

AN ORDINANCE GRANTING TO ONE GAS, INC., ACTING BY AND THROUGH ITS OKLAHOMA NATURAL GAS COMPANY DIVISION, AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM APPROVAL AND ACCEPTANCE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF NORMAN, OKLAHOMA FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CONSUMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING THAT THE CITY MAY ENACT AN ORDINANCE CHARGING PERSONS TRANSPORTING GAS THROUGH GRANTEE'S DISTRIBUTION SYSTEM A FEE ON THE CALCULATED VALUE OF SUCH TRANSPORTED GAS; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF NORMAN; PROVIDING FOR GRANTEE'S RULES AND REGULATIONS; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; ESTABLISHING GRANTOR'S OPTION TO PURCHASE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR THE SUBMISSION OF THIS ORDINANCE TO AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; AND REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Calculated Value" shall mean the total Transport Gas measured in Dekatherms (Dth), delivered to a Transport Gas Consumer for a billing period, multiplied by the Settlement Price to arrive at the value of the Transport Gas transported by Grantee for that Transport Gas Consumer.
- B. "Consumer" shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Ways.

- C. “Dekatherm” or “Dth” shall mean a measurement of natural gas equal to 1,000,000 British Thermal Units (“Btu”), or 1 MMBtu, on a dry basis. Btu shall be computed on a temperature base of 60 degrees Fahrenheit and a pressure base of 14.73 PSIA.
- D. “Distributed” or “Distribution” shall mean all sales, distribution, or transportation of natural gas to any Consumer or user located within the municipal corporate limits of the City by the Grantee or by others through Grantee’s Distribution System.
- E. “Distribution System” shall mean a system of works, pipes, pipelines, apparatus, machinery, structures, appliances and appurtenances as are reasonably necessary for the transportation, distribution or sale of gas to Consumers.
- F. “Franchise” shall mean the rights and privileges granted by Grantor to Grantee under Subsection A of Section 2 of this Ordinance.
- G. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance, at Paragraph A(1), as consideration for the use of the Public Ways and shall be inclusive or in lieu of any permit fees, lane closure fees and similar fees or charges for construction, installation, maintenance or restoration work on the Distribution System within the Public Ways.
- H. “Grantee” shall mean ONE Gas, Inc., a corporation acting by and through its Oklahoma Natural Gas Company division, and its successors and assigns.
- I. “Grantor” shall mean the City of Norman, Oklahoma, a municipal corporation, hereinafter also referred to as the “City”.
- J. “Gross Receipts” shall mean any and all compensation derived by Grantee directly from the Distribution of natural gas to a Consumer for any use, including residential, industrial and commercial purposes, and shall include without limitation revenues from any operation or use of any or all of the Distribution System by Grantee or others. Gross Receipts shall not include revenues received by Grantee from Consumers as franchise fee reimbursement nor Volumetric Rate Fees collected by Grantee and remitted to Grantor in accordance with Paragraph 11.A(2) pursuant to an ordinance enacted by Grantor according to Paragraph 3.B(1) hereof, nor shall Gross Receipts include revenues from incidental charges or miscellaneous fees not directly generated by the Distribution of natural gas to Consumers, such as, by way of example, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, delayed or late payment charges, temporary service charges, and other such charges.
- K. “Install, operate and maintain” shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.

- L. “Public Ways” shall mean any street, alley, avenue, boulevard, lane, park, parkway, sidewalk, driveway, utility easement, public right of way, and any other public ways, places, areas, or grounds within the municipal corporate limits of the City as now constituted or as may be added or extended hereafter.
- M. “Settlement Price” shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX), or any successor exchange or index, 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 each month of the twelve-month period immediately following.
- N. “Transportation Tariff Arrangement” shall mean any arrangement between Grantee and a Consumer pursuant to which natural gas owned by any party other than the Grantee shall be transported, distributed or sold through any portion of Grantee’s Distribution System and under one of Grantee’s tariffs or special contract for delivery to the Consumer.
- O. “Transport Gas” shall mean all natural gas transported by Grantee pursuant to a Transportation Tariff Arrangement or by other agreement, but not sold by Grantee through Grantee’s Distribution System to any Consumer or user located within the municipal corporate limits of the City.
- P. “Transport Gas Consumer” shall mean a Consumer which uses Transport Gas.
- Q. “Volumetric Rate” shall mean Four Point Two Five Percent (4.25%) of the Calculated Value of Transport Gas as determined by Grantee in accordance with the provisions of this definition. The Volumetric Rate Calculation Form incorporated herein as Exhibit “A” shall be used for the calculation of the Volumetric Rate; provided, that the Grantor enacts an ordinance as described in Paragraph 3.B(1) below, the four point two five percent (4.25%) multiplier labeled “4.25% Bundled Franchise Fee Rate” set forth on “Exhibit A” shall be completed by Grantee and filed with the City Clerk of the City upon Grantee’s acceptance of this franchise and annually by each July following acceptance. The calculation filed upon Grantee’s acceptance of this franchise shall be effective from the date of such filing through and including December 31 of the next succeeding calendar year. The calculation filed by Grantee on July 31 in years following the year of acceptance of this franchise shall be effective on January 1 of the next succeeding calendar year through and including December 31 of such calendar year. The calculation shall be subject to review by the City for mathematical correctness and the City shall notify Grantee in writing within forty-five (45) calendar days after submission if the City deems such calculation to be incorrect. The volumetric rate calculation shall be based on the average of the average Settlement Prices for the twelve-month period beginning in July of the immediately preceding year and ending in June immediately preceding the July 31 calculation. The average Settlement Prices for each month during said twelve-month period shall be calculated by adding the Settlement Prices for such

month and the previous eleven (11) months as published and dividing by twelve. The average Settlement Prices for each of the twelve months shall then be summed and divided by twelve to determine the average of the average Settlement Prices and then multiplied by four point two five percent (4.25%) to obtain the Volumetric Rate; provided, in the event the then-current average of the average Settlement Prices as calculated above and entered on the Volumetric Rate Calculation Form, attached as Exhibit "A" (see line designated on Exhibit "A" as "settlement price average"), exceeds the Index price for ONEOK Gas Transportation, L.L.C., that is listed in the issue of Platt's "Inside FERC's Gas Market Report" published on the first business day of the respective month ("Platt's Index price"), then the Platt's Index price shall be used to calculate the Volumetric Rate for that delivery month in lieu of the average of the average Settlement Prices entered on the Volumetric Rate Calculation Form (Exhibit "A") (*i.e.*, for that respective delivery month, the Volumetric Rate shall be determined by taking the Platt's Index price and multiplying that price by 4.25% or the then applicable increased percentage determined in the same manner set out in Paragraph 11.A(2) of this franchise).

- R. "Volumetric Rate Fee" or "Volumetric Rate Fees" shall mean the fee or fees based on the Volumetric Rate to be collected and remitted to the City by Grantee as required by Paragraph 11.A(2) of this franchise upon the enactment of an ordinance as described in Paragraph 3.B(1).

SECTION 2. GRANT OF FRANCHISE

- A. The Grantor hereby grants to Grantee for the term of twenty-five (25) years from the passage and voter approval of this Ordinance and the filing of a written acceptance by the Grantee, the right to enter upon the Public Ways to install, operate and maintain a Distribution System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to consumers and the public generally within the municipal corporate limits of the City.
- B. The Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.
- C. The franchise granted by this Ordinance is not exclusive and nothing herein shall be construed to divest the Grantor of its control and regulation of the Public Ways.

SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

- A. Grantee shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever to any third party not affiliated with Grantee the rights and privileges granted under this Ordinance except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Grantee of the franchise granted

herein to any third party not affiliated with Grantee shall be ineffective and void unless:

- (1) The proposed assignment, sale, lease or transfer shall be in writing;
- (2) The prospective assignee, buyer, lessee or other transferee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this Ordinance; and
- (3) Such writing shall be submitted to the City Clerk of the City.

This Subsection shall not apply to any arrangement which is in compliance with the provisions of Subsection B of this Section. This Section shall not apply to the use of any portion of Grantee's distribution system for the transportation, distribution or sale to any Consumer purchasing, receiving and using natural gas outside the municipal corporate limits of the City.

- B. After the operative date of this Ordinance, Grantee shall have the right to enter into or continue to operate pursuant to any "Transportation Tariff Arrangement" or to enter into or continue any arrangement by which natural gas owned by any party other than Grantee shall be transported, distributed or sold through any portion of Grantee's Distribution System for delivery to any Consumer located within the municipal corporate limits of the City, subject to the following:
- (1) Should Grantor, by separate ordinance, require persons transporting gas pursuant to a Transportation Tariff Arrangement to pay compensation to Grantor for use of the Public Ways in connection with the sale of Transport Gas, said compensation shall be calculated as a Volumetric Rate Fee and collected and remitted by Grantee as provided in Paragraph 11.A(2) of this Ordinance;
 - (2) The Transport Gas Consumer shall have obtained a license from the Grantor, if the Grantor shall have a licensing ordinance in effect, for the use of the Public Ways in connection with such transport of natural gas, and the Grantor shall have notified the Grantee in writing of such license.

SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee's Distribution System shall be erected, placed, and laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, least interfere with other public uses of the Public Ways.
- B. Before Grantee shall excavate or disturb the surface of any Public Way, except in the case of emergency, at least forty-eight (48) hours notice shall be given to the City's Engineer, Public Works Director or other proper authority designated in writing by the Grantor. After such excavation or disturbance, the Grantee shall,

with due diligence and dispatch, place the Public Way in a condition in compliance with the Grantor's reasonable standards and specifications.

- C. Upon Grantee's failure to commence or complete any construction, maintenance or restoration work required by this Ordinance with due diligence and dispatch, the Grantor may cause such work to be done after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such construction, maintenance or restoration incurred by Grantor upon Grantee's failure shall then be charged and collected from the Grantee.
- D. Grantor reserves the right to make and enforce reasonable regulations concerning the construction of Grantee's Distribution System located within, along, across, over, or under the Public Ways and to reasonably designate where the Distribution System's works and pipelines shall be placed, so long as such regulations are not unreasonable nor in conflict with this Ordinance, the laws of the State of Oklahoma and the United States or the orders, rules or regulations of the Oklahoma Corporation Commission or other regulatory authority having jurisdiction over Grantee.

SECTION 5. REGULATION OF SERVICE

- A. The Distribution System of the Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice and in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Oklahoma Corporation Commission or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Grantee of any other obligations set forth herein.
- B. In the event that the Oklahoma Corporation Commission or other state regulatory authority shall be deprived of the authority to regulate Grantee, then Grantor shall have the authority to set rates, terms and conditions of service for transportation, distribution or sale of natural gas by Grantee within the municipal corporate limits of the City.

SECTION 6. DEPTH OF PIPELINES

After the operative date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

SECTION 7. DUTY TO MOVE OR ALTER LINES

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the Public Ways. In permitting such work to be done, the Grantor shall not be liable to the Grantee for any damage to Grantee's pipeline unless Grantor or its agents or contractors are negligent in causing said damage.
- B. Whenever by reason of establishing a grade or changes in the grade of any street or in the location or manner of construction of any public way, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by the Grantor to alter, change, adapt or conform any portion of Grantee's Distribution System located in the Public Ways, such alterations or changes shall be made within a reasonable time by the Grantee, as ordered in writing by the Grantor, without claim for reimbursement or compensation for damages against Grantor; provided, however, that this Section is not intended to require Grantee to alter, change, adapt or conform any portion of its Distribution System without reimbursement or compensation where the right to locate the same, whether by private right-of-way grant, utility easement or otherwise, was acquired prior to its location in the public way.
- C. If Grantor shall require the Grantee to adapt or conform its Distribution System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the Grantor, to use the Public Ways, the Grantee shall be reimbursed by the person, firm, corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.
- D. "Person," "firm," "corporation," and "entity" as used in Subsection C of this Section shall not include regular departments of the Grantor, or any trust or authority formed by or for the benefit of Grantor for public utility purposes, but shall include any other agency or authority of the City, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the municipal corporate limits and relocates citizens for the purpose of urban development or similar aims.

SECTION 8. INDEMNIFICATION OF GRANTOR

The Grantee shall indemnify, become responsible for and forever save harmless the Grantor from any and all damages, judgments, reasonable costs and expenses, including attorney fees, which the Grantor may suffer or incur, or which may be legally obtained against the Grantor, for or by reason of the negligent use, repair or occupation of any public way within the municipal corporate limits of the City by the Grantee pursuant to the terms of this Ordinance or resulting from the negligent exercise by the Grantee of any of its privileges or by reason of its carrying on its business in the City (except where such damages, judgments, reasonable costs and

expenses, including attorney fees, result from the negligence of Grantor or its agents or contractors); provided, however, that in the event of such claim or claims being prosecuted against the Grantor, the Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the Grantor shall give prompt written notice to the Grantee of the presentation or prosecution of such claims.

SECTION 9. GRANTEE'S RULES AND REGULATIONS

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the prudent conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Oklahoma, with the orders, rules or regulations of the Oklahoma Corporation Commission or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Oklahoma Corporation Commission or such other regulatory authority.

SECTION 10. INSPECTION OF RECORDS

Grantee shall permit Grantor or its agents to inspect, during regular business hours, the books, papers and records kept by Grantee in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 11 hereof. Notwithstanding the obligation herein, Grantee shall have the right to request the reasonable protection of proprietary information and to provide redacted documents or require Grantor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee, but which do not unreasonably frustrate the purposes of this Section. Grantor shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of Grantor, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice.

SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

- A. In consideration for the rights and privileges enjoyed under this franchise, Grantee agrees to pay Grantor as follows:
 - (1) Grantee shall pay Grantor a franchise fee the sum of which is equal to Four Point Two Five Percent (4.25%) of the Gross Receipts received by Grantee, per billing period, from the transportation, distribution, and sale of natural gas for domestic, commercial or industrial consumption within the municipal corporate limits of the City. All sums due from Grantee shall be in lieu of all other franchise, license, or occupational taxes or fees, which may be levied or attempted to be levied on Grantee by the City.
 - (2) In the event that Grantor, pursuant to Paragraph 3.B(1) of this Ordinance, requires persons transporting gas pursuant to a Transportation Tariff Arrangement to pay compensation to Grantor for use of the Public Ways

in connection the sale of Transport Gas, said compensation shall be calculated as a Volumetric Rate fee for such Transport Gas, which shall be the sum equal to the then current Volumetric Rate multiplied by the number of Dth of Transport Gas reported or distributed through Grantee's facilities within the municipal corporate limits of the City by Grantee or by any third-party to transport customers for consumption within the City. Grantee will in that event collect such Volumetric Rate Fees from persons transporting gas pursuant to a Transportation Tariff Arrangement and remit the same to Grantor.

- B. In the event a customer of Grantee does not pay a monthly bill from Grantee in full, Grantee shall prorate its payments of remissions to the City for sums due on that particular bill so that the amount actually paid by the customer to Grantee on the bill is distributed to Grantee for the natural gas commodity and transportation or distribution service and to the City for sums due on the bill in proportion to the percentage of the total bill actually paid by the customer. In the event Grantee actually collects any outstanding amounts due on a past due, unpaid or partially paid monthly bill to a customer, then Grantee shall pay Grantor its proportionate share of sums due to the City on such bill.
- C. Grantee's franchise fee based upon a percentage of gross cash receipts or a volumetric rate shall be payable monthly on or before the 25th day of each month, on its gross cash receipts for the preceding calendar month.
- D. All sums due from Grantee under this Section shall be in lieu of all other franchise, license, or occupation taxes or fees, which may be levied or attempted to be levied on Grantee by the City including, but not limited to, any permit fees, lane closure fees and similar fees or charges for construction, installation, maintenance or restoration work on the Distribution System within the Public Ways.
- E. The City's chief administrative officer or his designee may waive the Volumetric Rate Fee or any part thereof due from a Transport Gas Consumer, but such waiver shall only be granted if:
 - (1) The Transport Gas Consumer could otherwise obtain its energy needs from another source that would not be subject to the fees imposed in Subparagraph 2 of Subsection 11.A above and sufficient evidence is produced by the Transport Gas Consumer so as to substantiate such alternative source; and
 - (2) Such alternative source, including all other fees, would be less than the cost of utilizing Grantee to furnish and transport the gas or transport alone, as the case may be.
- F. Grantee shall update its records for the purpose of franchise fee payments as soon as reasonably practicable after receiving notice of such waiver.

- G. In the event the accounting rendered to Grantor by Grantee is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that Grantor may accept amount offered by Grantee, but the acceptance thereof by Grantor shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. Grantee shall have no obligation, however, to make payment upon Transport Gas for which Grantee has not been paid. Grantee shall provide notice to Grantor of such delinquent accounts within ninety (90) days and Grantor shall hold Grantee harmless from the cost or liability for the collection of franchise fees on such delinquent accounts.
- H. In the event Grantee shall hereafter accept any franchise from any city in the State of Oklahoma having a population in excess of fifteen thousand (15,000) according to the most recent Federal Census which provides for the payment to such city in excess of the franchise fee provided herein, then Grantee shall forthwith and without demand pay to Grantor such increased rate applicable to the class of service affected.
- I. Grantor agrees that the franchise fee percentage rate set forth in Subsection 11.A, at Paragraphs (1) and (2), of this Ordinance shall in no event exceed the percentage rate hereafter approved to calculate any fee paid to Grantor by any other person or entity for use of the Public Ways if such fee or volumetric rate is based in any way on the amount of revenues or gross receipts from the transportation, distribution, or sale of natural gas or electric energy, excluding any municipally-owned electric utility, by such other person or entity to ultimate Consumers within the City. If at any time after the effective date of this Ordinance the fee or rate required to be paid by another is less than the percentage rate set forth in Paragraphs A(1) or (2) of Section 11, then the percentage rate set forth in Paragraphs A(1) or (2) of Section 11 of this Ordinance shall be reduced to equal such lesser percentage rate on the date such lesser percentage rate becomes effective and without any further action by the City or the qualified electors residing therein.

SECTION 12. GRANTOR'S OPTION TO PURCHASE

- A. Grantor shall have the option and right to purchase, take over and acquire (the "Purchase Option"), on an as-is, where-is basis:
 - (1) Grantee's system of pipes, pipelines, meters and connected apparatus that is located in, across, upon and under the public ways within the incorporated limits of the City, and that is used for the purposes of transporting, distributing and selling gas to the City and/or its inhabitants, and
 - (2) non-exclusive rights to use all assignable private rights of way and easements in favor of Grantee to the extent such rights of way and easements are located within the incorporated limits of the City and are used for the purposes of transporting, distributing and selling gas to the

City and/or its inhabitants (collectively the items in (1) and (2) are referred to herein as the “Purchase Option Assets”), provided that the Purchase Option Assets shall not include any of the following:

- i. Grantee’s office locations,
- ii. office equipment (including without limitation computers, computer software, data), books and records, and office supplies,
- iii. vehicles,
- iv. intangible property,
- v. assets used for operations, maintenance, meter reading, monitoring, construction, customer service, recordkeeping, administrative functions, emergency identification and response, or personnel training,
- vi. assets within the incorporated limits of the City that are used exclusively for the provision of gas service to areas outside such incorporated limits, and
- vii. assets that contribute to or assist in the delivery of gas to or from systems outside the incorporated limits of the City.

B. The Purchase Option shall be subject to all the following terms and conditions:

- (i) In order to exercise the Purchase Option, the City must deliver the following (the “Purchase Option Notice”) to Grantee, in writing, any time during the next to final year of this franchise, but no later than December 1, 2038:
 - (A) a written notice that the City intends to exercise the Purchase Option and the proposed closing date, and
 - (B) a copy, certified by the chief administrative officer of the City, of resolution(s) of the City’s governing body along with an opinion of counsel for the City, in form reasonably acceptable to Grantee, stating that, among other things, the City has taken all necessary measures and has all necessary authority to consummate the purchase of the Purchase Option Assets pursuant to the Purchase Option, reflecting the City’s intent to take over, purchase and acquire the Purchase Option Assets (the “Purchase”).
- (ii) If the City fails to provide the Purchase Option Notice during the next to final year of the franchise, then the Purchase Option shall automatically and immediately terminate without notice.

- (iii) Any Purchase by the City shall be on the following terms:
- (A) The closing date of the Purchase shall not be later than the last day of the term of this franchise.
 - (B) At or before closing of the Purchase, the City must pay to Grantee the following:
 - 1. an amount equal to the Fair Market Value (as defined below, and determined in accordance with the Appraisal Procedure) of the Purchase Option Assets as they exist on the date (the “Appraisal Effective Date”) of appointment of the third appraiser, as set forth in the Appraisal Procedure defined below,
 - 2. plus the actual cost or expense of all necessary capital improvements made by Grantee to the Purchase Option Assets and all necessary additions to the Purchase Option Assets from and after the Appraisal Effective Date until the date of closing the Purchase,
 - 3. plus comply with any and all requirements as may be ordered by any State or Federal regulatory agency including, but not limited to, the Oklahoma Corporation Commission pursuant to OAC 165:45-3-5 regarding the sale or disposal of jurisdictional facilities by utility which may include, but may not be limited to, any and all costs associated with isolating and separating Grantee’s distribution system within the incorporated limits of the City that is used at the time to serve customers, current and future, outside the incorporated limits of the City (the “Separate Distribution Assets”) so that (i) the Purchase can effectively take place without interfering with Grantee’s rights and/or obligations to such customers and (ii) Grantee can serve such customers without the use of the Purchase Option Assets (collectively the “Additional Separation Costs”). The Additional Separation Costs shall be determined using the Appraisal Procedure.
 - (C) the City shall Grant permits, licenses and/or easements to Grantee in a form acceptable to Grantee, at no cost to Grantee, for construction, operation and maintenance of existing facilities within the incorporated limits of the City that may be determined to be the most cost effective and/or reliable means of serving customers outside the incorporated limits of the City, in order to not unnecessarily add cost to the Grantee’s other customers in Oklahoma.

- (D) “Fair Market Value” shall mean the fair market sales value of the Purchase Option Assets that would be obtained in an arm’s length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller, in each case under no compulsion to buy or sell, as determined in accordance with the Appraisal Procedure.
- (E) “Appraisal Procedure” shall mean the following procedure for determining the Fair Market Value of the Purchase Option Assets and the Additional Separation Costs (collectively the “Values”).

After Grantee’s receipt of a Purchase Option Notice, Grantor and Grantee shall consult for purposes of determining the Values by mutual agreement.

In the absence of such agreement on or before the 60th day after the Grantee’s receipt of the Purchase Option Notice, then the Values shall be determined by a panel of three independent appraisers, one of whom shall be selected by each of the Grantor and Grantee on or before the 20th day following the expiration of such 60-day period, such selection to be made by a writing delivered by the selecting party to the other. If one party appoints an appraiser pursuant to the immediately preceding sentence, and if the other party fails to appoint a second appraiser within the applicable time limit, the appraisal shall be made by such appraiser. Except as provided in the preceding sentence, on or before the 10th day after appointment of the second appraiser, a third appraiser shall be selected by agreement of the first two appraisers, or if such two appraisers are unable to agree upon a third appraiser by such date, such appointment shall be made by the American Arbitration Association (or its successors).

Each appraiser appointed pursuant to the foregoing procedure shall (i) be experienced in rendering appraisals of gas distribution systems, (ii) be of recognized ability, and (iii) have no real or apparent conflict of interest with Grantor or Grantee (for example, and not by way of limitation, no appraiser shall be a resident or employee of the City nor an officer, employee, stockholder, or director of Grantee).

If they so desire, the appraisers may jointly retain the services of one or more third-party consultants (the “Third-Party Appraiser Consultants”) for the purposes of performing any engineering and technical work the appraisers desire in order to carry out their duties hereunder, including without limitation the determination of the components of the Fair Market Value of the Purchase Option Assets and/or the Additional Separation Costs.

The appraisers shall determine the Values and communicate such determination to the parties in writing (each such writing a “Return”) on or before the 180th day after the appointment of the last of such appraisers to be appointed, and such determination shall be final, binding and conclusive upon the parties, subject to the provisions set forth below. If three appraisers shall be appointed, the Values shall be the applicable averages of the three appraisals rendered by the appraisers. In the event, however, that the lowest or the highest of the three appraisals, or both, in regard to any component of the Values (*i.e.* the Fair Market Value of the Purchase Option Assets or the Additional Separation Cost), varies by more than ten percent from the middle appraisal, the appraisal or appraisals so varying shall be disregarded in determining such component(s) of the Values.

Regardless of whether the Purchase is actually closed, (i) Grantor and Grantee shall share equally the fees and expenses of the Appraisal Procedure and (ii) Grantor shall pay the costs and expenses related to the Third-Party Appraiser Consultants, as incurred.

Within thirty (30) days of receiving the last Return to be received, Grantor and Grantee shall each serve written notification on one another regarding whether such party agrees or disagrees with the determination of the Values. Any such written notice of agreement or disagreement shall be served personally or by certified mail, return receipt requested, on the City Manager of the City and on the Senior Vice President, Commercial or other equivalent officer of Grantee, respectively. Failure of a party to serve such written notice of agreement or disagreement within thirty (30) days of receiving such Return shall constitute a waiver of the right of the party not serving the notice in a timely manner to disagree with the determination, and such determination shall thereupon become binding on that party. If both parties agree with the determination, then such determination shall be binding on both parties. If either party disagrees with the determination of the appraiser(s) and serves written notice of such disagreement on the other party within thirty (30) days of receipt of the last Return to be received, as provided above, then the parties shall forthwith proceed to district court by the filing of an appropriate civil action for a declaratory judgment by either party against the other party, with the determination of the Values to be decided by non-jury trial. The district judge making such determination shall use the same criteria for determining the Values as are to be used by the appraiser(s) under the Appraisal Procedure. After the judge renders a verdict and the district court enters judgment on such

verdict, either party shall have such further right to appeal the verdict and judgment to an appellate court as may be provided by Oklahoma law. In any such judicial proceeding, the prevailing party, as determined by the court, shall be entitled to recover from the other party all legal fees and expenses that were incurred in connection with such judicial proceeding.

The decision of the appraisers (or the court, as applicable), and the Purchase, shall be subject to all applicable federal, state and local laws, or other applicable rules, regulations or orders.

(F) After closing of the Purchase,

- i. Grantor shall be responsible for all aspects of licensing and operating the Purchase Option Assets and
- ii. Grantor shall indemnify Grantee and hold Grantee harmless of and from all costs, expenses and liabilities relating to the ownership or operation of the Purchase Option Assets that arise or are incurred after the closing.

C. The closing of the Purchase shall occur on a date agreeable to the City and Grantee but in any event no later than one hundred twenty (120) days after the receipt of the last Return and, if any judicial proceeding is timely instituted under subsection B(3)(e) above, the final determination and disposition of all appeals in regard to any such judicial proceeding (such date the “Closing Deadline”). The closing shall occur at a location agreed to by both the City and Grantee.

D. At the closing of the Purchase,

- (1) Grantor shall pay to Grantee, in cash or immediately available funds, the amounts set forth in subsections B(3)(b) and B(3)(e) above,
- (2) Grantor shall execute and deliver to Grantee such documents and instruments as Grantee shall reasonably require to grant and transfer to Grantee the permits, licenses and/or easements described in subsection B(3)(c) above,
- (3) Grantee shall execute and deliver to Grantor such documents and instruments as Grantor shall reasonably request to transfer the Purchase Option Assets to Grantor, as-is and where is, expressly disclaiming any and all express and implied warranties, and
- (iv) each of Grantor and Grantee shall execute and deliver such other documents and instruments as shall be necessary to carry out the intent of this Section.

- E. If Grantor is unable or unwilling to close by the Closing Deadline, Grantee may, at Grantee's option, terminate the Purchase Option by written notice to Grantor. In any such case, Grantor and Grantee shall pay the fees, costs and expenses of the Appraisal Procedure as set forth in subsection B(3)(e).
- F. Any and all sales (including bulk sales), use, transfer, recording, value added, ad valorem, privilege, documentary, gross receipts, registration, conveyance, excise, license, stamp or similar taxes and fees arising out of, in connection with or attributable to the Purchase (the "Transfer Taxes") shall be paid by the City. City and Grantee shall:
 - (1) cooperate in timely making all filings, returns, reports and forms as may be required in connection with the City's payment of the Transfer Taxes and
 - (2) as appropriate, execute and deliver, or cause to be executed and delivered, all instruments and certificates necessary to enable the other to comply with any filing requirements relating to any Transfer Taxes.
- G. The Purchase Option shall be non-assignable by the City.
- H. Nothing contained in the Section shall be construed as denying the City the right of acquiring at any time, the properties and property rights of Grantee in such manner as may be otherwise provided or permitted by applicable laws of the State of Oklahoma.

SECTION 13. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted 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.

SECTION 14. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due Grantor by others for Transport Gas as set forth in Paragraph (2) of Subsection B of Section 3 and Paragraph (2) of Subsection A of Section 11 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to Grantor and Paragraph (2) of Subsection B of Section 3 and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect.

SECTION 15. ELECTION REQUIRED

This Ordinance shall not become operative until it shall be approved by a majority of the qualified electors voting thereon residing within the municipal corporate limits of the City at an election called for that purpose, and a special election is hereby called for the purpose of submitting to the qualified electors residing in said City, the question of approval or disapproval of this Ordinance, which election shall be held on the 12th day of September, 2023, between the hours prescribed by law. The Mayor of the City is hereby authorized and directed to issue a proper and lawful call and proclamation of such special election to be held on such date as aforesaid for said purpose, and the City Council of the City are hereby directed to give due and lawful notice of such election and submission of said question to the electors of said City as prescribed by law and the ordinances of the City.

SECTION 16. ACCEPTANCE, OPERATIVE AND EFFECTIVE DATE

In the event this Ordinance is approved by a majority vote of said electors voting thereon at said election, the Grantee shall file with the City Clerk, within thirty days after the official canvass of the votes and declaration by the City Council of the results thereof, a written acceptance. This Ordinance shall become *operative* on the date of filing of such acceptance.

SECTION 17. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 18. SEVERABILITY

The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

PASSED and approved by the City Council of the City of Norman, Oklahoma, this ____ day of _____, 2023.

Mayor

ATTEST:

City Clerk

APPROVED:

City Attorney

Exhibit "A"

The City of Norman, Oklahoma
Volumetric Rate Calculation Form
For the Transportation of Natural Gas in Pipelines Located in the City of Norman, Oklahoma

Based on the NYMEX settlement prices for each month of the twelve forward months as occurred on the 15th of each month, published the following business day.

Source: Wall Street Journal
Deadline: Form must be filed each year with the City Clerk by July 31 and notice sent to the Natural Gas Companies.

Month	Last Year Jul 15	Last Year Aug 15	Last Year Sep 15	Last Year Oct 15	Last Year Nov 15	Last Year Dec 15	This Year Jan 15	This Year Feb 15	This Year Mar 15	This Year Apr 15	This Year May 15	This Year Jun 15
Aug Last Year												
Sep Last Year												
Oct Last Year												
Nov Last Year												
Dec Last Year												
Jan Current Year												
Feb Current Year												
Mar Current Year												
Apr Current Year												
May Current Year												
Jun Current Year												
Jul Current Year												
Aug Current Year												
Sep Current Year												
Oct Current Year												
Nov Current Year												
Dec Current Year												
Jan Next Year												
Feb Next Year												
Mar Next Year												
Apr Next Year												
May Next Year												
Jun Next Year												
Avg Settlement Price												

July ____ through June ____
settlement price average

X. Bundled Franchise Fee Rate

= Volumetric Rate/MCF

%

Note: If the 15th of the month falls on a week-end or holiday,
then use the next business day settlement price.