

**AN ORDINANCE, GRANTING TO SUBURBAN WATER, INC., A KANSAS CORPORATION, ITS TRUSTEES, SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN WATER LINES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF BASEHOR, KANSAS FOR THE PURPOSE OF SELLING AND DISTRIBUTING WATER TO THE CITY OF BASEHOR, KANSAS AND THE INHABITANTS PURSUANT TO K.S.A. 12-2001, et. seq.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:**

**Section 1:** That in consideration of the benefits to be derived by the City of Basehor, Kansas, and its inhabitants, there is hereby granted to Suburban Water, Inc., a Kansas Corporation, hereinafter sometimes designated as Company, the right, privilege and authority for a period of twenty (20) years, subject to the provisions of Section 16 herein, from the effective date of this ordinance, subject to the conditions hereinafter stated and the lawful Rules and Regulations of the State Corporation Commission, and any other regulatory agency having jurisdiction over the Company, and the laws of the State of Kansas, to occupy and use the present and future several streets, alleys, avenues, roads, bridges and other public places of said city, for the placing and maintaining of pipe lines and all other equipment necessary to carry on the business of selling and distributing water for all purposes to the City of Basehor, Kansas, and its inhabitants, and through said City and beyond the limits thereof; to obtain said water from any source available and to do all things necessary or proper to carry on said water supply business in the City of Basehor, Kansas. Said rights, privilege and authority shall be applicable to that area within the city limits of the City of Basehor, Kansas, that are located within the area defined by the Certificate of Authority and Convenience issued to Suburban Water, Inc., by the Kansas State Corporation Commission.

**Section 2:** That all mains, services, pipes and all other equipment necessary to carry on the business of selling and distributing water, which shall be laid or installed under this grant, shall be so located and laid as not to unnecessarily obstruct or interfere with any public or private drains, sewers or other public improvements already installed, and with the lawful use of said streets, alleys, avenues, roads and other public places of said City.

**Section 3:** In consideration of the premises, the Company agrees to pay to the City of Basehor, Kansas, and the City of Basehor agrees to accept as adequate compensation and consideration for the franchise hereby granted and in lieu of occupation, license, privilege and all other taxes and fees, five percent (5%) of the total of the gross receipts for water sold by the Company to all consumers in the corporate boundaries of the City of Basehor during the term of this franchise. Any consideration hereunder shall be reported and paid to the city by the Company semi-annually on the last days of July and January of each year, based on gross receipts for water sold during the

SCANNED

1-8-07 *[Signature]*

preceding six (6) month period. In the event that the revenues of the Company increase to the amount that within the total discretion of the City it would be more economically prudent to require payment of such fees on a more frequent basis, then the City shall notify the Company that the fee payment shall be on a more frequent basis such as on a quarterly basis rather than on an annual basis.

**Section 4:** In the event the City should propose to construct, change or repair any sewers, pipes, drains or other public improvements or change the grade of any of its streets, alleys, roads or public grounds where the Company is using the streets, alleys, roads or public grounds for its mains or other pipes, or equipment, then the City shall give reasonable notice, in writing of such contemplated changes or repairs to the Company and the Company shall raise, lower or relocate its pipelines and equipment located within the public road right of way, at Company's own expense unless funds are available for reimbursing Company for any such expenses by reason of any laws, rules or regulations, state or federal, applicable to the project necessitating such construction, changes or repairs. The Company shall furnish the City with a map showing the size and location of its water distribution system and, upon written request of the City, Company shall make any changes or additions necessary to update said map.

**Section 5:** That the Company, in the construction, maintenance and operation of its water distribution system shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and the Company shall be liable for all losses, injuries or damages which may result to the City or to its inhabitants, by reason of the sole negligence of the Company, its agents or servants, in the construction or maintenance of its said system and shall at all times hold and save the City harmless from any and all liability of the City arising from claims for damages or injuries to others due to the sole negligence of the Company, its agents or servants, in the construction, maintenance and operation of said system I the streets, alleys, roads and public places of said City.

Except in the case of an emergency, a minimum of fourteen (14) days prior to the construction, reconstruction or relocation of any facilities in the right-of-way, a company shall submit to the City Engineer or his or her designee, for approval, plans and specifications of the proposed installation. The City review shall only concern matters related to the interests of the City as set forth in this Ordinance. In the event of an emergency, the Company shall notify the City as soon as possible of the location and duration of such construction or maintenance work.

**Section 6:** Except in the event of an emergency, the Company shall notify the City not les than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise

protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City Ordinances, regulations, and rules. All technical standards governing construction, reconstruction, installation, operation, testing, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with all applicable present and future federal, state and city law and regulations.

The Company equipment shall be placed underground as required by City Ordinances of the City of Basehor and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the Ordinances of the City without expense to the City.

**Section 7:** During the continuance of this franchise, the Company shall furnish water service to the City and its inhabitants in accordance with the terms of this franchise, the rates, charges, rules and regulations now on file with the State Corporation Commission of the State of Kansas, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas.

**Section 8:** It is recognized that the water to be delivered hereunder is to be supplied from Company's pipe line system transporting water from various sources of supply; and the Company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish water in such quantity and for such length of time, limited by the terms hereof, as the said sources of supply and said pipe lines are reasonably capable of supplying.

**Section 9:** The Company shall have the right to make reasonable rules and regulations for the protection of its property, for the prevention of loss and waste in the conduct and management of its business, and for the sale and distribution of water, including rules and regulations with reference to extensions or additions to its water distribution system, as from time to time is deemed necessary.

**Section 10:** The Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, subject to the approval of the State Corporation Commission of the State of Kansas, or any other body having jurisdiction over such assignment, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. All such assignments shall be in writing and authenticated copies thereof shall be filed with the Clerk of the City of Basehor.

**Section 11:** That in the event any other ordinances of the City of Basehor, Kansas, conflict with this ordinance, the terms and conditions set out herein shall prevail and the conflicting portions of other ordinances shall be deemed inapplicable.

**Section 12:** The Company agrees that all installation, construction and maintenance of its pipelines will be in conformity with all applicable state, county and city regulations, ordinances and codes.

**Section 13:** That this ordinance shall not take effect and be in force until after the expiration of sixty (60) days from the date of its final passage and acceptance by the Company, within said sixty (60) days, in writing; if no acceptance by the Company has been filed, then this ordinance shall be null and void.

**Section 14:** This franchise is granted pursuant to the provisions of K.S.A. 12-2001, and shall take effect and be in force as therein provided.

**Section 15:** The Company agrees to use due diligence in ascertaining the boundaries of the City, including the annexation of property into the City. The City shall provide copies of annexation ordinances to the Company on a timely basis. The Company shall obtain a copy of the annual boundary resolution adopted by the City, and the Company shall compare the City boundaries with existing and planned company services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

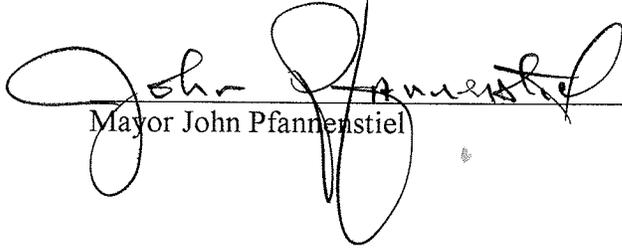
**Section 16:** In case of failure on the part of the Company, its successors and assigns to comply with any of the provisions of this Ordinance, or if the Company, its successors or assigns should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, the Company, its successors and assigns shall forfeit all rights and privileges granted by this Ordinance and all rights hereunder shall cease, terminate and become null and void, but only after the City of Basehor has given written notice to the company specifying the breach and company fails to remedy the breach within ninety (90) days of such notice.

**Section 17:** If any provision, section or subsection of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

**Section 18:** The Company shall, within sixty (60) days after the final publication of this Ordinance, file with the City Clerk its written acceptance of all the terms, conditions and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this ordinance shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

**Section 19:** During the terms of this Ordinance, the City may, by Ordinance, modify the franchise fee required by this Ordinance to increase the percentage of gross revenues required by this Ordinance provided however that any such increase may occur only once in any twelve (12) month period; the City shall provide the Company with ninety (90) days notice prior to the effective date of any such Ordinance providing such increase and the City shall lawful enact an Ordinance effecting such an increase in compensation.

**PASSED AND APPROVED THIS 15th DAY OF May, 2000.**

  
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Mayor John Pfannenstiel

Attest:

  
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Mary Ann Mogle, City Clerk