



ORDINANCE 934

A PROPOSED ORDINANCE OF THE CITY OF REXBURG, IDAHO, GRANTING TO INTERMOUNTAIN GAS COMPANY A ONE (1) YEAR EXTENSION TO ITS FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SYSTEM; PROVIDING FOR THE USE OF STREETS AND ALLEYS, AND RULES GOVERNING THE SAME, SUBJECTING THE GRANTEE TO ALL POWERS OF THE CITY; SETTING FORTH THE RULES OF THE FRANCHISE AND GRANT; PROVIDING FOR THE RIGHT OF INSPECTION BY THE CITY OF GRANTEE'S PLANS, ACCOUNTS, AND BOOKS; REQUIRING GRANTEE TO FURNISH CERTAIN MAPS; SETTING FORTH THE QUARTERLY PAYMENT TO THE CITY, AND THE FILING OF QUARTERLY REPORTS WITH THE CITY; REQUIRING GRANTEE TO INDEMNIFY CITY, AND FILE EVIDENCE OF INSURANCE; REQUIRING COMPLIANCE WITH SAFETY REGULATIONS; SETTING FORTH AN AGREEMENT NOT TO COMPETE, RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR SURRENDER OF FRANCHISE; GRANTING RIGHT TO SALVAGE; REQUIRING WRITTEN ACCEPTANCE; PROVIDING FOR CONSENT TO SALE OR ASSIGNMENT; PROVIDING FOR PAYMENT OF PUBLICATION COST; SETTING FORTH PENALTIES AND FORFEITURES, SEPARABILITY AND REPEAL.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF REXBURG, IDAHO:

SECTION I: GRANT OF AUTHORITY.

There is hereby granted to Intermountain Gas Company, a corporation, its successors and assigns (hereinafter collectively referred to as "Grantee") a one (1) year extension to the right and authority to construct, install, maintain and operate a gas transmission and distribution system, including mains, pipes, conduits, services and other necessary structures and appliances appertaining 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 Rexburg, Idaho (hereinafter referred to as "City") for the furnishing, transmission, distribution and sale of gas, whether artificial, natural, mixed or otherwise, for heating, domestic, industrial and other purposes and for transmitting gas into through and beyond the said City. The City represents that it has the sole power and authority to make this grant of authority and agrees to notify Grantee in writing if the City should cease to have this power.

SECTION II: USE OF STREETS AND RULES GOVERNING SAME.

Grantee shall secure a permit for any opening it shall make in the streets, alleys and public places in the City and shall be subject to all applicable ordinances as required within the City, except that no permit fees shall be charged as a result of said Ordinances. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the City may designate for such purpose. Whenever the City shall pave or repave any street or shall change the grade or line of any street or public place or shall construct or reconstruct any conduit, water main, sewer or water connection or other city public works or city utility, it shall be the duty of the Grantee when so ordered by the City to change its mains, services and other property in the streets or public places at its own expense so as to conform to the established grade or line of such street or public place and so as not to interfere with the conduits, sewers and other mains of the City as constructed or reconstructed; however, the Grantee shall not be required to relocate pipes, mains and appurtenances when the street, alley or public ground in which they are located is vacated for the convenience of abutting property owners and not as an incident to the public improvement, unless the reasonable cost of such relocation and the loss and expenses resulting therefrom is first paid to Grantee. In the event Federal, State or other funds are available in whole or in part for utility relocating purposes, the City may apply for such funds and the Grantee will be

reimbursed to the extent any such funds are actually obtained.

SECTION III: GRANTEE SUBJECT TO ALL POWERS OF CITY, RULES GOVERNING REPAIR AND RECONSTRUCTION OF STREET.

The exercise of privileges herein granted shall be subject at all times to all of the powers of the City and all regulatory ordinances adopted pursuant thereto. Prior to making any excavations in City Rights-of-way, the Grantee shall obtain an excavation permit and comply with all requirements of the permit. The Grantee shall not unnecessarily or unreasonably obstruct the use of or damage any street or alley, and shall within a reasonable time and as early as practicable upon completion of any construction or repair work as determined by the City, restore all City streets and alleys to the same order and condition as they were before the excavation was made insofar as reasonably possible. The Grantee shall maintain, repair and keep in good condition for a period of three years from the date of acceptance of completion by the City, all portions of streets and alleys disturbed by it or its agents. The Grantee shall be responsible for any obstruction in any street, alley or other public place caused by it in the operation and maintenance of its properties occurring at anytime and shall promptly remove such obstruction. Any such obstruction which, after proper notice to Grantee demanding removal is not promptly removed by the Grantee may be taken care of by the City and the costs thereof shall be charged against Grantee and may be enforced as a lien upon any of its properties or assets.

SECTION IV: TERM OF FRANCHISE AND GRANT.

The right, authority and grant herein and hereby made to said Grantee, its successor and assigns, is granted for and limited in time to a period of one (1) years from March, 2005 through and including February, 2006.

SECTION V: CITY RIGHT TO INSPECTION OF GRANTEE'S PLANS.

The City shall have access at all reasonable hours to all of the Grantee's plans, contracts and engineering, accounting, finance, statistical, customer and service records relating to the property and operations of Grantee within the City. The Grantee shall furnish, upon request, the City with a complete set of maps, including plans and profile of the distribution system of the Grantee and any future extensions.

SECTION VI: PAYMENT TO CITY AND FILING OF QUARTERLY WRITTEN REPORT WITH THE CITY.

As consideration for this franchise and grant said Grantee, its successors and assigns, during the franchise period, shall pay to the City three percent (3%) of the gross quarterly receipts received from all sales of gas by Grantee within the corporate limits of the City through use, operation or possession of this franchise and grant. Such quarterly payments shall be in lieu of taxes, fees or charges (other than ad valorem taxes) related to easements, franchises, rights-of-way, and utility lines during the term of the public service provider's franchise within the city, which the City may impose for the rights and privileges herein granted of for the privilege of doing business within the City.

The Grantee shall file by 30 days after the end of each calendar quarter with the City, a report for the preceding calendar quarter, verified by the affidavit of the general manager, auditor, treasurer, or assistant treasurer of said Grantee, which report shall contain a statement in such form and detail as shall from time to time be prescribed by the City, of all the gross receipts arising from all sales of gas by said Grantee within the City for the calendar quarter preceding such report, and at the same time the Grantee shall pay to the City the stipulated percentage of the gross quarterly receipts due for the calendar quarter for which said report is made and filed.

SECTION VII: GRANTEE LIABILITY-INDEMNIFICATION.

It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution claim or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its gas system in the City, The City shall notify the grantee's representative in the City within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of the Grantee.

SECTION VIII: INSURANCE.

Upon acceptance of this franchise by Grantee and before Grantee shall have any right hereunder,

Grantee shall file with the City Clerk a certificate evidencing the insurance of the Grantee against property damage in an amount not less than \$1,000,000.00 and bodily injury with limits of not less than \$1,000,000.00 per person and \$2,000,000.00 total for each occurrence. Provided however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of the City are increased pursuant to the Idaho Tort Claims Act (Idaho Code Section 6-901 et. seq.) or any similar legislation.

SECTION IX: SAFETY REGULATION COMPLIANCE.

Grantee shall comply with and conform to all safety regulations promulgated by the United States, State of Idaho or City of Rexburg, or any regulatory body having jurisdiction thereof.

SECTION X: AGREEMENT NOT TO COMPETE -- RESERVE TO CITY POWER OF EMINENT DOMAIN.

In consideration of Grantee's undertaking hereunder as evidenced by its acceptance thereof the City agrees not to engage in the business of distributing and selling gas during the life of this franchise or any extension thereof in competition with the Grantee, its successor and assign: but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State of Idaho.

SECTION XI: SURRENDER OF FRANCHISE

In the event natural gas at any time shall cease to be available to Grantee for the distribution and sale hereunder, Grantee reserves the right to surrender this franchise, or in any of such events, Grantee reserves the right to salvage all of its plant, works and facilities, and will restore City's streets and alleys damaged any such salvage operation.

SECTION XII: WRITTEN ACCEPTANCE.

The Grantee shall within thirty (30) days after the passage and publication of this ordinance, file with the City Clerk its acceptance of this franchise in writing signed by its proper officers and attested by its corporate seal.

SECTION XIII: SALE OR ASSIGNMENT OF FRANCHISE

No sale or assignment of this franchise shall be effective until it is approved by the City, provided, however, that nothing herein contained shall be construed as to require consent or to prevent the Grantee of this franchise and grant from including it in a mortgage or trust deed executed for the purpose of obtaining money for corporate objects.

SECTION XIV: PUBLICATION COSTS.

The Grantee shall assume the cost of publication of this ordinance as such publication is required by law.

SECTION XV: FORFEITURE.

Any violation by the Grantee, its vendee, lessee or successors of the provisions of this ordinance, franchise and grant or any material portions thereof or the failure promptly to perform any of the provisions thereof shall be cause for the forfeiture of this franchise and grant and all rights hereunder by the City after sixty (60) days written notice to the Grantee and the continuance of such violation, failure or default; however, this provision shall not prevent the Grantee from submitting such question of forfeiture to proper court determination.

SECTION XVI: SEPARABILITY.

If any part or parts of this ordinance shall be adjudged by the courts to be unconstitutional or invalid, either party shall have the option to repeal the entire ordinance.

SECTION XVII: AMENDMENT OR REPEAL.

In the event the Legislature changes the law relating to franchises granted in cities for natural gas, this ordinance may be amended or repealed by the City.

SECTION XVII: REPEAL

All ordinances and parts or ordinances of City in conflict herewith shall be, and the same are hereby repealed.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 20TH day of

2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City of Rexburg, this 20th day of April, 2005.

Blair D. Kay, City Clerk

(SEAL)