

ORDINANCE 682

AN ORDINANCE, granting to Kansas Gas Service Company, a Division of OneOK, Inc., its successors and assigns, a natural gas franchise, prescribing the terms 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 WASHINGTON, KANSAS:

SECTION 1. That in consideration of the benefits to be derived by the City of Washington, Kansas, (“City”), and its inhabitants, there is hereby granted to Kansas Gas Service, a Division of ONEOK, Inc. (“Company”), said Company operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority for a period of twenty (20) years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parking areas, and public places of said City, for the placing and maintaining of equipment and property necessary to carry on the business 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.

SECTION 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or permit fees, or revenue taxes, the Company shall pay to the City during the term of this franchise five percent (5%) of the gross cash receipts from the sale of natural gas for consumption in the City for all purposes within the corporate limits of the City, such payments to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the Company, which are not related to the “sale of natural gas”. These include, but are not limited to connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, and returned check charges as such terms are used in tariffs or in the natural gas industry.

SECTION 3. The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales, and excise taxes or charges made for privileges’ which are not connected with the natural gas business, will be imposed on the Company and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Company by any ordinance presently in effect or hereafter adopted for a permit to excavate in any unpaved street, alley, or other public place shall be deemed a part of the compensation paid in Section 2 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 notice to the City and the procedural requirements of such ordinance.

SECTION 4. The use of Right of Way under this franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Company

shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the 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, policy, resolution, or ordinance proposed, adopted or promulgated by the City and, further provided, other than the items enumerated in Section 3 herein, that such laws, rules, regulations, policies, resolutions, or ordinances shall not require the payment of additional fees or additional costs for the use of the Right of Way. In any event, the Company is granted an offset for such fees and costs against the franchise fees required to be paid hereunder.

SECTION 5. All mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed. Company shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parks, 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, Company shall have the right to commence work without having first providing such form(s).

SECTION 6. Company shall, in doing the work in connection with its said gas mains, pipes, and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare. It shall, without expense to the City, and in a manner satisfactory to the duly authorized representatives of the City, replace such paving or surface in substantially as good condition as before said work was commenced.

SECTION 7. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

SECTION 8. 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 hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of said Company, its successors and assigns, or its or their agents or servants.

SECTION 9. Within twenty (20) days after the passage and approval of this Ordinance, Company shall file the same with the Kansas Corporation Commission for the Commission's approval.

SECTION 10. After the approval of this Ordinance by the Kansas Corporation Commission, Company shall file with the City Clerk of the City its written acceptance of this

Ordinance. Said Ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, on the fifth day of July, 2003, such date being at least sixty (60) days after the final passage and approval by the city. During said sixty day period, publication of this Ordinance shall be as required by law.

SECTION 11. This Ordinance, when accepted as above provided, shall constitute the entire agreement between the City and the Company relating to this franchise and the same shall supercede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written, shall be binding upon the parties, including their successors and assigns, and shall not be amended or further obligations imposed without mutual consent of the parties hereto.

SECTION 12. I. Upon written request of either the City or the Company, this franchise may be reviewed after five (5) years from the effective date of this ordinance, and every five (5) years thereafter. Said request must be served upon the other party at least one hundred twenty (120) days prior to the end of every five years of the term of this Ordinance, and shall state specifically the amendments desired. The City and the Company shall negotiate in good faith in an effort to agree upon mutually satisfactory amendments.

Failure of the City and Company to successfully renegotiate the materially affected provisions of this franchise under this section shall give rise to dispute resolution as follows: When the parties determine that they are at an impasse, the City and the Company shall each select a representative who shall jointly select a third representative. The three representatives shall hear the positions of the City and the Company and shall determine the matters in disagreement by majority vote. Such decision shall be presented to City and the Company as the renegotiated language. Rejection of the dispute resolution by either the City or the Company shall give rise to the remedies provided by statute, or, at the option of the parties, the franchise shall remain in effect according to its then existing terms.

Amendments under this section, if any, shall be made by ordinance as prescribed by statute. Except as provided within this section the franchise shall remain in effect according to its terms pending completion of any review or renegotiation provided by this subsection.

II. Upon written request of either the City or the Company, the franchise shall be reopened or renegotiated at any time upon any of the following events:

- (a) Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or Company, including, but not limited to, the scope of the grant to the Company or the compensation to be received by the City.
- (b) Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or Company, including, but not limited to, the scope of the grant to the Company or the compensation to be received by the City.
- (c) Any other material and unintended change or shift in the economic benefit the City or the Company relied upon and anticipated upon entering into this franchise.

III. The compensation provision of this franchise shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines, and use the public rights of way or public property of the

City without paying a franchise fee or other payment substantially equivalent to the franchise fee established herein, which results in a material and unfair disadvantage to the Company. The use of right of provision of this franchise shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines which use the public rights of way or public property of the City, and do not have requirements on the use of the public ways substantially equivalent to the requirements of this franchise, which results in a material and unfair disadvantage to the Company. Upon any such event, the City shall have up to ninety (90) days after written request of the Company to restore competitive neutrality. Following notice to the City, Company may suspend collection and payment of the franchise fee to the City for the affected customers until the City resolves the competitive disadvantage. After the last above referred ninety (90) day period expires without resolution of the competitive disadvantage, the Company shall have no liability to the City for any uncollected franchise fees suspended as provided in this subsection.

SECTION 13. The City may by separate ordinance provide for the assessment and collection of franchise fees on all natural gas transported (transport gas) by the Company or by others, but not sold by the Company, to any consumer or user within the City through the facilities of the Company located in the public right of way. Said separate ordinance may also provide for the assessment and collection of franchise fees based upon the compensation paid by a consumer to the Company for the transportation of natural gas not sold by the Company using Company facilities located in public rights of way within the corporate limits of the City. In this event the Company may be granted the authority to collect on behalf of the City the total compensation to be made to the City by other parties using the Company's facilities for distribution of transport gas. The Company shall not be responsible for the nonpayment of such franchise fees, but under a satisfactory collection agreement between the City and the Company, agrees to collect such sums for the City and to submit such payments in a reasonable manner to be prescribed in the separate ordinance.

The City shall use the current method used by the Company to calculate the amount of the franchise fee to be charged to transport customers on a volume basis. Said method shall be fully delineated on the separate ordinance.

SECTION 14. The franchise fee is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

SECTION 15. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed or considered as having no effect.

Section 16. Should the Kansas Corporation Commission take any action with respect to this franchise ordinance which precludes Company from recovering from its customers any costs or fees provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Commission's ruling.

PASSED AND APPROVED this fifth day of May, 2003.

SEAL
/s/ Denise M. Powell, city clerk

/s/ Travis L. Kier, Mayor