

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Manager's Office

AGENDA DATE: December 10, 2013 (Introduction of Ordinance)
December, 17 2013 (Public Hearing)

CONTACT PERSON NAME/PHONE NUMBER: Carmen Arrieta-Candelaria, Chief Financial Officer 915-212-1063
Matthew Behrens, City Attorney's Office 915-212-1109

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

An Ordinance granting to Oneok, Inc., an Oklahoma Corporation, permission and authority to assign and transfer to Onegas, Inc., an Oklahoma Corporation, its rights and obligations under Ordinance No. 15316, by which Oneok, Inc. assumed the right and obligations granted to Southern Union Company under Ordinance No. 014360 as amended by Ordinance No. 014496 which granted certain non-exclusive powers, licenses, rights-of-way, privileges and franchise to construct, operate and maintain in the City of El Paso, Texas a natural gas distribution system. (All Districts)

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Oneok, Inc. has requested an assignment of its current franchise agreement to Onegas, Inc. Attached is the ordinance that will allow for such transfer. In addition, the City is proposing to changes it franchise fee structure as follows:

Section 8. Consideration. As consideration for this franchise, and as a charge for the use of the streets, alleys, and public ways:

(a) The Grantee will pay to the City on a quarterly basis during the life of this Franchise a Franchise Fee calculated by multiplying the Franchise Rate by the actual gross receipts by Grantee from the sale and transport of gas to residential, commercial, industrial and transport customers within the City of El Paso.

(b) The Franchise Rate will initially be 3.0% effective February 25, 2014, or as soon as possible thereafter. The rate will then change according to the following schedule:

- i.) beginning September 1, 2014 – 3.5%
- ii.) beginning September 1, 2015 – 4.0%
- iii.) beginning September 1, 2016 – 4.5%
- iv.) beginning September 1, 2017 – 5.0%

(c) Gross Receipts shall be defined as Revenues by tariff, Gas Cost Adjustments, occupation taxes, Texas Utility Taxes, Back-up fees, contract fees, and Street Rentals(including 3rd party street rentals), plus any other charges of the grantee related to its gas utility service business appearing on an invoice to the customer, except sales taxes. Gross receipts shall not include revenue from uncollected accounts.

(d) Grantee will make its quarterly payments to the City through electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the "Payment Date"). The Grantee, however, will continue to calculate the Franchise in accordance to the terms of Ordinance 014360 until February 24, 2014. Payment based on the period of January 1, 2014 through February 24, 2014, shall be included with the payment due on May 15, 2014. If any Franchise Fee is not paid on or before the Payment Date, the unpaid balance will bear interest from the date such payments are due until they are paid at a daily rate equal to the prime rate of interest as published by the Wall Street Journal plus one percent per annum. If any payment shall be more than thirty days late the interest will be paid at such prime rate plus three percent per annum. In the event it is determined that Grantee has overpaid its Franchise Fees, the Grantee shall be entitled to credit such overpayment to its next Franchise Fee payment to the City.

Currently, the franchise fee is currently being paid on the sum of a Gas Cost Adjustment Factor and a Base Rate Adjustment Factor. Over the course of the last five years, the franchise fee has averaged about 2.71% of Total Gross Revenues and has ranged from 2.10% to 3.64%.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

City Council has previously approved Ordinances related to OneOk on February 22, 2000 and May 30, 2000; as well as December 23, 2002.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This is a franchise to be granted by the City; the City received franchise fees from the company in accordance with its agreement.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Carmen Arietta Candalaria

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO ONEOK, INC., AN OKLAHOMA CORPORATION, PERMISSION AND AUTHORITY TO ASSIGN AND TRANSFER TO ONE GAS, INC., AN OKLAHOMA CORPORATION, ITS RIGHTS AND OBLIGATIONS UNDER ORDINANCE 15316, BY WHICH ONEOK, INC. ASSUMED THE RIGHT AND OBLIGATIONS GRANTED TO SOUTHERN UNION COMPANY UNDER ORDINANCE NO. 014360, AS AMENDED BY ORDINANCE NO. 014496, WHICH GRANTED CERTAIN NON-EXCLUSIVE POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES, AND FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN IN THE CITY OF EL PASO, TEXAS, A NATURAL GAS DISTRIBUTION SYSTEM.

WHEREAS, ONEOK, Inc., (“ONEOK”), its legal representatives, successors, lessees, and assigns pursuant to Ordinance No. 15316 were assigned and assumed the rights, privilege, and franchise to construct, operate, and maintain a natural gas distribution system in the City of El Paso, Texas, (the “City”) pursuant to the terms and conditions of Ordinance No. 014360 as amended by Ordinance No. 014496, (the “Franchise”) which ordinances were duly passed and adopted by the City Council on February 22, 2000, and May 30, 2000 respectively; and

WHEREAS, pursuant to the terms of Ordinance No. 014360, ONEOK has requested the express consent of the City to transfer and assign the Franchise to ONE Gas, Inc. an Oklahoma Corporation, (“ONE Gas”) and ONE Gas has likewise requested the express consent of the City that it be allowed to accept the assignment and transfer of the Franchise, and

WHEREAS, ONE Gas has agreed to assume and abide by all the obligations assumed by ONEOK in Section IV of Ordinance No. 15316; and

WHEREAS, a public hearing on the request was held on December 17, 2013; and

WHEREAS, ONE Gas has further agreed to the conditions and amendments described in Sections IV and V below.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:

SECTION I. ONEOK has complied with the provisions of the Franchise in requesting the express consent of the City for the transfer and assignment of the Franchise to ONE Gas, and ONE Gas has likewise appeared by its agents and employees before the City Council of the City of El Paso, Texas, (the “City Council”) and requested that ONE Gas be approved as the assignee of the Franchise.

SECTION II. Pursuant to Section III and the conditions and amendments of Sections IV and V of this Ordinance, the City Council, hereby gives its consent and permission to the assignment and transfer by ONEOK to ONE Gas of the Franchise, and to the substitution of ONE Gas for

ORDINANCE NO. _____

ONEOK as the holder of the franchise granted in Ordinance No. 014360, as amended by Ordinance No. 014496 and assigned by Southern Union Co. to ONEOK pursuant to Ordinance No. 15316, all of which are incorporated herein by reference as if recited verbatim.

SECTION III. Subject to the conditions in Section IV of this Ordinance, the City hereby grants its consent to the assignment and transfer of the Franchise to ONE Gas subject to the requirement that ONE Gas sign the acceptance of this ordinance, which shall indicate ONE Gas's agreement to accept and assume to pay, perform, and discharge all of the obligations, duties, and liabilities assumed by ONEOK in and under the terms and conditions of the Franchise and to be in all respects subrogated to the rights and liabilities of ONEOK.

SECTION IV. This consent is given subject to the following conditions:

1. As a condition of and in consideration of the City's consent to this assignment, ONE Gas agrees on behalf of itself and its successors in interest to assume and agree to the conditions in Section IV (1, 2, and 3) of Ordinance No. 15316 approved December 23, 2002 and accepted by ONEOK, Inc.
2. As a condition of and in consideration of the City's consent to this assignment, ONE Gas agrees on behalf of itself and its successors in interest that no costs, whether treated as an expense or capitalized, associated with the decision by ONEOK to separate its businesses and create and spin off the gas distribution business into ONE Gas will be directly or indirectly sought from or charged to ratepayers in the City of El Paso.
3. As a condition of and in consideration of the City's consent to this assignment, ONE Gas agrees to the amendment of the provisions of Section 8 of Ordinance No. 014360, as amended by Ordinance No. 014496, which changes are delineated in Section V.

SECTION V. Section 8, paragraphs (a) through (d) shall be replaced by the following:

Section 8. Consideration. As consideration for this franchise, and as a charge for the use of the streets, alleys, and public ways:

(a) The Grantee will pay to the City on a quarterly basis during the life of this Franchise a Franchise Fee calculated by multiplying the Franchise Rate by the actual gross receipts by Grantee from the sale and transport of gas to residential, commercial, industrial and transport customers within the City of El Paso.

(b) The Franchise Rate will initially be 3.0% effective February 25, 2014, or as soon as possible thereafter. The rate will then change according to the following schedule:

- i.) beginning September 1, 2014 – 3.5%
- ii.) beginning September 1, 2015 – 4.0%
- iii.) beginning September 1, 2016 – 4.5%

iv.) beginning September 1, 2017 – 5.0%

(c) Gross Receipts shall be defined as Revenues by tariff, Gas Cost Adjustments, occupation taxes, Texas Utility Taxes, surcharge tariffs, contract fees, Contributions in Aid of Construction, and Street Rentals(including 3rd party street rentals), plus any other charges of the grantee related to its gas utility service business appearing on an invoice to the customer, except sales taxes. Gross receipts shall not include revenue from uncollected accounts.

(d) Grantee will make its quarterly payments to the City through electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the "Payment Date"). The Grantee, however, will continue to calculate the Franchise in accordance to the terms of Ordinance 014360 until February 24, 2014. Payment based on the period of January 1, 2014, through February 24, 2014, shall be included with the payment due on May 15, 2014. If any Franchise Fee is not paid on or before the Payment Date, the unpaid balance will bear interest from the date such payments are due until they are paid at a daily rate equal to the prime rate of interest as published by the Wall Street Journal plus one percent per annum. If any payment shall be more than thirty days late the interest will be paid at such prime rate plus three percent per annum. In the event it is determined that Grantee has overpaid its Franchise Fees, the Grantee shall be entitled to credit such overpayment to its next Franchise Fee payment to the City.

SECTION VI. The assignment of the Franchise shall be effective upon (1) the transfer of the gas distribution assets of ONEOK to ONE Gas pursuant to the Separation and Distribution Agreement by and among ONEOK and ONE Gas and (2) the date of the filing by ONE Gas of the written acceptance of the terms of this assignment of the Franchise with the Municipal Clerk. (the "Effective Date"). ONEOK shall remain responsible for the duties, liabilities and obligations under the Franchise until the Effective Date.

The Municipal Clerk is hereby authorized and directed to make appropriate endorsements over his or her official hand and seal of the City of El Paso on a form provided at the conclusion of this ordinance.

(SIGNATURES BEGIN ON NEXT PAGE)

PASSED AND APPROVED this 17th day of December 2013.

City of El Paso

Oscar Leeser, Mayor

Attest:

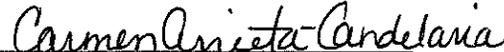
Richarda Duffy Momsen,
Municipal Clerk

Approved as to Form:

Approved as to Content:



Matthew K. Behrens
Assistant City Attorney



Carmen Arrieta-Candelaria,
Chief Financial Officer

ACCEPTANCE OF ASSIGNMENT OF FRANCHISE

STATE OF _____
COUNTY OF _____

Reference is made to Ordinance No. _____ of the City of El Paso Texas, adopted on the 17th day of December 2013 by the Mayor and City Council of the City of El Paso, a municipal corporation, El Paso County, State of Texas, permitting the assignment of the franchise granted to Southern Union Company in Ordinance No. 014360, amended by Ordinance No. 014496, and assigned to ONEOK Inc. in Ordinance No. 15316, a franchise for the service of natural gas in the City and the construction, maintenance, and operation of necessary facilities for a natural gas distribution system. Pursuant to Section VI of such Ordinance, ONE Gas, Inc. as assignee accepts the assignment of the Franchise with the intention that the acceptance be filed with the City of El Paso, Texas.

Executed at _____ this ___ day of _____, 2014

Vice- President, ONE Gas, Inc.

Before me the undersigned authority, appeared _____, Vice-President of ONE Gas, Inc. known to me, who acknowledged to that he/she executed the acceptance of Assignment of Franchise for the purposes stated therein on behalf of ONE Gas, Inc.

Notary Public
State of _____

STATE OF TEXAS
COUNTY OF EL PASO

I, Richarda Duffy Momsen, Municipal Clerk of the City of El Paso, El Paso County, Texas, hereby certify that the above and foregoing Acceptance of Franchise by ONE Gas, Inc., of Ordinance No. _____ was received and duly filed in the records of my office as the Municipal Clerk of the City of El Paso, Texas on the ___ day of _____, 2014.

Executed under my hand and the Seal of the City of El Paso on this ___ day of _____, 2014.

Municipal Clerk, City of El Paso