

ORDINANCE NO. 128

AN ORDINANCE AUTHORIZING THE LEASING
OF THE PROPOSED NATURAL GAS DISTRIBUTION
SYSTEM AND ITS RELATED FACILITIES
OF THE CITY OF COTTER,
ARKANSAS, AND THE EXECUTION OF AN
AGREEMENT AND LEASE, WITH AN OPTION
TO THE LESSEE TO PURCHASE.

BE IT ORDAINED by the Council of the City
of Cotter, Arkansas:

Section 1. That the City of Cotter,
Arkansas lease to Arkansas Western Gas Company
its proposed natural gas distribution system and related
facilities for a term of twenty-one (21)
years for the rentals, under the provisions of lease, and with
an option to purchase as set out more fully in the form of
Agreement and Lease hereinafter authorized to be executed.

Section 2. That the said Agreement and Lease
with option to purchase shall be in substantially the
following form:

AGREEMENT TO LEASE

This Agreement and Lease is executed this 1st day of September, 1965, by the undersigned Municipality (hereinafter referred to as "Municipality"), organized under the laws of the State of Arkansas, and Arkansas Western Gas Company (hereinafter referred to as "Company"), a corporation organized under the laws of the State of Arkansas, upon the premises and in consideration of the mutual agreements and covenants hereafter expressed, to wit:

1. Municipality proposes to make natural gas service available to its citizens at the lowest possible rates consistent with the cost of service; and to accomplish such purpose proposes to construct a natural gas distribution system and related facilities and to construct a natural gas transmission line (hereinafter, together with rights of way, easements and appurtenances, collectively referred to as "improvements"), generally described in Exhibit "A" attached hereto (and pursuant to plans and specifications approved by the parties hereto), and upon completion of improvements to lease it to the Company with option of Company to purchase, for the considerations and upon the terms and conditions as hereinafter set forth.

2. (a) Municipality, at its own expense, shall secure from the Arkansas Public Service Commission a certificate that the public convenience requires or will require the construction and operation of the improvements; and shall secure funds, through the issuance and sale of revenue bonds,

necessary to pay the cost of constructing said improvements, including costs of rights of way and easements, first year's interest, reasonable engineering, supervision, and attorney's fees, and all of the Municipality's expenses incident to the issuance and sale of said bonds. The aggregate of all such costs and expenses is hereinafter referred to as the cost of said improvements. The Municipality is issuing revenue bonds under Act No. 71 of 1949, as amended, in the principal amount of \$ 261,750, dated September 1, 1965 (herein called "bonds" or "bonds of the Municipality").

(b) Municipality agrees that it will not during the life of this lease create, permit to be created, or take any action toward the creation of, any lien or encumbrance against the improvements in addition to that of the bonds to be executed under the terms of the aforesaid contract.

3. Company, at its own expense, will make such applications as may be necessary to regulatory authorities having jurisdiction for the approval of this agreement and for authority to deliver gas into the improvements.

4. Municipality agrees that it will acquire the necessary rights of way, easements, crossing agreements and sites for the improvements and let contracts for construction of the improvements in accordance with the plans and specifications approved by the parties hereto as soon as possible after the execution of this agreement and approval thereof by regulatory authorities.

5. The aggregate of funds received by Municipality on account of the principal of the bonds issued and sold by it

and not needed to pay the cost of the improvements shall be used to call and redeem bonds at their par value, and the Municipality shall make such call and redemption as soon as the amount not needed for payment of the improvement may be ascertained, provided no partial payment shall be made on any bond.

6. (a). Municipality hereby leases to Company the improvements for a period of twenty-one (21) years from the date of the completion of improvements.

(b) Municipality shall deliver to Company the improvements when completed and inspected and approved by Company as conforming satisfactorily with the plans and specifications and all contracts and documents relating thereto.

(c) Company shall operate and maintain the improvements during the term of this agreement, in accordance with the usual standards of operation and maintenance. The maintenance of the improvements shall include, without limitation, the keeping of the same in good repair and the making of the necessary capital replacements therein or additions or extensions thereto. All repairs and replacements, additions and extensions shall be at least equal to the material and standard for workmanship used in the original construction.

(d) The duly authorized representatives of Municipality shall have the right to inspect the improvements at all reasonable times for the purpose of ascertaining whether they are being operated and maintained in accordance with the terms of this agreement.

(e) Municipality shall keep and maintain, or cause to be kept and maintained, complete accounting records of the cost of construction of the improvements in accordance with the Uniform System of Accounts of the Arkansas Public Service Commission applicable to gas utilities, which shall be available for inspection by Company or its authorized representatives at all reasonable times. Company shall keep and maintain, or cause to be kept and maintained, complete accounting records of the improvements and their operation in accordance with said Uniform System of Accounts, including, without limitation, the records of all capital replacements and retirements and the cost of operation and maintenance of the same, which shall be available for inspection by the duly authorized representatives of Municipality at all reasonable times.

7. Company shall, at its expense, carry adequate public liability insurance, and pay ad valorem taxes, special assessments and other governmental charges of whatever nature levied against the property of the improvements, and all costs of operation, maintenance, replacements, necessary additions and extensions of the improvements arising after completion thereof by Municipality and acceptance by Company.

8. (a) Basic Rent.

(1) Company covenants to pay Municipality, in the manner hereafter set forth in subparagraph (c) basic annual rent as follows, payable semiannually on the dates and in the amounts indicated:

(Cotter)

February 20, 1966	\$ 4,574.69
August 20, 1966	4,574.69
February 20, 1967	4,574.68
August 20, 1967	10,324.69
February 20, 1968	4,481.25
August 20, 1968	10,481.25
February 20, 1969	4,383.75
August 20, 1969	10,383.75
February 20, 1970	4,286.25
August 20, 1970	10,286.25
February 20, 1971	4,188.75
August 20, 1971	11,188.75
February 20, 1972	4,075.00
August 20, 1972	16,075.00
February 20, 1973	3,880.00
August 20, 1973	15,880.00
February 20, 1974	3,685.00
August 20, 1974	16,685.00
February 20, 1975	3,473.75
August 20, 1975	16,473.75
February 20, 1976	3,262.50
August 20, 1976	17,262.50
February 20, 1977	3,035.00
August 20, 1977	17,035.00
February 20, 1978	2,790.00
August 20, 1978	17,790.00
February 20, 1979	2,527.50
August 20, 1979	17,527.50
February 20, 1980	2,265.00
August 20, 1980	18,265.00
February 20, 1981	1,985.00
August 20, 1981	18,985.00
February 20, 1982	1,687.50
August 20, 1982	18,687.50
February 20, 1983	1,368.75
August 20, 1983	18,368.75
February 20, 1984	1,050.00
August 20, 1984	19,050.00
February 20, 1985	712.50
August 20, 1985	18,712.50
February 20, 1986	375.00
August 20, 1986	20,375.00

(2). If at any time while any of the bonds shall be outstanding, the above specified basic rent shall be insufficient to provide for the payment of the principal of and interest on the bonds as the same become due, the amount of the insufficiency shall be paid by Company as additional basic rent. If at any time the amount in the Bond Fund, hereafter referred to in subparagraph (c) hereof, is sufficient to pay in full the principal of, interest on and Paying Agent's fees in connection with all of the outstanding bonds of the Municipality, either at maturity or on earlier redemption, then no further basic rent shall be payable hereunder and all funds representing payment of basic rent which are then held in the Bond Fund and are in excess of the amount required to pay in full the principal of, interest on and Paying Agent's fees in connection with all outstanding bonds of Municipality, either at maturity or on earlier redemption, shall be refunded to Company as excess basic rent.

(b) Additional Rent.

Company shall pay as additional rent the fees, expenses and charges of the Trustee and Paying Agent and all expenses, liabilities, obligations and other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease. If at any time the amounts paid by Company as additional rent hereunder are or become in excess of the amounts required for the purposes for which paid, such excess amount shall be refunded to Company.

(c) Basic rent shall be paid to Municipality by Company remitting the same directly to the Trustee and Paying Agent for the account of Municipality, and shall be deposited by the Trustee and Paying Agent in the trust account provided for in the ordinance authorizing the issuance of Municipality's bonds, the "Gas Transmission and Distribution Revenue Bond Fund." Additional rent shall be paid by Company remitting the same directly to the Trustee and Paying Agent in the case of Trustee's and Paying Agent's fees and expenses and either making direct payment in the case of other costs, expenses, liabilities, obligations and payments constituting additional rent or reimbursing Municipality if Municipality shall make payment thereof.

(d). So long as any of the bonds or coupons or coupons relating thereto shall be outstanding and unpaid, or until payment thereof has been duly provided for, the basic rent and the additional rent shall be certainly payable on the dates or at the times specified without notice or demand, and without abatement or setoff, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including, but without limiting the generality of the foregoing:

(1) The unavailability of the improvements at any time by reason of the failure to complete the improvements by any particular time or at all or by reason of any other contingency, occurrence or circumstance whatsoever;

(2) Damage to or destruction of the improvements or any part thereof (except in the event Company exercises the option to purchase and pays the purchase price in cash);

(3) Legal curtailment of Company's use and/or occupancy of the improvements, or any part thereof;

(4) Change in Municipality's legal organization or status;

(5) The taking of title to or the temporary use of the whole or any part of the improvements by condemnation (except in the event Company exercises the option to purchase and pays the purchase price in cash);

(6) Any termination of this Lease for any reason whatsoever; or any default of Municipality under this Lease or any other fault or failure of the Municipality whatsoever.

Company covenants that it will not enter into any contract or agreement of any nature which shall in any way limit, restrict or prevent Company from performing any of its obligations under this Lease.

9. In the event default shall be made by the Company in performance of any of the covenants herein contained and such default shall continue for thirty (30) days after notice thereof in writing shall be given by the Municipality, then and in that event the Municipality may enter upon the improvements in possession of the Company under the terms of this agreement, with or without process of law, to take possession thereof together with any repairs, replacements,

additions, extensions, or alterations which have been made a part thereof, and operate and maintain the improvements so long as such default continues; and, in addition to any unpaid rental at the time Municipality takes possession of improvements, the Company shall be liable thereafter to the Municipality for the operation and maintenance expense incurred by Municipality, plus the rental payments heretofore provided, less the gross revenue received by the Municipality. The Company shall have the right to resume the operation and maintenance of the improvements under the terms of this lease at any time during the period thereof by payment to the Municipality of all amounts due under the terms hereof, and by correcting any other defaults.

10. The Municipality hereby grants to the Company the exclusive right, at the option of the Company, to purchase the improvements at any time during the term of this agreement and lease; such purchase may be made by the Company, at its election, entirely for cash, or partly for cash and partly on credit, all as is more particularly hereinafter set forth. In the event the Company shall be in default as to any amount due under this agreement prior to the time it shall exercise its option to purchase, the Company shall be required before exercising its option, to pay any amount due under the terms of this agreement.

In the event the Company shall exercise its purchase option by paying cash, the purchase price shall be (a) an amount equal to the then outstanding principal of the bonds

issued for the construction of the improvements, plus (b) any other secured indebtedness against the improvements, and (c) such amount in respect of redemption premiums, accrued and unpaid interest, and charges as will, when added to the principal of said bonds and other secured indebtedness, enable the Municipality promptly to call, redeem, and pay all bonds on the first date thereafter that the bonds may be redeemed and any other secured indebtedness. In the event the Company elects to purchase for cash, the Municipality, after receiving the purchase price, shall promptly redeem, pay, and discharge all of the said outstanding bonds and any other secured indebtedness against the improvements, and secure a satisfaction of any liens on account thereof.

In the event the Company shall exercise its purchase option by paying in installments, it shall undertake to pay to the Municipality, at the proper times such amounts as will enable the Municipality promptly to pay and discharge the principal and accruing interest of the then outstanding bonds and of any other secured indebtedness against the improvements as they mature, plus such amount in respect of Trustee's fees and paying charges as the Municipality may incur.

11. Company shall accrue annually, on the original cost of any additions and extensions to the improvements made by it, a depreciation reserve at such rates as it may accrue depreciation annually on its other properties of like character. The balance remaining in this reserve at any time Company may exercise its option to purchase shall be kept by the Company.

12. In the event Company does not exercise its option to purchase and the improvements are returned to Municipality on the expiration of the lease, or earlier for any cause, it shall be delivered in as good condition as when received by Company from Municipality, usual and ordinary wear and tear and deterioration excepted, and shall be paid by Municipality the original cost of any additions and extensions to the improvements made by it, less the amount then remaining in the depreciation reserve accumulated at the rates at which it accrues depreciation on like property.

13. Municipality agrees upon notice by Company of its election to exercise its rights of purchase hereunder and upon compliance by Company with the conditions herein provided for the exercise of such right, to transfer and convey to Company in the manner provided by, and subject to, applicable laws then existing, title to the improvements either (1) free and clear of all liens and encumbrances whatsoever, or (2) if Company so elects, subject to the then balance due upon the bonds and of any other secured indebtedness against the improvements and the lien securing the same; and to execute, acknowledge and deliver all instruments, conveyances and assignments, and to take, or cause to be taken, all such further action as may be reasonable and required by Company to effectuate the transfer.

14. Either party hereto may waive its rights with respect to default or any other matter arising in connection with this agreement but such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter.

15. Any written notice, demand or request required or authorized by this agreement shall be deemed properly given to or served upon Company if mailed to its home office, Fayetteville, Arkansas, and shall be deemed properly given to or served upon Municipality if mailed to the mayor thereof. The designation of the person to be notified or the address of such person may be changed at any time and from time to time by similar notice.

16. This agreement is not to be binding upon the parties hereto until:

(1) Approved by the regulatory authorities having jurisdiction in the premises;

(2) Municipality has granted Company a valid franchise to operate the natural gas system therein;

(3) Municipality has taken all steps required by, and has fully complied with, all of the provisions of Ark. Stats. (1947) §19-3907 authorizing a sale of the improvements to Company;

(4) Municipality has adopted a valid ordinance regulating the installation of natural gas services, fittings, and provided specifications therefor and for appliances, and for inspection of gas piping and appliances.

17. This agreement shall not be assigned by either party in whole or in part without the written consent of the other party, except that it may be assigned by Company in connection with reorganization, merger or a sale of its assets and properties.

18. It is agreed that the Municipality and the Company shall not alter, modify or amend any of the terms of this lease and agreement without the prior written approval of the Trustee for the holders of the bonds, which consent will not be unreasonably withheld.

IN WITNESS WHEREOF, Municipality has caused this agreement and lease to be signed in its corporate name and its corporate seal hereunto affixed and attested to by its officers thereunto duly authorized; and Company has signed its corporate name and its corporate seal has been affixed hereto and attested by the officers thereunto duly authorized, all of the day and year first above written.

City of Cotter, Arkansas

Frank L. Wallich
Mayor

Attest:

Carla Smith
City Recorder

ARKANSAS WESTERN GAS COMPANY

L. L. Dyer
President

Attest:

Charles H. Hanner
Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF Washington) ss

On this 24 day of Sept., 1965, before me, a Notary Public duly commissioned, qualified and acting, within and for the County and State aforesaid, appeared in person the within named L. L. Baxter and Charles J. Brannon, President and Secretary, respectively, of Arkansas Western Gas Company, an Arkansas corporation, to me personally well known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24 day of Sept., 1965.

L. L. Moore
Notary Public

My commission expires:

March 18, 1968

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF Baxter) ss

On this 21 day of Sept., 1965, before me,
a Notary Public duly commissioned, qualified and acting, within
and for the State and County aforesaid, appeared in person
the within named Frank Wallich and
Carl Smith, Mayor and Recorder,
respectively, of Cotter, Arkansas, a municipality of
the State of Arkansas, to me personally known, who stated
that they were duly authorized in their respective capacities
to execute the foregoing instrument for and in the name of
said municipality, and further stated and acknowledged that
they had signed, executed and delivered said foregoing
instrument for the consideration, uses and purposes therein
mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
official seal this 21 day of Sept., 1965.

Charles E. Shuler
Notary Public

My commission expires:

Sept. 15, 1966

Section 3. That the Mayor and Recorder of the
City of Cotter be, and they are hereby,
authorized and directed to execute in the name and on behalf of
the City of Cotter the agreement and lease
with option to purchase in the form as herein authorized, and
to deliver the instrument when so executed to Arkansas
Western Gas Company.

Section 4. That upon the exercise of the option
to purchase as provided in said agreement and lease, and
the performance by Arkansas Western Gas Company of all
acts required to be performed by it under the provisions
of the said agreement and lease, the Mayor and Recorder
of the City of Cotter be, and they are
hereby, authorized and directed to execute in the name and
on behalf of the City of Cotter an instrument
of conveyance as provided in said agreement and lease and
to deliver the said instrument when so executed to _____
Arkansas Western Gas Company.

Section 5. That it is ascertained and declared
that the lack of a distribution system for natural gas to
serve the inhabitants of the City of Cotter
subjects the City to greater fire hazards and greatly
endangers the life, health and property of the inhabitants
thereof, and that it is necessary that the City of
Cotter, Arkansas immediately construct a
distribution system for natural gas to protect and preserve
the life, health and property of its inhabitants, and that

only by this ordinance can said system be immediately constructed and put into operation. It is, therefore, declared that an emergency exists and this ordinance being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage.

PASSED: September 21, 19 65.

APPROVED:

ATTEST:

Carla Smith
Recorder

Frank D. Wallace
Mayor

(SEAL)