

APPENDIX B – FRANCHISE AGREEMENTS

Ord. 886 – 05/04/98:

AN ORDINANCE GRANTING A FRANCHISE TO UNITED COMMUNICATIONS ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CIMARRON, KANSAS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

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Section 1. DEFINITIONS. When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular number include the plural):

- (a) “City” means the City of Cimarron, Kansas.
- (b) “Council” means the governing body of the City.
- (c) “Grantee” means United Communications Assn., Inc., its successors and assigns, the grantee of rights under this Ordinance.
- (d) “Person” means any natural person, company or entity of any kind.
- (e) “Franchise area” means that area within the corporate limits of the City as now or hereafter constituted.
- (f) “Street” means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.
- (g) “Property of Grantee” means all property owned, installed or used by the Grantee in the conduct of the CATV business in the City.
- (h) “CATV” means a cable television system.
- (i) “Cable Television System” means a system composed of, without limitation, antenna, cable, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing and receiving, amplifying and distributing by coaxial cable radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- (j) “Subscriber” means any person or entity receiving and paying for basic CATV service.
- (k) “Basic Subscriber Revenues” means all remuneration received directly by the Company from subscribers in payment for regularly furnished basic CATV service, but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the Grantee.

Section 2. GRANT OF AUTHORITY. There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from

other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

Section 3. NON-EXCLUSIVE GRANT. The right to use and occupy said streets for the purposes herein set forth, shall not be exclusive in the Grantee.

Section 4. TERM OF FRANCHISE. The franchise and rights herein granted shall commence from the date of publication thereof and shall continue in force and effect for 15 years after said effective date. Upon application by the grantee to the City, the franchise may be renewed by mutual consent of both parties. No franchise shall be granted or extended unless a public hearing shall be held following at least one week of notice in the official city newspaper.

Section 5. CONDITIONS OF STREET OCCUPANCY.

- (a) All transmission and distribution structures, poles, lines and equipment installed or erected by the Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.
- (b) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good condition as theretofore.
- (c) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the grantee shall in all cases have the right of abandonment of its property, subject to City ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.
- (d) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of building, provided: (i) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given not less than three business days in advance notice to arrange for such temporary wire changes.
- (e) The Grantee shall have the authority to trim trees over-hanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the Grantee's expense.
- (f) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided; (i) such use by the City does not interfere with the use by the Grantee; and (ii) the City holds the Grantee

harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

Section 6. SAFETY REQUIREMENTS.

- (a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- (b) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable conditions and in good order and repair.

Section 7. SYSTEM CONSTRUCTION AND EXTENSION.

- (a) The Grantee is hereby authorized and will extend the system within the franchised area to all applications received before the starting of the original construction.
- (b) Hereinafter no person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 200 cable feet or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of material, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.
- (c) Whenever the Grantee shall have received written requests for service from at least fifteen (15) subscribers within 1300 cable feet of its aerial trunk cable, or from at least twenty-five (25) subscribers within 1300 cable feet of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1300 cable feet shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.
- (d) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; but otherwise the Grantee shall not be obligated to construct CATV system in such new development. Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the Grantee's plans and specifications. Developer may enter into a written agreement with the Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of fifty percent (50%) of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed ten (10) years.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 200 feet outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by Grantee.

Section 8. OPERATIONAL STANDARDS: FORCE MAJEURE

- (a) The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.
- (b) The Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockout, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship.

Section 9. LOCAL OFFICE: COMPLAINTS. The Grantee shall maintain a business office or agent which subscribers may telephone during regular business hours so that complaints regarding cable television operations may be promptly reported to the Grantee.

Section 10. RATES. The Grantee shall maintain a file with the City Clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Rates and charges as filed shall be the maximum rate for such service and may not be exceeded without the approval of the governing body of the City of Cimarron. Any rate increase may become effective immediately upon approval by the council or will automatically go into effect 60 days from the date of submission if no action is taken by the council to disapprove the increase. The grantee may pass along to subscribers such additional fees as may be imposed on it by a governmental unit including, but not limited to, direct taxes, copyright fees and permit fees without seeking council approval.

Section 11. FRANCHISE PAYMENTS. The Grantee shall pay the City, on or before each March 31st, a franchise fee of three percent (3%) of basic subscriber revenues received for cable television operations in the City for the preceding calendar year, and no other fee, charge of consideration. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the City. The Grantee shall provide an annual summary report showing gross annual basic subscriber revenues received during the proceeding year.

Section 12. INDEMNIFICATION OF CITY.

- (a) The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance for an amount of at least Three Hundred Thousand Dollars (\$300,000.00) single limit liability from the time of commencement of construction of the CATV system.

All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars (\$1,000.00) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

Section 13. PROCEDURES.

- (a) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.
- (b) The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary part to any hearing conducted in regard to its operations.

Section 14. PROCEDURE UPON TERMINATION. Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purpose of removing therefrom any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense any excavation that it shall make and shall leave said streets in a good condition as that prevailing prior to the Grantee's removal of its property.

Section 15. APPROVAL OF TRANSFER. The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this franchise to another without Council approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument of duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the Grantee for the purpose of financing.

Section 16. MISCELLANIOUS PROVISIONS.

- (a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.
- (b) The Grantee shall assume the cost of publication of this franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the City Clerk.
- (c) In the case of any emergency or disaster, the Grantee shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period.

Section 17. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCE. The Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the State or other local or Federal laws or regulations.

Section 18. VIOLATION: PENALTIES.

- (a) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City, which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- (b) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.

- (c) It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.
- (d) Any person violating or failing to comply with any of the provisions of this section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100.00), imprisonment for a term of not to exceed thirty (30) days, or both.

Section 19. LINE SEVERING. If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for such damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee's property.

Section 20. SEPARABILITY. If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 21. FACILITIES LOCATION MAP. A map showing the exact location of all CATV related facilities will be furnished to the City.

Section 22. PROGRAM OFFERINGS. The grantee shall maintain on file with the City Clerk a schedule setting forth the nature and extent of the program offerings available to subscribers for the basic CATV service and for the various optional services available through CATV franchise. The program offering as filed with the City Clerk shall be amended to include additional services and programs as added by the CATV service. Any charges reducing or eliminating program offerings or service may not be made without the prior approval of the governing body of the City.

Ord. 863 – 03/07/94:

AN ORDINANCE GRANTING TO PEOPLES NATURAL GAS COMPANY, DIVISION OF UTILICORP UNITED INC., ITS LESSEES, SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN, AND EXTEND A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF CIMARRON, KANSAS; AND PRESCRIBING THE TERMS THEREOF AND RELATING THERETO.

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

SECTION 1. The word "Grantee" as employed and used in this ordinance, shall denote Peoples Natural Gas Company, Division of UtiliCorp United Inc., its successors and assigns, and the word "Grantor" or "the City" shall denote the City of Cimarron Kansas, and the word "cus-

tomers" shall denote any person, firm, corporation, municipality or other public corporation located in the City of Cimarron, to be served by the Grantee.

SECTION 2. There is hereby granted to Peoples Natural Gas Company, Division of UtiliCorp United Inc., its lessees, successors and assigns, the right, privilege and franchise to construct, operate, maintain and extend a gas distribution system, together with any and all necessary appurtenances through and along the streets, alleys, public easements, and public places of the city for the purpose of supplying and/or transporting natural gas for light, heat, and power, to customers of Grantee for the full term of this franchise, and for the additional purpose of transmission, transporting and conveying such gas into, through or beyond the immediate limits of the City to other towns, cities, and customers, subject, however, to the following terms and conditions.

SECTION 3. All mains and works constructed under this grant shall be constructed in a safe and workmanlike manner. Grantee shall hold the City harmless from any and all claims and actions, litigation or damage, arising out of the passage of this Ordinance or the construction, erection, installation, maintenance and operation of Grantee's properties within the corporate limits of the City or the negligence of Grantee's employees in the operation thereof, including court costs and reasonable attorney's fees in making defense against such claims; provided, however, that Grantee shall not hold the City, harmless from claims and actions, litigation or damage arising out of the negligence of the City, its employees or agents. A copy of the process served upon the City shall be served by the City upon Grantee. Grantee shall have the right to defend in the name of the City and to employ counsel for such purpose.

SECTION 4. Any excavations by Grantee in any of the streets, alleys, avenues, roads, public easements, or public grounds within the corporate limits of the Grantor shall be done in accordance with such reasonable rules and requirements, resolutions and ordinances as now exist or may hereafter be enacted by the governing body of Grantor. When required by Grantor, Grantee, its successors and assigns, shall remove or relocate any mains and works located in the streets, alleys, public easements and public grounds of Grantor to make way for public improvements or other works of public nature. Such removal or relocation will be at the expense of Grantee, its successors and assigns, and with expense to Grantor.

SECTION 5. All earth, materials, sidewalks, paving crossing, or improvements of any kind injured or removed by Grantee shall be fully repaired and replaced promptly by Grantee. In the event Grantee neglects or refuses to make such repairs or neglects or refuses to replace such earth, materials, sidewalks, paving crossing or improvements within a reasonable time, Grantee shall reimburse Grantor for any reasonable expenses Grantor may incur in making such repairs or replacing such earth, materials, sidewalks, paving crossing or improvements.

Grantee shall limit all excavations of streets, alleys public easements or public places to the necessities of Grantee's efficient operation. Grantee shall not at any time obstruct or open more of any highway or public place than shall reasonably be necessary to enable Grantee to lay, replace or repair mains or pipes. Grantee shall not permit such excavations to remain open longer than reasonably necessary.

SECTION 6. This Ordinance is granted subject to all conditions, limitations and immunities now provided for and applicable to the operations of a public utility by the laws of the State of Kansas. The rates to be charged for natural gas service within the City and the rules and regulations regarding character, quality and standards of service to be furnished by Grantee shall be under jurisdiction and control of such regulatory body as may, from time to time, be vested by law with authority and jurisdiction of the rates, regulations and quality and standards of service to be supplied by Grantee.

SECTION 7. In consideration of and as compensation for the franchise hereby granted, and in lieu of all occupation and license taxes, Grantee shall file a verified statement of accounting with Grantor concerning its earnings and receipts, and shall pay Grantor semi-annually 5 percent (5%) of the gross receipts of Grantee collected during the preceding six (6) months from the sale or transportation of gas to customers of Grantee located within the city. Grantee agrees that Grantor shall have the right to examine, at reasonable times, all books, records, and documents necessary to verify the correctness of the verified statement and to correct the same if it is found to be erroneous.

SECTION 8. If Grantee shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than thirty (30) days after receiving notice from Grantor of such default, Grantor may, by ordinance duly passed and adopted, terminate all rights granted under this Ordinance. Notice shall be in writing and served in the manner provided by the laws of the State of Kansas for the service of original notices in civil actions.

SECTION 9. Upon the expiration of this franchise, whether by lapse of time, by agreement between Grantee and Grantor, or otherwise, Grantee shall have the right, but not the obligation, to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business. Should Grantee choose to remove any pipes, laterals, and other equipment, it shall be the duty of Grantee, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which the pipes, laterals, and other equipment are removed to as good condition as the same were before removal.

SECTION 10. The rights, privileges and franchise hereby granted to and conferred upon Grantee shall, unless this franchise be sooner terminated, extend for ten (10) years from the effective date set forth below.

SECTION 11. This Ordinance shall be effective sixty (60) days following its passage and upon its acceptance by Grantee. If Grantee does not, within sixty (60) days following passage of this ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

SECTION 12. If any clause, sentence or section of this Ordinance shall be held to be invalid it shall not affect the remaining provisions of this Ordinance.

Ord. 932 – 10/06/04:

An ordinance granting to Aquila, Inc. d/b/a Aquila Networks, a Delaware corporation, its successors and assigns, a natural gas franchise and the authority to construct, operate, maintain, and extend a natural gas distribution plant and system, and granting the right to use the streets, alleys, and other public places within the present or future corporate limits of the City of Cimarron, Kansas.

Be it ordained by the governing body of the City of Cimarron, Kansas, as follows:

FRANCHISE GRANTED

The City of Cimarron, Kansas, (hereinafter referred to as “Grantor”) hereby grants a non-exclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation (hereinafter called “Grantee”), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

TERM

The rights and privileges granted by this Ordinance shall remain in effect for a period of (10) ten years from the effective date of thereof and for an additional ten (10) years thereafter unless Grantor, through its Clerk, shall notify Grantee in writing at least ninety (90) days before the expiration of the initial term, that the Grantor, for good cause relating to default of any material obligations hereunder, desires not to renew the franchise, and such notice shall specify Grantor’s reasons.

During the 5th year of the initial and subsequent terms, Grantor or Grantee may, for good cause, review the Ordinance and propose amendments thereto. Grantor or Grantee shall notify the other party in writing, no later than ninety (90) days before the 5-year anniversary of the initial or subsequent term, if it desires to amend the ordinance. Grantor and Grantee shall negotiate in good faith to agree upon mutually satisfactory amendments. No amendment shall be effective until mutually agreed upon and accepted by the Grantor and Grantee. The Ordinance shall continue as written, unless amended as provided in this section.

FRANCHISE FEES

In exchange for the franchise granted herein, Grantee shall collect from its customers, located within the corporate limits of the City of Cimarron, and pay to Grantor an amount equal to:

Five (5%) percent of gross receipts received from the sale, distribution or transportation of natural gas, as measured at the customer's meter, delivered within current or future corporate limits of Grantor.

A sum equal to the Volumetric Rate multiplied by the number of Mcf of transported gas, as measured at customer's meter, delivered within current or future corporate limits of Grantor. The sums in (1) and (2) shall be adjusted for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

A Volumetric Rate of \$.2374/MMBtu will be implemented with the first billing cycle of the first month following passage and approval of this franchise by Grantor and acceptance by Grantee and will continue in effect through December 31, 2004.

Effective January 1, 2005, a Volumetric Rate will be implemented based on the Settlement Prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the 15th day of each month as published daily in the Wall Street Journal (WSJ) on the following business day (or the next day in which a Settlement Price is published) for the twelve-month period beginning in July of the second preceding year and ending in June of the preceding year. For the 15th day of each month during said twelve-month period, the Settlement Prices for the next twelve months will be summed and divided by twelve to determine an average Settlement Price. The average Settlement Prices for each of the twelve months shall then be summed and divided by twelve and multiplied by 5% to obtain the Volumetric Rate.

Thereafter, the Volumetric Rate shall be recalculated annually by the Grantor each July following the process herein described, to be effective January 1 of the next succeeding year and shall be effective upon filing of the completed Volumetric Rate Calculation Form with the City Clerk without the requirement of amendment of this ordinance.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the Grantor may impose for the rights and privileges herein granted or for the privilege of doing business within the City of Cimarron, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Grantor, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the City of Cimarron shall not be deemed to affect the obligation of the Grantee under this section.

Any consideration hereunder shall be reported and paid by electronic transfer to the Grantor by Grantee on a monthly basis. Such payment shall be made not more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portion of the period at the beginning and end of the term of this Ordinance.

Grantee shall list the local franchise fee collected from customers as a separate item on bills for utility service issued to customers. If at any time the Kansas Corporation Commission, or other authority having proper jurisdiction, prohibits such recovery, then Grantee will no longer be obligated to collect and pay the franchise fee herein contemplated. In addition, Grantee, upon

prior consultation with and approval from Grantor, may discount or reduce the franchise fee payable for natural gas delivered to a specific customer of Grantee when it is required to reduce the franchise fee to retain the business of that customer. Modification or reduction of the franchise fee should only occur if the franchise fee would cause the customer to cease purchase or transportation deliveries of natural gas from the Grantee by installing equipment to access gas supply not subject to the Grantor's franchise fee.

The Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

Grantor shall have access to and the right to examine during normal business hours, those of Grantee's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by Grantee shall be paid within 30 days of the recalculation and any over-payment by Grantee shall be discounted from the next payment(s) due.

GOVERNING RULES AND REGULATIONS

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly

by Grantee, leaving such properties in as good condition as existed immediately prior to excavation.

The Company agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the right-of-way upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities. .

EXTENSION OF COMPANY FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

RELOCATION OF COMPANY FACILITIES

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public right-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

FORCE MAJEURE

It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the afflicted party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

HOLD HARMLESS

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating and maintaining of distribution and transmission facilities or appliances of Grantee, provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

NON WAIVER

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

REPEAL CONFLICTING ORDINANCES

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede

all prior ordinances pertaining to this agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 863 of the City of Cimarron, Kansas, is hereby repealed as of the effective date hereof.

EFFECT AND INTERPRETATION OF ORDINANCE

The captions which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this ordinance.

EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and publication by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the City Clerk of the City of Cimarron, Kansas. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

OTHER AGREEMENTS

Ord. 842 – 11/01/88:

AN ORDINANCE PROVIDING FOR THE PURCHASE OF ELECTRIC ENERGY FOR THE OPERATION OF THE ELECTRIC DISTRIBUTION SYSTEM IN THE CITY OF CIMARRON, KANSAS, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT WITH CENTEL CORPORTION FOR SUCH SERVICE. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CIMARRON, KANSAS:

Section 1. That the Mayor and City Clerk be and they are hereby authorized, directed and empowered to execute on behalf of said city a contract with Centel Corporation, for furnishing electric energy for the operation of the Electric Distribution System in said city, which contract shall be in form substantially as follows:

CONTRACT FOR ELECTRIC SERVICE

This contract and agreement made and entered into this 1st day of November, 1988, by and between CENTEL CORPORATION, a Kansas Corporation, hereinafter called "Company," and the City of Cimarron, Kansas, hereinafter called "Customer," WITNESSETH:

ARTICLE I

Company agrees to sell to Customer and Customer agrees to purchase fro company and pay for electrical energy to be used on Customer's Electric Distribution System located in or near the City of Cimarron, Gray County, Kansas. The electrical energy herein contracted for will be used

by Customer to resale to the inhabitants of the Customer, for the operation of the street-lighting system and the water-pumping plant of the Customer and for other incidental purposes in connection therewith. Customer agrees to purchase from Company all of the energy required for the above purposes and agrees not to use such energy under conditions or for purposes other than those provided for herein.

The Customer agrees to provide free of charge to Company a suitable location for Company's metering, control equipment, and step-down transformer when necessary, convenient of access to employees of the Company, and Customer further agrees to furnish to Company a right of way over Customer's premises for the location of necessary lines and apparatus of Company.

The point of delivery at which energy will be supplied, measured, and accepted hereunder will be at Company's meter located at Company's substation on Avenue E.

The energy will be delivered at a nominal voltage of 13,800/8,000 volts at the point of delivery and in the amount of approximately 5,000 kilowatts.

The energy herein contracted for will be furnished by Company to Customer and will be accepted by Customer for a period of five years from December 2, 1988.

ARTICLE II

The Customer may from time to time cause to be increased the amount of energy to be delivered hereunder by making written request upon the Company stating the amount of additional energy desired, such request to be made at least 90 days prior to the time such additional energy is required by the Customer.

ARTICLE III

Each month the Customer will pay to the Company at its office within 10 days of rendition of bill for all energy delivered to the Customer during the preceding month an amount determined in accordance with Rate Schedule 88-MWH-5, attached hereto and made a part of this contract. The minimum monthly bill will be as provided in the rate schedule.

The rate schedule above referred to constitutes the present legal rate of Company for the class of service contracted for and is subject to change by order of the legally constituted rate-making body having jurisdiction over the Company's rates.

A "month" as used in this contract will mean the period between any two consecutive regular readings by the Company of the meters at the Customer's premises, such reading to be taken as nearly as may be practicable every thirty days.

ARTICLE IV

No allowance will be made on any bill on account of claim of inaccuracy of measurement, unless the Customer or the Company, in writing, requests allowance within 30 days from date of such bill. The Customer may install measuring instruments at its own expense for the purpose of checking the measurements made by the Company, such instruments, if installed, to be subject to test for accuracy as provided in the case of the Company's instruments. In case of quest as to the accuracy of the Company's measuring instruments, either party will have the right at any time, from time to time, upon giving 48 hours written notice to the other party to have them tested with both parties represented at the test, and if necessary, recalibrated. If it should be shown by test

that any of the measuring instruments are incorrect, proper allowance as indicated by such test will be made to the party entitled thereto, but not for a longer period than 30 days prior to the time when written complaint of inaccuracy is made. If the Company's measuring instruments should fail to register at any time during the month, the energy delivered during such months will be estimated upon the basis of the amount of energy delivered during the last preceding month, or next succeeding period of one month that Customer's plant is operated under condition similar to those existing during the month in which said instruments failed to register, or if Customer should have its own instruments, will be based on the registration of the Customer's instruments. The expense of any test and recalibration will be borne by the Customer if the Company's meter should be found to be accurate within 2%, otherwise the cost of the test will be paid by the Company. No allowance in the charge for energy will be made the Customer unless the error of the meter of meters should exceed 2%.

ARTICLE V

Customer shall, at the metering point install at its own risk and expense circuit breakers or reclosers for the protection of each distribution circuit leaving the metering point. The equipment installation shall be selected and applied to not cause disturbances on the Company's line that will affect service to other non-municipal customers of the Company served from the same primary system. Customer shall install and maintain its distribution system apparatus to conform to latest National Electrical Safety Code standards of good practice. The Company does not assume responsibility for the design or condition of the Customer's installation. The Customer shall be responsible for providing the voltage regulators to maintain proper voltage for its distribution system.

ARTICLE VI

The Company will not be liable for loss or damage caused by interruption or failure of service or delay in commencing service due to accident or breakdown to plant, lines or equipment, strike, riot, act of God, or causes reasonably beyond the Company's control or due to shutdowns for reasonable periods to make repairs to generating or distributing equipment.

In case of any of the causes mentioned above whereby the Customer's premises are rendered wholly unfit for the continue operation of the Customer's plant or business, this contract will thereupon be suspended until such time as the plant or premises will have been reconstructed, reconditioned, and reoccupied by the Customer for the purpose of his business.

ARTICLE VII

No delay by the Company in enforcing any of its rights hereunder will be deemed a waiver of such rights nor will waiver by the Company of any default by Customer be deemed a waiver of any other or subsequent default.

ARTICLE VIII

The Customer will indemnify and save harmless the Company from all loss on account of injury or damage to persons or property on the Customer's premises growing out of any accident or mishap.

ARTICLE IX

This contract will bind and benefit the successors and assigns of the Company. This contract supersedes all prior agreements between the Customer and the Company for the service mentioned herein.

ARTICLE X

In witness whereof, the parties hereto have caused this contract to be executed by these duly authorized officers the day and year first above written.

Ord. 846 – 10/09/89:

AN ORDINANCE AUTHORIZING THE EXECUTION OF AGREEMENTS ENABLING THE DODGE CITY UTILITIES DEPARTMENT TO PROVIDE CERTAIN SERVICES TO THE CITY OF CIMARRON.

WHEREAS, the Dodge City Utilities Department has, upon request, provided certain services to the City of Cimarron, by the use of equipment belonging to the Dodge City Utilities Department and with Department personnel; and it is the desire of the Governing Body of the City of Cimarron, to enter into contracts for such services with this City and to designate a person for the execution of said contracts on behalf of the City of Cimarron.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CIMARRON:

SECTION 1: The Governing body of the City of Cimarron authorized and designates CITY CLERK*SUPT. UTIL. to execute for and on behalf of the City all contracts for the services of the Dodge City Utilities Department.

SECTION 2. This ordinance shall take effect from and following its publication in the official city paper as provided by law.

Ord. 934 – 10/06/04:

An ordinance granting to Aquila, Inc. d/b/a Aquila Networks, a Delaware corporation, hereinafter called the "Company", the right to use certain streets, avenues, alleys, bridges and public places of the City of Cimarron, Kansas, hereinafter called the "City", for the purpose of erecting, construction, installing, maintaining and operating poles, wires, conduits, tunnels and other fixtures in, upon, across and along such streets, avenues, alleys, bridges and public places of said City, for the purpose of maintaining and operating an electric transmission line through and beyond said City, and prescribing certain terms and conditions therefore.

Be it ordained by the governing body of the City of Cimarron, Kansas, as follows:

AUTHORITY GRANTED

The City of Cimarron, Kansas, hereby grants to Aquila, Inc., a Corporation duly incorporated under the laws of the State of Delaware, its successors and/or assigns, the right, privilege and authority to erect, construct, install, maintain and operate an electric transmission line within the limits of said City, and for that purpose, there is hereby granted to said Company, the right, privilege and authority during said period, to erect, construct, install, maintain and operate in, upon, over, across and along the several streets, avenues, alleys, bridges and public places of said City as laid out and approximately located on the attached map of the City, marked Exhibit "A.", all poles, wires, conduits, tunnels, cables, fixtures and appliances necessary or proper to carry on the business of constructing and maintaining transmission lines for the transmission of electric energy through the City, and beyond the limits of said City (the "Facilities").

TERM

The rights and privileges granted by this Ordinance shall remain in effect for a period of twenty (20) years from the effective date of this Ordinance.

COMPENSATION

As compensation to the City for the granting of this Ordinance, Company will provide space on its poles for the City's electric circuits under-build, within the City on Public-Right-of-Way. The City shall pay the Company for upgrades to Company facilities to accommodate the City owned attachments, when the Company is required to upgrade Company facilities to be in compliance with the National Electric Safety Code, IEEE, and/or ANSI standards. The City shall notify the Company at least thirty (30) days in advance of any changes to City attachments that may cause the Company to be in non-compliance with National Electric Safety Code, IEEE, and/or ANSI standards.

MAINTENANCE

The Company agrees that for the term of this Ordinance, it will use its best efforts to install and maintain the Facilities so as to provide the least interference with the traffic over the streets, avenues, alleys and public places of said City. The facilities as they now exist through said City are shown with their approximate location on the attached Exhibit "A". The original location and relocation of the Facilities shall be fixed under the supervision of the governing body of said City, or its authorized representative, but said supervision shall be such as is reasonable and commensurate with the proper installation, operation and maintenance of said Facilities. The Company is hereby given the right within the limits of the streets and alleys where the Facilities are now located or may be located in the future to trim and cut such trees and foliage as may be located in the future to trim and cut such trees and foliage as may be reasonably necessary for the safe and efficient maintenance and operation of its transmission lines.

The Company, upon receipt of forty-eight (48) hours written notice shall raise or lower or otherwise alter its circuits to permit the passage of buildings, structures or equipment being lawfully used upon or moved along or across or into any street, avenue, alley or public place within the Corporate limits of said City. The person, firm or corporation moving or removing such building, structure or equipment shall pay the expense incurred by the Company for obtaining the clearance necessary for the passage of these obstructions under or across its circuits.

RELOCATION OF FACILITIES

If the City elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or other public place for a public purpose, or if any buildings or other structures are to be constructed for a public purpose, the Company, upon reasonable notice from the City, shall remove and relocate any of the Facilities in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the City, at the cost and expense of the Company. If the City orders or requests that the Company relocate the Facilities primarily for non-public purposes or for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the City or other right-of-way user, the Company shall receive payment for the cost of such relocation as a precondition to relocating the Facilities. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's Facilities.

If the City orders or requests that the Company relocate Facilities located in private easements purchased by the Company, the Company shall receive payment for the cost of such relocation as a precondition to relocating the Facilities.

POLE ATTACHMENTS

The Company will provide pole attachment space for CATV/Communications Licensees in accordance with the federal and state statutes. Such attachments will be subject to a contractual agreement between the Company and the Attaching entity and will include attachment fees as well as make-ready costs, when applicable.

GOVERNING RULES AND REGULATIONS

The Company shall have the right to make such reasonable rules and regulations for the protection of its property and the conduct of its business as shall be determined by the Company and approved by the Kansas Corporation Commission, or other regulatory body having jurisdiction thereof.

HOLD HARMLESS

The Company, during the term of this Ordinance, agrees to save harmless the City from and against all claims, demands, losses and expenses arising directly out of the negligence of the Company, its employees or agents, in the constructing, operating and maintaining of the Facilities; provided, however, that the Company need not save harmless the City from claims, demands, losses and expenses arising out of the negligence of the City, its employees or agents.

LIMITATION ON DISTRIBUTION

The rights herein granted shall continue so long as the Company shall at no time during the term of this Ordinance engage in the business of distributing electricity in the City, unless the consent of the City to do so has been first obtained in writing. Any attempt on the part of the Company to engage in such distribution business without the written consent of the City shall automatically terminate this Ordinance.

CONFIDENTIAL INFORMATION

The City acknowledges that certain information it might request pursuant to this Ordinance may be of a proprietary and confidential nature. If the Company requests that any information provided by the Company to the City be kept confidential due to such proprietary or commercial value, the City and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If the City is requested or required by legal or administrative process to disclose any such confidential information, the City shall promptly notify the Company of such request or requirement so that the Company may seek an appropriate protective order or other relief. The City shall use all reasonable efforts to ensure that the confidentiality of the Company's confidential information is maintained.

FORCE MAJEURE

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the afflicted party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

SUCCESSORS AND ASSIGNS

The Company reserves the right to transfer or assign any interest in this Ordinance, in accordance with the rules and regulations of the Kansas Corporation Commission. All rights, privileges and authority hereby granted to the Company shall inure to the benefit of its successors and assigns, subject to all of the terms, provisions and conditions herein contained, and all obligations hereby imposed upon the Company shall be binding upon its successors and assigns.

SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

NON WAIVER

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

REPEAL CONFLICTING ORDINANCES

This Ordinance, when accepted by the Company as provided below, shall constitute the entire agreement between the City and the Company relating to this Ordinance and the same shall supersede all prior ordinances pertaining to this agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed.

EFFECT AND INTERPRETATION OF ORDINANCE

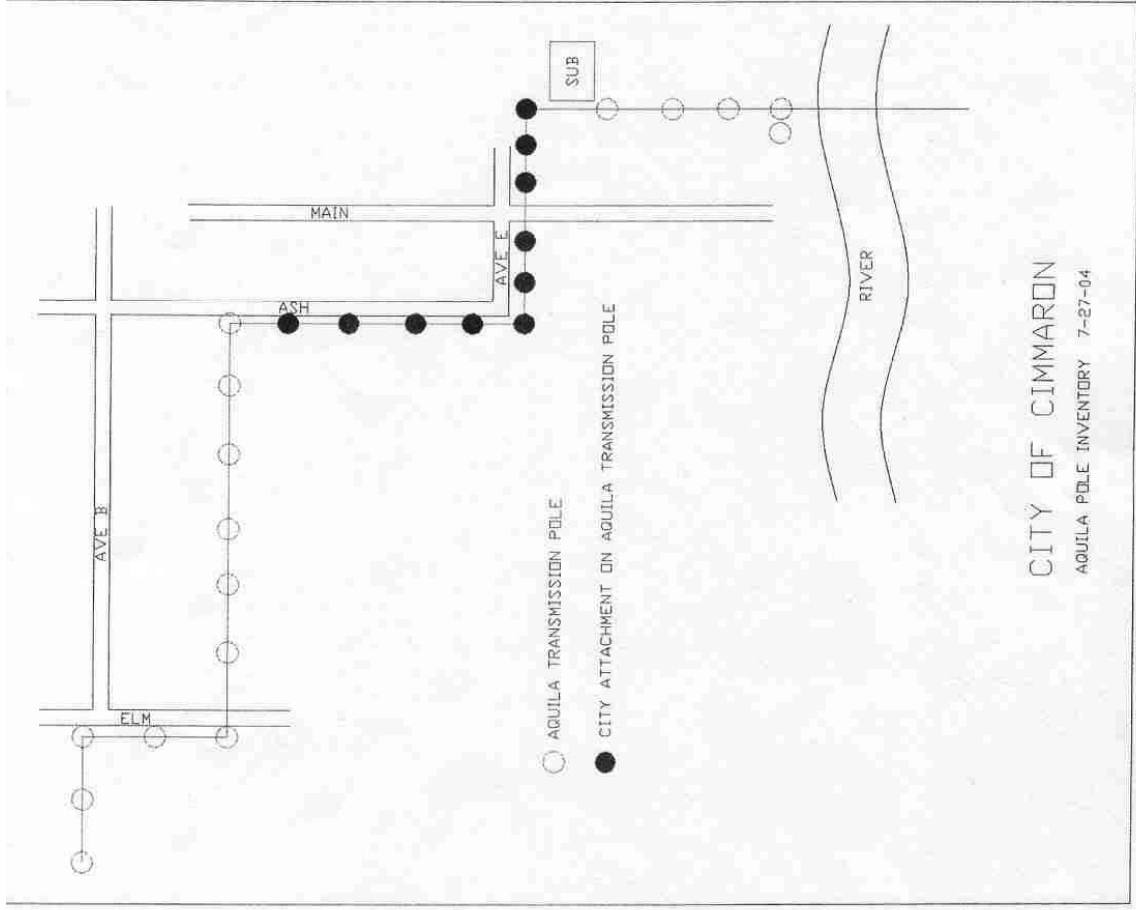
The captions which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this ordinance.

EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the City and the Company, upon its final passage and publication by the City, in accordance with applicable laws and regulations, and upon acceptance by the Company by written instrument within sixty (60) days of passage by the governing body of the City. If the Company does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, the Company shall be deemed to have accepted this ordinance and all of its terms and conditions.

34.5
2 new poles
3 poles
3 poles

26 total
10 retained by
city



COPY

The City of Cimarron
Volumetric Rate Calculation Form
For the Transportation of Natural Gas in Pipelines Located in the City of Cimarron
Based on the NYMEX settlement prices for the dates shown, published the following business day

Month	Last Year					This Year						
	15-Jul	18-Aug	15-Sep	15-Oct	17-Nov	15-Dec	15-Jan	17-Feb	15-Mar	15-Apr	17-May	15-Jun
Aug Last Year	5.020											
Sept Last Year	5.047	4.883										
Oct Last Year	5.080	4.918	4.685									
Nov Last Year	5.293	5.173	4.947	5.431								
Dec Last Year	5.485	5.418	5.222	5.780	4.764							
Jan Current Year	5.590	5.552	5.410	5.926	5.014	6.954						
Feb Current Year	5.522	5.487	5.353	5.868	5.044	6.991	5.845					
Mar Current Year	5.374	5.382	5.258	5.598	4.944	6.636	5.955	5.319				
Apr Current Year	4.819	4.942	4.840	4.933	4.634	5.335	5.435	5.254	5.718			
May Current Year	4.681	4.852	4.750	4.793	4.607	5.046	5.295	5.230	5.797	5.734		
June Current Year	4.678	4.857	4.760	4.790	4.617	5.016	5.297	5.230	5.827	5.814	6.424	
July Current Year	4.673	4.862	4.761	4.790	4.632	5.021	5.322	5.250	5.850	5.880	6.510	6.304
Aug Current Year		4.869	4.761	4.800	4.649	5.031	5.342	5.265	5.865	5.918	6.541	6.364
Sept Current Year			4.751	4.783	4.639	5.021	5.320	5.222	5.832	5.889	6.508	6.388
Oct Current Year				4.788	4.654	5.021	5.334	5.232	5.842	5.909	6.520	6.412
Nov Current Year					4.814	5.539	5.539	5.395	6.000	6.081	6.675	6.527
Dec Current Year						5.216	5.727	5.560	6.155	6.253	6.860	6.827
Jan Next Year						5.401	5.857	5.678	6.285	6.376	6.963	6.952
Feb Next Year								5.623	6.220	6.318	6.923	6.897
Mar Next Year									5.990	6.098	6.728	6.732
Apr Next Year										5.428	5.948	6.030
May Next Year											5.768	5.855
June Next Year												5.860
Avg Settlement Price	5.105	5.100	4.958	5.190	4.751	5.558	5.522	5.355	5.948	5.975	6.532	6.437

July 2003 through June 2004 settlement price average: 5.536

x Bundled Franchise Fee Rate: 5.0%

Volumetric Rate/Mcf for 2005: 0.2768

Source: *Wall Street Journal*

Deadline: Form must be filed with City Clerk by July 31 and notice sent to Aquila.

Note: If the 15th of the month falls on a week-end or holiday, the settlement price for the following business day is used.