

**PROPOSED CITY ORDINANCE**

City of Burkesville  
P.O. Box 177  
Burkesville, KY 42717

City Ordinance

No. 2005- 7

AN ORDINANCE RENEWING THE FRANCHISE AGREEMENT PREVIOUSLY AWARDED TO KEN GAS OF KENTUCKY, INC. UNDER CITY ORDINANCE NO. 1985-10, AND SUBSEQUENTLY ASSIGNED FOR COMPLETION TO BURKESVILLE GAS COMPANY, INC. FOR THE CONTINUED OPERATION OF A NATURAL GAS SYSTEM IN THE CITY OF BURKESVILLE, KENTUCKY FOR THE FURNISHING AND SELLING OF NATURAL GAS BY MEANS OF SAID FACILITIES.

WHEREAS, THE CITY OF BURKESVILLE, KENTUCKY HAD PREVIOUSLY ADOPTED CITY ORDINANCE NO. 1985-10 WHICH AWARDED A FRANCHISE AGREEMENT FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A NATURAL GAS SYSTEM IN THE CITY OF BURKESVILLE, KENTUCKY FOR THE FURNISHING AND SELLING OF NATURAL GAS BY MEANS OF SAID FACILITIES TO KEN-GAS OF KENTUCKY, INC. ADOPTED ON AUGUST 16, 1985 AND BECAME EFFECTIVE AS OF NOVEMBER 19, 1985; AND

THAT WHEREAS, said franchise was subsequently assigned, with the approval of the City of Burkesville, Kentucky, by Ken-Gas of Kentucky, Inc. to Burkesville Gas Company, Inc., said entity having taken over and completed the construction of such facility, and said entity having maintained the facility under such franchise agreement and having provided the sale of natural gas to the residents of the City of Burkesville, Kentucky and Cumberland County pursuant to Ordinance No. 1985-10 and pursuant further to authorization of the Kentucky Public Service Commissioner under Case No. 90-290.

THAT WHEREAS, the terms set forth in Section 10 of City Ordinance 1985-10 was approaching its expiration date, and the franchisee, Burkesville Gas Company, Inc., a Kentucky corporation, desires that the City of Burkesville adopt this ordinance to renew such franchise agreement for an additional period of time; and

THAT WHEREAS, the City of Burkesville, Kentucky wishes to renew said Franchise Agreement and continue with certain guidelines for the operation of a natural gas system for the use and enjoyment of the people of the City of Burkesville, Kentucky by said franchisee;

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BURKESVILLE, KENTUCKY that:

Section 1: The franchise heretofore granted to Ken-Gas of Kentucky, Inc., and which has subsequently been assigned by Ken-Gas of Kentucky, Inc. to Burkesville Gas Company, Inc., with the approval of the City of Burkesville, Kentucky, for the installing, laying, and maintaining gas pipe and other necessary apparatus for the transmission, distribution and sale of natural gas, with all appurtenances necessary for the franchisee to facilitate and equip the system so as accomplish the goal of such franchise which would include providing an easement along, under and across the public ways, roads, streets, alleys and other public places within the City of Burkesville, Kentucky to include all necessary construction of pipes, facilities and equipment for the sale of natural gas by the means of such plant that has heretofore been constructed or maybe modified or constructed in the future so as provide gas to be conveyed through the City of Burkesville and to any portion of Cumberland County that customers desire to receive the natural gas shall be continued.

Section 2: The franchise previously bestowed upon Ken Gas of Kentucky, Inc., and assigned to Burkesville Gas Company, Inc. shall continue in the name of Burkesville Gas Company, Inc., or any successor or assignee thereof throughout the duration of the franchise as renewed by this ordinance.

Section 3: The franchisee, Burkesville Gas Company, Inc., a Kentucky corporation and its legal representatives, successors and assigns are subject to conditions hereinafter contained in this ordinance as said franchisee, and said entity shall be permitted to acquire, purchase, construct, maintain and operate in and through the City of Burkesville, Kentucky a system utilized for the generation, distribution and transmission of natural gas from points either within or without the corporate limits of Burkesville, Kentucky, or to the City of Burkesville, Kentucky and its inhabitants thereof, and from and through the City to persons, corporations or municipalities beyond the city limits of Burkesville, Kentucky, which would include the sale of gas for light, heat, power or other energy purposes; to erect and maintain gas mains, pipes and other apparatus necessary or convenient for the operation of said system, whether in its present condition or any necessary configured condition in the future that would include said system coming in contact with, running across, and along any or all streets, alleys or public places within the present or future corporate limits of Burkesville, Kentucky or in such other places as may be authorized by this ordinance or by any regulation of the Kentucky Public Service Commission, or any regulation adopted and authorized by any administrative agency on behalf of the Commonwealth of Kentucky. In the event that it is necessary for the City Commission at a subsequent date to remove any gas mains, pipes or other apparatus that has heretofore been constructed by the franchisee in furtherance of the exercise of its plant operation under this franchise agreement, the city shall pay the cost of making such relocation necessary. In the event that it becomes necessary for new construction of any line or the laying of pipes, gas mains, or other apparatus necessary under this franchise agreement, Burkesville Gas Company shall prepare a plat showing the necessary construction work to be done and a brief description and the manner in which it is to be

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done and such plans and specifications shall be presented to the City Commission for its approval, and until such time as approval is granted, such construction shall not be undertaken. The approval shall not be unreasonably withheld by the City Commission. Upon completion of such work, the City Commission shall have the right to examine such work, and in the event that a finding is made that the work has not been undertaken in accordance with the plans and or specifications heretofore previously approved by the City Commission, then Burkesville Gas Company, its successors or assigns, shall, at their own expense, make all necessary changes so as to require the work to conform to the plans and specifications that have been approved by the City Council. When the surface of any street is open it must be restored to as good as a condition as it was prior to the opening thereof. Burkesville Gas Company shall be entitled to use the streets within the city limits of Burkesville, Kentucky to continue servicing and maintaining all portions of its gas system that falls within the city limits of Burkesville, Kentucky.

Section 4: Burkesville Gas Company shall indemnify and hold harmless the City of Burkesville for any and all damages, judgments, decrees, costs, or expense which the City of Burkesville, Kentucky may legally suffer or incur or which may be legally obtained against the city for or by reason of the franchise awarded to Burkesville Gas Company, Inc. If any claim has been filed against the city for damages alleged to have been sustained by reason of the furtherance of the franchise agreement by Burkesville Gas Company, Inc., or its successors or assigns, the city shall immediately notify Burkesville Gas Company, Inc., in writing thereof, and the company shall be given the right and privilege to defend or assist in the defending of such suit and the name of the City of Burkesville, Kentucky.

Section 5: At all times during the terms of the renewal of this franchise, Burkesville Gas Company will, at its own expense, maintain in full force and effect a general comprehensive liability insurance policy with an insurance company that has been approved by the mayor of the City of Burkesville. The coverage represented by such policy shall be for the protection of the city, its elected officials, agents, members of board or commissions, and employees and shall insure against liability for the loss or damage of bodily injury, death, or property damage as a result of activities undertaken by Burkesville Gas Company through the award and/or renewal of said franchise. The limits of liability under such policy shall be the minimum of \$250,000.00 for damage to property resulting from any one occurrence and a maximum of \$1,000,000.00 for a personal injury or death from any or all occurrences.

Section 6: Burkesville Gas Company may be entitled under this renewed franchise agreement to furnish natural gas for light, heat, power and any other lawful purpose to any person, persons, company or entity residing along or near the streets within or outside of the City of Burkesville, Kentucky or in Cumberland County, Kentucky and may make such lawful contracts for the use thereof as may be agreed upon between Burkesville Gas Company and such person, persons, company or entity.



Section 7: Burkesville Gas Company shall be permitted to extend its natural gas lines, mains, pipe and equipment and install the necessary additional equipment wherever and whenever it is assured of deriving additional income there from and receive a reasonable return upon its investment so as to be required to install such before doing so.

Section 8: Burkesville Gas Company shall have the right to make and enforce reasonable rules and regulations necessary for the proper conduct of its business and protection of its property, subject to all local, state or federal laws or regulations that would govern such business.

Section 9: Burkesville Gas Company shall have the right to charge whatever reasonable rates the Public Service Commission of the Commonwealth of Kentucky would approve for the natural gas to be supplied to its customers under this renewed franchise agreement.

Section 10: The renewal of this franchise and all rights and privileges granted hereunder shall be in full force and effect for a period of 20 years from and after the expiration of City Ordinance No. 1985-10, or through September 30, 2025, unless extended further by a subsequent resolution of the city ordinance from the City of Burkesville, Kentucky, subject to compliance with provisions of the renewal of this franchise agreement by Burkesville Gas Company, Inc., or its successors or assigns.

Section 11: In the event that Burkesville Gas Company, Inc., fails to comply with the terms of this ordinance that has renewed its franchise agreement the City of Burkesville, through its mayor or other designed representative, shall place said company on written notice of whatever term or conditions are alleged to have caused Burkesville Gas Company, Inc. to be in non compliance, and then Burkesville Gas Company, Inc., its successors or assigns, shall be allowed 60 days from the date of written receipt or notification thereof in which to correct and/or substantially correct such alleged failure or non compliance. In the event that Burkesville Gas Company, Inc., fails to comply with this provision, then a second written notice shall be sent of a City Commission meeting for Burkesville, Kentucky in which to consider what further action should be taken if any, to obtain substantial compliance of such condition or conditions by Burkesville Gas Company, Inc., which may, but will not be limited to, the possibility of termination of the renewed Franchise Agreement, or such other conditions or terms as may be necessary to achieve the compliance with the first written notice.

Section 12: Burkesville Gas Company, Inc. shall extend to the City of Burkesville the right of first refusal for the purchase of its system in the event that Burkesville Gas Company, Inc., at anytime during the renewed franchise agreement, desires to sell same. The city should be placed on notice as to the terms and conditions of such sale, and the price for same. The parties shall then be given 90 days in which to accept the terms, conditions, and price for the sale of the system, or in the alternative, if the parties thereto have not agreed upon the price, or the parties have not agreed on a method for determining a price, then Burkesville Gas Company, Inc., shall be allowed to entertain bids to accept its terms and conditions for the sale of said system to a third party.

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Section 13: Burkesville Gas Company, Inc. shall comply with all local, state and federal laws and regulations as it pertains to the operation of its natural gas system, which would include any existing rules and regulations set forth by the Public Service Commission, the Commonwealth of Kentucky or any other appropriate local, state or federal agency.

Section 14: In the event that the City of Burkesville should hereafter enact a utility tax, user fee or similar charge to be levied upon gas purchasers during the term of this renewed franchise, Burkesville Gas Company shall agree to collect such charge as part of its monthly bills to such consumer, and remit the amount of such tax so collected on the 30th day of the month in which said tax has been received from the customer. It shall be incumbent upon the City of Burkesville to notify Burkesville Gas Company as to the passage of such a tax. This section shall not apply to the franchise fee which shall be discussed hereinbelow.

Section 15: The City of Burkesville shall receive from Burkesville Gas Company, Inc. as consideration for the granting of the renewal of this franchise and the continuing enjoyment thereof an annual franchise fee equal to 1½% of the gross receipts from the sale of gas to the customers within the city limits of Burkesville, Kentucky as are charged to customers within the city limits of Burkesville, Kentucky during a calendar year. Such fees shall be paid on the 30th day in a given month in which same has been collected from the customers of Burkesville Gas Company, Inc., that would be applicable to this provision. When such payment is remitted to the treasurer of the City of Burkesville, it should be accompanied by a statement showing in detail the total gross receipts from the sale of natural gas to customers within the city limits of Burkesville, Kentucky for the particular reporting period. Burkesville Gas Company, Inc. shall at all times keep and maintain a full, true and correct accounting of all gross receipts arising from the sale of natural gas to customers within the city limits of Burkesville, and upon reasonable notice and request being made by the City of Burkesville through its mayor or otherwise designated representative, allow such books and records to be reviewed by the City of Burkesville, Kentucky. In the event that there is a dispute between the amounts remitted and the amounts that the records would reflect would be due and owing to the City of Burkesville, Kentucky, and the dispute has not been resolved amicably, both parties hereto agree to resolve such dispute by binding arbitration and/or mediation.

Section 16: This renewed franchise may be transferred or assigned by Burkesville Gas Company to any other entity provided, however, that the City of Burkesville has executed in writing a waiver of its right of first refusal for the purchase and/or transfer of such renewed franchise.

Section 17: The terms of this ordinance renewing the franchise agreement are contractual and binding according to its natural terms and interpretations thereof on both the City of Burkesville, Kentucky and Burkesville Gas Company, Inc.



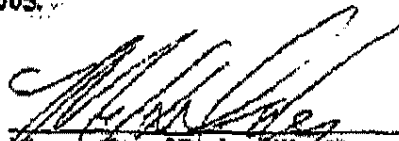
Section 18: Any provisions of this ordinance that are inconsistent with any other ordinance shall be construed so that the provisions of this ordinance shall be binding and any prior or inconsistent ordinance shall be ineffective.

Section 19: It is understood and agreed that Burkesville Gas Company, Inc. shall continue to provide natural gas to the City of Burkesville to be used for heating and operating any municipal building desired by the City of Burkesville at such rate or rates as are applicable to the City of Burkesville, Kentucky as are set forth in the rate structure as adopted by Burkesville Gas Company, Inc., and approved on an annual basis by the Kentucky Public Service Commission.

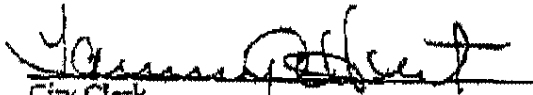
Section 20: The renewal of this franchise is granted pursuant to the laws of the Commonwealth of Kentucky regulating the granting of such and the rights and privileges bestowed upon Burkesville Gas Company, Inc. by the City of Burkesville as a municipal corporation. If any article, section, or sentence of this ordinance is, for any reason, held by a court of competent jurisdiction to be illegal, invalid, or unconstitutional, then such invalidity shall not affect the validity of the remainder of said ordinance or any other remaining portions that are not so affected. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect the consideration or other obligations required of Burkesville Gas Company, Inc.

Section 21: This ordinance shall become effective upon the passage, approval and publication as required by law.

Enacted this the 17<sup>th</sup> day of November, 2005.

  
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Mayor, City of Burkesville, Kentucky

ATTESTED BY:

  
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City Clerk

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