisee also agree that such information shall remain the sole property of Franchisee. The City and Franchisee further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act, codified as amended at K.S.A. 45-215 et seq. In the event that the City shall be required to disclose such information, the City shall provide Franchisee advance written notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with Franchisee in safeguarding such information.

Franchisee agrees to indemnify and to hold the City harmless from any and all penalties or costs, including reasonable attorneys' fees, incurred by the City, at the written request of Franchisee, in seeking to safeguard the confidentiality of information provided to the City by Franchisee under this section.

In the event that such information is required by law to be publicly disclosed, then Franchisee shall have no further obligation under this section to provide the City with such information.

- (d) Except in cases of emergency, a minimum of fourteen (14) days prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, Franchisee shall submit to the City Engineer, or his or her designee, for approval, plans and specifications related to the proposed construction, reconstruction, location, or r

elocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specification. The City's review of the plans and specifications shall be confined to matters impacting the interests of the City in managing the Public Rights of Way of the City.

- (e) As reasonably necessary to accommodate City projects (not to include private parties), Franchisee shall relocate or adjust any of its Facilities located in a Public Right of Way for a Public Project upon forty-five (45) days written notice from the City. Such relocation or adjustment shall be performed by Franchisee at its sole cost and expense, without any cost or expense to the City or its authorized agents and Contractors and shall be subject specifically to the rules and regulations of the City.

Notwithstanding Section 3(e), Franchisee shall not be responsible for the expenses of relocation to accommodate any private party initiated installation of its Facilities. The expenses attributable to such a project shall be the responsibility of the private party upon the request and appropriate documentation of Franchisee. Before such expenses may be billed to the private party, Franchisee shall coordinate with the private party and the City on the design and construction to ensure that the work required is necessary and done in a cost-effective manner. Franchisee may require payment in advance of estimated costs or relocation prior to undertaking any work required to accommodate any installation initiated after the effective date of this Agreement.

- (f) It shall be the sole responsibility of Franchisee to take adequate measures to protect and defend its Facilities in the Public Rights of Way from harm and damage. If Franchisee fails to accurately or timely locate its Facilities when requested, then Franchisee has no claim for costs or damages against the City or its authorized agents and Contractors or

any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by such party's negligent or intentional conduct. The City and its authorized agents and Contractors agree to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near Franchisee's Facilities.

- (g) Except in cases of emergency, Franchisee shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the approval or denial of such authority, neither of which shall be unreasonably denied nor delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled Public Rights of Way that, in any way, impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed within the Public Rights of Way, Franchisee shall comply with the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards.

- (h) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be in accordance with applicable present and future federal, state, and local laws and regulations.

- (i) The City shall have the authority to prohibit Franchisee's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district as defined by federal, state, or local law, provided such prohibition is applied in a competitively neutral, non-discriminatory manner.

SECTION 4. - Compensation to the City.

- (a) Franchisee is solely responsible for the payment of all lawful franchise and permit fees in connection with Franchisee's performance under this Agreement.
- (b) In consideration of this Franchise Agreement, Franchisee agrees to remit to the City a franchise fee of five percent (5%) of Gross Revenues ("Franchise Fee"). As defined in Wichita City Code 3.93.040, "gross receipts" means all revenues received directly or indirectly by a franchisee or its affiliates for communications services that either originate or terminate within the corporate limits of the city, and all revenue derived from the use of facilities. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the City. Such gross receipts means only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) recurring local exchange service revenues from businesses and residences which includes basic telephone exchange service, touch tone, optional calling features and measured local calls; (2) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service

providers; (3) local directory assistance (411); (4) line status verification/busy interrupt; (5) local operator assistance; (6) nonrecurring local exchange service revenue, which shall include customer service charges for installation of lines, reconnection of service and charge for duplicate bills.. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance or interexchange services, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are exclude from gross receipts. Additionally, "gross receipts" shall not include revenues from cable services subject to a cable services franchise, or bad or uncollected debt and late charges, and any federal, state or local taxes or franchise fees separately stated on a customer's bill, provided, that a franchisee shall include uncollected debt in gross receipts at the time it is actually collected.

- (c) The franchise fee is compensation for the use of the right of way and shall in no way be deemed a tax of any kind. The franchise fee is in addition to, and not in lieu of, the City's Telecommunications Service Occupation Tax under Wichita City Code section 3.90.020. Franchisee will receive credit toward total franchise fee payment pursuant to Wichita City Code section 3.93.350 for occupation tax paid.
- (d) In accordance with section 3.93.310 of the Wichita City Code, each franchise fee payment shall be accompanied by a statement showing the manner in which the franchise fee was calculated. The franchise fee payment should also specify occupation tax credit as identified in section 4(c) above.

- (e) The franchise fee shall be due on a quarterly basis. The first payment shall be due on the first day of the month following the date on Page 1 of this Franchise Agreement, without the City being responsible for submitting an invoice. Any franchise fee not postmarked or delivered by the due date shall accrue interest from the due date until received, at the applicable statutory interest rate, as defined in K.S.A. 16-201.

SECTION 5. - Indemnification.

- (a) It shall be the responsibility of Franchisee to take adequate measures to protect and defend its Facilities in the Public Rights of Way from harm or damage. If Franchisee fails to accurately or timely locate its Facilities, when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., then it has no claim for costs or damages against the City or its authorized Contractors, except to the extent such harm or damage is caused by such party's negligence or intentional conduct.
- (b) Franchisee, and any successor or assign, agrees to indemnify, defend, save, and hold harmless the City, its officers, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including reasonable attorneys' fees, on account of any injury to persons (including death) or damage to property to the extent caused by Franchisee's activities in the Public Rights of Way under the terms of this Franchise Agreement. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence or intentional conduct or that of its employees, agents, or Contractors. This indemnity provision shall extend beyond the termination or expiration of this Franchise Agreement.

- (c) The City and Franchisee shall promptly advise the other in writing of any known claim or demand against Franchisee or the City related to or arising out of the Franchisee's activities in the Public Rights of Way.

SECTION 6. - Transfer and Assignment.

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned or delayed, Franchisee shall have the right to assign this Franchise Agreement and the rights and privileges hereby granted to any person, firm, or corporation, and any such assignee, who by accepting such assignment shall be bound by the terms and provisions of this Franchise Agreement. If Franchisee should seek approval to assign this Franchise Agreement, Franchisee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This Franchise Agreement shall be assignable only in accordance with the laws of the State of Kansas.
- (b) This prohibition shall not apply, and the City's prior consent shall be not required, in the case of sale, assignment, transfer, or lease by Franchisee to an affiliated entity or to a successor in interest to the merger, consolidation, sale or acquisition of Franchisee; nor shall it apply to assignments made or security interests granted in order to secure financing. The City shall have the discretion to review the qualifications of any entity acquiring this Franchise Agreement.

SECTION 7. - Notice.

All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or by a recognized overnight delivery service, to the following addresses:

If to City:

City of Wichita, Kansas
Attn: City Clerk
455 North Main Street, 13th Floor
Wichita, KS 67202

With a copy to:

City Attorney
455 North Main Street, 13th Floor
Wichita, KS 67202

If to Franchisee:

Butler Rural Electric Cooperative Association, Inc.
Attn: Sarah Madden
PO Box 1242
El Dorado, KS 67042

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

SECTION 8. - Term and Termination Date.

- (a) This Franchise Agreement shall be effective for a term of ten (10) years from the effective date of this Franchise Agreement. Thereafter, this Franchise Agreement will renew for one (1) additional ten (10) year term, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Franchise Agreement not less than one hundred eighty (180) days before the termination of the then-current term. The additional term shall be dee

med a continuation of the Franchise Agreement and not a new Franchise Agreement or amendment.

- (b) Upon written request of the City or Franchisee, this Franchise Agreement shall be renegotiated at any time upon either of the following events: (i) any change in federal, state, or local laws, ordinances, regulations, orders, or rules that materially affects any rights or obligations of either the City or Franchisee under this Franchise Agreement; or (ii) notice is given not less than one hundred eighty (180) days before the termination of the then-current term.
- (c) If any clause, sentence, section, or provision of K.S.A. 17-1901 et seq., and any amendments thereto, shall be held to be invalid by any court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Franchisee may elect to request an amendment to the Franchise Agreement to be consistent with the order, unless the Franchise Agreement cannot be reasonably amended to remain a valid agreement in light of the order, in which event either the City or Franchisee may elect to terminate the entire Franchise Agreement. In the event of such invalidity and termination, if either the City or Franchisee is required by law to enter into a new agreement or an Ordinance Franchise with the other, the parties agree to act in good faith to promptly negotiate a new agreement or an Ordinance Franchise.

SECTION 9. - Termination or Forfeiture of Agreement.

- (a) In case of failure on the part of Franchisee, its successors or assigns, to comply with any of the provisions of this Franchise Agreement, or if Franchisee, its successor or assigns, should

do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Agreement, then Franchisee, its successors or assigns, shall forfeit all rights and privileges granted by the Franchise Agreement and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:

Before the City may proceed to terminate this Franchise Agreement, it shall first serve a written notice as provided by the Notice provisions of this Franchise Agreement, setting forth in detail the conditions of neglect, default, or failure complained of, and Franchisee shall have ninety (90) days after the receipt of such notice in which to comply with the conditions of this Franchise Agreement. If, at the end of such ninety (90) day period, the City deems that the conditions of the Franchise Agreement have not been met and that such Franchise Agreement is subject to cancellation thereunder, then the City shall terminate the Franchise Agreement, unless compliance with the conditions cannot be reasonably accomplished within said ninety (90) day period, in which event Franchisee shall have such additional time as is reasonably necessary provided Franchisee has commenced the cure within said ninety (90) day period and diligently prosecutes the cure to completion.

- (b) Franchisee, its successors or assigns, may terminate this Franchise Agreement by notifying the City of its intent to terminate not less than thirty (30) days prior to the annual anniversary date of this execution of this Franchise Agreement.
- (c) In the event of forfeiture or termination of the Franchise Agreement under this Section, Franchisee agrees that all compensation paid theretofore to the City shall be forfeited.

SECTION 10. - Rights and Duties upon Termination of Agreement.

Upon termination of this Franchise Agreement, whether by lapse of time, agreement by the parties, or by forfeiture, Franchisee shall have the right to abandon in place or, at its option, to remove its Facilities from the Public Rights of Way within a reasonable time after such termination. In the case of the latter event, it shall be the duty of Franchisee immediately upon removal to restore the Public Rights of Way from which said Facilities are removed to as good condition as the same were before said removal was effected, ordinary wear and tear and damages not caused by Franchisee excepted, without cost to the City. In the case of the former event, abandonment by Franchisee shall operate to vest in the City all title, rights, and ownership of the abandoned facilities in their AS-IS, WHERE-IS condition with no warranties or guarantees of any kind.

SECTION 11. - Insurance.

- (a) During the initial term, the renewal term, or any other extension of this Franchise Agreement, Franchisee shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Franchisee elect to use the services of an affiliated captive insurance company for this purpose, Franchisee shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. Franchisee shall provide not less than the following insurance:
 - (1) Worker's compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

- (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be named as an additional insured with respect to liability arising from Franchisee's operations under this Franchise Agreement. Franchisee may utilize a combination of primary and umbrella liability insurance policies to satisfy the insurance policy limit requirements herein.
- (b) As an alternative to the requirements of Section 11(a), supra, Franchisee may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by Franchisee or so alleged to have been caused or to have occurred.
- (c) Franchisee shall, as a material condition of this Franchise Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled without first giving the City thirty (30) days prior written notice. Franchisee shall make available to the City, on request, the policy declarations page and a certified copy of the policy in effect so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(d) Franchisee shall, as a material condition of this Franchise Agreement, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Twenty Thousand Dollars (\$20,000.00) payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public Rights of Way and must be issued by a surety company authorized to transact business in the State of Kansas and satisfactory to the City Attorney or to the City's Legal Department in form and substance. The performance bond shall remain in effect the entire term of the Ordinance to ensure the ongoing performance of the terms and obligations of the franchise as well as any future phases of construction and/or repair work. Notwithstanding the foregoing sentence, the City reserves the right to require Franchisee to provide additional financial assurance for future phases of construction and/or repair work, as reasonably determined by the City.

SECTION 12. - Reservation of Rights.

In entering into this Franchise Agreement, neither the City's nor Franchisee's present or future legal rights, positions, claims, assertions, or arguments, before any administrative body or court of law are in any way prejudiced or waived. By entering into this Franchise Agreement, neither the City nor Franchisee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Franchisee may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of this Franchise Agreement or any present or future laws, ordinances, or rulings that may be the basis for the City or Franchisee entering into this Franchise Agreement.

SECTION 13. - Failure to Enforce.

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

SECTION 14. - Force Majeure.

No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or Franchisee's reasonable control.

SECTION 15. - Severability.

If any provision, section, or subsection of this Franchise Agreement or the application thereof to any person or circumstance is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this Franchise Agreement that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this Franchise Agreement are hereby declared to be severable.

SECTION 16. - Governing Law.

The terms of this Franchise Agreement shall be governed by the laws of the State of Kansas.

SECTION 17. – Effective Date of Ordinance.

This ordinance shall be effective upon its final passage and publication once in the official city paper.

PASSED AND APPROVED by the governing body of Wichita, Kansas this 13th day of
February 2024.

CITY OF WICHITA

Lily Wu, Mayor

ATTEST:

Jamie Buster, City Clerk

Approved as to form:

Jennifer Magaña, City Attorney and
Director of Law