

GILMORE & BELL, P.C.  
10/10/1997

(PUBLISHED IN THE OSAGE COUNTY CHRONICLE ON \_\_\_\_\_, 1997)

ORDINANCE NO. 1808

AN ORDINANCE AUTHORIZING THE EXECUTION OF AMENDMENT NO. 2 TO THE GAS ACQUISITION PREPAY PROGRAM PARTICIPATION AGREEMENT BETWEEN THE CITY OF BURLINGAME, KANSAS AND THE KANSAS MUNICIPAL GAS AGENCY.

WHEREAS, the governing body of the City of Burlingame, Kansas (the "City"), has previously passed Ordinance No. 1771 and Ordinance No. 1787 (jointly, the "Ordinance"), authorizing the execution of a Gas Acquisition Prepay Program Participation Agreement and an Amendment No. 1 thereto (jointly, the "Agreement") with the Kansas Municipal Gas Agency ("KMGA") and pledging the revenues of the gas utility system of the City to the payment of the obligations of the City under the Agreement; and

WHEREAS, the Agreement provides that all obligations under the Agreement shall expire on November 1, 1997 if the "Effective Date" of the Agreement has not occurred by such date; and

WHEREAS, due to unfavorable natural gas market conditions, the KMGA has been unable to effectuate the Gas Acquisition Prepay Program (the "Program") within the foregoing price restraints and therefore has not established, and may not establish, the "Effective Date" of the Agreement by the aforementioned November 1, 1997 date; and

WHEREAS, it is necessary to modify the Agreement, including extension of the aforementioned November 1, 1997 date and alteration of the definition of "Contract Period" in the Agreement; and

WHEREAS, it is also necessary (1) to modify Exhibit B to the Agreement to provide, under certain conditions described in Section 2 (a) hereof, for a reduction to zero the Program Gas Nomination (as set forth on Exhibit B to the Agreement) for the time period of May 1, 1998 to April 30, 1999 and for additional Program Gas Nominations (as set forth on Exhibit B to the Agreement) for the time periods of May 1, 2007 to April 30, 2008 and May 1, 2008 to April 30, 2009, and (2) to modify Exhibit C to the Agreement to provide, under the certain conditions referenced above, a corresponding alteration of the Program Payments Amounts (as set forth on Exhibit C to the Agreement) for the time periods of May 1, 1998 to April 30, 1999, May 1, 2007 to April 30, 2008 and May 1, 2008 to April 30, 2009; and

WHEREAS, an Amendment No. 2 to the Agreement has been presented which (1) extends to November 1, 1998 the date by which the "Effective Date" can occur; (2) changes the definition of "Contract Period" so that such period ends April 30, 2009; and (3) modifies Exhibit B and Exhibit thereto in the manner described above.

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

SECTION 1. The Mayor and City Clerk are hereby authorized and directed to execute Amendment No. 2 to the Agreement on behalf of the City in substantially in the form presented to the governing body this date, which Amendment No. 2: (a) extends to November 1, 1998 the date by which the "Effective Date" can occur; (b) changes the definition of "Contract Period" so that such period ends April 30, 2009; and (c) modifies Exhibit B and Exhibit C to the Agreement as described below in Section 2(a).

SECTION 2. (a) The final form of Exhibit B to the Agreement shall be modified to:

(i) provide for additional City Program Gas Nominations for the period from May 1, 2007 to April 30, 2008, if KMGA determines, based on purchase price offers received from the Supplier, that the average effective cost of Program Gas under the Agreement would be less if there were Program Gas Nominations for the May 1, 2007 to April 30, 2008 time period; or

(ii) reduce to zero the City's Program Gas Nominations for the period from May 1, 1998 to April 30, 1999, and provide for additional City Program Gas Nominations for the period from May 1, 2007 to April 30, 2008, or for the periods from May 1, 2007 to April 30, 2008 and May 1, 2008 to April 30, 2009, if KMGA determines, based on purchase price offers received from the Supplier, that the average effective cost of Program Gas under the Agreement would be less if there were no Program Gas Nominations for the May 1, 1998 to April 30, 1999 time period and additional Program Gas Nominations for the May 1, 2007 to April 30, 2008 time period or additional Program Gas Nominations for the periods from May 1, 2007 to April 30, 2008 and May 1, 2008 to April 30, 2009.

(b) If the final form of Exhibit B to the Agreement is modified under Section 2 (a) of this Ordinance, Exhibit C shall be modified correspondingly to set forth no Program Payment amounts or the time period from May 1, 1998 to April 30, 1999, or additional Program Payment Amounts or the time periods from May 1, 2007 to April 30, 2008 and May 1, 2008 to April 30, 2009, as applicable.

SECTION 3. This Ordinance shall be in force and take effect from and after its adoption, approval by the Mayor and publication once in the official newspaper of the City.

ADOPTED by the governing body of the City of Burlingame, Kansas, on November 3, 1997, and APPROVED by the Mayor.

/s/ Donald Parker, Mayor

ATTEST: /s/ Cheryl Holloway, City Clerk

(SEAL)