

(Summary Published in the Derby Informer on the 2nd day of October, 2019.)

ORDINANCE NO. 2405

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONE Gas, Inc., and its successors and assigns, a natural gas franchise, and permission to utilize the Right-of-Way to operate a natural gas system in the City of Derby, Kansas, prescribing the terms and conditions thereof and relating thereto, 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 DERBY, KANSAS:

SECTION 1. DEFINITIONS.

For purposes of this Franchise Ordinance, the following words and phrases shall have the following meanings. 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 Derby, 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 person or Entity located within the municipal corporate limits of the City and serviced by the Company through any use of the ROW.

"Distribution" or "Distributed" shall mean all sales, distribution, or transportation of natural gas to any Sales or Transportation Consumer for use within the City by the Company or by others through the Distribution Facilities of Company in the ROW.

"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 ROW, 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 said Franchise Ordinance by the City.

"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.

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

“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 within the ROW.

“Franchise Fee” shall refer to the charges as prescribed in Sections 3 and 4 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 Sale or 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 right(s)-of-way (“ROW”) means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or

broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts, or facilities or property owned by the City even if located within the ROW.

“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 Transportation Tariff Arrangement or by other agreement, but not sold by the Company, through Company’s Distribution Facilities to any Consumer or user located within the municipal corporate limits of the City.

“Transportation Consumer” shall mean without limitation, any Entity that transports Transport Gas pursuant to a Transportation Tariff 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 \$0.1613 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 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 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 system for the sale, transmission and distribution of natural gas in the State of Kansas, a non-exclusive franchise for a period of Ten (10) years from the Effective Date to construct, maintain, extend and operate its Distribution Facilities along, across, upon or under any ROW 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 limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business.

B. The grant of this franchise by the City shall not convey title, equitable or legal, in the ROW and shall give only the right to occupy the ROW 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 whether inside or outside of the ROW, specifically including, but not limited to, poles, street lights, buildings, towers, park property, City Hall property, or other facilities;
- (3) Excuse the Company from obtaining appropriate access or attachment agreements or permits before installing, placing, or attaching its Facilities on property owned or controlled by the City or a third party;
- (4) Grant to any licensee or lessee of Grantee or other third party a right of access or authority to the City's right-of-way without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party; or
- (5) Provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Franchise and Grantee shall not knowingly allow the use of its Facilities or natural gas distribution system by any third party in violation of any federal state, or local law.

SECTION 3. FRANCHISE FEE.

A. As further consideration for the granting of this franchise, and in lieu of city occupation, license or permit fees, or revenue taxes, except as expressly provided herein, the Company shall pay to the City during the term of this franchise, a Franchise Fee of (i) six percent (6%) of the actual Gross Cash Receipts collected by the Company from the sale, distribution and transportation of natural gas to all Sale Consumers and Transportation 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 beginning after the passage, adoption and acceptance of this Franchise Ordinance, as provided in Section 11 below. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 1676 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 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 Consumer. In the event Company actually collects any outstanding amounts due on a past due, unpaid or partially paid monthly bill to a customer, then Company shall pay City its proportionate share of sums due to the City on such bill.

D. Upon written request by the City, but no more than once per quarter, 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 (but no more often than once per calendar year), 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 Fees 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 and amendments thereto. From and after the date hereof, the permit fees required of the Company (and/or its contractors performing work on behalf of the Company pursuant to this Franchise Ordinance) by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to the ROW shall be deemed a part of the compensation paid pursuant to this Franchise Ordinance and shall not be separately assessed or collected by the City; in no event, however, shall this provision be interpreted to waive the requirement of an application and notice to the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation and the procedural requirements of any such ordinance. The Franchise Fee is compensation for use of the ROW.

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

A. Except as provided herein or as regulated by state or federal law, the use of the ROW under this franchise by the Company shall be subject to all laws, statutes, regulations and/or city policies including the requirements of Derby Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with the management of the ROW. In addition, except as 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 the ROW; 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 and, further provided other than the items enumerated in this Section 4 herein, that such rules, regulations or policies shall not require the payment of additional permit fees for the use of the ROW.

B. All mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid in accordance with any then current ordinance or regulation of the City dealing with management of the ROW and shall be located and laid so 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 the payment of permit fees. In the event of an emergency, the Company shall have the right to commence work without having first providing such information or form(s) in accordance with the City's then current ROW management ordinance.

C. The Company's use of any ROW shall always be subject and subordinate to the City's use of the ROW for any public purpose, including for the public health, safety, and welfare of City's residents. The City may exercise its home rule powers in its administration and regulation related to the management of the ROW; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory, nor in conflict with state or federal law. Company shall comply with all laws, rules, and lawful city regulations, in effect now or as may be adopted in the future, governing the use of the ROW, specifically including Derby Ordinance No. 2293, as amended or replaced and the City's zoning, land use, and subdivision regulations, as amended.

D. The City reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines, and other equipment or facilities and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over or under the ROW. 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 changes in the grade of any street or in the location or manner of construction of the ROW, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by the City to alter, change, adapt or conform any portion of the Company's Facilities located in the ROW, such alterations or changes shall be made within a reasonable time by the Company, as ordered 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 its location in the ROW.

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 or El Paso Water Company, Inc., (during all times

said company is owned or operated by City), to use the ROW, 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, El Paso Water Company, Inc., or any trust or authority formed by or for the benefit of 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 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 the ROW 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 the ROW 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 the ROW: (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 ROW 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; and (iii) the repair and restoration costs associated with repairing and restoring the ROW because of damage caused by the Company, its assigns, contractors, and/or subcontractors in the ROW, (iv) reimbursement to the City for the publication costs related to the adoption or amendment of this Franchise Ordinance.

SECTION 5. NOTICE OF WORK & 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 ROW, the Company shall comply with the provisions of the City's then current ROW management ordinance with regard to notice and application requirements. Company shall coordinate the installation, construction, maintenance, and operation of its Facilities in a manner which minimizes adverse impact on existing or contemplated Public Improvements as reasonably determined by the City. The Company's Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety upon or within the ROW or adjacent streets, sidewalks, or other facilities and Company's Facilities will not be constructed and maintained in a manner that unreasonably obstructs 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 to City. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the ROW 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 representatives 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 adequate measures to protect and defend its facilities in the ROW from harm or damage. If Company fails to accurately or timely locate facilities as established in the Kansas Underground Utility Damage Prevention Act when requested, it has no claim for costs or damages against the City or the City's agents or authorized contractors unless such party is responsible for the harm or damage by their gross negligence or intentional conduct.

B. The Company, 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 indemnify, defend, and hold harmless the City, its agents, representatives, officers, officials, employees and contractors, from and against all liability, claims, demands, losses, damages, fines, charges, penalties, administrative proceedings and orders, judgements, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent said damages, costs or expenses result from activities taken by the Company, its successors and assigns, or its (or their) agents or servants.

C. The city will be liable, if at all, only for the cost of repair to damaged portions of Company's facilities and or injury to persons suffered arising from the gross negligence or willful misconduct of the City or its employees provided that the City shall not hold harmless, indemnify, or be liable beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*). The city, its agents, officers, employees, or contractors shall not be liable for any damage from any cause whatsoever to facilities, specifically including and without limitation, damage, if any, resulting from the city's maintenance operations adjacent to the facilities or from vandalism or unauthorized use of the facilities, except to the extent such damage is caused by the negligence or willful misconduct of city, its officers, or employees. The city will in no event be liable for indirect or consequential damages. The City specifically reserves and does not intend to waive any and all defenses, limitations of liability or damages, and/or immunities available to it under the Kansas Tort Claims Act or other state or federal law.

D. The Company or the City shall promptly advise the other in writing of any known claim or demand against the Company or the City related to or arising out of the Company's activities in the ROW.

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 including Ordinance No. 2293 of the City, or any then current ordinance or regulation of the City dealing with the management of the ROW insofar as they are consistent with the jurisdiction of the Kansas Corporation Commission or such other regulatory authority.

SECTION 8. INSURANCE REQUIREMENTS.

During the term of this Franchise Ordinance, the Company shall obtain and maintain insurance coverage at its sole expense with financially reputable insurers that are acceptable to the City and authorized to do business within the State of Kansas. 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 basis and not a claims made basis, with a limit of not less than Two Million Dollars 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.

(3) Auto Liability Insurance with limits of insurance not less than \$1,000,000 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired and non-owned autos used in connections with the operations and activities authorized pursuant to this Franchise Ordinance.

As an alternative to the above insurance requirements, the Company may demonstrate to the satisfaction of the City that it is self-insured and as such Company has the ability to provide coverage in an amount not less than One Million Dollars per occurrence and Two Million Dollars 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 the Company, or alleged to so have been caused or occurred.

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 shall forfeit all rights,

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 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 days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If at the end of such sixty-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-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 days to appeal such decision to the District Court of Sedgwick County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty-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.

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.

In adopting and passing this Franchise 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. ACCEPTANCE OF TERMS.

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 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.

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 12. REOPENER PROVISION.

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 Company, including, but not limited to, the scope of the grant to the Company or the compensation to be paid to the City.

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 ROW, 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 natural gas or electric energy (excluding any municipally-owned electric utility) distribution company is less than the percentage rate set forth in Section 3, then the percentage rate set forth in Section 3 shall be automatically reduced to equal such lesser percentage rate on the date such lesser percentage rate becomes effective and without any further action by the City.

SECTION 13. 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 fees provided for in Section 3 above 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 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 14. RELEVANT LAW.

The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. Any and all prior franchise ordinances between the City and the Company 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 ordinance.

SECTION 15. 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.

Company's obligations under this Franchise Ordinance with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of any transfer or assignment.

SECTION 16. POINT OF CONTACT AND NOTICES.

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 Derby, Kansas
Attn: Hillary Lawrence
City Clerk
611 N. Mulberry Rd., St. 300

Company:

Kansas Gas Service, a Div. of ONE Gas, Inc.
Attn: Legal Department
7421 W. 129th Street
Overland Park, KS 66213-2713

Derby, KS 67037
Phone: (316) 788-3132
Fax: (316) 788-6067
Email: Hillarylawrence@derbyweb.com

Phone: (913) 319-8618
Fax: N/A
Email: kgsfranchises@onegas.com

Emergency Contact Information:

Emergency Designee:	Emergency Designee:
Emergency Contact No.:	Emergency Contact No.:
Emergency Email:	Emergency Email:

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


SECTION 17. 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.

PASSED, ADOPTED AND APPROVED this 24th day of September, 2019.



CITY OF DERBY, KANSAS



Randy White, Mayor

ATTEST:



Hillary Lawrence, City Clerk