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MAR 28 2007

PUBLIC SERVICE  
COMMISSION

March 27, 2007

Ms. Beth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

RE: Case No. 2007-00047

Dear Ms. O'Donnell:

Pursuant to the Commission Order of February 1, 2007, Columbia Gas of Kentucky notifies the Commission that it was a successful bidder on a gas franchise offered by the City of Winchester, Kentucky. Two copies of the Franchise Agreement are attached. If you have any questions or need additional information, do not hesitate to call me at (859) 288-0242. Thank you.

Sincerely,



Judy Cooper  
Director, Regulatory Policy

Attachments

RECEIVED

MAR 28 2007  
PUBLIC SERVICE  
COMMISSION

CITY OF WINCHESTER, KENTUCKY  
FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, made and entered into on this the 13<sup>th</sup> day of March 2007, by and between the CITY OF WINCHESTER, KENTUCKY, hereinafter "City," and COLUMBIA GAS OF KENTUCKY, INC., hereinafter "Company;"

WITNESSETH: WHEREAS, in its Regular Commission Meeting on November 21, 2006, the City created a gas distribution franchise and provided for bidding procedures in Ordinance No. 18-2006, and

WHEREAS, after due advertisement as required by law, the Company submitted a bid dated February 6, 2007 wherein it accepted the terms of said franchise, which terms include the payment of the consideration for said franchise set forth in Exhibit A, and

WHEREAS, on February 20, 2007 City accepted the terms set forth in Exhibit A, hereinafter "Franchise," and authorized the execution of this Franchise Agreement by the Mayor of the City;

NOW, THEREFORE, in consideration of the premises and mutual rights and obligations contained in the Franchise which is adopted and made a part hereof, the parties agree and bind themselves, their successors and assigns, as follows:

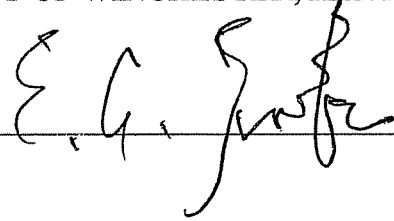
1. Pursuant to action of the City on November 21, 2006, creating a gas distribution franchise and action of the City on February 20, 2007 awarding said franchise to the Company, the City herewith grants to the Company a gas distribution franchise, governed by the provisions of Exhibit A for a period of ten (10) years from the effective date hereof.
2. This Franchise Agreement and the provisions of Exhibit A shall inure to the benefit of and be binding upon the parties hereto, their successor and assigns.
3. This Agreement shall become effective on the 27<sup>th</sup> day of March, 2007.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the City of WINCHESTER, Kentucky, acting by and through its Mayor, Ed Burtner, pursuant to the authority duly granted, and on behalf of Columbia Gas of Kentucky, Inc.,

acting by and through its President, Herbert A. Miller, Jr., pursuant to authority duly granted.

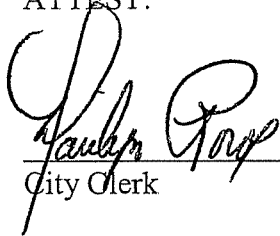
CITY OF WINCHESTER, KENTUCKY

By



Mayor

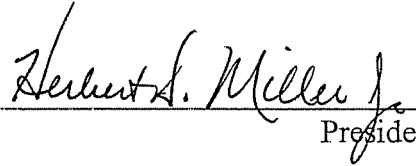
ATTEST:



City Clerk

COLUMBIA GAS OF KENTUCKY, INC.

By




President

CITY OF WINCHESTER, KENTUCKY  
ORDINANCE NO. 2-2007

SUMMARY

AN ORDINANCE AWARDING A TEN (10) YEAR GAS  
DISTRIBUTION FRANCHISE TO COLUMBIA GAS OF  
KENTUCKY FOR THE OPERATION OF A NATURAL AND  
ARTIFICIAL GAS WITHIN THE CONFINES OF THE CITY OF  
WINCHESTER, KENTUCKY BASED UPON AND SUBJECT TO  
THE CONDITIONS OF ORDINANCE NO. 18-2006

I hereby certify that the foregoing is an accurate summary of  
the contents of the above-entitled Ordinance.



William A. Dykeman  
City Attorney

**CITY OF WINCHESTER, KENTUCKY**  
**ORDINANCE NO. 2-2007**

**AN ORDINANCE AWARDING A TEN (10) YEAR GAS DISTRIBUTION  
FRANCHISE TO COLUMBIA GAS OF KENTUCKY FOR THE  
OPERATION OF A NATURAL AND ARTIFICIAL GAS WITHIN THE  
CONFINES OF THE CITY OF WINCHESTER, KENTUCKY BASED UPON  
AND SUBJECT TO THE CONDITIONS OF ORDINANCE NO. 18-2006**

**WHEREAS**, the City of Winchester by virtue of Ordinance No. 18-2006 heretofore passed on November 21, 2006 by the Commission of the City of Winchester has advertised for bids to award a franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) (hereinafter "streets") of the City of Winchester, Kentucky (hereinafter "City"), a system of mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City; and

**WHEREAS**, Columbia Gas of Kentucky has been granted a Certificate of Convenience and Necessity by the Commonwealth of Kentucky Public Service Commission (Case No. 2007-00047) dated February 1, 2007 that authorizes Columbia Gas of Kentucky to bid on a franchise for gas distribution services offered by the City of Winchester; and

**WHEREAS**, Columbia Gas of Kentucky was the sole bidder of the gas distribution franchise and has agreed to the terms as set forth in Ordinance No. 18-2006.

**NOW, THEREFORE, BE IT ORDAINED BY THE WINCHESTER CITY COMMISSION THE FOLLOWING:**

**Section 1.** That Columbia Gas of Kentucky be and is hereby awarded a ten (10) year gas distribution franchise for operation of a gas distribution system within the confines of the City of Winchester based upon and subject to the terms, specifications, restrictions and obligations set forth in Ordinance No. 18-2006.

**Section 2.** That the Mayor of the City of Winchester is hereby authorized and directed to execute any documents pertaining thereof, and City Staff is authorized to perform any and all acts pursuant to the implementation of the gas distribution franchise.


**Section 3.** That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

**Section 4.** That this Ordinance shall be effective on the date of its passage.

Introduced and given first reading at a meeting of the Board of Commissioners of the City of Winchester, Kentucky held on February 6, 2007 and adopted, after second reading, at a meeting of said Board held on February 20, 2007.

Roll call as follows:

Mayor Ed Burtner - *yes*  
Commissioner Rick Beach - *yes*  
Commissioner Kenny Book - *yes*  
Commissioner Shannon Cox - *yes*  
Commissioner JoEllen Reed - *yes*

  
\_\_\_\_\_  
Ed Burtner, Mayor

ATTEST:

  
\_\_\_\_\_  
Marilyn Rowe, City Clerk

Reviewed by William A. Dykeman, City Attorney: January 29, 2007

Columbia Gas<sup>®</sup>  
of Kentucky

A NiSource Company

P.O. Box 14241  
2001 Mercer Road  
Lexington, KY 40512-4241

Ms. Marilyn Rowe, City Clerk  
City of Winchester, Kentucky  
32 Wall Street  
Winchester, KY 40392

February 6, 2007

**HAND-DELIVERED**

To Whom It May Concern:

Please find enclosed the bid of Columbia Gas of Kentucky, Inc. in response to the request for bids for a natural gas franchise as advertised in the January 23, 2007 issue of *The Winchester Sun*. If you have any questions, please contact me at (859) 288-0242 or [jmcoop@nisource.com](mailto:jmcoop@nisource.com). Thank you for your assistance.

Sincerely,



Judy M. Cooper  
Director, Regulatory Policy

Enclosure

BID OF COLUMBIA GAS OF KENTUCKY, INC.

To the Mayor and Board of Commissioners of the City of Winchester, Kentucky:

Upon the terms and conditions hereinafter set forth, Columbia Gas of Kentucky, Inc., ("Columbia") submits the following bid for the gas distribution franchise authorized by the City of Winchester, Kentucky ("City") in Ordinance No. 18-2006 on November 21, 2006 and advertised in *The Winchester Sun* on January 23, 2007.

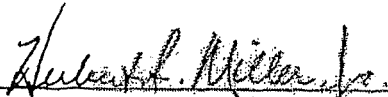
Columbia hereby accepts the terms and conditions of Ordinance No. 18-2006. In consideration of the granting of the franchise for sale and distribution of natural gas within City, Columbia agrees to pay to the City a sum equal to three percent (3%) of the gross annual revenues received from the sale of natural gas within the corporate limits of City.

Columbia represents and warrants that it has obtained a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission in Case No. 2007-00047 dated February 1, 2007, which authorizes it to bid on the subject franchise offered by the City, as required under KRS 278.020 (3).

Columbia further represents and warrants that it presently owns plant, facilities and equipment within the corporate limits of the City sufficient to render the service required by Ordinance 18-2006.

COLUMBIA GAS OF KENTUCKY, INC.

BY:

  
Herbert A. Miller, Jr., President



Energy Distribution Group Legal

**NiSource**  
Corporate Services

200 Civic Center Drive  
Columbus, OH 43215  
(614) 460.6000  
Fax: (614) 460.6986

February 5, 2007

William Dykeman, Esq.  
Dyeman & Rosenthal  
Attorneys at Law  
31 W. Hickman Street  
Winchester, KY 40391

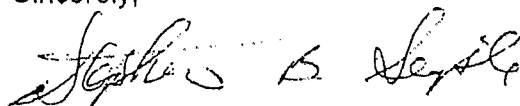
Re: Franchise Agreement with City of Winchester

Dear Mr. Dykeman:

This letter will confirm our discussion that Columbia Gas of Kentucky, Inc. has and will continue to treat the expired franchise agreement with the City of Winchester as if it were unexpired, until such time as a new franchise agreement is fully agreed and approved by the parties and by the Public Service Commission of Kentucky.

If you have any questions or comments, please do not hesitate to call.

Sincerely,



Stephen B. Seiple  
Lead Counsel

Enclosure

cc: Smitty Taylor  
Herb Miller  
Judy Cooper

## Notice of Sale of Franchise

By virtue of an ordinance heretofore passed by the Commission of the City of Winchester, Kentucky, directing the advertisement for bids and selling of a franchise to use certain of the streets, alleys and public grounds of the city of Winchester, Kentucky, for the purpose of owning, operating, equipping and maintaining a system for the transmission and distribution of natural gas. The City Clerk of the said City, will on February 6, 2007 at or about 5:00 p.m., sell at public auction to the highest bidder at the City Hall of said City, a franchise for the purpose set out. Said franchise is more particularly described and fully defined in a proposed ordinance granting and creating the same and said proposed ordinance defines the terms and conditions upon which said sale shall be made, the full text of which is available for inspection in the office of the Winchester City Clerk, Winchester, Kentucky. The ordinance by title and summary is as follows:

### ORDINANCE NO. 18-2006

#### AN ORDINANCE CREATING A GAS DISTRIBUTION FRANCHISE, DEFINING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR BID PROCEDURE

There is hereby created a franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) (hereinafter "streets") of the City of Winchester, Kentucky (hereinafter "City"), a system of mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

Adopted, after second reading, at a meeting of the Winchester Board of Commissioners held on November 21, 2006.

Marilyn, Rowe, City Clerk, City of Winchester

Publication Date: January 23, 2007

**ATTACHMENT**

**ORDINANCE NO. 18-2006**  
**November 21, 2006**

**CITY OF WINCHESTER, KENTUCKY**

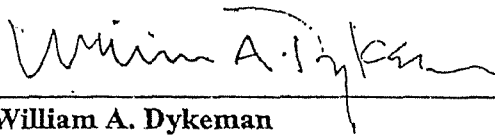
**ORDINANCE NO. 18-2004**

**SUMMARY**

**AN ORDINANCE CREATING A GAS  
DISTRIBUTION FRANCHISE, DEFINING  
THE TERMS AND CONDITIONS THEREOF  
AND PROVIDING FOR BID PROCEDURE**

There is hereby created a franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) (hereinafter "streets") of the City of Winchester, Kentucky (hereinafter "City"), a system of mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

I hereby certify that the foregoing is an accurate summary of the contents of the above-entitled Ordinance.



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**William A. Dykeman**  
City Attorney

**CITY OF WINCHESTER, KENTUCKY**

**ORDINANCE NO. 18-2001**

**AN ORDINANCE CREATING A GAS  
DISTRIBUTION FRANCHISE, DEFINING  
THE TERMS AND CONDITIONS THEREOF  
AND PROVIDING FOR BID PROCEDURE**

**BE IT ORDAINED** by the City of Winchester, Kentucky:

**SECTION I. FRANCHISE CREATED.** There is hereby created a franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) (hereinafter "streets") of the City of Winchester, Kentucky (hereinafter "City"), a system of mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

**SECTION II. TERM OF FRANCHISE.** The franchise herein created shall be for a term of ten (10) years.

**SECTION III. FRANCHISEE.** The person, firm or corporation which shall become the purchaser of said franchise, or any success or assignee of such person, shall for brevity hereinafter be referred to as the "franchisee".

**SECTION IV. RIGHTS AND PRIVILEGES.** The franchisee shall possess the franchise, privilege, right and authority to acquire, maintain, construct and operate in, above, under, across and along the streets, thoroughfares, alleys, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) of the City of Winchester, Kentucky, mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

**SECTION V. CONSTRUCTION AND MAINTENANCE OF PIPELINES OR OTHER INSTALLATIONS.**

A. No pavement, sidewalks, curbs, gutters or other street installations shall be disturbed and no excavations in any of the said streets shall be made, except with the written permission of the City Manager or the Director of Public Works of the City, and such work shall be done under the supervision of the Director of Public Works; all pipelines, apparatus or appurtenances shall be located in such portion of said streets as may be designated by the Director of Public Works.

B. When an emergency arises which requires immediate repair, the franchisee may disturb or excavate a street without first obtaining written permission from the City Manager or the Director of Public Works, provided that the City Manager is notified in writing of said repair within five (5) days. The said notification shall include at least the time, date, location and extent of excavation or other work performed.

C. When the franchisee shall enter upon any street for the purpose of constructing, erecting, operating, maintaining or removing pipelines, apparatus, or appurtenances, it shall prosecute the work at its own cost or expense with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible; it shall leave the streets in the same condition as when it entered for said purpose or purposes. All such repairs shall be maintained by the franchisee for one (1) year in as good condition as the remainder of said street; in the event the franchisee fails, refuses or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the franchisee or any officer or agent representing it, to do said work or make said repairs, and the cost or expense thereof shall be paid by the franchisee to the City within thirty (30) days from the date on which an itemized bill is presented to the franchisee.

D. During the construction, reconstruction, maintenance or removal of any of said pipeline, apparatus, or appurtenances, the franchisee shall have due regard for the rights of the City and others, and shall not interfere with or in any way injure the property of the City or others under, on or above the ground. Said franchisee shall comply with all of the laws of the Commonwealth of Kentucky and ordinances of the City of Winchester as to placing lights, danger signals or warning signs, and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such laws and ordinances. Work by the franchisee hereunder shall be done in a workmanlike manner so as not to interfere unnecessarily with the public use of any of said streets.

**SECTION VI. DUTY OF FRANCHISEE TO RELOCATE PIPELINE, APPARATUS OR APPURTENANCES.**

A. Whenever the City or any of its departments, agencies or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street, or shall construct, reconstruct, repair, maintain or alter any other municipal public works

(including but not limited to storm sewers, sanitary sewers and water pipelines or fire hydrants) therein, it shall be the duty of the franchisee, if so ordered by the City, to change or relocate its pipelines, apparatus or appurtenances at its own expense so as to conform to the new or revised City construction and so as not to interfere with such municipal public works so constructed, reconstructed or altered.

B. The franchisee shall be given access to street plans and specification in the possession of the City.

**SECTION VII. DUTY OF FRANCHISEE WITH RESPECT TO PLANNED CONSTRUCTION OR RECONSTRUCTION.** If any street is about to be constructed, reconstructed, widened, altered, paved or repaved by the City, the franchisee shall on notice by the Director of Public Works make at its own expense any extensions or changes in pipelines, apparatus or appurtenances prior to paving; provided that, if the franchisee deems it unnecessary to make extensions or changes, it may refrain from doing so, but thereafter it shall be precluded for a period of one (1) year from disturbing such paving, except in an emergency. If the franchisee makes any extensions or changes in pipelines, apparatus or appurtenances, including connections to property lines, within such one year period, the same shall be made in the unpaved portion of the street and shall not disturb the pavement unless permission is granted by the Director of Public Works.

**SECTION VIII. QUANTITY AND QUALITY OF GAS TO BE SUPPLIED; TESTING OF METERS.** The quantity, quality and pressure of gas supplied, customer service standards, and the accuracy of meters shall at all times be in accordance with the standards, rules and regulations of the Public Service Commission of the Commonwealth of Kentucky, from time to time in effect. The City reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by the franchisee as it shall deem necessary and advisable.

**SECTION IX. SAFETY STANDARDS TO BE MAINTAINED.** The franchisee shall conform to all standards provided by law which relate to the safe operation of its equipment and apparatus.

**SECTION X. LIABILITY OF FRANCHISEE.** The franchisee shall indemnify and keep and save the City free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, or repair or operation of its gas system. In the event that suit shall be brought against the City, either independently or jointly with the franchisee, on account hereof, said franchisee, upon notice by the City, shall defend the City in any such suit at the cost of the franchisee, and in the event of final judgment being obtained against the City, either independently or jointly with the franchisee, the franchisee shall pay such judgment with all costs and hold the City harmless therefrom.

**SECTION XI. ACCESS TO PROPERTY OF FRANCHISEE.** The City, through such agents or employees as it may designate for the purposes set forth in this Section, shall at all reasonable times have access to all or any of the property owned or used in part or in whole by the franchisee in its operation and maintenance of the gas system under this franchise for the purpose of examining or inspecting said property and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or other papers of the franchisee reasonably necessary to the administration of the franchisee.

**SECTION XII. NOTICE OF APPLICATION TO PUBLIC SERVICE COMMISSION.** The franchisee shall furnish the City with personal notice or written notice of the filing of an application with the Kentucky Public Service Commission for an increase in general rates and charges, which notice shall be given concurrently with such filing. The City shall be given access, on request, to records related to such application.

**SECTION XIII. ASSIGNMENT.** Whenever in this franchise either the City of Winchester, Kentucky or Columbia Gas of Kentucky, Inc., is referred to, it shall be deemed to include the respective successors and assigns, of either, and all rights, privileges and obligations contained in this franchise shall be binding upon, and inure to the benefit of, the respective successors and assigns, of the City and franchisee, whether so expressed or not.

**SECTION XIV. BID PROCEDURE.**

A. It shall be the duty of the Mayor or his designated subordinate as soon as practicable after the passage of this ordinance to offer for sale at public auction said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder at a time and place fixed by the Mayor after he has given due notice thereof by advertisement in at least one (1) issue of The Winchester Sun, a newspaper of general circulation published in Winchester, Kentucky. This advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date of bid opening.

B. Bid and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or his designated subordinate upon the date and at the time fixed by him in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Board of Commissioners, at the time of its next regular meeting, said bids and proposals for its approval. The said Board of Commissioners reserves the right, for and in behalf of the City, to reject any and all bid for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the said Board of Commissioners, it may direct, by resolution or ordinance, said franchise and privilege to be again offered for sale, from time to time, until satisfactory bid therefore shall be received and approved. Each bid shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank in an amount equal to five percent (5%) of the fair estimated cost of the plant required to render service, which check or cash shall be forfeited to the City in case the bid should be accepted and the bidder should fail,



within thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth of the fair estimated cost of the plant to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within nine (9) months, to establish and begin rendering the service in the manner set forth in this ordinance; but such deposit need not be made by a corporation or person already owning within the corporate limits of the City a plant and equipment sufficient to render the service required by this ordinance.

#### SECTION XV. CONSIDERATION.

A. In consideration of the granting of this franchise to distribute gas within the City, the franchisee shall pay the City, subject to the terms of Section XV(B) and XV(C) herein, a sum equal to three percent (3%) of the gross annual revenues received by the franchisee from the sale of gas within the corporate limits of the City. The franchise shall be effective shall be effective fourteen (14) days from and after the execution of the franchise agreement between the City and the franchisee, and calculation of amounts payable shall commence with all bills tendered to customers by the franchisee in the first billing period following tariff approval by the Kentucky Public Service Commission.

C. The franchisee shall add to the customer's bill, as a separate item, an amount equal to the proportionate part of the franchise fee set forth in Section XV(A). Such amount shall be added exclusively to bills of customers receiving gas service within the corporate limits of the City. No later than ten (10) working days after final acceptance of its bid by the City, the franchisee shall file an application or tariff with the Public Service Commission to provide for prompt and satisfactory cost recovery of the amount payable under this Section. The franchisee shall provide the City with copies that it files with the Public Service Commission in order to satisfy the obligations created by this subsection. If the franchisee fails to file its application or tariff within the specified time period, the City may, at its option, terminate the Franchise Agreement upon thirty (30) days written notice to the franchisee. If, after a period of sixty (60) days from the filing of franchisee's application, the Public Service Commission shall have made no final determination concerning the prompt and satisfactory recovery of amounts payable under this Section herein by the franchisee, then the franchisee's obligation to pay the amount specified in this Section shall be suspended, provided the franchisee shall first give the City ten (10) days written notice of its intention to suspend payment pending the decision of said Commission. In the event of suspension of the franchisee's obligation as herein provided, the City shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the franchisee.

D. If it is determined at any time by the Kentucky Public Service Commission (or its successor or court having jurisdiction) that all or any portion of the franchise fee set forth in Section XV(A), shall not be recoverable by the franchisee in the manner set forth in Section XV(B), the franchisee, at its election, shall thereafter be relieved of its obligation to pay such portion of the agreed franchise fee and in such case shall so notify the City in writing within five (5) working days of receipt by the franchisee of such order by the Kentucky Public Service Commission (or its success or a court having

jurisdiction). In such event, the City shall have the option to terminate its franchise agreement with the franchisee within ninety (90) days or receipt of said written notification from the franchisee.

If however, the Kentucky Public Service Commission (or its successor or court having jurisdiction) shall, subsequent to an order that all or any part of said franchise fee shall not be recoverable by the franchisee in the manner set forth in Section XV(B), make a final determination providing for recovery in the manner set forth in Section XV(B), and the City has not cancelled the franchise in the interim, then the franchisee's obligation to make payment of such amounts shall resume from and after the date of notification by the franchisee of such determination; provided, however, that any such notice shall be given in timely fashion.

**SECTION XVI. PAYMENT.** Payment of any amount due under this Ordinance shall be made monthly, within thirty (30) days of the end of the preceding calendar month. In the event of suspension of the franchisee's obligation pursuant to Section XV(C) herein, said suspension shall have no application to any amount due hereunder for the preceding calendar month, and the gross revenue received by the franchisee during any such suspension period shall be excluded from the franchisee's annual gross revenues for the purpose of calculating amounts due under Section XV(A) hereof. If any amount paid pursuant to the provisions of this ordinance is stated by the franchisee at the time of such payment to be based in whole or in part on revenues which are subject to refund by the franchisee, and if any of such revenues thereafter is required to be refunded by the franchisee, the franchisee shall credit same against the payment next coming due hereunder.

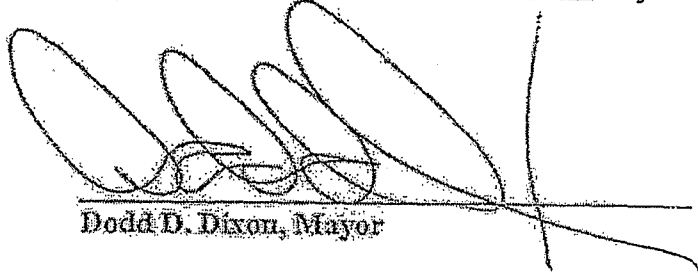
**SECTION XVII. VIOLATION/FORFEITURE.** Any violation by the franchisee, its vendee, lessee or successor, of the provisions of this ordinance, or the failure to perform promptly the provisions hereof, shall be cause for the forfeiture of this franchise and all rights hereunder a the option of the City; failure of the City to declare a forfeiture shall not constitute a waiver of the right so to do.

**SECTION XVIII. REPEALER.** Any ordinance or parts of ordinances in conflict herewith are, to the extent of such conflict, herewith repealed.

**SECTION XIX. SEVERABILITY.** If any portion of this ordinance shall be held to be invalid, the balance hereof shall remain in full force and effect; however, Section XV(B) and Section XV(C) are not severable under this section.

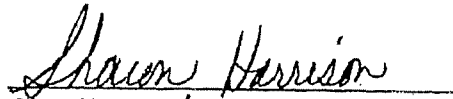
**SECTION XX. EFFECTIVE DATE.** This ordinance shall become effective upon publication as required by law.

Introduced at a meeting of the Board of Commissioners of the City of Winchester, Kentucky, held on the 9<sup>th</sup> day November of 2006, and finally adopted, after second reading, at a meeting of said Board held on the 21<sup>st</sup> day of November, 2006.



Dodd D. Dixon, Mayor

ATTEST:



Shawn Harrison  
City Clerk Acting