

APPENDIX B - FRANCHISES

ORDINANCE NO. 713

AN ORDINANCE GRANTING TO THE GAS SERVICE COMPANY, A CORPORATION OPERATING GAS DISTRIBUTION SYSTEM IN THE CITY OF HORTON, STATE OF KANSAS, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION PLANT AND SYSTEM IN SAID CITY AND VICINITY, AND REPEALING ORDINANCE NO. 563.

Section 1. That there is hereby granted to The Gas Service Company, a corporation operating gas distribution system in the City of Horton, herein called the grantee, its successors and assigns, the right, privilege and franchise for a period of 20 years from the effective date hereof, to construct, maintain and operate in the present and future streets, alleys, bridges and public places in said city, its gas distribution system as now located, together with the right, privilege and franchise to acquire, construct, maintain and operate therein and thereon such additions and extensions thereto as may be necessary or desirable, all for the purpose of supplying natural gas for all purposes to the inhabitants of said city and consumers in the vicinity thereof.

Section 2. All rates established and charges made by grantee for gas distributed and sold hereunder shall be subject to valid and lawful orders of the State Corporation Commission of the State of Kansas or other competent authority having jurisdiction in the premises and the sale of gas to consumers shall be governed by the present operating rules, regulations and customs of grantee and such rules and regulations as may hereafter be prescribed and approved.

Section 3. That in consideration of and as compensation for the right, privilege and franchise hereby granted, the grantee, its successors and assigns, shall furnish gas at such pressure and of such quality as shall be designated by lawful orders of the State Corporation Commission of said state, if such gas is reasonably procurable; shall furnish free of cost to each consumer a recognized standard meter or other instrument for measurement of gas sold or computation of consumer's bills and keep same in repair at its cost, which meter shall at all times be the property of the grantee but subject to inspection by said city; shall at all times save the city harmless from any and all damages which said city may be liable to pay that may arise from the construction, maintenance and operation of its plant system or any part thereof; shall limit all excavations of streets, alleys or public places to the necessities of efficient operation and shall not at any one time open or encumber more of any highway or public place than shall be reasonably necessary to enable grantee to proceed with advantage in laying or repairing mains or pipes and shall not permit such highway or public place to remain open longer than necessary for the purpose for which it was opened; shall refill all excavations and replace all pavement with like material and leave same in as good condition as when altered or removed; shall perform all work on streets, alleys and public places under supervision of a representative of said city if so desired; and shall repay said city all expense to which it has been put in the repair or

replacement of streets, highways or pavements in the event such work is done by said city after the neglect or refusal of grantee to perform same in reasonable time.

Section 4. As a further consideration for the rights, privilege and franchise hereby granted and in lieu of all occupation and license taxes, the grantee shall not later than February 1st and August 1st respectively in each year make a report to the governing body of the City of Horton of its gross receipts from the sale of gas for all purposes within said city for the six months period ending at the last meter reading preceding December 31st and June 30th respectively; and at the time of making such report, pay into the city treasury a sum equal to five percent of said gross receipts from the sale of gas for domestic purposes, and one percent of its gross receipt from the sale of gas for industrial purposes, which shall have accrued subsequent to the effective date of this franchise. Industrial sales shall be considered as those made under special contracts providing for stand-by fuel and interruption of service at any time demands of domestic consumers may so require.

Section 5. That none of the privileges granted by this ordinance shall take effect or be in force until after the expiration of 60 days from the date of its final passage and until grantee, its successors and assigns, shall file within said 60 days with the city clerk of said city, a written acceptance of the provisions hereof; and after the expiration of 60 days if no acceptance as hereinbefore provided has been filed, then this ordinance shall ipso facto cease and become null and void.

Section 6. That Ordinance No. 563 is hereby repealed.
(12-16-68)

ORDINANCE NO. 910

AN ORDINANCE GRANTING TO THE BROWN-ATCHISON ELECTRIC COOPERATIVE ASSOCIATION, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

Section 1. That in consideration of the benefits to be derived by the city and its inhabitants, there is hereby granted the Brown-Atchison Electric Cooperative Association, Inc., a Kansas corporation, hereinafter sometimes designated as "cooperative", the cooperative being a corporation operating system for the transmission, distribution, and selling of electric current in designated territories within the State of Kansas, the right, privilege, and authority for a period of 20 years from the 20th day of November, 1989, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings and public places of the city, lying within territories certified by the Kansas Corporation Commission to the Brown-Atchison Electric Cooperative Association, Inc. that is or may be annexed by the city, which may be, or at any time during the term of this franchise, be annexed into the corporate limits of the city. This franchise is hereby granted for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes within the corporate limits of the city, and through the area and beyond the limits thereof; to obtain the

electricity from any source available; and to do all things necessary or proper to carry on the business in the city.

Section 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license or revenue taxes, the cooperative shall pay to the city during the term of this franchise three percent of its gross revenue from all sales of electric energy within the corporation limits of the city, such payment to be made monthly for the preceding monthly period.

Section 3. That the cooperative, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the city from any and all damage, injury and expense caused by the sole negligence of the cooperative, its successors and assigns, or its or their agents or servants.

Section 4. That within 60 days from and after the passage and approval of this ordinance, the cooperative shall file with the city clerk of the city its unconditioned written acceptance of this ordinance.

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

Section 6. That this ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after its passage, approval, publication as required by law, and acceptance by the cooperative.

Section 7. That this ordinance, when accepted as above provided, shall constitute the entire agreement between the city and the cooperative relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

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

Section 9. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude the Brown-Atchison Electric Cooperative Association, Inc. from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the corporation commission's ruling.
(11-6-89)

ORDINANCE NO. 969

AN ORDINANCE GRANTING TO RSP, INC., A CORPORATION OPERATING A SOLID WASTE DISPOSAL SYSTEM, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE AND PROVIDE A SOLID WASTE DISPOSAL SERVICE IN THE CITY OF HORTON, BROWN COUNTY, KANSAS, AND GRANTING TO SAID RSP, INC. THE RIGHT TO USE THE STREETS AND ALLEYS OF THE CITY IN THE PROVIDING OF SUCH SERVICE

Section 1. That there is hereby granted to RSP, Inc., a corporation organized and existing under the laws of the State of Kansas, its successors and assigns, the right, privilege and franchise for a period of 10 years from the effective date hereof, to collect and dispose of solid waste for the citizens of Horton, Brown County, Kansas, and to use the streets and the alleys of the City of Horton, Kansas, and to use the streets and the alleys of the City of Horton, Kansas in the carrying on of such business.

Section 2. All rates established and charges made by grantee for the collection and disposal of solid waste shall be subject to the valid and lawful orders of the city commission of the City of Horton, Kansas, established under the provisions of Ordinance No. 967. The city shall bill the residents of the City of Horton for trash disposal services provided by grantee, pursuant to the provisions of Ordinance No. 967 according to the rate schedule established by the city. The billing for trash disposal services will be incorporated into the water bills and utility bills issued by the city. The city shall remit to contractor on the 20th day of each month the amounts collected from the utility bills for trash disposal service. The city shall have no obligation to pay fees for trash disposal to contractor until the customer located within the city has paid the amount to the city. The city will take all reasonable and appropriate measures to enforce collection of the trash disposal fee as described in Ordinance No. 967.

Section 3. That in consideration of and as compensation for the right, privilege and franchise hereby granted, the grantee, its successors and assigns, shall provide solid waste disposal services to the residents of the City of Horton, Kansas, pursuant to the provisions of Ordinance No. 967 of the City of Horton, Kansas, and further pursuant to the provisions of any rules and regulations adopted by the city commission or the city administrator of the City of Horton, Kansas, under Section 15 of Ordinance No. 967; shall furnish free of cost to each consumer of trash disposal services a container according to the specifications set forth in Ordinance No. 967; and shall at all times save the city harmless from any and all damages which the city may be liable to pay that may arise from grantee's provisions of solid waste disposal services.

Section 4. As a further consideration for the right, privilege and franchise hereby granted, and in lieu of all occupation and license taxes, the grantee shall pay into the city treasury, on or before the last day of each month, a sum equal to \$.50 per customer to whom solid waste disposal services is being provided by grantee.

Section 5. Grantee shall not assign this franchise or its duties and obligations hereunder to any successor or assignee without the express written consent of the city.

Section 6. That none of the privileges granted by this ordinance shall take effect or be in force until after the expiration of 60 days from the date of its final passage and until grantee shall file within the 60 days with the city clerk of the city a written acceptance of the provisions hereof; and after the expiration of 60 days if no acceptance as herein provided has been filed, then this ordinance shall ipso facto cease and become null and void.

(3-20-95)

ORDINANCE NO. 973

AN ORDINANCE PROVIDING FOR AND APPROVING THE TRANSFER OF THE CABLE TELEVISION FRANCHISE IN THE CITY OF HORTON, KANSAS, (THE CITY) GRANTED PURSUANT TO ORDINANCE NO. 789, DATED NOVEMBER 22, 19767, (THE FRANCHISE ORDINANCE); AMENDING THE FRANCHISE ORDINANCE IN CERTAIN RESPECTS; PROVIDING FOR PUBLICATION OF THE CAPTION; AND PROVIDING THE EFFECTIVE DATE OF THE TRANSFER.

Section 1. Transfer of Franchise Ordinance. Pursuant to the franchise ordinance, consent and approval is hereby granted by the city for the transfer and assignment of the franchise ordinance by Douglas to CLR. The mayor, council president, or presiding officer of the city, or an person designed by the mayor, council president, or presiding officer are hereby authorized to execute the Consent to Assignment attached hereto as Annex 1.

Section 2. Ordinance Affirmed and Term Extended. All terms and provisions of the franchise ordinance shall continue in full force and effect except that the remaining term of the franchise ordinance shall be extended to expire on the 10th anniversary of the date of transfer by Douglas to CLR. As set forth in the Consent to Assignment, the city consents to the grant by CLR of a security interest in the franchise ordinance to its lenders to secure indebtedness or other obligations incurred by CLR with respect to the cable television system to be operated by CLR pursuant to the franchise ordinance.

Section 3. Effective Date. The transfer of the franchise ordinance shall be effective upon the closing of the sale by Douglas to CLR of the cable television facilities serving the City of Horton. CLR shall notify the city of the transfer of the franchise ordinance within 30 days of such closing, and provide therewith a copy of the Assignment and Assumption of Franchise by which the franchise ordinance was transferred and assigned by Douglas to CLR.

(10-2-95)

ORDINANCE NO. 1026

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF KANSAS D/B/A SPRINT A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF HORTON, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

United Telephone Company of Kansas, d/b/a Sprint, grantee, a corporation organized under the laws of the State of Kansas, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of Horton, grantor; and to construct, lay, maintain, and repair such cable as grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business. Nothing in this franchise is intended to preclude the city from seeking, or authorize the city to seek a franchise from any subsidiary, affiliate, or third party providing telecommunications services. Nothing herein contained shall be construed as giving grantee an exclusive franchise.

This franchise does not provide the grantee the right to provide "cable service" to city and inhabitants thereof. For purposes of this ordinance, "cable service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service; but "cable service" does not include point to point, point to multi-point, and switched video services that grantee has historically offered or other similar services that grantee may in the future offer.

Section 1. This grant shall be effective in accordance with Section 14, below and shall continue for a term of five years from its effective date, and for three successive terms of like duration unless written notice is given by either the grantor or the grantee to the other 180 days or more prior to the expiration of the initial term or any successive term of its intention to terminate or modify the same at the expiration of the then current term.

Section 2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the city and its inhabitants rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

Section 3. In the use of right-of-way under this franchise, grantee shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power. In addition, the grantee shall be subject to all rules, regulations,

policies, resolutions, and ordinances now or hereafter adopted or promulgated by the city relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, beautification, and other requirements on the use of the right-of-way and shall comply with the following:

(a) Grantee's use of right-of-way shall in all matters be subordinate to the city's use of the right-of-way for any public purpose. Sprint shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the city. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

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

(c) Grantee shall notify the city not less than three working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by grantee no such closure shall take place without prior authorization from the city. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guideline for Work Zone Traffic Control, unless otherwise agreed to by the city.

(d) Grantee shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its facilities located within right-of-way when requested by the city or its authorized agents for a public project. Such location and identification shall be at the sole expense of grantee without expense to the city, its employees, agents, or authorized contractors.

(e) Grantee shall promptly remove, relocate, or adjust any facilities located in right-of-way if reasonably necessary and directed by the city for a public project. Such removal, relocation, or adjustment for a particular public project shall be performed by grantee at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city pertaining to such.

(f) It shall be the responsibility of grantee to take adequate measures to protect and defend its facilities in the right-of-way from harm or damage. If grantee fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the city and its authorized contractors unless such party is solely responsible for the harm or damage by its negligence or intentional conduct. Grantee shall be responsible to the city and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of grantee to perform any of its obligations under this agreement unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm. However, the city and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near grantee facilities.

Section 4. The grantee shall hold and save the city, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including attorney fees, to the extent any claims, damage, expense or liability is caused solely by the grantee's occupancy of right-of-way. In the event a claim shall be made or an action shall be instituted against the city growing out of such occupancy of the right-of-way by facilities of the grantee, then upon notice by the city to the grantee, the grantee will assume liability for the defense of such actions at the cost of the grantee, subject to the option of the city to appear and defend, at its own cost, any such case.

Section 5. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements and, if such be injured, grantee shall repair any damages caused to the satisfaction of the city and, in default thereof, the city may repair such damage and charge the cost to grantee.

Section 6. The poles of grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonably with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the city. Nothing in this ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the city or the grantee on the poles of the other. If such attachments are desired by the city or the grantee, then a separate non-contingent agreement shall be prerequisite to such attachments.

Section 7. Grantee shall remove, raise, or adjust its aerial plant, after 48 hours notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the city. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the city for the movement and agree to pay grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by grantee. The city shall not be liable for any such expense for the moving of houses or structures by the city or its contractors.

Section 8. Permission is hereby granted to grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the city so as to prevent the branches of such trees from coming into contact with grantee's wires and cables. All such trimming will be done under the supervision and direction of any city official to whom such duties have been or may be delegated.

Section 9. In consideration for rights and privileges herein granted, grantee shall pay to the city, in arrears, 5% of the gross receipts from billings for local exchange service rendered wholly within the corporate limits of the city. The gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone services in the city, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Grantee shall pay

the city on or about June 1, 2001 for the period January 1, 2001 through March 31, 2001 and quarterly thereafter on or about 60 days after March 31, June 30, September 30, and December 31 of each year, for the term of this franchise. The payments herein provided shall be in lieu of all other licenses, taxes, charges, fees or impositions, except that the usual general property taxes and special ad valorem property taxes, and any charges for pavement cuts or other charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with telephone business, as such, will be imposed on the grantee, and are not covered by the payments herein.

Section 10. Nothing herein shall affect any prior or existing rights of grantee to maintain a telephone company within the city.

Section 11. The recovery of the charges from grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the city. The obligation of grantee to pay compensation under this ordinance is contractual; the city makes no requirements as to the method grantee uses to recover the payments.

Section 12. The franchise and all rights hereunder may be assigned by the grantee, as well as all succeeding grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the grantee hereunder.

Section 13. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

Section 14. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

Section 15. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting grantee a franchise, or while the city and grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

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

(12-11-2000)