

## ORDINANCE NO. 1041

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONE Gas, Inc., and its successors and assigns, a natural gas franchise, prescribing the terms thereof and relating thereto, providing definitions of terms, prescribing a franchise fee, providing terms and conditions for the use of public rights-of-way, requiring advance notice of work and duty to repair, providing for indemnification and a hold harmless agreement, providing for rules and regulations, prescribing insurance requirements, reserving certain rights, providing for revocation and termination, providing for an acceptance of the terms of the franchise, providing for a reopener, providing for notice of annexations, prescribing relevant governing law, providing for transfer and assignment of the franchise, providing for points of contact and notifications, providing for an agreement to renegotiate, and repealing all ordinances or parts of ordinances inconsistent with or in conflict with the terms hereof.

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

### SECTION 1. DEFINITIONS.

For purposes of this Franchise Ordinance the following words and phrases shall have the meanings given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

“**City**” shall mean the City of Westwood, Kansas, and, where appropriate by the context, each of its departments, divisions and component units, including public trusts or authorities of which the City is a beneficiary.

“**Company**” shall mean Kansas Gas Service, a division of ONE Gas, Inc.

“**Consumer**” shall mean any Entity located within the municipal corporate limits of the City and serviced by the Company through any use of the Public Ways.

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

“**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 any Public Way, for the purpose of Distribution or supplying natural gas for light, heat, power and all other purposes.

**“Effective Date”** shall mean the date the Company files its written acceptance with the City following the final passage and approval of this Franchise Ordinance by the City, as set forth in Section 11 of this Franchise Ordinance.

**“Entity”** shall mean any individual person, governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture, trust, and any form of business enterprise not specifically listed herein.

**“Facility” or “Facilities”** refers to the Company’s Distribution System or Distribution Facilities.

**“Franchise”** shall mean the grant of authority, set forth in Section 2 of this Franchise Ordinance, by the City to the Company for the Distribution of natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities.

**“Franchise Fee”** shall refer to the charges as prescribed in Section 3 of this Franchise Ordinance.

**“Franchise Ordinance”** shall mean this Ordinance granting a natural gas Franchise to the Company.

**“Gross Receipts”** shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of natural gas to Consumers within the City. 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, bad debts, customer project contributions, meter test fees, revenues received by Company from Consumers as Franchise Fee reimbursement, and returned check charges. Additionally, Gross Receipts shall not include credit extended pursuant to the Cold Weather Rule (or substitute rule) of the Kansas Corporation Commission for natural gas sold within the corporate limits of the City, nor Volumetric Rate Fees collected by Company and remitted to City in accordance with Section 3 of this Franchise Ordinance.

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

**“Public Improvements”** means any public facilities, buildings, or capital improvements, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvements, and other Public Projects.

**“Public Project”** means any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

**“Public Way” or “Public Ways”** shall mean the area on, below or above the present and future public streets, avenues, alleys, bridges, boulevards, roads, highways, parks, parking places,

and other public areas, and general utility easements, dedicated to or acquired by the City. The term does not include easements obtained by private entities providing utilities services or private easements in platted subdivisions or tracts.

**“Sales Consumer”** shall mean, without limitation, any Entity that purchases natural gas within the corporate City limits from Company for delivery to such Consumer within the City through the Company’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 day of each month as published in nationally recognized publications such as the CME Group (CME) or S&P Global Platts (Platts) on the following business day (or the next day in which a Settlement Price is published).

**“Transport Gas”** shall mean all natural gas transported by Company pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, but not sold by the Company, through Company’s Distribution Facilities to any Transportation Consumer.

**“Transportation Consumer”** shall mean without limitation, any Entity that transports Transport Gas pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, within the City’s municipal corporate limits through Company’s Distribution Facilities for consumption within the City’s corporate limits.

**“Volumetric Rate”** is the rate applicable to each MCF of Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be based on a twelve month average of Settlement Prices as calculated from July through June. Initially, the Settlement Price shall mean \$0.2345 per MCF for Transport Gas distributed to Transportation Consumers within the City as represented in “Attachment A,” which is incorporated herein and attached hereto. 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 previous twelve-month period. The average Settlement Prices for each of the twelve months shall be summed and divided by twelve and multiplied by five percent (5%) to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Company shall calculate the Volumetric Rates in accordance with the procedures set out herein and then 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 NON-EXCLUSIVE FRANCHISE.**

A. In consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to the Company (said Company operating a Distribution System in the State of Kansas), a non-exclusive Franchise for a period of fifteen (15) years from the Effective Date, to construct, maintain, extend and operate its Distribution Facilities along, across, upon or under any Public Way; for the purpose of selling and distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the thereof; to obtain said natural gas, and/or comparable blends of combustible gasses, from any source available; and to do all things necessary

or proper to carry on said business. Company may not allow an unaffiliated third-party to occupy the Right-of-Way under this Franchise Ordinance.

B. The grant of this Franchise by the City shall not convey title, equitable or legal, in a Public Way and shall give only the right to occupy the Public Way for the purposes and for the period stated in this Franchise Ordinance. This Franchise Ordinance does not:

- (1) Grant the right to use facilities or any other property, natural gas-related or otherwise, owned or controlled by the City or a third party without the consent of such party;
- (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of a Public Way;
- (3) Excuse the Company from obtaining appropriate access or attachment agreements before locating its Facilities on property owned or controlled by the City (other than a Public Way) or a third party; or
- (4) Unless explicitly set forth herein, excuse the Company from obtaining and being responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the Kansas Corporation Commission.

### **SECTION 3. FRANCHISE FEE.**

A. In consideration for the granting of this Franchise, Company agrees to pay pay to the City during the term of this Franchise, a Franchise Fee of:

(i) five percent (5%) of the actual Gross Cash Receipts collected by the Company from the Distribution of natural gas to all Sales Consumers within the corporate limits of the City; and

(ii) 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, all such payments to be made monthly for the preceding monthly period.

B. The Company's obligation for payments of the Franchise Fee shall commence with the first cycle of the monthly billing cycle following the Effective Date of this Franchise Ordinance. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 893, and amendments thereto.

C. In the event a Consumer of Company does not pay a monthly bill from Company in full, Company shall prorate its payments of remissions to the City for sums due on that particular bill so that the amount actually paid by the Consumer to Company on the bill is distributed to Company and to the City for sums due on the bill in proportion to the percentage of the total bill actually paid by the Consumer. In the event Company actually collects any outstanding amounts

due on a past due, unpaid, or partially paid monthly customer bill, the Company shall pay City its proportionate share of sums due to the City on such bill.

D. Upon written request by the City, the Company shall submit to the City a certified statement showing the manner in which the Franchise Fee was calculated. The City shall have the right to examine within the corporate limits of the City and during regular business hours, upon reasonable advance written notice to the Company, all books, papers and records kept by the Company in the ordinary course of business and pertaining to its business carried on by it in or through the City, necessary to verify the correctness of the Franchise Fee paid by Company.

E. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

F. The Franchise Fee required herein shall be in lieu of all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001, K.S.A. 17-1902, and amendments thereto.

#### **SECTION 4. USE OF PUBLIC RIGHT-OF-WAY.**

A. Except as provided herein or as regulated by state or federal law, the use of any Public Way under this Franchise by the Company shall be subject to all laws, statutes, regulations and/or city policies (including, but not limited to those relating to the construction and use of the Public Way or other public property) now or hereafter adopted or promulgated. Unless specifically provided herein, the Company shall be subject to all rules, regulations 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 a Public Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company 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 Franchise shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. The Company shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, the Company shall have the right to commence work without having first provided such information or form(s).

C. The Company's use of any Public Way shall always be subject and subordinate to the City's use of the Public Way for any public purpose. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory, nor in conflict with state or federal law.

D. The City reserves the right to lay or permit to be laid cables (including by way of example any internet or fiber), 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 City, along, across, over, or under any Public Way. In permitting such work to be done, the City shall not be liable to the Company for any damage to the Company's Facilities unless the City or its agents or contractors are negligent in causing said damage.

E. Whenever by reason of establishing a grade or changing in the grade of any street, or the location or manner of construction of any Public Way, the City deems it necessary to alter, change, adapt, or conform any portion of the Company's Facilities located in the Public Way, the City shall provide reasonable notice and such alterations or changes shall be made within a reasonable time by the Company, as requested in writing by the City, without claim for reimbursement or compensation for damages against the City; provided, however, that this provision is not intended to require the Company to alter, change, adapt, or conform any portion of its Facilities 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 the designation of the location as a Public Way.

F. If the City shall require the Company to adapt or conform its Facilities 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 City, to use the Public Way, the Company 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. "Person," "Firm," "Corporation," and "Entity" as used in this paragraph shall not include regular departments of the City, or any trust or authority formed by or for the benefit of the City 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.

G. The Company and the City shall participate in the Kansas One-Call utility location program. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within a Public Way when requested by the City. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents or authorized contractors. The Company shall designate and maintain an agent familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in a Public Way during, and for the design, of Public Improvements.

H. The Company shall be subject to the following fees and costs in connection with its use and occupancy of any Public Way: (i) in the event that the repairs or replacements set forth under Section 5 below, have not been timely completed by Company, the City may charge an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity; (ii) inspection fees to recover all reasonable costs associated with City inspection of the work of the Company in the Public Way when the Facilities are of such a scope and magnitude so as to require the City to incur such inspection costs by an outside party; (iii) the repair and restoration costs associated with repairing and restoring the Public Way because of

damage caused by the Company, its assigns, contractors, and/or subcontractors in the Public Way, and (iv) routine fees assessed by the City for performing work within the Public Way.

## **SECTION 5. NOTICE OF WORK AND DUTY TO REPAIR.**

A. Prior to commencing any activities related to the construction, maintenance, or extension of its Facilities along, across, upon or under the Public Way, the Company shall submit to the City written plans detailing all such activities in the manner required by the City by Ordinance. In the event of an emergency, Company shall have the right to commence work without providing such plans, provided such plans are submitted within five business days of commencement of the work. The Company's Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such Public Ways or unreasonably obstruct the legal use by other utilities.

B. Prior to beginning work, the Company will inspect existing pavement within and/or adjacent to the work area and will report any existing damage or concerns. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within or adjacent to the Public Way that are damaged, displaced, or removed by the Company shall be fully repaired or replaced to their prior condition or to existing municipal standards as are then in existence, and in a manner satisfactory to the duly authorized representative of the City, after completing such activity as is permitted under this Franchise Ordinance and without cost to the City.

## **SECTION 6. INDEMNITY AND HOLD HARMLESS.**

- a. It shall be the responsibility of Company to take reasonable and proper precautions to protect and defend its Distribution Facilities in the Public Way from harm or damage. If Company fails to accurately or timely locate Distribution Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City, its officers, employees and its authorized contractors, or subcontractors shall be responsible to take reasonable precautionary measures, including but not limited to, calling for utility locations and observing marker posts when working near Company's Distribution Facilities.
- b. Company 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 Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public Right of Way.

- c. The indemnity provided by this section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company 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 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 Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- d. Company or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the public Right-of-Way.

## **SECTION 7. RULES AND REGULATIONS.**

The Company 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 Kansas, with the orders, rules, or regulations of the Kansas Corporation Commission or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the City insofar as they are consistent with the jurisdiction of the Kansas Corporation Commission or such other regulatory authority.

## **SECTION 8. INSURANCE REQUIREMENTS.**

A. During the term of this Ordinance, the Company shall maintain insurance coverage at its sole expense with financially reputable insurers. The Company shall provide not less than the following insurance:

- (1) Workers' compensation as provided for under any worker's 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 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 the Company's operations under this Franchise Ordinance, provided that such additional insured coverage shall be on a primary and non-contributory basis with respect to the City's own coverage and, notwithstanding the general limits described above and elsewhere, provide limits to the City of no more (and no less) than Five Hundred Thousand Dollars (\$500,000) per occurrence.



B. As an alternative to the above insurance requirements, if self-insurance is allowed by state law for one or more of the required coverages, Company may present certificate or permit of self-insurance issue by state to satisfy requirement(s).

C. The Company shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, 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.

D. The Company shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$10,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of the 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 multiple times during the course of a year, the Grantee may choose to meet the bond requirements by providing a bond of \$100,000 annually.

## **SECTION 9. REVOCATION AND TERMINATION.**

In case of failure on the part of the Company to comply with any of the provisions of this Franchise Ordinance, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, the Company may be subject to forfeiture of all rights, privileges, and Franchise granted herein, and all such rights, privileges, and franchise hereunder be deemed ceased, terminated, 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:

1) Before the City proceeds to revoke and terminate this Ordinance, it shall first serve a written notice upon Company, setting forth in detail the neglect or failure complained of, and the Company shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance.

2) If at the end of such sixty (60) day period the City determines that the neglect or failure complained of has not been cured, the City shall take action to revoke and terminate this Franchise Ordinance by an affirmative vote of the governing body present at a public meeting and voting, setting out the grounds upon which this Franchise Ordinance is to be revoked and terminated; provided, to afford the Company due process, the Company shall first be provided reasonable notice of the date, time, and location of the governing body's consideration and shall have the right to address the governing body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the governing body believes the Company has in good faith timely commenced its cure and is diligently pursuing the completion of the same, the Company may, in the City's sole discretion, be given a reasonable additional period of time to complete its cure.

Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the governing body to revoke and terminate this Franchise Ordinance, the Company shall have thirty (30) days to appeal such decision to the District Court where the City is located or in the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless the Company has instituted such an appeal. If the Company does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of the Company to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by the Company 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 the Company is due to any cause or delay beyond the control of the Company or to bona fide legal proceedings.

#### **SECTION 10. RESERVATION OF RIGHTS.**

A. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, applicable Federal laws or regulations as the same may be amended, its home rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

B. In adopting and passing this Ordinance, neither the City's nor the Company's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By the City's adopting and passing this Franchise Ordinance and the Company's acceptance hereof as provided in Section 11, neither the City nor the Company waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or the Company may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

#### **SECTION 11. FAILURE TO ENFORCE**

The failure of the City to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract Franchise 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 unless said waiver or relinquishment is in writing and signed by both the City and the Grantee subject to the provisions and laws of the state of Kansas.

#### **SECTION 12. ACCEPTANCE OF TERMS.**

A. This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Company, and publication in the official City newspaper. The Company shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its written acceptance 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 the Company and such contract shall be deemed effective on the date Company files its acceptance with the City.

B. This Franchise Ordinance, when accepted as provided above, (i) shall constitute the entire agreement between the City and the Company relating to this Franchise, and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written, (ii) shall be binding upon the parties, including their successors and assigns, and (iii) shall not be amended or further obligations imposed without mutual consent of the parties hereto.

### **SECTION 13. REOPENER PROVISION.**

A. Upon written request of either the City or the Company, this Franchise may be reviewed once after five (5) years from the effective date of this Franchise Ordinance, and once every (5) five years thereafter, to review the Franchise Fee set forth in Section 3 above. Said request must be served upon the other party at least 120 days prior to the end of each period set forth above, and shall state specifically the amendment(s) to the Franchise Fee desired. The City and the Company shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment of the Franchise.

B. Upon written request of the Company, the Franchise shall be reopened and renegotiated at any time upon a change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of the Company, including, but not limited to, the scope of the grant to the Company or the compensation to be paid to the City.

C. The Franchise Fee percentage rate set forth in Section 3 shall in no event exceed the percentage rate hereafter approved to calculate any fee paid to the City by any Entity for use of the Public Ways, if such fee is based in any way on the amount of revenues or gross receipts from the sale, transportation and/or distribution of natural gas or electric energy (excluding any municipally-owned electric utility) by such other Entity to customers within the City. If at any time after the Effective Date of this Franchise Ordinance, the fee or rate required to be paid by another Entity selling, transporting, and/or distributing natural gas or electric energy (excluding any municipally-owned electric utility) is less than the Franchise Fee percentage rate set forth in Section 3, then this Franchise shall become automatically subject to reopen upon notice by the Company for purposes of negotiation of a new lower Franchise Fee percentage rate.

### **SECTION 14. NOTICE OF ANNEXATION.**

The City shall promptly notify the Company in writing (to include a map) of areas newly annexed into or deannexed from the corporate limits of the City, and the Company shall update its records for the purpose of payment of Franchise Fees as soon as reasonably practicable after receiving such notice. Notwithstanding anything to the contrary in this Franchise Ordinance, the Franchise Fees provided for in Section 3 shall not become effective within any area annexed by the City until the beginning of the monthly billing cycle which begins no more than sixty (60) days after the date that the City provides the Company 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 15. RELEVANT LAW.**

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed or considered as having no effect as of the first cycle of the monthly billing cycle as referenced in Section 3 of this Franchise Ordinance.

**SECTION 16. TRANSFER AND ASSIGNMENT.**

Company shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever to any third party not affiliated with Company the rights and privileges granted under this Franchise Ordinance except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Company of the Franchise granted herein to any third party not affiliated with Company 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 Franchise Ordinance; and
- (3) Such writing shall be submitted to the City Clerk of the City.

**SECTION 17. POINT OF CONTACT AND NOTICES.**

The Company shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said local contact’s name, address, telephone number, fax number, and e-mail address. Emergency notice by either party to the other may be made by telephone to the City’s designee as listed below. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail (return receipt requested), or via the email addresses provided below. Any notice served by U.S. Mail or Certified Mail (return receipt requested) shall be deemed delivered upon actual receipt unless otherwise provided. Other than emergencies, notices to the parties shall be to the following:

**The City:**

The City of Westwood  
Attn: City Clerk  
4700 Rainbow Blvd.  
Westwood, Kansas 66205  
Phone: 913-362-1550  
Fax: N/A  
Email: info@westwoodks.org

**Company:**

Kansas Gas Service, a Div. of ONE Gas, Inc.  
Attn: Legal Department  
7421 W. 129<sup>th</sup> Street  
Overland Park, KS 66213-2713  
Phone: (913) 319-8619  
Fax: N/A  
Email: kgsfranchises@onegas.com

**Emergency Contact Information:**

Emergency Designee: John Sullivan, Public Works Director      Natural Gas Emergency No: 888-492-4950

Emergency Contact No.: 913-942-2132      Emergency Email: kgsdispatch-overlandpark@onegas.com

(or to replacement addresses that may be later designated in writing).

**SECTION 18. AGREEMENT TO RENEGOTIATE.**

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

**SECTION 19. PAYMENT OF PUBLICATION COSTS.**

In accordance with statute, the Company shall be responsible for payment of all costs and expense of publishing this Contract Franchise, and any amendments thereof.

**SECTION 20. RIGHTS AND DUTIES UPON EXPIRATION.**

Upon expiration of this Contract Franchise, whether by lapse of time, by agreement between the the Company and the City, or by forfeiture thereof, the Company 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 Company, immediately upon and during such removal to restore the streets, avenues, alleys, parks, 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 effected.

PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of April, 2024.

CITY OF WESTWOOD, KANSAS

[seal]

\_\_\_\_\_  
David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

Volumetric Rate Calculation Form													
For the Transportation of Natural Gas in Pipelines Located in the City													
Based on the NYMEX settlement prices for the dates shown, published the following business day													
Source: Wall Street Journal, or DTN, or Gas Daily													
Year	1	2	3	4	5	6	7	8	9	10	11	12	
Month-Day	2022 Jul-15	2022 Aug-15	2022 Sep-15	2022 Oct-17	2022 Nov-15	2022 Dec-15	2023 Jan-17	2023 Feb-15	2023 Mar-15	2023 Apr-17	2023 May-15	2023 Jun-15	
Aug - 2022	7.016												
Sep - 2022	6.926	8.728											
Oct - 2022	6.917	8.712	8.324										
Nov - 2022	6.997	8.788	8.372	5.999									
Dec - 2022	7.096	8.903	8.522	6.479	6.034								
Jan - 2023	7.184	8.963	8.620	6.714	6.395	6.970							
Feb - 2023	6.881	8.497	8.319	6.508	6.143	6.589	3.586						
Mar - 2023	5.961	7.108	7.280	5.913	5.457	5.820	3.253	2.471					
Apr - 2023	4.825	5.394	5.791	5.014	4.765	5.279	3.218	2.555	2.439				
May - 2023	4.697	5.220	5.648	4.948	4.750	5.244	3.283	2.709	2.546	2.275			
Jun - 2023	4.748	5.268	5.698	5.023	4.833	5.339	3.421	2.896	2.759	2.444	2.375		
Jul - 2023	4.800	5.318	5.751	5.103	4.924	5.428	3.551	3.067	2.958	2.652	2.542	2.533	
Aug - 2023		5.329	5.762	5.115	4.933	5.414	3.584	3.114	2.997	2.717	2.624	2.609	
Sep - 2023			5.743	5.084	4.870	5.337	3.528	3.080	2.964	2.688	2.620	2.606	
Oct - 2023				5.158	4.918	5.389	3.597	3.152	3.043	2.778	2.721	2.719	
Nov - 2023					5.229	5.590	3.995	3.568	3.370	3.167	3.157	3.131	
Dec - 2023						5.921	4.423	3.933	3.764	3.619	3.654	3.569	
Jan - 2024							4.670	4.162	3.957	3.862	3.922	3.822	
Feb - 2024								4.033	3.841	3.765	3.843	3.746	
Mar - 2024									3.514	3.447	3.511	3.477	
Apr - 2024										3.155	3.148	3.157	
May - 2024											3.129	3.139	
Jun - 2024												3.238	
Avg Settlement Price	6.171	7.186	6.986	5.588	5.271	5.693	3.676	3.228	3.179	3.047	3.104	3.146	
July 2022 through June 2023 settlement price average							4.690						
X Bundled Franchise Fee Rate							5.0%						
=Volumetric Rate/MCF for 2023							0.2345						

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