

# APPENDIX B. FRANCHISES

## ARTICLE 4. KANSAS GAS SERVICE, DIVISION OF ONE GAS, INC.

### SECTION 1. Definitions.

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

“**City**” shall mean the City of Leawood, Kansas.

“**Distribution System or Distribution Facilities**” shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within the Right-of-Way, for the purpose of “Distribution” or supplying natural gas for light, heat, power and all other purposes.

“**Distributed or Distribution**” shall mean all sales, supply, or transportation of natural gas to any Sales or Transportation Consumer for use within the City by the Grantee or by others through the Distribution Facilities of Grantee in the Right of Way.

“**Entity**” shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

“**Franchise**” shall mean the grant of authority by the City to transport, distribute or sell natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities, in accordance with K.S.A. 12-2001, et seq., as amended and City ordinances.

“**Franchise Fee**” shall mean consideration paid in the form of a charge upon the Grantee as prescribed in this Franchise Ordinance.

“**Franchise Ordinance**” shall mean this Ordinance No. 2739C granting a natural gas franchise to the Grantee.

“**Grantee**” shall mean Kansas Gas Service, a Division of ONE Gas, Inc.

“**Gross Receipts**” shall mean any and all compensation and other consideration derived directly or indirectly by the Grantee from any Distribution of natural gas to all consumers for any use, including domestic, commercial and industrial purposes, and shall include, but not be limited to, revenues from any operation or use of any or all Distribution Facilities in the Right-of-Way by the Grantee or others, including without limitation, charges as provide in tariffs filed and approved, and shall also include all fees or rentals received by the Grantee for the lease or use of pipeline capacity within the City for Transport Gas services. Such term shall not include revenue from certain miscellaneous charges and accounts including but not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, customer project contributions, meter test fees, and returned check charges.

**“MCF”** shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units.

**“Right-of-Way”** shall mean the area on, below or above the present and future streets, avenues, alleys, bridges, boulevards, roads, highways dedicated to or acquired by the City as Right-of-Way and shall include parks, parking places and public areas where Grantee currently owns facilities.

**“Sales Consumer”** shall mean, without limitation, any “Entity” that purchases natural gas within the Corporate City limits from Grantee for delivery to such consumer within the City through the Grantee’s Distribution System or Distribution Facilities.

**“Settlement Prices”** shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth (15<sup>th</sup>) day of each month as published in the Wall Street Journal (WSJ), or other nationally recognized publication, on the following business day (or the next day in which a Settlement Price is published).

**“Transportation Consumer”** shall mean without limitation, any Entity that transports “Transport Gas” within the Corporate City limits through Grantee’s Distribution Facilities for consumption within the City’s corporate limits.

**“Transport Gas”** shall mean all natural gas transported by the Grantee, or by others, but not sold by the Grantee, to any consumer within the City through the Distribution Facilities of the Grantee.

**“Volumetric Rate”** shall mean \$0.2114 per MCF for Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be subject to adjustment and recalculation in the future in accordance with the provisions set forth below. The Volumetric Rate Calculation form incorporated herein and attached hereto as Attachment A shall be used for recalculating the Volumetric Rate. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2<sup>nd</sup>) preceding year and ending in June of the preceding year. For the fifteen (15<sup>th</sup>) day of each month during said twelve (12) month period, the Settlement Prices for natural gas for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price.

The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by five percent to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rates shall be calculated in accordance with the procedures set out herein and filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

## **SECTION 2. Grant of Franchise:**

That in consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to Grantee, subject to the terms and conditions herein set forth, the non-exclusive right, privilege, and authority for the full term of this Franchise Ordinance, the non-exclusive right, privilege and franchise to occupy and use the Right-of-Way of the City, for the placing and maintaining of Distribution Facilities necessary to carry on the business of distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business. Provided all Grantee's facilities authorized to be located on the Right-of-Way pursuant to this Franchise Ordinance shall be subject to the provisions of the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way codified as Chapter XIII, Article 3, of the Code of the City of Leawood, 2000, as amended. Nothing in this grant shall be construed to franchise or authorize the use of the Grantee's Distribution Facilities or Right-of-Way by the Grantee or others, for any purpose other than the provision of natural gas. The Grantee may not allow a subsidiary, affiliate, or a third party to acquire rights to occupy the Right-of-Way under this Franchise Ordinance, provided, that nothing in this section shall prevent Grantee from allowing the use of its Distribution Facilities by others for the purpose of providing Transport Gas to Transportation Consumers when the City is compensated for such use, pursuant to the provisions of this Franchise Ordinance.

## **SECTION 3. Term and Re-opener Provisions.**

- A. The term of this Franchise shall be twenty (20) years from the effective date of this Franchise Ordinance.
- B. Upon written request of either the City or the Grantee, this Franchise may be reopened and reviewed after five (5) years from the effective date and every five (5) years from the effective date of this Franchise Ordinance and either the City or the Grantee may propose amendments to any provision of this Franchise by giving sixty (60) days written notice to the other of the amendment(s) desired. The City and the Grantee shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s).
- C. Upon written request of either the City or the Grantee, the Franchise Ordinance shall be reopened and renegotiated at any time upon any of the following events:
  1. Change in federal, state, or local law, regulation, or order, which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City;
  2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City.

- D. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and/or easements granted on publicly owned property and pay a franchise fee or other payment which results in a material or economic disadvantage to the Grantee. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance and the use of the Right-of-Way provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and do not have requirements on the use of the Right-of-Way substantially equivalent to the requirements of this Franchise Ordinance, which results in a material or economic disadvantage to the Grantee.
- E. Upon written request by either party to the other, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated should issues arise related to the Volumetric Rate or matters related to the collection and payment of compensation due the City for Grantee operations related Transport Gas.
- F. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Franchise Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to this Section.

#### **SECTION 4. Compensation to the City.**

In consideration of and as compensation for the Franchise hereby granted to the Grantee by the City, the Grantee shall make an accounting to the City of all natural gas that has been "Distributed" within the City on a monthly basis. The Grantee shall pay the City as compensation:

- A. A sum equal to five percent (5%) of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Sales and Transportation Consumers; plus
- B. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers.

The sums in A above shall be collected from Sales Consumers and the sums in A and B above shall be collected from Transportation Consumers and shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in August 2015. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 1509C and amendments thereto. Such payments shall be made on or before the last day of each month and shall be based upon such Gross Receipts charges and collected for the preceding month.

## **SECTION 5. Use of Right-of-Way**

- A. The Grantee's use of the Right of Way granted by the City shall be subject to all rules, regulations, ordinances, resolutions and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Grantee shall be subject to all rules, regulations, ordinances, resolutions and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Grantee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation or policy proposed, adopted, or promulgated by the City.
- B. All mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. Grantee shall provide, prior to commencing work, information to the City concerning work to be performed in the Right-of-Way, as the City may from time to time require for purposes of record keeping.
- C. Grantee shall, in doing the work in connection with its said gas mains, pipes, and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare. It shall, without expense to the City, and in a manner satisfactory to the duly authorized representatives of the City, replace such paving or surface in accordance with the City's requirements.
- D. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Grantee, by its acceptance of this Franchise Ordinance as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.
- E. Grantee, its successors and assigns, in the construction, maintenance, and operation of its natural gas system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of said Grantee, its successors and assigns, or its or their agents or servants.

## **SECTION 6. Acceptance of Terms by Grantee and Effective Date of Ordinance.**

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Grantee, and publication in the official city newspaper. Grantee shall have thirty (30) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and Grantee and said contract shall be deemed effective on the date Grantee files acceptance with the City.

## **SECTION 7. Notice of Property Annexed by City.**

Notwithstanding anything to the contrary in this Franchise Ordinance, the fees provided for in Section 4 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date that the City provides the Grantee with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

## **SECTION 8. Indemnity**

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representative, while installing, repairing or maintaining Distribution Facilities in the Right-of-Way or in regards any action or inaction related to Grantee's obligations set forth in this Franchise.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under the state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and the Grantee and does not create or grant any rights, contractual or otherwise, to any other person or Entity.

## **SECTION 9. Insurance Requirements and Performance Bond.**

- A. During the term of this Franchise Ordinance, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
1. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
  2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Franchise Ordinance.

- B. As an alternative to the requirements of subsection A, Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, to protect the 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 Grantee, or alleged to so have been caused or occurred.
- C. Grantee shall deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page.
- D. Grantee shall, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$5,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Distribution Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if the Grantee anticipates that it will be engaged in the construction and/or maintenance of its Facilities in the Right-of-Way multiple times during the course of a year, the Grantee may choose to meet the bond requirements by providing a bond of \$50,000 annually.

**SECTION 10. Payment of Costs.**

Grantee shall be responsible for payment of all costs and expense of publishing this Franchise Ordinance and any amendments thereof.

**SECTION 11. Authority.**

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

**SECTION 12. Actions by the Kansas Corporation Commission.**

Should the Kansas Corporation Commission take any action with respect to this Franchise Ordinance and any amendments thereto which precludes Grantee from recovering from its customers any costs or fees provided for hereunder, the parties shall renegotiate this Franchise Ordinance in accordance with the Commission's ruling.

**SECTION 13. Revocation and Termination.**

In case of failure on the part of Grantee to comply with any of the provisions of this Franchise Ordinance, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Grantee shall forfeit all right, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Franchise Ordinance shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have ninety (90) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If a cure cannot be reasonably affected within ninety (90) days, Grantee shall be afforded such additional time to cure, as the City and Grantee shall agree. If at the end of such period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty-day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment and any appeal therefrom. Provided, however, that the failure of Grantee to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 14. Rights and Duties of Grantee Upon Expiration of Franchise.**

Upon expiration of this Franchise Ordinance, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture thereof, the Grantee shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business within a reasonable time and after such expiration, but in such event, it shall be the duty of the Grantee, immediately upon and during such removal to restore the streets, avenues, alleys, and other public ways and grounds from which said pipes, laterals, and other equipment have been removed, to the equivalent condition as the same were before said removal was effects.

**SECTION 15. Conditions of Franchise.**

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond City's or Grantee's control.

**SECTION 16. Failure to Enforce.**

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

**SECTION 17. Repeal of Conflicting Ordinances.**

Ordinance No. 1509C and amendments thereto which heretofore granted a non-exclusive franchise to the Grantee, and which became a contract between the City and the Grantee in accordance with its terms and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby repealed, effective as of the first cycle of the monthly billing cycle which begins in August 2015.

(Ord. No. 1509C; effective 10-15-95)  
(Ord. No. 2739C; effective 07-15-15)