

ORDINANCE _____

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK HILLS WYOMING GAS, LLC d/b/a BLACK HILLS ENERGY, ITS SUCCESSORS AND ASSIGNS, AND THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SYSTEM, INCLUDING MAINS, PIPES, CONDUITS, SERVICES AND OTHER STRUCTURES, IN, UNDER, UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES WITHIN THE PRESENT AND FUTURE CORPORATE LIMITS OF THE CITY OF LANDER, WYOMING FOR THE FURNISHING, TRANSMISSION, DISTRIBUTION AND SALE OF GAS WHETHER ARTIFICIAL, NATURAL, MIXED OR OTHERWISE FOR LIGHTING, HEATING, DOMESTIC, INDUSTRIAL AND OTHER USES IN SAID CITY AND ELSEWHERE, LIMITING THE TERM OF SAID GRANT, PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID COMPANY MAY OPERATE, AND REPEALING ORDINANCE NO. 1239.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LANDER, WYOMING:

SECTION 1. That in consideration of the benefits to be derived by the City of Lander, Wyoming, hereinafter referred to as "Municipality" or "City", and the public thereof from the construction and operation of a gas transmission and distribution system within said Municipality there be and hereby ~~isare~~ granted to Black Hills Wyoming Gas, LLC, d/b/a Black Hills Energy, its successors and assigns, hereinafter collectively referred to as "Grantee," a non-exclusive franchise and the right, permission and authority to construct, maintain and operate a gas transmission and distribution system within the limits of said Municipality, as the same now exists or may hereafter be extended for said purpose and there ~~isare~~ hereby further granted to Grantee the right, permission and authority during said period to lay, install, construct, maintain and operate in, under, upon, over, across and along all of the streets, alleys, bridges and public ways and public places within the present and future corporate limits of said Municipality all mains, pipes, services, conduits and structures necessary or convenient for the furnishing, transmission, distribution and sale of gas whether artificial, natural, mixed or otherwise for lighting, heating, domestic, industrial and other uses, and for transmitting such gas into, through or beyond the limits of said Municipality to other towns, cities and customers.

The right and authority herein granted shall continue for the period of twenty-five (25) years from and after the date of final passage; provided, however, that the City Council reserves the right at the end of each five (5) year period from and after the date of final passage, to renegotiate the provisions of this ordinance with the Grantee, its successors and assigns and in that event such negotiations shall not have resulted in a mutually agreeable amendment to said ordinance within a period of ninety (90) days leading up to the end of such five (5) year period, then and in such event, the Municipality, through its City Council, reserves the right to cancel this franchise by repeal of this Ordinance within this ninety (90) day period. If no renegotiation is instituted by the City Council within said ninety (90) day period or if the franchise is not canceled within said ninety (90) day period, this franchise shall continue in full force and effect.

SECTION 2. That all mains, services, and pipes laid or installed under this grant shall be so located and laid at a sufficient depth and as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to the reasonable approval of the Public Works Director or other authorized representatives of said Municipality.

In addition, Grantee shall complete any work in accordance with the following requirements:

General conduct of work. The Grantee, in performing any work on or related to its mains, pipes, services, or other facilities, shall conduct such work so as to avoid,

insofar as practicable, interference with the public's use of any street, alley, or public place and shall comply with the City's standards and applicable law (including traffic control consistent with MUTCD and one-call/utility-locate requirements).

Restoration. If paving, surface, sidewalk, curb/gutter, landscaping/irrigation, signage, striping, or other municipal improvements within the right-of-way are disturbed, the Grantee shall, at its sole expense and to the satisfaction of the City Engineer in accordance with the City's standards, restore the affected area to a condition equal to or better than that which existed before the work commenced. The temporary surface shall be maintained until final restoration is completed and accepted.

Permits required. ~~Prior permit.~~ The Grantee shall obtain all required City permits before commencing any work within the City (for example, in a municipal right-of-way, whether paved or unpaved).

Permit fee. No fee shall be charged for such permits; the parties acknowledge that the compensation provided under this Franchise includes the cost of permit administration.

Emergency work. In an emergency necessary to protect public safety or restore service, the Grantee may proceed immediately; the Grantee shall notify the City Engineer as soon as practicable and apply for the required permit no later than the next business day after commencing such emergency work.

Inspection and acceptance. No work in the right-of-way shall be deemed complete until inspected and accepted by the City Engineer or his/her designee in accordance with the City's standards.

Reasonable conditions. The City Engineer may impose reasonable permit conditions—including traffic control, safety measures, hours of work, trenching/compaction standards, temporary restoration, erosion control/ADA measures, and coordination with other projects—to protect the public interest and municipal infrastructure.

Failure to restore. If the Grantee fails to restore disturbed areas to the satisfaction of the City Engineer's satisfaction in accordance with the City's standards within a reasonable time after written notice (or sooner if a safety hazard exists), the City may complete the restoration and recover all associated, reasonably documented costs from the Grantee.

Any privilege claimed under the franchise by Grantee in any street, alley, or other public way shall be subordinate to any lawful occupancy of any such street, alley, or other public way by the City.

If Municipality elects to change the grade of or otherwise construct or alter any street, alley, avenue, bridge, City Utility (for example, water, wastewater, or storm drainage), public right-of-way, public easement, or public place for a public purpose, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Municipality, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee. If Municipality orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

The Municipality shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, Municipality shall also provide a reasonable alternative location for Grantee's facilities. Municipality shall give Grantee written notice of an order or request

to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it (a) if applicable, receives the reasonable cost of relocating the same or (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

SECTION 3. Grantee shall have the right to make all such reasonable rules and regulations in the conduct of its business as it may deem necessary or expedient, including meter deposits in such amounts as may be required to assure payment of bills. Grantee shall make such reasonable extensions in compliance with its effective tariff and the applicable rules and regulations of the Wyoming Public Service Commission (the "Commission").

SECTION 4. The City may adopt, from time to time, in addition to but not inconsistent with the rules and regulations of the Commission, such ordinances, rules and regulations as the City Council may see fit to adopt in regard to the regulation, maintenance and control of the rights and privileges herein conferred.

The City reserves its rights under its lawful police powers. The City, among other things, does not waive any rights it may have under any requirements of local law or regulations as amended, including for example, zoning codes, codes regarding building permits and fees, or time or manner of construction.

SECTION 5. Whenever the delivery or supply capability of Grantee's system, due to any cause whatsoever not limited to force majeure, is such that Grantee is unable to deliver to consumers served by Grantee the quantity of gas which the consumers require, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available quantities of gas among such consumers. All such action shall be completed in compliance with the Grantee's effective tariff and the Commission rules and regulations. Grantee shall defend, indemnify and hold Municipality harmless from any claim, damages, liability, costs and attorneys' fees arising out of such action.

SECTION 6. Grantee in the construction of said gas system within the limits of said Municipality shall use tested and approved pipes, materials and equipment.

SECTION 7. Grantee at all times will maintain mapping in compliance with the National Pipeline Mapping System ("NPMS") showing the size and approximate location of its mains laid in said distribution system in said Municipality.

SECTION 8. In case the available supply of gas shall at any time fail or become insufficient to supply the needs of the public of said Municipality, or should Grantee for any reason be unable to furnish the service herein contemplated, or upon the termination of this franchise for any reason whatsoever, Grantee shall have the right, within its discretion, to remove any and all of its pipes and other equipment or property from said Municipality, but in such event Grantee shall restore the streets, alleys and other public places to as good a condition as before such removal, and will hold said Municipality harmless from damages, attorneys' fees, costs and expenses incident to such removal.

SECTION 9. At all times during the term of the franchise, Grantee will, at its own expense, maintain in force general comprehensive liability insurance. A certificate of insurance for said insurance shall be provided to the City upon request. The coverage represented by the policy or policies shall be for the protection of the City, members of its boards and commissions, and its officers, mayor, council members, attorneys, agents, representatives and employees against liability for loss or damages for bodily injury, death, and property damage occasioned by the activities of Grantee under the franchise. Minimum liability limits under the policy or policies are to be \$3,000,000 for personal injury or death of any one person and \$3,000,000 for damage to property resulting from any one occurrence. Grantee may satisfy the above requirements through self-insurance.

SECTION 10. Grantee shall, and by the acceptance hereof agrees, to indemnify, save harmless and defend the City from and against all lawful actions, claims and demands, and from all damages, losses, liabilities, attorneys' fees, costs and expenses incurred as a result thereof, arising out of the negligence, willful act or omission of Grantee in the construction, removal, replacement, inspection or repair of any mains, pipes, services, equipment, appurtenances or appliances of Grantee, or in the use and operation thereof during the term of this Ordinance. However, Grantee shall not need to indemnify or save the City harmless from any actions, claim and demands, and from damages, losses, liabilities, attorneys' fees, costs and expenses incurred as a result thereof, arising out of the negligence, willful acts or omissions of the City, its representatives, agents or contractors.

SECTION 11. As consideration for all franchise rights and contractual privileges granted by the City under this Ordinance, the Grantee shall assess, effective the first billing cycle after this Ordinance becomes effective, to small, medium and large general service customers and any other gas users within the City, a Franchise Fee equal to 3% of the gross revenues actually received from its customers within the corporate limits of the City. Grantee shall pay to the City Treasurer in quarterly payments each year for the Ordinance's duration an amount equal to the Franchise Fee collected by Grantee hereunder.

Payment shall be made on or before the last business day of the months of January, April, July, and October.

Such payment shall be in lieu of any and all other fees, charges, licenses, ~~taxes~~ or assessments which the Municipality may impose for the rights and privileges herein granted under this Franchise. ~~Ad Valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect the obligations of the Grantee under this section.~~

Each franchise fee payment shall be accompanied by a report reflecting total gross revenues by category of customer class applicable to payment. Grantee shall at all times keep and maintain a full, true, and correct account of volumes delivered on Grantee's distribution and transmission system within the City in accordance with Grantee's corporate data retention policies. The City reserves the right to audit and recompute any and all amounts paid under and pursuant to the franchise, limited to a three-year look back period. No acceptance of any payment made shall be construed as a release, waiver or as an accord and satisfaction of any claim the City may have for further or additional sums payable under the franchise, or for the performance of any other obligation under the franchise.

To assist Grantee in determining which of its customers are located within the corporate limits of the City, the City agrees to furnish a map of the City boundaries to Grantee within ten (10) days of this Ordinance becoming effective and within thirty (30) days after any City annexation occurs.

SECTION 12. Notwithstanding the ~~exclusionary~~ provisions ~~in~~ Section 11, payment of the franchise fees by the Grantee as accepted by the City does not exempt the Grantee from sales tax, ~~license fees~~, occupation and use taxes, income taxes, excise taxes, utility taxes, head taxes, building permit fees, land use fees, development impact fees, business and license fees, motor vehicle registration fees, or other fees and charges that are required to be paid pursuant to ordinances of general application that are not pursuant to the rights and privileges herein granted for the use of the streets and public ways. For example, and without limitation, Ad Valorem property taxes imposed generally upon all real and personal property within the Municipality shall be payable by the Grantee under this section.

SECTION 13. This franchise may be revoked by the City Council at any time for violation of this Ordinance or for the failure or refusal to comply with the provisions of this Ordinance except for any cause beyond the control of Grantee; provided that the City shall first give written notice by registered mail to the Grantee, specifying what in particular the Grantee is claimed to be in default of within the provisions of this

Ordinance and shall have been given a reasonable time (30 days) after receipt of such notice to make good such claimed default before a revocation or forfeiture occurs. Grantee shall have the right to timely appeal such revocation or forfeiture to a court of competent jurisdiction in Fremont County or the United States District Court for the District of Wyoming in Lander.

SECTION 14. This Ordinance and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this Ordinance, one or both of the parties, or any transaction hereunder.

SECTION 15. This Ordinance and the rights, authority and franchise herein and hereby granted shall terminate and be of no further force and effect:

(a) unless within six (6) months after final passage of this Ordinance Grantee shall file with the Clerk of said Municipality a written acceptance hereof; ~~or~~

(b) if and when, after such acceptance, Grantee shall file with the Clerk of said Municipality a surrender hereof in writing.

SECTION 16. This Ordinance shall be in full force and effect from and after its final passage and publication as required by law and upon acceptance by Grantee shall be held to constitute a binding contract between said Municipality and Grantee, subject to its terms and conditions.

SECTION 17. The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same.

SECTION 18. The City retains its governmental immunity and defenses as provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

SECTION 19. If any section, subsection, phrase or provision of this Ordinance is found in conflict with the rules, regulations or requirements of the Commission, only the specific section, subsection, phrase or provision in conflict shall be null and void, and all other sections, subsections, phrases or provisions of this Ordinance shall remain in full force and effect.

SECTION 20. This Ordinance shall take effect from and after its passage, approval and publication as required by law and the ordinances of the City of Lander.

PASSED ON FIRST READING _____

PASSED ON SECOND READING _____

PASSED ON THIRD READING _____

PASSED, ADOPTED AND APPROVED by the Mayor and City Council on the _____ day of _____, 202~~6~~5.

THE CITY OF LANDER
A Municipal Corporation

By _____
_____, Mayor

ATTEST:
