

GILMORE & BELL, P.C.
03/13/1997
"B CITIES"

(PUBLISHED IN THE _____ ON _____, 1997)

ORDINANCE NO. 1787

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AMENDMENT NO.1
TO THE GAS ACQUISITION PREPAY PROGRAM PARTICIPATION
AGREEMENT BETWEEN THE CITY OF BURLINGAME, KANSAS AND THE
KANSAS MUNICIPAL GAS AGENCY AND THE AMENDMENT OF
ORDINANCE NO. 1771 OF THE CITY.**

WHEREAS, the governing body of the City of Burlingame, Kansas (the "City"), has previously passed Ordinance No.1771 (the "Original Ordinance"), authorizing the execution of a Gas Acquisition Prepay Program Participation Agreement (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 120 days after execution of the Agreement if the "Effective Date" of the Agreement has not occurred by such date; and

WHEREAS, the Original Ordinance provides that the average effective cost of gas under the Agreement shall not exceed \$1.959 per MMBtu; 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 within the aforementioned 120 day time period; and

WHEREAS, it is necessary to modify the Agreement and the aforementioned 120 day time period and to amend the Original Ordinance to increase the not to exceed average effective cost of gas under the Agreement to \$1.999 per MMBtu, all to provide an additional opportunity to effectuate the Program; and

WHEREAS, an Amendment No. 1 to the Agreement has been presented which (1) extends to November 1, 1997 the date by which the "Effective Date" can occur; (2) under certain conditions described in *Section 2(a)* hereof, reduces to zero the Program Gas Nomination (as set forth on *Exhibit B* to the Agreement) for the time period of May 1, 1997 to April 30, 1998 and (3) under certain conditions described in *Section 2(b)* hereof, correspondingly modifies the Program Payments Amounts (as set forth on *Exhibit C* to the Agreement) for the time periods of May 1, 1997 to April 30, 1998 and May 1, 1998 to April 30, 1999.

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

SECTION 1. *Section 2* of the Original Ordinance is hereby deleted in its entirety and replaced with the following:

"Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Gas Acquisition Prepay Program Participation Agreement (the "Participation Agreement") on behalf of the City substantially in the form presented to the governing body this date; provided that the average effective cost of Program Gas under the Participation Agreement, including the price of gas and financing costs, but excluding costs of transportation and management fees, if any, shall not exceed \$1.999/MMBtu."

SECTION 2. The Mayor and City Clerk are hereby authorized and directed to execute Amendment No. 1 to the Agreement on behalf of the City substantially in the form presented to the governing body this date.

(a) The final form of *Exhibit B* to the Agreement shall be modified to reduce to zero the City's Program Gas Nominations for the period from May 1, 1997 to April 30, 1998, in any one of the following circumstances:

(i) 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 such Program Gas Nomination for the May 1, 1997 to April 30, 1998 time period were zero.

(ii) KMGA has not entered into a binding commitment for the sale of Bonds on or before April 23, 1997.

(iii) the Program has not become effective prior to May 1, 1997

(b) The final form of *Exhibit C* to the Agreement shall be modified in the following particulars:

(i) if *Exhibit B* is not modified pursuant to *Section 2(a)* hereof, *Exhibit C* shall be changed to reflect actual prices for gas purchased and working capital fund contributions;

(ii) if *Exhibit B* is modified pursuant to *Section 2(a)*, *Exhibit C* shall be modified by reducing all amounts for the period May 1, 1997 to April 30, 1998 to zero and the balance shall be changed to reflect actual prices for gas purchased and working capital fund contributions.

SECTION 3. As amended hereby, the Original Ordinance is in all respects ratified and confirmed.

SECTION 4. 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 March 17, 1997, and APPROVED by the Mayor.

(Seal)

ATTEST:

Donald D. Parker
Mayor

Cheryl D. Holloway
City Clerk