(First published in the Western Butler County Times, July 3, 1965)

ORDINANCE NO. 37

AN ORDINANCE GRANTING TO RAY TO REED, JR., HIS SUCCESSORS AND ASSIGNS, A FRANCHISE CONFERRING UPON SUCH GRANTEE, HIS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF 20 YEARS FROM AND AFTER THE DATE OF THE FINAL PUBLICATION OF THIS ORDINANCE, THE RIGHT, PRIVILEGE AND AUTHORITY TO PROVIDE, FURNISH, DISTRIBUTE AND SELL WATER TO THE CITY OF ANDOVER, KANSAS, GRANTOR, AND TO ITS INHABITANTS: AND TO EXTEND THE WATER SYSTEM IN SAID CITY, AND TO ENTER UPON AND USE THE STREETS, AVENUES, ALLEYS, PARKING, BRIDGES, AND PUBLIC GROUNDS OF SAID CITY FOR THE INSTALLATION AND EXTENSION OF THE PIPES, CONNECTIONS, AND APPURTENANCES NECESSARY TO A WATER SYSTEM WITHIN AND THROUGH SAID CITY, FOR ALL SUCH PURPOSES FOR WHICH WATER MAY BE USED, UPON THE TERMS AND CONDITIONS HEREIN STATED.

BE IT ORDAINED BY THE CITY OF ANDOVER, BUTLER COUNTY, KANSAS:

Section 1. That in consideration of the benefits to be received by the City of Andover, Kansas, Grantor, and its inhabitants and for the further consideration hereinafter provided, there is hereby granted to Ray T. Reed, Jr., his successors and assigns, the right, privilege, and authority for a term of twenty years from the date of the final publication of this ordinance, to supply the City of Andover, Kansas, and the inhabitants thereof with water for all purposes for which water may be used, and to enter upon and use the streets, avenues, parking, bridges, and public grounds of said City for the installation, expansion, location, relocation, maintenance, and repair of its water mains, laterals, pipes, connections, and appurtenances necessary to a complete water system within and through said City, for all purposes for which water is furnished, distributed, sold, and used, all upon the terms and conditions hereinafter set forth.

Section 2. That all water mains laid in or on the streets, avenues, parkings, bridges, or public grounds of the City of Andover, Kansas, shall be laid in accordance with recognized engineering practices for water distribution.

Section 3. That the City does hereby agree to pay for the use of fire hydrants and for water required for municipal fire protection to the City of Andover, Kansas, for a period equal to that for which this franchise shall be in full force and effect, at an annual amount per fire hydrant, said amount to be established by mutual agreement between the City of Andover, Kansas, and Grantee, his successors and assigns. No additional charge shall be made to the City of Andover, Kansas, during the terms of this franchise for water from said

hydrants which the City may require for tank wagons used in the flushing of sewers, gutters, and streets, and other reasonable public uses. That all public fire hydrants shall be used exclusively for the extinguishment of fires, necessary drill and practice of the Fire Department, the flushing of city streets, sewers, and gutters, and other public or private uses approved by the Chief of the Fire Department and Grantee, his successors and assigns; but all uses of fire hydrants in the City of Andover, Kansas, shall be under the direction and supervision of the Chief of the Fire Department of Fire District No. 1 of Butler County, Kansas; provided, however, that nothing herein shall be construed to authorize the use of water from said hydrants for any private purpose, except at such reasonable charges therefor and under such reasonable regulations as may be prescribed by Grantee, his successors and assigns. Nothing in this section shall excuse the City from paying for water used in flushing tanks now installed on sewers and such additional flushing tanks as are required by the City. The City may purchase water for such other and additional purposes as said City may hereafter demand. It is understood that the Grantee, his successors and assigns, are obligated to furnish potable water according to Kansas State Board of Health standards; provided, however, circumstances due to war, insurrection, or other circumstances beyond the control of Grantee, his successors and assigns, are not intended to be covered in this provision.

Section 4. That as consideration for the rights and privileges herein, Grantee, his successors and assigns, bind and obligate themselves during the full term of this ordinance, to furnish water to the City of Andover, Kansas, within its present boundaries, and its inhabitants, upon the terms and conditions stated in this ordinance, and to accept from the City and its inhabitants as full compensation therefor the rates and charges as shall be lawfully established by the rate making body or commission having jurisdiction thereof under the laws of the State of Kansas, provided, however, that Grantee, his successors and assigns, shall not be obligated under the terms of this franchise to install, maintain or extend its distribution system unless the prospective revenue from the sale of water will provide an adequate and reasonable return on the capital investment required therefor. As further consideration for the rights, privileges and franchise herein granted, Grantee, his successors and assigns, hereby bind themselves to file with the City of Andover, Kansas, by the first days of March and September of each year a report showing in full the gross earnings derived from all sales of water to the City of Andover, Kansas, and its inhabitants,

for the 6 month period ending December 31 and June 31 next preceding such date and will at the time of making such semi-annual report pay into the Treasury of the City the sum equal to one per cent (1%) of the gross earnings for the period of such report.

Section 5. The Grantee, his successors and assigns, shall maintain the water supply and system, and the City shall authorize an adequate number of hydrants. Fire pressures will be 50 pounds per square inch static head for the business district and 50 pounds per square inch static head for other districts. Ordinary pressure for domestic service shall be not less than forty pounds per square inch static head as measured at the customer's meter.

The City Council will pass and enforce an ordinance prohibiting, during fires, the use of water for lawn sprinkling and the drawing of water from the fire hydrants for purposes other than fire fighting.

Section 6. That all facilities necessary to the supplying of water to the City of Andover, Kansas, and its inhabitants under this Ordinance shall be constructed, maintained, and operated with as little interference with public convenience and commerce as practicable, and as far as practicable to avoid injury to property of others. All damage to sidewalks or pavement caused by the installation, maintenance, or operation of any of the facilities herein provided for, shall be promptly repaired by Grantee, his successors and assigns, under the direction and supervision of the City. All the excavations and installations made in the streets, avenues, alleys, bridges, and public grounds within the limits of the City, any relocation or alteration necessary to permit the installation of public improvements therein, and all repairs and maintenance work which tend to interfere with the public use of the streets and other public grounds, shall be done in accordance with rules, regulations, and ordinances enacted by the City Council.

Section 7. That Grantee, his successors and assigns, shall have the right to make such reasonable lawful rules and regulations for the protection of their property, for the prevention of loss and waste in the conduct and management of their business, and for the sale and distribution of water under the terms hereof, as may from time to time be deemed necessary.

Section 8. Grantee, his successors and assigns, hereby agree to save the City of Andover, Kansas, harmless from any liability, loss, damage, or

expense which it may sustain by reason of the Grantee's negligence, default, or misconduct in the construction, operation, or maintenance of its water system.

Section 9. Grantee, his successors and assigns, shall keep on file in the office of the City Clerk, full and complete maps or plats showing the exact location of the water plant, mains, laterals, pipes, connections and appurtenances. Said maps or plats shall be corrected annually to show changes and additions of every kind.

Section 10. Grantee, his successors and assigns, shall at their own expense, furnish and maintain approved water meters for the use of all customers for all metered service, and shall keep the same as accurate as possible. The testing of said meters shall be done from time to time in accordance with standard waterworks practices and the rules and regulations of Grantee, his successors and assigns.

Section 11. The City of Andover, Kansas, agrees that it will pass all necessary ordinances for the protection of and to prevent interference with the property of the said water system; and to prevent the contamination of the water supply; to prevent the waste of water from the hydrants, mains and pipes; that it will, upon request of Grantee, his successors and assigns, proceed without delay to exercise its rights under the statutes of the State of Kansas, in the matter of the condemnation of any lot, piece, or parcel of ground or water, or water privileges that may be necessary to the proper and convenient construction, maintenance, and operation of the system of waterworks contemplated in this Ordinance; provided, that the said Grantee, his successors and assigns, pay all the costs and expenses incident thereto, including the cost of all property so condemned; and provided further, that the right to the free and exclusive control of all property so condemned shall remain in Grantee, his successors or assigns.

Section 12. The Grantee, his successors or assigns, shall only be required to extend water service to additions hereafter annexed or incorporated in or into the City of Andover, Kansas, upon the owners or developers of the land or premises to be served by such extensions providing at their cost and expense the distribution facilities and supply facilities which shall be installed therein, and provided that all such distribution facilities and supply facilities shall only be installed after the plans and specifications therefor shall be approved by the engineer of the Grantee, his successors or assigns, with all

construction and installation thereof subject to inspection and approval by the engineer for the Grantee, his successors and assigns, and all as specified and approved and in compliance with the rules and regulations as hereinafter adopted of the Grantee, his successors and assigns. That all such extensions of distribution facilities and supply facilities shall be contiguous to and adjoining areas served by Grantee, his successors and assigns, and shall constitute an immediate and direct continuation of a then existing water main of Grantee, his successors and assigns, within the limits of said City; and after such construction and installation all such distribution facilities and supply facilities shall be transferred and assigned to and become the sole property of the Grantee, his successors and assigns; provided, however, that the owners of the premises to be served by such extensions and the Grantee, his successors or assigns, may from time to time by mutual agreement otherwise provide for such extensions; provided further that such extensions shall be of such a nature as to be financially feasible in consideration of the successful operation of the system by the Grantee, his successors or assigns.

Section 13. The Grantee, his successors or assigns, shall not be obligated to deliver nor the customer to receive water or water service when its delivery or receipt shall be prevented by strike, flood, drought, riot, fire, invasion, explosion, act of God, public enemy, failure of water supply, or for any other cause reasonably beyond the control of the Grantee, his successors or assigns, and the Grantee, his successors or assigns, shall endeavor promptly and diligently to remove and overcome the cause or causes of such interruptions with the least possible time delay.

Section 14. The City and the Grantee, his successors or assigns, agree that if any question shall arise under the terms and conditions of this franchise and any amendments or supplements to or modifications thereof which have not been settled by mutual agreement by the parties concerned, and after such controversy has existed for 60 days, then all parties shall forthwith take such steps as necessary to submit such controversy to the State Corporation Commission for adjudication, and either the City or the Grantee, his successors or assigns, may on its or upon their own motion submit the controversy to such State Corporation Commission.

Section 15. That this Franchise shall become and be a binding contract

between the City of Andover, Kansas, Grantor, and Ray T. Reed, Jr., Grantee, his successors or assigns, only if Grantee, his successors or assigns, shall within 180 days after the passage, approval and necessary publication of this Ordinance, file with the City Clerk of the City of Andover, Kansas, said Grantee's, his successors' or assigns', written acceptance thereof, and if such written acceptance is not so filed, this grant and franchise shall be null and void and neither of the parties shall have any liability in connection with this franchise, and provided further that this franchise shall be and become a binding contract between the Grantor and the Grantee, his successors and assigns, only if the Grantee, his successors and assigns, shall have a waterworks system consisting of a water supply, distribution lines and customers, in operation within two years from the effective date of this Ordinance; otherwise this grant of franchise shall be null and void and neither party shall have any liability or obligation to the other from such franchise.

Section 16. Should any part, term, section or provision of this Ordinance be by the courts decided to be illegal or in conflict with the law of the State of Kansas, the validity of the remaining portions or provisions shall not be affected thereby.

Section 17. All ordinances and parts of ordinances of the City of Andover, Kansas, in conflict with this Ordinance are hereby repealed.

Section 18. This ordinance shall take effect and be in force from and after its passage, and approval, and publication according to law in the official city paper of the City of Andover, Kansas, and upon its acceptance by Grantee, his successors and assigns, as herein provided.

Approved this 27 day of March, 1965.

Wal Baker
MAYOR

ATTEST:

Charles E. Clay
CITY CLERK

(SEAL)