

# public notice

## ORDINANCE NO. 1576

AN ORDINANCE OF THE CITY OF GOODLAND, KANSAS, GRANTING TO AQUILA INC., ITS SUCCESSORS, LESSEES, AND ASSIGNS, A NON EXCLUSIVE AUTHORITY FOR A PERIOD OF UP TO 20 YEARS TO ERECT, MAINTAIN, AND OPERATE, A GAS DISTRIBUTION SYSTEM AND ANY AND ALL NECESSARY MAINS, PIPES, SERVICES, AND OTHER APPURTANCES THEREUNTO, APPERTAINING IN, UPON, OVER, ACROSS, AND ALONG THE STREETS, ALLEYS, BRIDGES, AND PUBLIC WAYS OF THE CITY OF GOODLAND, KANSAS, FOR THE TRANSMISSION, DISTRIBUTION, AND SALE OF NATURAL AND/OR MIXED GAS FOR LIGHTING, HEATING, INDUSTRIAL, AND ALL OTHER USES IN SAID CITY OF GOODLAND, KANSAS, AND FOR THE PURPOSE OF TRANSMITTING, TRANSPORTING AND CONVERTING SUCH GAS INTO, THROUGH, OR BEYOND THE IMMEDIATE LIMITS OF CITIES TO OTHER CITIES, CITIES AND CUSTOMERS, AND PRESCRIBING SUCH BASIC TERMS AND CONDITIONS UNDER WHICH THE SAID COMPANY IS TO OPERATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GOODLAND, KANSAS AS FOLLOWS:

**SECTION 1 DEFINITIONS.** For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include future tense; words in the plural number include the singular number; provided that the word "shall" is to be construed as mandatory.

a. "City" shall mean the City of Goodland, Kansas a municipal corporation, or its successors, and shall include them appropriate to the use of the term in context, the city in its present incorporated form, or in any later reorganized, consolidated, enlarged, or reincorporated form.

b. "Commission" shall mean the present governing body of the City or any future board constituting the legislative body of the City.

c. "Franchisee" shall mean the person, firm, or corporation to whom or which a franchise, as hereinabove defined, is granted by the Commission under this ordinance, and the lawful successor, transferee, leasee, or assignee of said person, firm, or corporation, and hereafter referred to as Aquila Inc. and/or the Franchisee.

d. "Franchise" shall mean and include the right to conduct and operate a natural gas system within said City subject to the terms and conditions hereinafter stated in the above captioned ordinance.

e. "Street" shall mean any public street, roadway, highway, alley, or other public right of way, now or hereafter subject to the jurisdiction and regulation of the City of Goodland, Kansas, as provided by the laws of the State of Kansas, and any subsequent amendments thereof.

f. "Natural Gas System" shall mean a gas distribution system and any and all necessary mains, pipes, services, and other appurtances thereunto, appertaining, upon, over, across and along the streets, alleys, bridges, and public places of the City, for the non-exclusive transmission, distribution, and sale of natural and/or mixed gas for lighting, heating, industrial, and all other uses and purposes in said City, and for the non exclusive purpose of transmitting, transporting, and conveying such gas into, through, or beyond the immediate limits of cities to other cities, cities and customers, and prescribing the basic terms and conditions under which the said franchise is to operate.

g. "Gross Receipts" the term "gross receipts" as applied to sales of all commodities through and with the natural gas system as now exist, or may expand to, and shall include all natural gas and/or artificial gas for domestic, residential, industrial, or commercial consumption.

h. "Shall" means when used the action is mandatory and obligatory.

i. "Residential Natural Gas Service" shall mean that category of natural gas system consumer and natural gas system service, which resides in single and multi family dwellings. All other gas service would include non-residential service, such as commercial and industrial natural gas service.

**SECTION 2 GRANT OF NON-EXCLUSIVE FRANCHISE.** After a review of the qualification of Aquila Inc, and after determining that to the best of its knowledge Aquila is legally qualified, of good reputation, adequately financed, and technically competent to provide for the operation of a natural gas system in the city, there is hereby granted unto Aquila Inc., a non-exclusive franchise to operate a natural gas system within said City, and in doing so to use the Streets of said City for operation of said natural gas system.

**SECTION 3 TERM OF FRANCHISE.** The franchise granted hereunder shall remain in effect for a period of five (5) years from the effective date of this Ordinance (the "Initial Term"), and for three additional five (5) year terms after the expiration of the Initial Term, unless City, through its Clerk, notifies Franchisee in writing at least 90 days before the expiration of the Initial Term, or succeeding term, that City desires not to renew the franchise and specifies the reasons for non-renewal. The effective date of this Ordinance shall be determined pursuant to state law. This Ordinance shall continue as written, unless terminated as provided in this section. The effective date of this Ordinance and any extensions thereof shall be determined pursuant to state law. Franchisee shall indicate acceptance of this agreement, or lack thereof, by filing accordingly such written indication with the City Clerk within sixty (60) days of passing of this ordinance.

**SECTION 4 STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES.** Any construction of facilities after the effective date of this ordinance shall comply with the following standards:

a. The construction of the properties and facilities of said Franchisee's natural gas system shall conform, at least, to the plumbing and other mechanical codes of the City which have been so adopted, at the time any such properties and facilities shall be constructed or reconstructed, provided further that said construction shall be in conformance with all laws and regulations of the United State of America, and the State of Kansas, and of the City, and any administrative agency thereof, having jurisdiction to regulate the construction of said natural gas system.

b. All equipment necessary for the operation of the natural gas system which is located within the corporate limits of said city shall be so located and constructed as to cause minimum interference with the proper use of streets, easements, and swales, sidewalks, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, easements and swales, sidewalks, alleys or other ways and places.

c. In case of disturbance caused by the Franchisee of any street or other public area, the Franchisee shall, at its reasonable expense, and in a manner reasonably approved by the City, replace and restore such street or other public area in as good condition as theretofore existed.

d. The Franchisee, in above ground level fashion shall not place fixtures or devices necessary for the operation of the natural gas system where the same will interfere with any existing cable television appurtances or devices, electric or telephone fixtures, water hydrants or mains, or sewer mains, and all such fixtures placed in any street and shall normally be placed toward the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be

placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys, and public ways.

Except in an emergency, prior to any underground construction occurring on any City right-of-way a permit shall be applied for requesting permission to install such service. After receipt of such permit request, the City shall have two working days to approve or reject the application. Such application shall set forth the route, depth, location of other utilities in the area proposed for construction, and the location of telephone, cable television, water, sewer, and electric lines and the location of the proposed natural gas system work to be accomplished. Upon approval of the permit by the City, the Franchisee may commence construction.

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of City and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Franchisee, all in accordance with City Code 15-701 of the City of Goodland, Kansas.

Underground construction, which occurs on private property, shall not be required to have a permit under the terms and conditions described above.

**SECTION 5 OPERATION STANDARDS.** The Franchisee's natural gas system shall be constructed, operated, and maintained in accordance with the accepted standards of the governmental authorities having jurisdiction over such system and generally within the standards established by natural gas industry wide practices, lawful applicable city codes, and ordinances as now exist, or may hereafter be adopted to insure that the various natural gas system customers receive safe and reliable service in accordance with applicable law.

**SECTION 6 ADDITIONAL OPERATING STANDARDS.** The Franchisee shall comply with the following additional standards of operations:

a. The Franchisee shall at all times make and keep full and complete plats, maps, or other records showing exact location of its facilities located within the streets and other public ways of the City. Subject to confidentiality, and upon reasonable prior written notice, a copy of such records shall be available to the City Manager or its designated agent for the purpose of inspecting, regulating, administrating, or enforcing the provisions of this franchise.

b. The Franchisee shall at its expense protect, support, temporarily disconnect, relocate in the same street or other public way, or remove from the street or other public way any property of the Franchisee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, or any other type of structures or improvements by the City, but, the Franchisee may in all cases have the right of abandonment of its property, subject to city ordinances and approval.

c. If City orders or requests Franchisee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and is not merely for the convenience of the City or other right-of-way user, Franchisee shall receive payment for the cost of such relocation from the commercial or private project developer as a precondition to relocating its facilities or equipment. City shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Franchisee unreasonable additional expense. City shall also provide a reason-

able alternative location for Franchisee's facilities. City shall give Franchisee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Franchisee of its right to operate and maintain its existing facilities in such public right-of way until it receives the reasonable cost of relocating the same and City provides a reasonable alternative location for such facilities.

d. If a subscriber has an unresolved complaint regarding the terms of this franchise agreement, then the customer shall be entitled to file his/her written complaint with the City Manager of such city, who has primary responsibility for the continuing administration of the franchise and procedures for resolving complaints, and thereafter to meet jointly with the representative of the Franchisee within thirty (30) days to fully discuss and resolve such franchise matters within the City's jurisdiction.

The Franchisee at all times shall employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisance to the public. All structures, lines, equipment, and connections in, under, and through streets and other public ways in the City shall be kept and maintained in accordance with the federal and state safety statutes and regulations.

City will give Franchisee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Franchisee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the City will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Franchisee a sufficient length of time in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Franchisee to make any additions, alterations, or repairs to its facilities.

**SECTION 7 INDEMNIFICATION OF CITY.** It is expressly understood and agreed by and between the City and the Franchisee that the Franchisee shall protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damage of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any persons arising out of the negligence of the Franchisee in the ownership, construction, repair, replacement, maintenance and operation of the gas system provided the City gives prompt notice of any such claims, actions, and suits, without limitations, in writing. The Franchisee shall maintain adequate insurance for such claims. The City may require that any and all investigation of claims by any person against the City arising out of any use or misuses of privileges granted to the Franchisee hereunder shall be made by, or at the expense of the Franchisee or its insurer. The Franchisee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement, or otherwise; provided, however, the interests of the City shall be as fully protected thereby as if the Franchisee has obtained individual policies of insurance, and the City a named insured in any policy. The policy, or certificate of insurance, will be available to the City; the City will receive prior notice of any intent to cancel insurance by the issuing company.

**SECTION 8 EXTENSIONS.** Franchisee will from time to time during the term of this franchise make such enlargements and extensions of its natural gas system as the business of the natural gas system, and the growth of said City require, in accordance with its Rules and Regu-

lations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the Kansas Corporation Commission, or other competent authority having jurisdiction on the premises; provided, however, that no obligation shall extend to, or be binding upon the Franchisee, to construct or extend its mains or furnish natural gas or natural gas service within the City if Franchisee is, for any reason, unable to obtain delivery of natural gas of an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service.

Upon receipt and acceptance of a valid application for service, Franchisee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of City.

**SECTION 9 ASSIGNMENTS.** All provisions of this ordinance shall be binding upon the Franchisee and all successors, lessees and assigns of the Franchisee whether expressly stated herein or not.

**SECTION 10 STATUTORY REGULATIONS.** The franchise herein granted shall be subject to all of the provisions of Article 20 of Chapter 12, K.S.A. and amendments thereof, as may be applicable to this franchise.

**SECTION 11 FRANCHISE PAYMENTS.** In consideration for the rights, privileges, and franchise hereby granted, and as compensation to the City for use of its streets and public ways by the Franchisee, the Franchisee shall, on or before the end of each month of each year in which this franchise is effective, pay to the City in prior monthly amounts a sum equal to 5% of gross receipts on residential natural gas service and 3% of gross receipts for all other natural gas service as called for herein.

Such payments shall be accompanied by the certified notarized statement on such gross receipts on each date such payments are submitted to the City.

Any tax which is considered as sales tax, state tax, franchise tax, or otherwise, may at the election of the Franchisee, be an add on to rates, and may be passed onto the customers of the natural gas system. If passed on, these costs shall be shown separately on billings to customers, and shall be carefully and accurately delineated thereon. Such City shall be exempt from payment of any itemized or delineated franchise tax which may be shown on the natural gas service utilized by the City in performance of its official and legally bound duties and obligations.

**SECTION 12 REVOCATION OF FRANCHISE.** The Governing Body of the City may revoke the franchise including, but not limited to the following grounds;

a. Willful and material breach of any terms or conditions of this franchise;

b. Willful and/or misrepresentation of fact in the application for, or negotiation of this franchise;

c. Insolvency of the Franchisee, or continued inability of the Franchisee to pay its just debts, or application of the Franchisee for adjudication as a bankrupt.

The City shall file with the Franchisee a detailed list of the grounds alleged for revocation of the franchise. This notice shall include specific details of the acts, omissions, breaches, or other grounds asserted as warranting revocation. The notice shall also include the time and date established for a public hearing to be held on the matter before the Governing Body. The Franchisee shall have at least sixty (60) days prior to the hearing and after receipt of the notice during which it may remedy the acts, omission, breaches, or other asserted as giving cause for revocation and which are stated in the notice. If prior to the time of the public hearing, the City determines that the Franchisee has taken action during or is

making significant progress toward eliminating the causes and grounds asserted as giving cause to revoke, the City shall either cancel the hearing or postpone the hearing for a reasonable time to a certain date, whichever is appropriate. Any evidence offered by the City, the Franchisee, Subscriber or any other interested person or entity, whether oral or written, shall be received by the Governing Body if it tends to substantiate or disapprove the causes or grounds for revocation stated in the notice. The Governing Body shall determine based on all admissible evidence submitted to it at the hearing, whether or not to revoke the franchise. Upon a finding that the grounds for revocation as stated in the notice have been substantiated by a preponderance of the evidence, the Governing Body shall revoke the franchise, subject to judicial review sought by the Franchisee. Revocation shall be accomplished by the passage of an ordinance and delivery of a certified copy of it to the Franchisee. The franchise shall main in full force and effect pending the judicial review and a court or courts of competent jurisdiction issue a final order affirming the City decision to revoke the franchise.

**SECTION 13 RIGHTS OF THE FRANCHISEE.** The Franchisee shall have the authority to promulgate such reasonable rules, regulations, terms, and conditions of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to each and all of its customers. The Franchisee shall, upon request of the City, provide to the City a copy of such rules, regulations, terms and conditions and copy of any changes as may be made during the term of the franchise. Such rules, regulations, terms and conditions of business shall include rates charged for various levels of service.

**SECTION 14 RIGHTS RESERVED TO THE CITY.** Without the limitations upon the rights the City might otherwise have, said City does hereby expressly reserve the following rights, power, and authorities:

a. The Franchisee shall at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide;

b. The right of reasonable regulation of the erection, constructions or installation of any facilities by the Franchisee and to reasonably designate where such facilities are to be placed within the public ways and places;

c. The right to grant additional natural gas franchises shall be retained by the City.

**SECTION 15 CITY'S FAILURE TO ENFORCE THE TERMS AND CONDITIONS OF THIS FRANCHISE.** The City's failure to notify, enforce, or remedy any noncompliance by the Franchisee of any of the terms and conditions of this franchise ordinance shall not constitute a waiver of said City's rights hereunder, and said Franchisee shall continue to perform its obligation as herein provided.

**SECTION 16 AMENDMENTS TO FRANCHISE.** The City may amend this franchise, subject to mutual agreement and acceptance by the Franchisee, from time to time to enable the Franchisee to take advantage of any developments in the technology of natural gas systems, thus enabling the Franchisee to operate more effectively, efficiently, or economically.

**SECTION 17 MISCELLANEOUS PROVISIONS.**

a. Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if to be served upon the City, it shall be delivered either by first class United

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