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ORDINANCE NO. 3038

AN ORDINANCE, GRANTING TO KANSAS GAS SERVICE, 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 PAOLA, KANSAS:

SECTION 1. Definitions.

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

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

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

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

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

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

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

“**Franchise Ordinance**” shall mean this Ordinance No. 3038 granting a natural gas franchise to the Grantee.

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

“Gross Receipts” shall mean any and all compensation and other consideration derived directly or indirectly by the Grantee from any Distribution of natural gas to all consumers within the City. Such term shall not include revenue from certain miscellaneous charges and accounts including but not limited to delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

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

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

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

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

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

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

“Volumetric Rate” shall mean \$.2263 (5%) per MCF for Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be subject to adjustment and recalculation in the future in accordance with the provisions set forth below. The Volumetric Rate Calculation form incorporated herein and attached hereto as Attachment A shall be used for recalculating the Volumetric Rate. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2nd) preceding year and ending in June of the preceding year. For the fifteen (15th) day of each month during said twelve (12) month period, the Settlement Prices for natural gas for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by three percent to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rates shall be calculated in accordance with the procedures set out herein and filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

SECTION 2. Grant of Franchise:

That in consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to Grantee the right, privilege, and authority for the full term of this Franchise Ordinance, the non-exclusive right, privilege and franchise to occupy and use the Right-of-Way of the City, for the placing and maintaining of Distribution Facilities necessary to carry on the business of distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business.

SECTION 3: Term and Re-opener Provisions.

A. The term of this Franchise shall be ten (10) years from the effective date of this Franchise Ordinance.

B. Upon written request of either the City or the Grantee, this Franchise may be reopened and reviewed after five (5) years from the effective date and every five (5) years from the effective date of this Franchise Ordinance and either the City or the Grantee may propose amendments to any provision of this Franchise by giving sixty (60) days written notice to the other of the amendment(s) desired. The City and the Grantee shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s).

C. Upon written request of either the City or the Grantee, the Franchise Ordinance shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, state, or local law, regulation, or order, which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City;
2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City:

D. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and/or easements granted on publicly owned property and pay a franchise fee or other payment which results in a material or economic disadvantage to the Grantee. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance and the use of the Right-of-Way provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and do not have requirements on the use of the Right-of-Way substantially equivalent to the requirements of this Franchise Ordinance, which results in a material or economic disadvantage to the Grantee. Upon

any such event, the City shall have up to ninety (90) days after written request of the Grantee to restore competitive neutrality. Following notice to the City, Grantee 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 Grantee shall have no liability to the City for any uncollected franchise fees suspended as provided in this subsection.

E. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Franchise Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to this Section.

SECTION 4: Compensation to the City.

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

A. A sum equal to five (5%) of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Sales and Transportation Consumers; plus

B. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers.

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

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in January 2012. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No.2793 and amendments thereto. Such payments shall be made on or before the last day of each month and shall be based upon such Gross Receipts charges and collected for the preceding month.

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 Grantee and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Grantee by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to any street, alley, or other public place shall be deemed a part of the compensation paid in this Section 4 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 5. Use of Right-of-Way

A. The Grantee's use of the Right of Way granted by the City shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Grantee shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Grantee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation or policy proposed, adopted, or promulgated by the City and, further provided other than the items enumerated in Section 4 herein, that such rules, regulations or policies shall not require the payment of additional fees or additional costs for the use of the Right of Way. In any event, the Grantee is granted an offset for such fees and costs against the franchise fees required to be paid hereunder.

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

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

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

E. Grantee, its successors and assigns, in the construction, maintenance, and operation of its natural gas system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of said Grantee, its successors and assigns, or its or their agents or servants.

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

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Grantee, and publication in the official city newspaper. Grantee shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and Grantee and said contract shall be deemed effective on the date Grantee files acceptance with the City.

SECTION 7. Notice of Property Annexed by City.

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

SECTION 8. Payment of Costs.

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

SECTION 9. Actions by the Kansas Corporation Commission.

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

SECTION 10. Repeal of Conflicting Ordinances.

Ordinance No.2793 and amendments thereto which heretofore granted a non-exclusive franchise to the Grantee, and which became a contract between the City and the Grantee in accordance with its terms and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby repealed, effective as of the first cycle of the monthly billing cycle which begins in January 2012.

PASSED AND APPROVED this 8th day of November, 2011.

Artie Stuteville, Mayor

ATTEST: [seal]

Daniel G. Droste, City Clerk