

Exhibit No.:	_____
Issue:	Income Tax, NOL Exclusion, Property Tax Tracker, GRT
Witness:	Charles J. Kuper
Type of Exhibit:	Surrebuttal Testimony
Sponsoring Party:	Spire Missouri Inc.
Case No:	GR-2021-0108
Date Testimony Prepared:	July 14, 2021

SPIRE MISSOURI INC.

CASE NO. GR-2021-0108

SURREBUTTAL TESTIMONY

OF

CHARLES J. KUPER

JULY 14, 2021

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SCHEDULE:

Schedule CJK-SR-1: Confidential Franchise Agreement

1 **SURREBUTTAL TESTIMONY OF CHARLES J. KUPER**

2 **I. INTRODUCTION**

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Charles J. Kuper and my business address is 700 Market Street, St. Louis,
5 Missouri 63101.

6 **Q. ARE YOU THE SAME CHARLES J. KUPER WHO PREVIOUSLY FILED**
7 **DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?**

8 A. Yes, I submitted Direct Testimony and Rebuttal Testimony on behalf of Spire Missouri
9 Inc. (“Spire” or “Company”) in this rate case.

10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

12 A. The purpose of my testimony is to respond to various issues addressed in Rebuttal
13 Testimony filed by Staff of the Missouri Public Service Commission (“Staff”), Office of
14 the Public Counsel (“OPC”), Missouri Industrial Energy Consumers (“MIEC”) and
15 Vicinity Energy Kansas City, Inc. (“Vicinity”). These issues include Spire’s treatment of:
16 the Net Operating Loss (“NOL”) Exclusion; property tax expenses and trackers; income
17 tax issues, including Accumulated Deferred Income Taxes (“ADIT”), and treatment of
18 current and deferred income taxes; and Gross Receipts Tax (“GRT”) refunds and
19 calculations.

20 **III. NET OPERATING LOSS (NOL) EXCLUSION**

21 **Q. OPC WITNESS JOHN S. RILEY CONTENDS THAT SPIRE’S TREATMENT OF**
22 **THE NOL AS AN OFFSET GENERATES “FREE CASH” (RILEY REBUTTAL,**
23 **PGS. 1-3.) DO YOU AGREE?**

1 A. No. The interest free loan only occurs if or to the extent the corresponding deduction results
2 in reduction of tax payments to the government. This does not occur, as is the case with
3 Spire, when the deduction for accelerated/bonus depreciation results in or contributes to an
4 NOL carryforward deferred tax asset. If ADIT is thought of as representing an interest free
5 loan from the U.S. Treasury, in a situation where the benefit of accelerated depreciation
6 cannot be utilized to offset taxable income and current tax, there is no interest free loan.
7 As a result, rate base should not be reduced for ADIT in this situation. Including the NOL
8 deferred tax asset in rate base accomplishes this result.

9 **Q. HOW DOES THE IRS ADDRESS TREATMENT OF AN NOL IN THIS**
10 **SITUATION?**

11 A. The Internal Revenue Service (“IRS”) established the following rule under Regulation
12 Section 1.167(l)(h)(1)(iii) when an NOL is created by accelerated tax return depreciation
13 in excess of normalized ratemaking depreciation:

14 The amount of Federal income tax liability deferred as a result of the use of
15 different methods of depreciation...is the excess...of the amount the tax
16 liability would have been had a subsection (l) method been used over the
17 amount of the actual tax liability. If, however, in respect to any taxable year
18 the use of a method of depreciation other than a subsection (l) method
19 ...results in a net operating loss carryover...which would not have
20 arisen...had the taxpayer determined his (depreciation) using a subsection
21 (l) method, then the amount and time of the deferral of tax liability shall be
22 taken into account in such appropriate time and manner as is satisfactory to
23 the district director of the IRS.

24
25 *Id.* The tax normalization regulation noted above is designed to prevent public utility
26 commissions from imputing an unrealized tax benefit in setting rates. If the utility did not
27 receive a tax benefit, a tax benefit should not be imputed in rates as if it had been received.
28 An adjustment to rate base for the NOL deferred tax asset allows the utility to remain in
29 compliance with the normalization rules.

1 Also, the IRS has long held that the tax value of an NOL carryforward is a deferred tax
2 asset that must be offset against the ADIT balance to avoid a normalization violation. The
3 IRS reaffirmed its position in various private letter rulings (“PLRs). In PLR 201438003,
4 for example, the IRS stated that the “reduction of Taxpayer’s rate base by the full amount
5 of its ADIT account balance unreduced by the balance of its NOL carryforward-related
6 account balance would be inconsistent with the requirements of” Internal Revenue Code
7 Section 168(i)(9) and Treasury Regulation Section 1.167(l). This would flow through a
8 tax benefit of accelerated depreciation to ratepayers even though the taxpayer had yet to
9 realize the benefits. Other PLRs ruled to the same effect are PLR 201436037, PLR
10 201436038, PLR 201519021, PLR 201534001, PLR 201548017 and PLR 201709008.

11 Of the many PLRs that have been issued on this topic, only one PLR came to a different
12 conclusion. That is PLR 201418024, which was issued earlier in time relative to most of
13 the other PLRs and is no longer being followed.

14 To summarize, the OPC position that an NOL creates free cash is simply not accurate. The
15 NOL has not created any tax benefit.

16 **Q. DOES STAFF AGREE WITH THE OPC’S POSITION ON THIS ISSUE?**

17 A. No. Staff witness Matthew R. Young responded with the Staff’s position in his Rebuttal
18 Testimony. (Young Rebuttal, pgs. 5-9.) Staff disagrees with OPC’s treatment of NOLs
19 and agrees with Spire’s treatment of NOLs. In a nutshell, Staff found that “the NOL
20 Asset represents a tax benefit Spire has not yet realized at that date, [and] it is
21 appropriate to include the tax asset as an offset to total ADIT.” *Id.* at 8. Further, Staff
22 found that OPC’s logic is flawed because it would result in disparate treatments of NOLs
23 and ADIT. *Id.* Thus, OPC’s recommended treatment of NOL and ADIT are inconsistent.

1 **Q. DO YOU AGREE WITH STAFF’S POSITION ON THIS ISSUE?**

2 A. Yes. Staff concluded that the NOL deferred tax asset should offset ADIT, which is
3 consistent with Spire’s conclusion.

4 **IV. GROSS RECEIPTS TAX (GRT)**

5 **Q. CAN YOU SUMMARIZE OPC’S ARGUMENTS RELATING TO GROSS**
6 **RECEIPTS TAX AND WHETHER SPIRE AGREES WITH THOSE**
7 **ARGUMENTS?**

8 A. OPC claims that Spire’s treatment of the ISRS Refund and its calculation of GRT is
9 incorrect. (Riley Rebuttal Testimony at pg. 6.) Spire disagrees with both assertions.

10 **Q. COULD YOU SUMMARIZE YOUR PREVIOUS TESTIMONY REGARDING**
11 **SPIRE’S TREATMENT OF THE GROSS RECEIPTS TAX ASSOCIATED WITH**
12 **THE ISRS REFUND AND WHETHER YOUR POSITION CHANGED IN**
13 **RESPONSE TO OPC’S REBUTTAL?**

14 A. I responded in my Rebuttal Testimony (Kuper Rebuttal, pgs. 7-10.) to Direct Testimony
15 from OPC Witnesses John S. Riley (Riley Direct, pgs. 13-18.) and Robert E. Schallenberg
16 (Schallenberg Direct, pgs. 2-6.) where they claim that Spire incorrectly placed
17 the Infrastructure System Replacement Surcharge (“ISRS”) court-ordered refund below
18 the gross receipts tax calculation line, thereby short-changing the ratepayer for the amount
19 of gross receipts tax that should have been refunded. I responded that the ISRS settlement
20 was silent with respect to this issue, but that Spire calculated the refund in line with how
21 the majority of taxing jurisdictions view the GRT (as a component of revenue).
22 Therefore, Spire handled the ISRS refund correctly. Mr. Riley’s Rebuttal Testimony does
23 not advance any new arguments that change the way I view Spire’s treatment of the ISRS
refund.

1 **Q. NEXT, OPC CLAIMED THAT SPIRE OVERCHARGES GRT ACROSS ALL ITS**
2 **CUSTOMERS. DO YOU AGREE WITH OPC'S CALCULATION OF**
3 **OVERCHARGES RELATING TO THE GRT?**

4 A. No I do not. OPC witness John S. Riley prepared Schedule JSR-R-2 which attempted to
5 recalculate the gross receipts tax for all taxing jurisdictions for a 12-month period. His
6 basis for recalculating the gross receipts tax was the amount of tax that was paid to each
7 respective taxing jurisdiction over this time period. His methodology is incorrect and does
8 not factor in many variables that are used in the computation of the GRT.

9 First, his computation is based on the tax paid from a workpaper that was provided by
10 Spire. He then presumably recalculated the tax with the assumption that the gross receipts
11 tax is not considered a gross receipt in all jurisdictions. This is simply an error. As
12 indicated in my Rebuttal Testimony, approximately 80% of the taxing jurisdictions include
13 the gross receipts tax as a component of gross receipts. The way Mr. Riley re-computed
14 GRT was to assume GRT was taxed in every taxing jurisdiction, which is clearly wrong.

15 Using an example from Mr. Riley's schedule JSR-R-2, the taxing jurisdiction of
16 Independence has a GRT rate of 9.08%. The amount of tax paid in November 2019 was
17 \$149,514. Using a 9.08% tax rate, the gross receipts on which this tax was computed was
18 \$1,646,630 ($\$1,646,630 * 9.08\% = \$149,514$). Mr. Riley recomputed the tax for
19 Independence as \$134,861.34. Using a 9.08% tax rate, the gross receipts on which this tax
20 was computed was \$1,485,257 ($1,485,257 * 9.08\% = \$134,861.34$). The difference in
21 gross receipts is \$161,373. The tax computed by Spire was \$149,514, so the reduction in
22 gross receipts being taxable differs by \$11,859 ($\$161,373 - \$149,514$). It appears Mr. Riley
23 used a 9.8% tax rate to compute his amount of GRT. If I use 9.8%, the gross receipts

1 resulting in a \$149,514 tax would be \$1,525,653. The tax of \$134,861.34 would have
2 \$1,376,136 of gross receipts ($\$1,376,136 * 9.8\% = \$134,861.34$). This variance in gross
3 receipts is \$149,517, which is the amount of gross receipt tax computed by Spire. In this
4 example, Mr. Riley has concluded that the gross receipts should not include the gross
5 receipts tax even though the Independence ordinance defines gross receipts to include
6 the gross receipts tax. *See* Schedule CJK - SR-1 attached to this Surrebuttal Testimony, at
7 Section 2.9. Mr. Riley has also used an incorrect GRT tax rate.

8 Second, certain jurisdictions do not include the gross receipts tax as a component of
9 revenue. Therefore, the adjustment made by Mr. Riley unilaterally to all jurisdictions
10 would not apply to these jurisdictions. The gross receipts tax computed by Spire in these
11 jurisdictions did not include the gross receipts tax as a component of revenue, so the
12 adjustment made by Mr. Riley is not needed.

13 Third, certain jurisdictions have a different GRT tax rate for residential customers and
14 commercial/industrial customers. I am not sure how Mr. Riley determined what portion of
15 the tax paid related to each class of customer to compute his alleged overcollection.

16 Fourth, certain jurisdictions have a fixed or minimum charge or only tax current period
17 charges up to a certain threshold. I am not sure how Mr. Riley factored this into his
18 computations of alleged overcollection.

19 OPC data request 2078 asked for a sample of customer bills from which Mr. Riley surmised
20 the GRT was improperly computed. In reviewing each of those customer bills, the amount
21 of GRT was computed correctly on each bill.

22 The assertion that Spire overcharged its customers GRT by an aggregate \$3,986,643 over
23 a 12-month period is simply not true and not validly substantiated. The methodology used

1 by Mr. Riley was flawed, contains errors, and he is misguided on the basis on which the
2 tax is computed.

3 **V. MISSOURI PROPERTY TAX**

4 **Q. CAN YOU RESTATE SPIRE'S POSITION ON CONTINUATION OF THE**
5 **MISSOURI PROPERTY TAX TRACKER?**

6 A. Yes, Spire does not oppose discontinuation of the property tax tracker in Missouri. The
7 Missouri property tax is primarily based on the amount of property (plant) in service within
8 the state. The valuation of the property is relatively consistent year over year with increases
9 driven by new assets being placed in service.

10 **Q. DOES STAFF AGREE WITH SPIRE'S POSITION?**

11 A. Yes, in Staff witness Jeremy Juliette's Rebuttal Testimony (Juliette Rebuttal, pgs. 5-6.),
12 Mr. Juliette states that the tracker should be discontinued.

13 **Q. DID STAFF PROVIDE A POSITION ON USE OF 2021 FORECAST VALUES FOR**
14 **USE IN FORECASTED PROPERTY TAX AMOUNTS?**

15 A. Yes, Staff prepared its report for property taxes as part of the cost of service to be based on
16 the 2020 actual property taxes paid and the comparison of the plant-in-service as of January
17 1, 2020 and the plant-in-service as of January 1, 2021. The ratio of taxes to plant-in-service
18 for 2020 is applied to the January 1, 2021 plant-in-service amounts to account for the assets
19 placed in service during calendar year 2020, which is part of the test year and true up
20 period. Spire agrees with this methodology.

21 **VI. KANSAS PROPERTY TAX**

22 **Q. COULD YOU SUMMARIZE SPIRE'S POSITION ON THE KANSAS PROPERTY**
23 **TAX TRACKER?**

1 A. Spire opposes discontinuation of the property tax tracker in Kansas. The assets Spire has
2 in Kansas consists of natural gas storage inventory, and the price of that inventory on hand
3 is subject to change based on market conditions. By way of example, the property tax
4 tracker would serve a critical role in the event of a repeat of the February 2021 cold weather
5 event. If the historical price of natural gas was on average \$3 per unit of measure, and the
6 annual property tax was on average \$1,500,000, an increase in the price of natural gas to
7 \$4 per unit of measure on the lien date (January 1 of each year) would cause the property
8 tax to increase to \$2,000,000 assuming the same volume of natural gas is on hand at the
9 lien date. The lien date is the date on which the value is determined for property tax
10 purposes. This increase in Kansas property tax could be significant.

11 Spire recommends maintaining the Kansas property tax tracker. At the next rate case, the
12 results of the tracker can be reviewed, and a determination can be made to either continue
13 or discontinue the tracker.

14 **Q. WHAT IS STAFF'S POSITION ON THE KANSAS PROPERTY TAX TRACKER?**

15 A. Staff opposes continuation of the tracker because, as Mr. Juliette argues, the Kansas
16 property taxes are now a normal operating expense for Spire. (Juliette Rebuttal, pg. 11-12.)

17 **Q. DOES SPIRE AGREE THAT KANSAS PROPERTY TAXES ARE NOW A**
18 **NORMAL OPERATING EXPENSE FOR SPIRE?**

19 A. No, for the reason described above, and as demonstrated by the February 2021 weather
20 event, Spire's natural gas inventory is subject to significant price spikes in a fundamentally
21 different way than its assets in Missouri. Therefore, while there may be periods of relative
22 consistency, singular price spikes—especially towards the calendar year end have the
23 potential to cause non-negligible rate fluctuations as the lien date is January 1 of each year.

VII. CONCLUSION

1

2 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

3 **A. Yes, it does.**

City of Independence

111 EAST MAPLE • P.O. BOX 1019 • INDEPENDENCE, MISSOURI 64051-0519

www.ci.independence.mo.us • (816) 325-7000



August 15, 2013

AUG 19 2013

Mr. David Abernathy
Vice President and Associate General Counsel
Laclede Gas Company
720 Olive Street
St. Louis, MO 63101

Mr. Abernathy:

The City Clerk forwarded the attached August 9, 2013 letter from Mr. Robert J. Hack, Chief Operating Officer, for Missouri Gas Energy (MGE) regarding the purchase of MGE by Laclede Gas Company. In this letter Mr. Hack requested the City, by Ordinance, acknowledge the assignment to Laclede Gas Company of the Franchise Agreement between MGE and the City.

In my opinion it is not necessary for the Council of the City of Independence to approve an Ordinance that acknowledges Laclede's purchase of MGE. I have attached a copy of Ordinance No. 17697 that was approved on December 20, 2010 and is the Franchise Agreement that currently exists with MGE. Section 13 of this Franchise Agreement addresses the possibility of a sale, transfer, or assignment of MGE and the responsibility of the successor company, Laclede.

Should you have any questions regarding this information please feel free to contact me at the above address or by calling me at 816-325-7173.

A handwritten signature in black ink, appearing to read "James C. Harlow".

James C. Harlow
Director of Finance & Administration

c: City Clerk, Ordinance No. 17697



MISSOURI GAS ENERGY

3420 Broadway • Kansas City, MO • 64111-2404 • (816) 360-5755

ROBERT J. HACK
CHIEF OPERATING OFFICER

August 9, 2013

Via Certified Mail
Return Receipt Requested

City Clerk
City of Independence, Missouri
111 E. Maple Avenue
Independence, Missouri 64050

RECEIVED

AUG 16 2013

CITY OF INDEPENDENCE
FINANCE

Re: Franchise Agreement that expires 12/19/2020 between City of Independence, Missouri and Missouri Gas Energy, a division of Southern Union Company (the "Agreement")

Dear Sir/Madam:

Southern Union Company ("SUG") has entered into a Purchase and Sale Agreement (the "Purchase Agreement") with Laclede Gas Company ("Laclede") under which it will sell its Missouri Gas Energy division's gas distribution business assets to Laclede. As part of the Purchase Agreement, SUG, doing business in Missouri as Missouri Gas Energy, will assign to Laclede all of its rights, duties, and obligations under certain contractual arrangements, including its municipal franchise agreements. The Missouri Public Service Commission approved Laclede's purchase of the MGE assets on July 17th, 2013. I have attached the Commission's order for your reference.

This letter is to advise you that SUG will assign all of its rights and obligations under the Agreement to Laclede upon Closing of the transaction, which is expected to occur on or after September 1, 2013. The same terms, conditions, and effective dates will continue in the Agreement – only the name of your natural gas provider will change.

Laclede has provided valuable, reliable gas service to Missouri customers since 1857. Laclede is a subsidiary of the Laclede Group, Inc., a public utility holding company registered on the New York Stock Exchange. Laclede is the largest natural gas distribution utility in Missouri, serving more than 632,000 residential, commercial, and industrial customers in St. Louis and surrounding counties of eastern Missouri. With the acquisition of SUG's Missouri Gas Energy assets, Laclede will serve over 1,100,000 natural gas customers in Missouri. Laclede's management team is committed to providing reliable and efficient service to its new customers. While rebranding discussions are underway, Laclede will continue to do business in your municipality for the near future as "Missouri Gas Energy."



MISSOURI GAS ENERGY

August 9, 2013

Page 2

The assignment of the Agreement will be to "Laclede Gas Company, a Missouri Corporation, 720 Olive Street, St. Louis, MO 63101." **We request your signed acknowledgment and a duly passed ordinance returned no later than October 15, 2013 with an effective date of September 1, 2013.** Please send these documents to:

Laclede Gas Company
ATTN: Legal Department
720 Olive Street
St. Louis, MO 63101

Thank you for your assistance. Should you have any questions, please contact Todd Jacobs, Senior Director – Legal at 816-360-5976 or todd.jacobs@sug.com (MGE) or David Abernathy, Vice President and Associate General Counsel, at 314-342-0536 or dabernathy@lacledegas.com (Laclede).

Sincerely,

SOUTHERN UNION COMPANY

Robert J. Hack
Chief Operating Officer
Missouri Gas Energy

THE UNDERSIGNED HEREBY ACKNOWLEDGES THE ASSIGNMENT OF THE AGREEMENT TO LACLEDE GAS COMPANY EFFECTIVE AT CLOSING OF THE PURCHASE AGREEMENT:

[Party Name]

By: _____
Name: _____
Title: _____
Date: _____

MGE Franchise (Draft)
11/15/10-js

BILL NO. 10-173

ORDINANCE NO. 17697

AN ORDINANCE GRANTING A FRANCHISE TO MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS DISTRIBUTION SYSTEM IN THE CITY OF INDEPENDENCE, MISSOURI; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION OF THE GAS SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

WHEREAS, there is a need to enter into a new franchise agreement with Missouri Gas Energy, a Division of Southern Union Company;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. SHORT TITLE.

This Ordinance shall be known and may be cited as the Missouri Gas Energy Franchise Ordinance Referencing Agreement (the "Agreement").

SECTION 2. DEFINITIONS.

For the purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein, unless the context or use clearly indicates another or different meaning is intended.

- 2.1 "City" is the City of Independence, Missouri.
- 2.2 "City Council" is the Council of the City of Independence, Missouri.
- 2.3 "Commission" is the Public Service Commission of the State of Missouri and any successor of such commission having jurisdiction of the subject matter herein.
- 2.4 "Company" is the grantee of rights under this Agreement, which is Missouri Gas Energy, a division of Southern Union Company, doing business as Missouri Gas Energy ("MGE"), and any successor or assigns thereof acting through their officers, agents or employees within the scope of their respective duties and authorities.
- 2.5 "Construction" is the process utilized to install, excavate or repair Company assets on the public property and public ways including utility easements and rights-of-way.

MGE Franchise (Draft)
11/15/10-js

- 2.6 “Corporate Authorities” are the Mayor and the City Council of the City of Independence, Missouri.
- 2.7 “Gas Distribution System” shall include (a) through (c) below:
- (a) “Gas Facilities” includes the piping, fuel lines, fixtures, valves, regulators, appliances and apparatus of any kind, owned and/or used by the Company, which are part of the mechanism by which gas is transported and supplied.
 - (b) “Main” is a gas pipe owned, operated and maintained by Company as a distribution line that serves as a common source of supply for more than one service line.
 - (c) “Service Line” is the pipe installed from Company’s Main to the inlet of Company’s meter or to the connection to a customer’s piping, whichever is farther downstream.
- 2.8 “Gas Service” is the availability of gas supplied or transported over or through Company’s facilities to any person or customer regardless of whether or not the person or customer makes use of such gas service and regardless of whether Company, person or the customer owns the gas transported over Company’s facilities while such gas is in the Company’s possession.
- 2.9 “Gross Receipts” shall represent all amounts received from the sale or transportation of natural gas; delayed payment charges (forfeited discounts); collection, disconnection and reconnection charges; insufficient fund charges; customer read charges, but shall not include compensation received by Company for collecting sales tax. So long as Company shall be required by any regulatory authority having jurisdiction, to separately state the gross receipts tax increment on its charges for natural gas service rendered under the franchise hereby granted, the term “gross receipts” as used herein shall include the separately stated gross receipts tax increment.
- 2.10 “Infrastructure” means the City’s streets, sidewalks, curbs, gutters, waterlines, pavements, alleys, sewer line and storm water facilities.
- 2.11 “Liability” includes, but is not limited to actual loss or damage to property or injury to or death of persons; actual responsibility for such loss, damage, injury or death; and any and all judgments, decrees, costs and expenses of every sort and kind incident to such loss, damage, injury or death or responsibility, including, but not limited to, court costs, fines and reasonable attorney’s fees.
- 2.12 “Person” is any individual, firm, partnership, co-partnership, company, association, public or private corporation, joint stock company, trust, estate, political subdivision, governmental agency, or other legal entity recognized by law.

MGE Franchise (Draft)
11/15/10-js

- 2.13 “Public Property” means all real property and all improvements thereon, owned, leased to, leased by or otherwise controlled by the City.
- 2.14 “Public Ways” means the surface, the air space above the surface and the area below the surface of any public right-of-way, including, but not limited to, any street, highway, avenue, drive, boulevard, lane, path, alley, sidewalk, waterway, bridge, tunnel, park, parkway or other public right-of-way, including public utility easements or rights-of-way over which the City has jurisdiction, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in which the City holds rights sufficient, without consent of any other Person, to permit Company the use thereof for the purpose of installing, operating or maintaining its Gas Distribution System.
- 2.15 “Tariff” shall be defined as the schedule of rates and charges and general terms and conditions for gas service filed by the Company with the Commission, as amended and approved by the Commission.
- 2.16 “Utility Coordinator” is an individual appointed by the City to facilitate communications between the City and the Company. The Utility Coordinator will serve as a contact for the Company to help expedite permits and to maintain City policy affecting Company work.
- 2.17 “Utility Construction and Maintenance Permit”, is a permit issued by the City to the Company to allow construction, alteration, repair or maintenance of a main or any part of the Gas Distribution System in or on Public Property.

SECTION 3. RULES OF CONSTRUCTION.

- 3.1 This Agreement shall be construed in accordance with the following provisions. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. To the extent terms or words used in this Agreement are defined in Commission rules, regulations and orders, the Company’s Tariff or the Adopted International Codes, those definitions are incorporated by reference herein. Where the provisions hereof conflict in any way with the Company’s Tariff, or the rules, regulations or orders of the Commission which specifically pertain to Company and with which the Company is required to comply, the conflicting provisions hereof shall be void and the relevant provisions of such rules, regulations or orders shall prevail.
- 3.2 The words “shall” and “will” are always mandatory and not merely directory.
- 3.3 The provisions of this Agreement shall be read as a whole so as to effect the purposes of this Agreement.
- 3.4 Section headings are descriptive and used merely for the purpose of organization.

MGE Franchise (Draft)
11/15/10-js

Where inconsistent with the text, section headings are to be disregarded.

SECTION 4. NON-EXCLUSIVE RIGHTS GRANTED.

- 4.1 There is hereby granted by the City to the Company the right and privilege to erect, construct, operate, maintain a Gas Distribution System, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the City, and for these purposes to establish the necessary facilities and equipment and to lay and maintain Mains, Service Lines and any other appurtenances necessary to the sale and distribution of gas in the Public Property and Public Ways of the City. The right to use and occupy said Public Property and Public Ways for the purposes herein set forth shall not be exclusive, and the City reserves the right to make a similar use or grant a similar use of said Public Property and Public Ways, to any Person at any time during the period of this Agreement.
- 4.2 **Emergency Access to Public Ways and Public Property.** In the event of an emergency which the Company reasonably believes poses a threat of immediate harm to the public or to any of the Gas Facilities, the Company is hereby granted access to the Public Ways and Public Property, without a permit, to ameliorate the threatened harm. The Company shall immediately advise the City of any such emergency.

SECTION 5. MUNICIPAL RIGHTS RESERVED.

- 5.1 **Police Powers and City Rights.** The City expressly reserves the right to adopt, from time to time, in addition to the provisions contained herein, such ordinances, rules and regulations as the appropriate City authorities may deem necessary in the exercise of police power for the protection of the health, safety and welfare of the City's citizens and their properties.
- 5.2 **Regulation of Public Ways and Public Property.** The City expressly reserves the right to enforce reasonable regulations concerning access to or use of the Public Ways and Public Property, as may from time to time be provided by ordinance, including requirements for permit applications.

SECTION 6. INDEMNIFICATION AND INSURANCE.

- 6.1 The Company shall indemnify, become responsible for and forever hold harmless the City, its officers, agents and employees from and against Liability to the extent caused by any negligent act, error, or omission, or willful misconduct of the Company or its agents or employees in the Public Ways or on Public Property pursuant to this Agreement or by virtue of or pursuant to an order, rule, regulation or authorization of the Commission. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

MGE Franchise (Draft)
11/15/10-js

- 6.2 To the extent permitted by law, the City shall indemnify, become responsible for and forever hold harmless the Company, its officers, agents and employees from and against Liability to the extent caused by any negligent act, error, or omission, or willful misconduct of the City or its agents or employees in the Public Ways or on Public Property pursuant to this Agreement.
- 6.3 **Comprehensive Liability Insurance or Self Insurance.** At all times while this Agreement remains in effect, and in recognition of the Indemnification provided in the foregoing Sections 6.1, the Company shall, at its own cost and expense, maintain a program of third party liability insurance and/or self-insurance in the amounts specified below to protect the City, its officers, employees and agents from any liability for bodily injury, death and property damage occasioned by the activities of the Company or any Person acting on its behalf. As proof of this compliance, the Company shall, during the life of this Agreement, keep on file with the Clerk of the City a certificate of insurance with an insurance company licensed to do business in the State of Missouri and/or affidavit of self-insurance which shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by an employee or officer of the Company who has knowledge of the Company's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations. The insurance coverage required by the City is set out in Exhibit A attached hereto and incorporated herein by reference.
- 6.4 Any right to indemnification as set forth in this franchise shall survive the termination of this franchise

SECTION 7. SERVICE STANDARDS.

- 7.1 **Maintenance of Facilities.** The Company shall maintain and operate its Gas Distribution System and render efficient Gas Service in accordance with the rules and regulations as set forth by the Commission.
- 7.2 **Nondiscrimination.** The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Person or subject any Person to any prejudice or disadvantage, except as allowed pursuant to its Tariff on file with the Commission.
- 7.3 **Service Interruptions**
- 7.3.1 The Company shall make all reasonable efforts to prevent interruptions of Gas Service. When interruptions occur, the Company shall reestablish Gas Service with the shortest possible delay consistent with general safety and public welfare.

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- 7.3.2 The Company shall make all reasonable efforts to notify the City Utility Coordinator, or the appropriate City authorities if the Utility Coordinator is not immediately available, of major service interruptions within the City within one (1) hour after the Company learns of such interruption. "Major service interruption" shall mean any interruption which may affect public health or safety or an interruption affecting more than five (5) customers. If at the time such notification is made the Company is not able to provide an estimate of when Gas Service is expected to be restored, such information shall be provided to the Utility Coordinator or the appropriate City authorities as it becomes available.
- 7.3.3 The Company shall make a good faith effort to notify potentially affected customers and the Utility Coordinator prior to performing any work on its Gas Distribution System that may result in an interruption of Gas Service to customers in the City.

SECTION 8. COMPANY RULES.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Agreement, to the extent that such rules, regulations, terms, and conditions do not conflict with, or require approval by any relevant jurisdiction.

SECTION 9. CONDITIONS ON PUBLIC PROPERTY.

- 9.1 The Company shall, as a condition of making any excavation in, through or under any street, sidewalk, alley, or Public Way in the City, deposit with the Director of Public Works a performance bond in the penal sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), or such other sum as may be established by ordinance, conditioned that the principal thereunder shall save harmless and indemnify the City on account of damages to any persons or property occurring by reason of any excavations as provided for in this Agreement; provided, however, if Company has over \$25,000,000 in net assets and otherwise qualifies pursuant to RSMo 67.1830(6)(a), Company shall be exempt from such performance bond requirement. In such event, Company shall provide an affidavit of net assets upon City's request. The Company or any Person acting on its behalf may construct, repair, maintain, renew or replace Gas Facilities, Service Lines, Mains and any apparatus necessary to the operation and maintenance of the Gas Distribution System in the City located in the Public Ways or on Public Property, subject to the following conditions:
- 9.2 **Use.** The Gas Distribution System placed by the Company in or on the Public Property and Public Ways in the City shall be placed so as not to obstruct or interfere with Public Ways and Public Property existing or hereafter existing. All Gas Facilities, Mains and Service Lines must be in a standard location and at a

standard depth and in accordance with the Public Works Manual, as codified in Chapter 20 of the City Code, as adopted and as continually amended. The Company shall avoid interfering with the use of any street, alley or other highway where the paving or surface of the streets would be disturbed. All new installation must be on the opposite side of the street as the water line and in accordance with the latest edition of the City's Public Works Manual. New installation shall not be located within thirty-six (36) inches of any water and sanitary sewer lines or stormwater facilities. Should Company determine that it cannot comply with this provision, then before any work is done or a permit applied for, Company shall contact the City Utility Coordinator for approval of any variance from these installation requirements. The requirements set forth in this paragraph shall not be construed to imply an obligation of the Company to relocate existing Gas Distribution Systems.

9.2.1 Neither the Company nor any Person acting on its behalf may unreasonably interfere with the use of the Public Ways or Public Property by the general public or by other Persons authorized to use or be present upon said Public Ways or Public Property.

9.3 **Utility Coordinator and Construction Meetings.** In an effort to facilitate issue resolution, construction planning, and franchise management, the City shall identify a Utility Coordinator to serve as the principal contact between the City and Company. Representatives of the Company and the City shall meet and confer on an as needed basis or not less than quarterly, concerning all construction projects proposed by the Company, the City, or private development that will affect the provision of Gas Service or the Gas Distribution System by the Company and the use of Public Property and Public Ways.

9.4 **Company Contact.** The Company shall identify one (1) individual to serve as the principal contact between the Company and the City Utility Coordinator. This officer or employee shall be present at all quarterly meetings or any other meetings scheduled as needed, and handle City complaints and service requests and expedite resolution thereof between the City and the Company.

9.5 **Construction on Public Property and Public Ways.**

9.5.1 Whenever it becomes necessary to construct or excavate in the Public Property or Public Ways of the City in order to install, construct, maintain or repair any part of the Company's Gas Distribution System now located, or to be located, therein or thereon Public Property or Public Ways, the Company shall obtain a Utility Construction and Maintenance Permit issued by the City, prior to commencement of each Construction project. Such permits shall state the particular parts or points where said Construction shall occur and the length of time in which such permits shall authorize the work to be done. Time of commencement and time of completion shall also be stated in said permits. The Company shall include

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with its permit application such plans and schedules for restoration of the Public Ways or Public Property as the City may reasonably require. The City at all times shall have the right to inspect all Construction being conducted by the Company or any Person acting on its behalf and to stop any work being conducted if it does not meet City specifications and ordinances.

- 9.5.2 When the Company, or any Person acting on its behalf, performs any Construction in or affecting the Public Ways or Public Property, it shall, at its own expense, remove any obstructions therefrom and restore such Public Ways or Public Property, to as good a condition as existed before the Construction was undertaken, including landscape and tree replacement, unless otherwise directed by the City. Cuts in the City streets are prohibited except when no other reasonable construction alternatives exist as reasonably determined by the Utility Coordinator. Company, at its expense, shall repair any curb or pavement replacement or restoration in a condition consistent with the City's Public Works Manual for a period of two (2) years after acceptance by the City of the replacement or restoration of all street cuts. Prior to commencement of any Construction in or affecting the Public Ways or Public Property by Company pursuant to this Agreement, Company shall provide at its own cost, preconstruction photos when said Construction impacts Infrastructure.
- 9.5.3 If weather or other conditions do not permit the complete restoration of Public Property and Public Ways required by Section 9, the Company may temporarily restore the affected Public Ways or Public Property upon receiving the approval of the City Utility Coordinator, provided that such approval shall not be unreasonably withheld. Such temporary restoration shall be at the Company's sole expense and the Company shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- 9.5.4 If the Company fails, neglects or refuses to restore the Public Ways or Public Property or to remove any obstruction therefrom, the City may, after affording the Company a reasonable opportunity to correct the situation, as will be determined by the Utility Coordinator, give five (5) days written notice to the Company, or such longer period if mutually agreed upon, and thereafter restore such Public Ways or Public Property or remove the obstruction therefrom. No such prior written notice shall be required in the event that the City determines that an emergency situation exists. The Company shall pay the City for any such restoration or removal within thirty (30) days after receiving a bill from the City for such work. The City may file a claim against the performance bond in lieu of payment to the City if not paid in full within forty-five (45) days of billing.

9.6 **Inspection of Restoration Work.**

9.6.1 All restoration work shall be subject to inspection by the Utility Coordinator and/or his designee. Immediately after the Construction has been completed, the Company herein shall notify the City Utility Coordinator that the work has been completed and is ready for final inspection. If, upon final inspection, the Utility Coordinator or his designee finds such work to be not in conformance with City standards, Company shall replace the work at its cost within two (2) weeks of final inspection by the Utility Coordinator.

9.6.2 Company shall not open or encumber, at any one time, any more of such Public Property or Public Ways than may, in the opinion of the Utility Coordinator, be reasonably necessary to enable the Company to proceed in laying or repairing its Gas Distribution System. Nor shall the Company permit any property so opened or encumbered by the Company to remain open for a longer period of time than shall, in the opinion of the City Utility Coordinator, be reasonably necessary. In all cases where any Public Property or Public Ways shall be excavated or encumbered by the Company herein, the Company shall take all precautions for the protection of the public as is reasonable in such circumstances and as may be required by the general ordinances of the City.

9.7 **City Projects.** Whenever the City shall construct or maintain Infrastructure, along or across Public Property or Public Ways or alters or changes the grade of any street, alley or other Public Way where the Company shall have installed any of its Gas Distribution System, it shall be the duty of the City to provide reasonable advance notice to the Company and to provide such plans as Company may reasonably require. Company shall, at its own expense, move or relocate the appropriate parts of its Gas Distribution System so as to conform to the locations of the Public Property, Public Ways or Infrastructure. It shall be the further responsibility of Company to review all construction projects submitted to it by the City and to notify the City of all necessary alterations of Company's Gas Distribution System which will be occasioned by proposed construction. Upon reasonable notification by the City of the timing of the construction project, Company shall complete the required alteration of its Gas Distribution System within the time reasonably directed by the Utility Coordinator at Company's expense.

9.8 **Utility Locate.** Company or its contractor shall, not in excess of two (2) working days from receipt of the notice from the City or the City Utility Coordinator requesting the location of underground facilities, identify the approximate location of underground Gas Facilities so as to enable the City to locate the facilities in advance of and during any work performed by the City or by Persons acting on its behalf. If the City states in the notice of intent that the City's planned work will involve tunneling or horizontal boring, the Company shall inform the

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Utility Coordinator of the depth, to the best of its knowledge or ability, of its Gas Facilities according to the records of the Company. Company and City shall follow all requirements set out in the Missouri Underground Facility Safety and Damage Prevention Act, when applicable.

- 9.9 **Right of Way Acquisition.** Acquisition of right of way shall be the responsibility of the Company if acquisition is required by Construction projects proposed by the Company. Such acquisition shall occur in a timely fashion so as not to interfere with the timely completion of a City construction project.
- 9.10 **Construction Standards.** The quality of all Company Construction and restoration shall comply with the laws, statutes, ordinances, and regulations promulgated by Federal, State and Local governments.

SECTION 10. Remedies.

- 10.1 Subject to the limitations in Sections 10.2, 10.3 and 10.4 below, in the event the Company or the City fails to fulfill any of their respective obligations under this Agreement, the City or the Company, whichever the case may be, will have claims for breach of contract and specific performance against the other in addition to any other remedy provided under this Agreement or otherwise provided by law, except that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action as would be necessary to formally amend the Agreement.
- 10.2 In the event that the Company violates any terms of this Agreement for conduct that is subject to the exclusive jurisdiction of a competent authority other than the City, the sole remedy for such violation shall be before that other competent authority. For purposes of determining the applicability of this section, no provision of this Agreement may be used as the sole basis to defeat the exclusive jurisdiction of such other competent authority.
- 10.3 In the event that the Company violates any term of this Agreement for conduct that is also a violation of another applicable City ordinance, the Company shall be subject to remedies under that other ordinance plus ordinary contract remedies under this Agreement.
- 10.4 Subject to the limitation of Section 10.2, upon the finding by either party hereto that the other party hereto has failed or refused to observe any terms and conditions of this Agreement, the non-offending party shall notify such other party in writing of the terms and conditions which it has not observed. Waiver of any breach of this Agreement shall not constitute a waiver of any subsequent breach of the same or any other provision in this Agreement. The notice shall inform the offending party of the actions which it must take to correct the violation and shall grant such party seven (7) calendar days to cure such failure or violation unless such failure or violation infringes upon the public safety or

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health, in which case cure shall be immediate. In events of non-emergency, the non-offending party may agree to extend this seven (7) day cure period. In the case of an emergency, the notice need not be made in writing. If a competent authority other than the City has determined that the action giving rise to the City's notice constituted a violation of an applicable rule, regulation or order of such competent authority, then the cure period granted by the City shall be no less than the cure period ordered by such competent authority. If the offending party does not eliminate or correct such failure or violation in accordance with the notice, the party's rights under this Agreement may be forfeited or such party may be subjected to any other remedies afforded by this Agreement, including the assessment of reasonable attorney's fees incurred by the non-offending party.

SECTION 11. REVOCATION OR SUSPENSION BY PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI.

In the event that the Commission revokes or suspends any license, certificate, or other authorization held by the Company for the purpose of either operating any portion of its Gas Distribution System within the City or providing Gas Service within the City, then the Company's rights under this Agreement shall likewise be revoked or suspended, without further notice from the City. The Company's rights under this Agreement shall be reinstated (1) if the Commission rescinds its revocation or suspension; (2) if the revocation or suspension order is overturned upon review by the Commission; (3) if the Commission reinstates the Company's license; or (4) if the suspension expires of its own terms. The original termination date of this Agreement shall not be affected if the rights forfeited under this Agreement are reinstated.

SECTION 12. NON-DISCRIMINATION AND EQUAL OPPORTUNITY.

The Company and City represent that they will not discriminate against any person employed or seeking employment with respect to hiring, promotion or tenure, or to terms, conditions or privileges of employment, on account of race, color, sex, religion, national origin or ancestry.

SECTION 13. TRANSFER AND RIGHTS AND OBLIGATIONS OF ASSIGNEES.

In the event of a sale, transfer, assignment or any other transaction Company may enter into which involves the Company's rights, duties and privileges under this Agreement, all provisions of this Agreement which are obligatory upon, or which inure to the benefit of the Company shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of the Company. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Company, shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

SECTION 14. LAWS, RULES AND REGULATIONS.

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- 14.1 **Compliance with Laws, Rules and Regulations.** While this Agreement remains in effect, the Company shall promptly and fully comply with all applicable statutes, ordinances, judgments, decrees, orders, rules and regulations of any competent authority other than the City having jurisdiction over the Company's activities.
- 14.2 **Compliance with Municipal Ordinances, Rules and Regulations.** While this Agreement remains in effect, the Company shall promptly and fully comply with all applicable orders, rules, regulations and ordinances of the City.
- 14.3 **Violation of Laws, Rules and Regulations.** Any claim by the City that the Company has violated any provision of Section 16, shall be subject to the procedures set forth in Section 10 of this Agreement.

SECTION 15. PAYMENT TO CITY.

The Company shall, not later than the twentieth (20) day of each calendar month in each year, make a report to the Finance Director of the City of its gross receipts from the sale or transportation of gas within the corporate limits of said City for the one (1) month period ending on the last day of the month preceding that on which the report is due; and at the time of making reports, pay into the City treasury a sum equal to the City's then current gross receipts tax on gross receipts of the Company. Company's gross receipts tax is hereby levied and assessed as an occupation and license tax (in lieu of all other occupation, license or other revenue taxes) for the privilege of engaging in the business herein recited during the term hereof; and as a further consideration for this franchise, Company and the City agree that with a period of sixty (60) days notice, City shall have the right to adjust the gross receipts tax rates.

SECTION 16. RECORDS AND REPORTS AND INSPECTION OF FACILITIES.

The City shall have access upon reasonable notice and during the Company's normal business hours, to such of the Company's plans, contracts and records relating to the Gas Distribution System and the operations of the Company within the City so as to determine whether the Company is complying with the terms of this Agreement and any City ordinance relating to the conduct of Company's operations in the City.

- 16.1. **Gross Revenue Report.** The Company shall provide to the City an annual summary report showing gross revenues received by the Company from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the Company's Gas Service within the City.

SECTION 17. TERM OF FRANCHISE.

The Franchise granted by this Agreement and rights herein granted shall take effect and be in force from and after the final passage of the Ordinance, as required by law, and shall

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continue in force and effect for a term of twenty (20) years after the effective date of this Agreement.

SECTION 18. EFFECTIVE DATE.

This Agreement shall be in full force and effect from and after the passage of the authorizing ordinance and receipt of the Company's acceptance by the City.

SECTION 19. RENEWAL.

At any time during the first sixty (60) days of the last year occurring prior to the expiration date of the Agreement, Company may request the City to enter into negotiations toward renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually agreeable and neither party shall be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement.

SECTION 20. TERMINATION.

The rights and obligations of the Company under this Agreement shall be terminated upon the end of the term of this Agreement or if either party hereto has exercised its options to terminate under Section 10 or upon the Company's violation or forfeiture as provided in any other section of this Agreement.

SECTION 21. NOTICES.

Notices required to be given in writing under this Agreement shall be effective when delivered personally to the addressees or when forty-eight (48) hours have elapsed after the notice is deposited in the United States Mail in a sealed envelope with registered or certified mail postage prepaid thereon, addressed to the party which notice is being given. Such addresses may be changed by either party upon notice to the other party given as provided in this section. At the date of execution herein the addresses of the parties are as follows:

Company:

Missouri Gas Energy, a division of Southern Union Company
3420 Broadway
Kansas City, MO. 64111
Attn. Chief Operating Officer

City:

City of Independence
111 East Maple
Independence, Missouri 64050
Attn. Public Works Director

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With copy to:

City of Independence
111 East Maple
Independence, Missouri 64050
Attn. City Counselor

SECTION 22. ACCEPTANCE.

The Company shall accept this Agreement by filing with the City Clerk an unconditional written acceptance hereof, to be duly executed according to law, along with proof of compliance required by Section 6.3. The failure of the Company to so accept this Agreement within sixty (60) days of enactment shall be deemed a rejection hereof by the Company, and the rights and privileges herein granted shall absolutely cease unless said period of time shall be extended by an ordinance duly passed by the Corporate Authorities for that purpose before the expiration of the sixty (60) day period.

SECTION 23. REOPENER.

At any time, but not more than once in any five (5) year period, either party may require both parties to negotiate in good faith on any proposed amendment to this Agreement. The object of any proposed amendment shall be set forth in a written notice.

SECTION 24. AMENDMENTS.

No revision, modification or amendment of this Agreement shall be effective unless it has been passed by the Corporate Authorities and accepted by the Company in writing.

SECTION 25. SEVERABILITY.

If any section, sentence, paragraph or clause of the Agreement shall be declared invalid or unconstitutional, such declaration shall not affect the validity of any of the remaining sections, sentences, paragraphs or clauses.

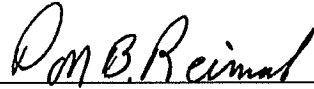
SECTION 26. FORCE MAJEURE.

The Company shall not be deemed in violation of this Agreement for the delay in performance or failure to perform in whole or in part its obligations under this Agreement due to war or act of war, whether an actual declaration is made or not, insurrection, riot, act of public enemy, fire, flood or other act of God or by other events to the extent that such events are caused by circumstances beyond the Company's control and are not caused by negligence on the part of the Company or any Person acting on its behalf. In the event that the delay in performance or failure to perform affects only part of the Company's capacity to perform its obligations under this Agreement, the Company shall perform such obligations to the extent it is able to do so in as expeditious a manner as possible. The Company shall promptly notify the City Utility Coordinator in writing of any event covered by this section and the date, nature and cause

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thereof. Furthermore, the Company, in such notice, shall indicate the anticipated extent of such delay and the obligations under this Agreement to be affected thereby.

PASSED THIS 20 DAY OF DECEMBER, 2010, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

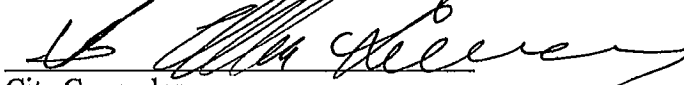


Presiding Officer of the City Council
of the City of Independence, Missouri

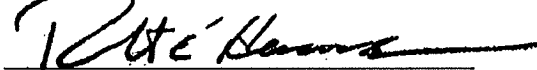
ATTEST:


City Clerk

APPROVED - FORM AND LEGALITY:


City Counselor

REVIEWED BY:


City Manager

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Exhibit A

CITY REQUIRED INSURANCE COVERAGE

Commercial General Liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage liability. The City shall be included as an additional insured with respect to liability arising from Company's operations under this Franchise.

Or

Self-insurance providing coverage in the amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Company, or alleged to so have been caused or occurred.