



ORDINANCE NO. 451

AN ORDINANCE OF THE CITY OF REXBURG, IDAHO, GRANTING TO INTERMOUNTAIN GAS COMPANY A THIRTY (30) YEAR 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 GOVERNING REPAIRS AND RECONSTRUCTION OF THE STREETS; PROVIDING FOR THE TERM 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 ANNUAL PAYMENT TO THE CITY OF THE FILING OF ANNUAL 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, ASSIGNMENT OR LEASE; SETTING FORTH CITY'S RIGHT TO ADDITIONAL PAYMENTS; SETTING FORTH PENALTIES AND FORFEITURES, SEPARABILITY, AND REPEAL.

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

SECTION I: GRANT OF AUTHORITY

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, but no fee shall be required of Grantee for any such permit. 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, but not so as unreasonably to interfere with the proper operation of Grantee=s facilities and service. 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 pupes, 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 a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to Grantee. Whenever the City grants a permit for an excavation in a street, alley or other public ground and the work contemplated by the permit may expose gas pipes, mains and appurtenances of the Grantee, the City shall promptly furnish a copy of the permit to Grantee.

SECTION II: GRANTEE SUBJECT TO ALL POWERS OF CITY-RULES GOVERNING REPAIR AND RECONSTRUCTION OF STREETS

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. 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 practible upon completion of any construction or repair work, 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 be responsible for any obstruction or any defect in any street, alley or other public place caused by it in the operation and maintenance of its properties occurring at any time and shall promptly remove any such obstruction or defect. Any such obstruction or defect which, after proper notice to Grantee demanding removal or repair, as the case may be, is not promptly removed or repaired 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 III: TERM OF FRANCHISE AND GRANT

The right, authority and grant herein and hereby made to said Grantee, its successors and assigns, is granted for, and limited in time to, a period of thirty (30) years from the date it takes effect.

SECTION IV: CITY RIGHT TO INSPECTION OF GRANTEE'S PLANS, ACCOUNTS AND BOOKS - GRANTEE TO FURNISH CERTAIN MAPS

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 the City with a complete set of maps, including plans and profile of the distribution system of the Grantee and any future extensions.

SECTION V: PAYMENT TO CITY AND FILING OF ANNUAL 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 the following stipulated percentage of the gross annual receipts received from all sales of gas within the corporate limits of the city through use, operation or possession of the franchise and grant:

1. Three per cent (3%) per each year during the life of this franchise and grant.

Such annual payments shall be in lieu of any and all other fees, charges, licenses or taxes (other than ad valorem taxes) which the City may impose for the rights and privileges herein granted or for the privilege of doing business within the City.

The Grantee shall file by March 31 of each year with the City a written report for the preceding calendar year, 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 gross receipts arising from all sales of gas by said Grantee within the City for the calendar year preceding such report, and the gross annual receipts due for the year for which said report is made and filed. The word Ayear@ as used in the Section VI means the calendar year, except for the first year which will commence on the date when this franchise and grant is in effect and end on the following December 31.

SECTION VI: 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, judgement, 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 VII: INSURANCE

Upon acceptance of this franchise by Grantee and before Grantee shall have any rights 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 \$50,000.00 and bodily injury with limits of not less than \$50,000.00 per person and \$500,000.00 total for each occurrence.

SECTION VIII: SAFETY REGULATION COMPLIANCE

Grantee shall comply with and conform to all safety regulations promulgated by the City or any regulatory body having jurisdiction hereof.

SECTION IX: TIME LIMIT IN WHICH TO COMPLY WITH TERMS OF FRANCHISE

Grantee shall have a reasonable time within which to lay gas mains and to otherwise comply with the terms of the franchise, not to exceed 365 days from this date, unless such time is extended by the City.

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

To consideration of Grantee=s undertaking hereunder as evidenced by its acceptance hereof 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 successors and assigns; 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 and in the event of such surrender prior to any expiration or termination of this franchise, or in any of such events, Grantee reserves the right to salvage all of its plants, works and facilities, and will restore City=s streets and alleys damaged by such salvage operation.

SECTION XIII: 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 XIV: SALE, ASSIGNMENT OR LEASE OF FRANCHISE

No sale, assignment, or lease 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 XV: PUBLICATION COSTS

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

SECTION XVI: 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 XVII: SEPARABILITY

If any part or parts of this ordinance shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any other part or parts hereof which can be given

(SEAL)

REPEALED BY ORD. 774