

## **APPENDIX B - FRANCHISES**

### **FRANCHISES**

NOTE: The franchise ordinances included herein are for information only. Each of them contains the substance as adopted by the governing body but enacting clauses, repealers and signatures have been omitted. Complete copies of each ordinance as adopted are on file in the office of the city clerk. Date of adoption of each franchise ordinance is shown in parentheses at the end of the text.

### **ORDINANCE NO. 01-10**

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF SOUTHEASTERN KANSAS D/B/A SPRINT A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF GALENA, COUNTY OF CHEROKEE, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

United Telephone Company of Southeastern Kansas d/b/a Sprint, Grantee, a corporation organized under the laws of the State of Missouri, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, polo and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of Galena, Grantor; and to construct, lay, maintain, and repair such cable as Grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business under the following terms and restrictions:

Section 1. This grant shall be effective in accordance with Section 12, below and shall continue for a term of five (5) years from its effective date, and for successive terms of like duration unless written notice is given by either the Grantor or the Grantee to the other 120 days or more prior to the expiration of the initial term or any successive term of its intention to terminate the same at the expiration of the then current term.

Section 2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the City and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

Section 3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public

improvements and, if such be injured, Grantee shall repair any damages caused to the satisfaction of the Mayor of the City and, in default thereof, the City may repair such damage and charge the cost to Grantee.

Section 4. The poles of Grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonably with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the City.

Section 5. Grantee shall remove, raise, or adjust its aerial plant after forty-eight (48) hours' notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the City. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the City for the movement and agree to pay Grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by Grantee.

Section 6. Permission is hereby granted to Grantee to trim trees. upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantees wires and cables. All such trimming will be done under the supervision and direction of any City official to whom such duties have been or may be delegated.

Section 7. In consideration for rights and privileges herein granted, Grantee shall pay to the City, in arrears, four percent (4%) of the annual gross receipts from billings for local exchange service rendered wholly within the corporate limits of the City. Said gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone services in the City, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made on or before the 1st day of March of each year during the term of this ordinance. The City agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

Section 8. Nothing herein shall affect any prior or existing rights of Grantee to maintain a telephone company within the City.

Section 9. The franchise and all rights hereunder may be assigned by the Grantee, as well as all succeeding Grantees, at their option, and the successors and for assigns shall succeed to all the rights, duties, and liabilities of the Grantee hereunder.

Section 10. The recovery of the charges from Grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the City. The obligation of Grantee to pay compensation under this Ordinance is contractual; the City makes no requirements as to the method Grantee uses to recover the payments.

Section 11. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

Section 12. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

Section 13. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting Grantee a franchise, or while the City and Grantee are engaged In good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

Section 14. If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.  
(12-17-01)

### **ORDINANCE NO. 03-08**

AN ORDINANCE AMENDING ORDINANCE NO. 01-10 RELATING TO A FRANCHISE AGREEMENT WITH SPRINT PURSUANT TO K.S.A. 12-2001.

Section 1. As used in this ordinance, the term "gross receipts" shall mean:  
Gross receipts - means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/ busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, re-connection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, non-regulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.  
(10-20-03)

### **ORDINANCE NO. 05-08**

An Ordinance granting THE EMPIRE DISTRICT ELECTRIC COMPANY, a corporation, its successors and assigns, the right to use the streets, alleys and public grounds for the purpose of erecting and maintaining an electric distribution system, with the necessary poles, wires and other apparatus, equipment and appliances therefor, and to string wires

above ground or carry same thereunder; and the right to do all things necessary and proper for the purpose of generating or otherwise procuring electric energy, or any part thereof, and distributing same throughout the City of Galena, Kansas, and of supplying and selling electric energy for light, power, heat and any other purposes to the said City and the inhabitants thereof, and fixing the terms and conditions upon which such rights may be granted and exercised.

SECTION 1. That THE EMPIRE DISTRICT ELECTRIC COMPANY, hereinafter called the COMPANY, its successors and assigns, are hereby authorized and empowered to use the streets, avenues, lanes, alleys and other public grounds and ways in the City of Galena, Kansas, as its limits now exist or may be altered, for the purpose of erecting and maintaining an electric distribution system, with the poles, wires (above ground or thereunder) and other apparatus, equipment and appliances necessary therefor; and for the purpose of conducting, supplying and selling electric energy to the City and the inhabitants thereof for light, power, heat and any other purposes; and for the purpose of erecting and maintaining a plant or plants in said City for the generating of such electric energy, or any part thereof, with the right in said COMPANY also to generate or procure said electric energy, or any part thereof, at other points and carry same into and through said City and there distribute and sell same.

SECTION 2. Said COMPANY shall use every reasonable precaution to avoid damage or injury to person or property, and agrees to indemnify and save harmless the said City from damage, injury, suits, actions, loss or expense arising from any negligent construction, reconstruction, repair, maintenance or operation of its said electrical system.

SECTION 3. The COMPANY agrees that it will furnish continuous and uninterrupted electric service from the beginning of such service to the end of the franchise period, except for interruptions caused by strikes, riots, Governmental interference or regulation, acts of Providence, or accidents beyond the control of the COMPANY.

SECTION 4. All rates established and charges made by the COMPANY for electric energy distributed and sold hereunder shall be subject to the present and future valid and lawful orders of the Corporation Commission of the State of Kansas, or other competent authority having jurisdiction. All terms, provisions and conditions of this ordinance, the distribution and sale of electric energy are subject to and shall be governed by any present and future valid and lawful supervision, review, change, amendment and modification by a competent authority having jurisdiction, and all present and future valid and lawful orders of said authority.

SECTION 5. All the terms and provisions of this Ordinance shall be binding upon the parties hereto, and upon their respective successors and assigns.

SECTION 6. The franchise granted herein shall continue and remain in full force and effect for a period of twenty (20) years from and after the effective date of this Ordinance, providing written acceptance is made in writing by the COMPANY, signed by its proper officers and filed with the City clerk within a period of thirty (30) days from and after said effective date.

SECTION 7. This Ordinance shall take effect and be in force, and the franchise herein granted shall be and become effective on February 7, 2005 and the City Clerk of said City is hereby directed and empowered to cause this Ordinance to be published in full in the official newspaper of said City for one (1) publication after its final adoption and passage, and in accordance with the provisions of K.S.A., Section 12-824.  
(12-20-04)

#### **ORDINANCE NO. 05-09**

AN ORDINANCE authorizing and providing a contract between the City of Galena, Kansas (hereinafter sometimes called the CITY) and The Empire District Electric Company (hereinafter sometimes called the COMPANY), its successors or assigns, for electric service and equipment to light the CITY's streets, alleys and public ways, electric service for light and power for the CITY's parks, other properties and public places, for a term of years, and specifying the prices to be paid for such lighting and power service, and the terms and conditions of such contract, and providing for discounts from rates. and for a payment by the COMPANY, and acceptance by the CITY of such discounts and such payment as full payment by the COMPANY of any Occupation Tax, Franchise Tax, License Tax or any similar tax or charge by the CITY for the establishment, operation and maintenance of the COMPANY's facilities within the CITY; and providing further that said discounts and said payment shall not be taken in lieu of the CITY's light to collect motor vehicle license fees and any ad valorem tax on the COMPANY's real estate and personal property.

ARTICLE 1: That said City of Galena, Kansas is hereby authorized and does contract with The Empire District Electric Company, a corporation, its successors or assigns for electric service and equipment to light the CITY's streets, alleys and public ways; and electric service for light and power for the CITY's parks, other properties and public places.

ARTICLE 2: The CITY and the COMPANY mutually agree that this ordinance will constitute a contract and that all of its terms, conditions and provisions for payment shall be in effect for a period of one (1) year from February 8, 2005, provided that same has been executed as provided in Article 15, and shall be automatically extended for a further period of one (1) year from each successive expiration date unless one party shall notify the other in writing not less than sixty (60) days prior to any such expiration date of its desire to terminate this agreement; and further providing that this contract shall not be effective for a total period exceeding ten (10) years; and further provided that the terms of Article 5 are not limited by the terms of Article 2.

ARTICLE 3: The COMPANY agrees to furnish and the CITY agrees to use and pay for the street lighting service described in SPL Street Lighting Data sheet, designated Exhibit A, attached hereto and made a part hereof, and for any and all additional street lighting service subsequently agreed upon under the terms of this contract or any amendment hereto, according to the rates and conditions set out in the Municipal Street Lighting Service Schedule SPL, attached hereto and made a part hereof.

ARTICLE 4: When, by agreement with the CITY, the COMPANY shall install, own, operate and maintain street lights charged for under Schedule SPL, or as required

to provide special or excessive electric facilities to serve CITY owned street lighting systems served under Schedule SPL, there shall be charge. In addition to the rates hereinbefore set out, a Facilities Usage Charge, payable as herein provided, as mutually agreed upon by the parties.

ARTICLE 5: It is agreed that the Facilities Usage Charge shall be computed at the rate set forth in Municipal Street Lighting Service Schedule SPL as now or in the future approved by competent authority having jurisdiction. Said rate shall be applied to the investment in COMPANY owned street lights and special or excessive electric facilities to serve CITY owned street lights utilized by the CITY under Schedule SPL. The total of such investment by the COMPANY is \$48,042.72 and the total of the Facilities Usage Charge shall be \$8,647.69 until additional street lights are requested by the CITY and Installed by the COMPANY and this contract amended by written agreement Such Facilities Usage Charge shall be due and payable by the CITY of Galena, Kansas to the COMPANY so long as the street lights and/or special electric facilities herein referred to in Article 4 and its references shall be utilized by said CITY, but for a term of not less than ten (10) years from date hereof, and shall be payable as provided in said Schedule SPL.

ARTICLE 6: The COMPANY agrees to change the location of any street lamp in use upon written request of the CITY, provided the CITY shall pay the COMPANY the actual cost thereof.

ARTICLE 7: The COMPANY shall furnish and the CITY shall take and pay for all electric service for municipal use, other than street lighting service, as may be required from time to time by the CITY in its park, buildings, properties and public places, according to the rates and provisions of the filed standard rate schedules of the COMPANY, subject to the provisions of Municipal-General Power and Lighting Service (Rider M), attached hereto and made a part hereof.

ARTICLE 8: The COMPANY agrees to pay to the CITY during the term of this contract and at such times as may be mutually agreed upon a sum equal to five (5) percent of the gross receipts collected by the COMPANY from the sale of all electric energy sold to all of COMPANY's customers within the present or future boundaries of the CITY of Galena, Kansas under rate schedules as now or in the future approved by the State Corporation Commission of Kansas for residential and commercial service to a maximum of twenty-five (25.00) per month of the charges for service to all customers, with schools and churches being exempt.

ARTICLE 9: The discounts provided in the attached Schedule and Rider, and in all applicable rates, rules and regulations of the COMPANY filed with competent authority having jurisdiction as now or hereafter promulgated, shall be allowed provided the CITY utilizes the COMPANY's service for its entire requirements for electric or power service and the COMPANY serves the CITY under the provisions of an electric franchise having an original term of not less than ten (10) years; and the amounts resulting from the above discounts and the payments made by the COMPANY to the CITY shall be accepted by the CITY as full payment of any Occupation Tax, Franchise Tax, License Tax or any similar tax or charge imposed upon the COMPANY by the CITY for the establishment, operation and maintenance of the COMPANY's facilities within the CITY; provided, however, that said discounts and said payment shall not be taken in lieu of the

CITY's right to collect motor vehicle license fees or any ad valorem tax on the COMPANY's real estate and personal property.

ARTICLE 10: The COMPANY agrees to protect the CITY and save it harmless from any and all loss, damage or expense to persons or property which is caused by the negligence of the COMPANY in its use or maintenance of any and all equipment owned by it, and used to supply service under this contract. The CITY agrees to protect the COMPANY and save it harmless from any and all loss, damage or expense to persons or property, which may arise due to the use or maintenance of any street lighting equipment owned by the CITY, unless such loss, damage or expense be the sole and proximate result of the COMPANY's negligence.

ARTICLE. 11: The COMPANY agrees to exercise reasonable care in maintaining the facilities to be maintained by it and in rendering the service to be rendered by it in the performance of this contract, so that the said service and said facilities may be furnished and maintained in a satisfactory manner.

ARTICLE 12: The CITY agrees for the term of this contract to utilize the COMPANY's service for the purpose herein set forth, and that the electric service rendered the City hereunder shall be for its use alone, and shall not be resold, and that it will utilize no electric or power service from a source other than the COMPANY.

ARTICLE 13: The rates and charges to be paid by the CITY herein are subject to change and amendment by application of the COMPANY to the State Corporation Commission of Kansas or other regulatory authority having jurisdiction. All terms, provisions and conditions of this Agreement. The distribution and sale of electric energy provided by the COMPANY hereunder, and the operating rules, regulations and practices of the COMPANY relating to such sale and distribution, are subject to and shall be governed by any valid and lawful present and future supervision, review, change, amendment, approval and modification by a competent regulatory authority having jurisdiction and all present and future valid and lawful orders or said authority. Should said authority make any order binding on the CITY with respect to any payments being made by the COMPANY to the CITY under this agreement which would preclude the COMPANY from recovering from its customers such cost, the parties hereto agree to renegotiate such provisions of this agreement in accordance with said ruling.

ARTICLE 14: This contract supersedes all prior representations of agreements, either verbal or written, concerning matters herein contained, and shall inure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties hereto.  
(2-7-05)

#### **ORDINANCE NO. 05-16**

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.

SECTION 1. That in consideration of the benefits to be derived by the City of Galena, 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 ten (10) 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 (i) three percent (3%) of the gross cash receipts from the sale of natural gas and (ii) one percent (1%) of the gross cash receipts for natural gas transportation services to all consumers 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 or transportation 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 or adjacent to any 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 and policies 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 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 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 Section 3 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 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.

SECTION 10. After the approval of this Ordinance by the City, 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, no later than the first cycle of the monthly billing cycle which begins no later than sixty (60) days after its passage and approval by the City, acceptance by the Company, and publication in the official City newspaper. In its letter of acceptance, Company shall identify the effective date as set forth above and Company shall begin charging its customers those fees set forth in Section 2 above on that date.

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. Said request must be served upon the other party at least one hundred twenty (120) days prior to the end of each period set forth above, 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. 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 and 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 to 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 at any time 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 the subsection.

SECTION 13. The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

SECTION 14. 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 10 of this ordinance.

SECTION 15. 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 ordinance in accordance with the Commission's ruling.

### **ORDINANCE NO. 05-23**

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.

SECTION 1. That in consideration of the benefits to be derived by the City of Galena, 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 often (10) 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 and transportation services to all consumers 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 or transportation 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 or adjacent to any 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 and policies 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 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 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 Section 3 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 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.

SECTION 10. After the approval of this Ordinance by the City, 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, no later than the first cycle of the monthly billing cycle which begins no later than sixty (60) days after its passage and approval by the City, acceptance by the Company, and publication in the official City newspaper. In its letter of acceptance, Company shall identify the effective date as set forth above and Company shall begin charging its customers those fees set forth in Section 2 above on that date.

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. Said request must be served upon the other party at least one hundred twenty (120) days prior to the end of each period set forth above, 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.

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 and 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 to 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 at any time 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 the subsection.

SECTION 13. The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

SECTION 14. 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 10 of this ordinance.

SECTION 15. 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 ordinance in accordance with the Commission's ruling.

(12-5-05)