



CITY OF WASHINGTON, ILLINOIS
City Council Agenda Communication

Meeting Date: March 16, 2020

Prepared By: Joanie Baxter, Finance Director *JB*

Agenda Item: Gas Franchise Extension Agreement – Ameren

Explanation: The current gas franchise agreement with Ameren has 20 years remaining on its 50-year term. The franchise fee is based on a formula that is dependent on usage and thus fluctuates on an annual basis. The prior year fee received was just under \$36,000. Our energy consultant, Good Energy negotiated an amendment to the agreement to provide for a flat franchise fee of \$47,110 per year with a 3% growth clause that could result in increased fees should our customer count increase more than 3% in future years. Ameren requests that the agreement also be extended for an additional 10 years, leaving a 30-year remaining term. A 3% growth clause is provided in the amended contract which could result in increased fees if our customer count increases more than 3% in any future years

Fiscal Impact: A franchise payment of \$47,110 will be received following execution of the contract, with an additional \$47,110 paid per year for the remainder of the contract. Estimated increased franchise fees for the remaining 30 years of the contract after extension is \$363,300 before any consideration for the 3% growth clause should it apply in future years.

Recommendation/Committee Discussion Summary: Will be discussed at Finance & Personnel Committee with First Reading on agenda of the City Council meeting.

Action Requested: An Ordinance is required to extend the contract and amend the franchise fee method. First Reading of the Ordinance will be on March 16, 2020 with Second Reading scheduled for April 6, 2020.

ORDINANCE NO. _____

AN ORDINANCE

EXTENDING THE AUTHORIZATION TO

Ameren Illinois Company
d/b/a/ Ameren Illinois

ITS SUCCESSORS AND ASSIGNS

TO CONSTRUCT, OPERATE AND MAINTAIN
A GAS UTILITY SYSTEM

IN THE

City of Washington

COUNTY OF TAZEVELL

AND

STATE OF ILLINOIS

PASSED _____

EXPIRES _____

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF 30 YEARS TO AMEREN ILLINOIS, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN, AND OPERATE A GAS UTILITY SYSTEM IN THE CITY OF WASHINGTON, COUNTY OF TAZEWELL AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, COUNTY OF TAZEWELL, AND THE STATE OF ILLINOIS, AS FOLLOWS:

Section 1
Grant of Franchise

1.1 Extension. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to Ameren Illinois, its successors and assigns, to construct, operate and maintain a gas utility system within the City as originally authorized by Ordinance No. 1645 approved on October 1, 1990. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of gas energy and other purposes within the City for the benefit of its citizens and residents as well as other consumers of gas energy located within its corporate limits.

1.2 Grant of Franchise. There is hereby given and granted to Ameren Illinois, its successors and assigns (hereinafter referred to as the Company), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the City of Washington (hereinafter referred to as "Municipality"), a gas utility system for the transmission, distribution and/or sale of gas energy and other purposes (the System), together with the right, privilege and authority to lay, erect, construct, install, operate and/or maintain all necessary mains, pipes, valves, equipment and/or other apparatus (collectively Facilities) as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places (collectively Public Thoroughfare).

1.3 Successors and Assigns. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

Section 2
Term

2.1 All rights, privileges and authority given and granted by this Ordinance are granted for a term of 30 years from and after the acceptance of this Ordinance as hereinafter provided (the Initial Term), and thereafter on a year-to-year basis (each a Subsequent Term) unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least six (6) months prior to the expiration of the Initial Term or any Subsequent Term.

Section 3 Franchise Fee and Tax Consideration

3.1 Franchise Fee. As a further consideration for the rights, privileges and authorities granted by this ordinance, the Company shall, throughout the period in which Company shall exercise the rights, privileges and authority granted by this ordinance furnish to the said Municipality, compensation in the amount of \$47,110, payable annually, within 30 days of the anniversary date. Municipality may request a revision to the compensation amount after five years from the date of passage of this ordinance if Municipality has a reasonable belief that its population has increased or decreased by 3% or more. Municipality must request the revision at least 60 days prior to the next anniversary date. If Company confirms that the number of customers served by the System within Municipality's corporate limits has increased or decreased by 3% or more, the compensation amount will be revised by that percentage for the next and succeeding payments. Municipality may request similar revisions to compensation amounts under these criteria in additional five year periods throughout the term of this ordinance.

3.2 Tax Exemption. The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Ordinance, on all Facilities placed under the Public Thoroughfares within the corporate limits of Municipality.

Section 4 Construction Activities

4.1 Construction. All Facilities shall, so far as practicable, be placed underground and shall be so located and laid as not to interfere unnecessarily with any pipes, conduits, sewers, drains, pavements, public places, or right-of-way existing at the time of such location, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof and in default thereof said Municipality may repair such damage and charge the cost thereof to, and collect the same from, the Company. There shall be no unnecessary obstruction to the Public Thoroughfares of said Municipality in the laying, installation, operation or maintenance of any of said Facilities. All Facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

4.2 Relocation. When any Public Thoroughfare, upon which or in which any Facilities of Company have been placed or installed, shall be graded, curbed, paved or otherwise changed or when there is a relocation of such Public Thoroughfare, so as to make the resetting or relocation of any Facilities placed or installed under this Ordinance necessary the Company shall make such resetting or relocation, at the Company's cost and expense as qualified. The work is reasonably necessary for the construction, repair, maintenance, improvement or use of such Public Thoroughfare; is reasonably necessary for the location, construction, replacement, maintenance, improvement or use of other property of the Municipality; or is reasonably necessary for the operations of the Municipality. If the setting or location, or resetting or relocation of any Facilities is required for aesthetic purpose, the Municipality shall reimburse the Company for the resetting and/or relocation. The Company, as determined in discretion will not be responsible for the expense of removals, relocations, changes or alternations required by the Municipality for the purpose of assisting either private projects, aesthetic reasons, or municipal gas utility. Municipality shall provide the Company with a suitable location for the resetting or relocation of

such Facilities, and the Company's obligation shall be limited to resetting or relocating the Facilities of the same type and configuration as the displaced Facilities. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the establishment by the Municipality of the permanent grade at the new location. Except as expressly stated, nothing in this Section requires the Company to bear responsibility for any costs or expenses to relocate its Facilities for any other reason or cause.

4.3 Permit Obligation. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of Facilities within the Public Thoroughfare thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its Facilities. Except in cases of emergency, prior to engaging in any excavation activity that is expected to create an obstruction or other hazardous condition in any Public Thoroughfare, the Company shall notify Municipality of the location and extent of the planned excavation. In cases of emergency, Company shall notify Municipality of the location and extent of any such activity as soon as practicable after the emergency has been abated.

Section 5

Indemnity and Insurance

5.1 Indemnification. The Company shall indemnify and save harmless the Municipality and all contractors, officers, employees and representatives thereof from all claims, demands, causes of action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Worker's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the Company's construction, erection, maintenance, use or presence of, or removal of any Facilities. The foregoing indemnification shall not apply to the extent any such claim, demand, cause of action, liability, judgment, cost, expense or loss arises out of, is caused by, or results from the negligent or wrongful willful act or omission of the Municipality or any contractor, officer, employee or representative thereof.

5.2 Insurance. Company shall be obligated under this ordinance to maintain through the Term of this ordinance, at its sole cost and expense, to maintain the following insurance coverages which shall name Municipality as an additional insured:

A. Comprehensive General Liability. Comprehensive General Liability insurance, including contractual liability with limits of \$2,000,000 per occurrence for bodily injury and property damage. Railroad exclusions must be deleted if any work is to be performed within 50' of an active railroad track.

B. Comprehensive Automobile Liability. Commercial Auto Liability insurance with a limit of liability for bodily injury and property damage of not less than \$2,000,000. Such policy shall include owned and blanket non-owned and hired coverage.

C. Workers' Compensation. Workers' compensation coverage in accordance with statutory limits.

D. General Standards for All Insurance. All commercial insurance policies obtained by the Company to satisfy this obligation must be written by companies customarily used by public utilities for those purposes, including policies issued by a captive insurance company affiliated with the Company. Upon written request, the Company shall provide Municipality with evidence of insurance. The above requirements maybe satisfied with primary insurance, excess insurance or a combination of both.

E. Self-Insurance. Company shall have the right to self-insure any or all of the above-required insurance coverage.

Section 6 Miscellaneous Provisions

6.1 Rates. The rates to be charged by the Company for gas service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

6.2 Company Rights Independent of Ordinance. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any Public Thoroughfare during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, under, along, over and across each and all of such vacated premises which are at that time in use by the Company.

6.3 Conflicting Ordinances. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

6.4 Severance Clause. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

6.5 Conflicting State Statutes. Any conflict between the Franchise Ordinance and any state statute will be resolved by giving the state statute mandatory priority over any contrary language contained in the Franchise Ordinance.

6.6 Most Favored Nation. If, at any time, during the term of this contract, Municipality permits another entity or person to provide gas distribution or similar services, and Company reasonably

believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify Municipality of such treatment, terms, or conditions. Alternatively, if Municipality reasonably believes the other entity or person grants Municipality more favorable treatment, terms, or conditions, then Municipality shall notify Company of such treatment, terms, or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this ordinance to provide Company or Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and the entity or person receiving the more favorable or less favorable treatment, terms, or conditions.

Section 7 General Provisions

7.1 Notice. Any notice that (a) requires a response or action from the Municipality or the Company within a specific time frame or (b) would trigger a timeline that would affect one or both of the parties' rights under this Ordinance must be made in writing and must be sufficiently given and served on the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

If to Municipality:

City Clerk
City of Washington
301 Walnut Street
Washington, IL 61571

If to Company:

Ameren Illinois Company d/b/a/ Ameren Illinois
President
6 Executive Drive
Collinsville, IL 62234

For other notices regarding the general business between the parties, e-mail messages and facsimiles will be acceptable when addressed to the persons of record specified above.

7.2 Entire Agreement and Interpretation. This Ordinance embodies the entire understanding and agreement of the Municipality and the Company with respect to the subject matter of this Ordinance and the Franchise. This Ordinance supersedes, cancels, repeals, and shall be in lieu of the Previous Agreement.

7.3 Governing Law and Venue. This Ordinance has been approved and executed in the State of Illinois and will be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of the State of Illinois. Any court action against the Municipality may be filed only in Tazewell County, Illinois, in which the Municipality's principal office is located.

7.4 Amendments. No provision of this Ordinance may be amended or otherwise modified, in whole or in part, to be contractually binding on Municipality or Company, except by an instrument in writing duly approved and executed by the Municipality and accepted by the Company.

7.5 No Third-Party Beneficiaries. Nothing in this Ordinance is intended to confer third-party beneficiary status on any person, individual, corporation, or member of the public to enforce the terms of this Ordinance.

7.6 No Waiver of Rights. Nothing in this Ordinance may be construed as a waiver of any rights, substantive or procedural, the Company or the Municipality may have under federal or State of Illinois law unless such waiver is expressly stated in this Ordinance.

Section 8 Acceptance

8.1 This Ordinance shall confer no right, privilege or authority on Company, its successors or assigns, unless Company shall within ninety (90) days after due notice to the Company of the enactment of this Ordinance, file with the City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges, and authority herein granted shall become null and void.

Section 9
Effective Date

9.1 This Ordinance shall be in full force from and after its passage, approval and ten (10) day period of publication in the manner provided by law. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein.

Passed and approved this _____ day of _____, 2020.

Mayor, City of Washington, Illinois

[SEAL]

ATTEST:

City Clerk

STATE OF ILLINOIS)
CITY OF WASHINGTON) SS
COUNTY OF TAZEWELL)

I, _____, City Clerk within and for the City of Washington, in
the State and County aforesaid, do hereby certify that:

(1) the foregoing constitutes a full, true and correct copy of Ordinance No. _____
of said City as:

(a) introduced before the City Council on the ____ day of
_____, 2020; and

(b) passed by the City Council and approved by the Mayor on the ____ day
of _____, 2020, as fully as the same appears of record in my
office;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
the City of Washington, Illinois, at my office in said City this ____ day of _____,
2020.

[SEAL]

City Clerk

ACCEPTANCE

Ameren Illinois, ("Company") in consideration of the rights and privileges granted by Ordinance No. _____ of the City of Washington, Illinois, passed _____, A.D. 2020, approved _____, A.D. 2020, and entitled "An Ordinance extending the authorization to Company, its successors and assigns, to construct, operate and maintain a gas utility system in the City of Washington, County of Tazewell, and State of Illinois", hereby accepts said Ordinance and all the provisions thereof.

In Witness Whereof, Ameren Illinois, Company as aforesaid has caused these presents to be signed by its President or a Vice President and attested by its Secretary or an Assistant Secretary and its corporate seal to be affixed this _____ day of _____, A.D. 2020.

Ameren Illinois

By _____
Richard J. Mark
President

(Corporate Seal)

Attest:

Assistant Secretary