

ORDINANCE 2025-15

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.

NOW THEREFORE, 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 under streets within said Municipality there be and hereby is 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 for the right, permission and authority to construct, maintain and operate a gas transmission and distribution system under the streets within the limits of said Municipality, as the same now exists or may hereafter be extended for said purpose and there is 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, City easements and other City real property and public ways 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 (20) 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 from 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. 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 approval of the Public Works Director or other authorized representatives of said Municipality. No manholes or other fixtures shall be constructed as to extend above the grade line of the streets, alleys, or public ways where the same may be situated.

Grantee, in doing any work in connection with said mains, pipes and services shall avoid, so far as practicable, interfering with the use of any street, alley or public place. If disturbed, Grantee at its own expense and in a manner satisfactory to the authorized representatives of said Municipality shall replace such paving or surface in as good a

condition as before such work was commenced. The Grantee shall so locate its plants, works, transmission and distribution structures, equipment, mains and pipes within said City in a manner to meet with the approval of the City and further, in locating said facilities, shall do so in such manner as to cause minimum interference with the proper use of streets, alleys and public ways and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoin any of the said streets, alleys or public ways.

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.

In the event that at any time hereafter said Municipality shall lawfully elect to change or alter the grade of any street, alley or public place, or to construct new or additional water or sewer lines, Grantee, upon being directed by resolution of the Mayor and City Council of said Municipality so to do, shall, where the same becomes necessary by reason of said change of grade or construction of water or sewer lines, move or re-lay its mains or service pipes. During the preliminary stages of planning and engineering of any Municipality project which may require the Grantee to relocate its facilities and at any time at which the Municipality determines that it may materially modify such Municipality project, the Municipality shall provide notice to Grantee of such Municipality project or material modification of such Municipality project and offer to meet and confer with Grantee on date(s) and at time(s) and location(s) that are mutually acceptable to the Municipality and Grantee. The purpose of such meeting(s) is to seek Grantee's input and explore means of reducing the costs to the Grantee and to provide the Municipality with a timetable within which the involved Grantee facilities will be relocated, including anticipated start date, so as to facilitate coordination with the timetable to be established by the Municipality for completion of the Municipality project. The Municipality shall make reasonable efforts to mitigate the financial impact of any such project on the Grantee. If the Municipality does not meet and confer with the Grantee within a reasonable time, which shall be at least ninety (90) days prior to formalizing the planning and engineering and any subsequent material modification of any Municipality project which may require the Grantee to relocate its facilities, the Municipality shall pay the Grantee relocation and restoration expenses incremental to the expenses that Grantee would have incurred if the Municipality had met and conferred with the Grantee in such manner. The Municipality will not be required to pay relocation or restoration costs in those circumstances in which the Municipality could not have reasonably known that there would be a potential impact to Grantee's 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 of its mains from time to time as may be required to furnish service within the City in compliance with its effective tariff and the applicable rules and regulations of the Wyoming Public Service Commission (the "Commission"), taking into account provisions regarding lack of supply and lack of adequate return on investment.

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, rules regarding obtaining permits and paying fees, or the 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 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, material 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 shall, 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.

SECTION 10. Grantee shall, and by the acceptance hereof agrees, to indemnify, save harmless and defend said Municipality 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.

SECTION 11. As consideration for all franchise rights and contractual privileges granted by the City under this Ordinance, the Grantee shall pay, beginning the first billing cycle after this Ordinance becomes effective and throughout its duration, a Franchise Fee equal to 3% of the gross revenues actually received from its customers located within the corporate limits of the City for gas delivered to such users. Grantee shall pay to the City Treasurer four (4) quarterly payments each year by the last business day of the months of January, April, July, and October.

Such payment shall be in addition to any and all other fees, charges, licenses, taxes or assessments which the Municipality may impose for the rights and privileges herein granted or for the privilege of doing business within the Municipality. For example, and without limitation, Ad Valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect the obligation of the Grantee under this section.

Each franchise fee payment shall be accompanied by a report reflecting total gross revenues for the quarter and attested to by the person principally responsible for the financial operations of Grantee. Grantee shall at all times keep and maintain a full, true, and correct account of gross revenues derived from Grantee's distribution and transmission system within the City. The City reserves the right to audit and recalculate any and all amounts paid under and pursuant to the franchise. 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. 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 13. 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 14. 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 15. 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 16. 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 17. The City retains its governmental immunity and defenses as provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

SECTION 18. 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 19. 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.

PUBLIC HEARING	November 12, 2025
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 _____, 2025.

THE CITY OF LANDER
A Municipal Corporation

By _____
_____, Mayor

ATTEST:

_____, City Clerk

STATE OF WYOMING)
) ss.
COUNTY OF FREMONT)

CERTIFICATE

I hereby certify that on _____, 2025, following passage, adoption and approval of Ordinance _____, _____, the duly elected, qualified and acting Mayor of the City of Lander, issued this proclamation and said ordinance was published at least once in the Lander Journal, a newspaper of general circulation within Lander, Wyoming, the effective date and publication being _____, 2025.

_____, City Clerk

ACCEPTANCE OF FRANCHISE

Ordinance 2025-____ (the Franchise) is accepted and approved as of this _____ day of _____, 2025, subject to applicable law.

BLACK HILLS WYOMING GAS, LLC
d/b/a BLACK HILLS ENERGY

By: _____
Name: _____
Title: _____