

ORDINANCE NUMBER 1134

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, GRANTING TO INTERMOUNTAIN GAS COMPANY A TEN (10) YEAR NON-EXCLUSIVE FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SERVICE; PROVIDING DEFINITIONS; REGULATING USE OF THE PUBLIC WAYS; SUBJECTING FRANCHISEE TO THE POWERS OF THE CITY; PROVIDING THE TERM OF FRANCHISE; PROVIDING FOR INSPECTION OF RECORDS; REQUIRING FRANCHISEE TO FURNISH MAPS; REQUIRING A FRANCHISE FEE; PROVIDING FOR REMOVAL OF FRANCHISEE'S PROPERTY; PROVIDING FOR REVOCATION FOR CAUSE; REQUIRING FRANCHISEE TO INDEMNIFY CITY AND PROVIDE INSURANCE; REQUIRING COMPLIANCE WITH SAFETY REGULATIONS; PROVIDING CITY'S AGREEMENT NOT TO COMPETE, RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR SURRENDER OF FRANCHISE; GRANTING RIGHT TO SALVAGE; REQUIRING WRITTEN ACCPETANCE; PROVIDING FOR CONSENT TO SALE OR ASSIGNMENT; PROVIDING FOR PAYMENT OF PUBLICATION COST; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE AND PROVIDING AN EFFECTIVE" DATE.

BE IT IS ORDAINED by the Mayor and City Council of the City of Ketchum, Idaho, that:

SECTION 1. PURPOSE. The public ways of the City of Ketchum serve a variety of municipal and utility purposes providing for the public health, safety and welfare. Franchisee is hereby permitted to use said public ways for its gas transmission and distribution service purposes under the terms and conditions contained herein.

SECTION 2. DEFINITIONS. For the purpose of this Ordinance and Franchise, the following terms shall have the meaning given herein.

A. "CITY" means the City of Ketchum, a municipal corporation of the State of Idaho.

B. "COUNCIL" means the City Council of the City of Ketchum, Idaho.

C. "CUSTOMER" means a person or user of the gas system who lawfully receives gas service with Franchisee's permission.

D. "FRANCHISE" shall mean the authorization provided by this Ordinance issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes installation, construction, maintenance or operation of the gas transmission and distribution system for the purpose of offering gas service to customers.

E. "FRANCHISEE" means INTERMOUNTAIN GAS COMPANY, the person to whom a Franchise, as hereinabove defined, is granted by the council under this Ordinance, and the lawful agent, successor, transferee or assignee of said person, subject to such conditions as may be prescribed by the City.

F. "GAS SERVICE" means 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 said City to a Customer.

G. "GROSS REVENUES" means any and all receipts and revenues received by Franchisee from all sales of gas and transportation charges to Customers within the corporate limits of the City.

H. "PERSON" means any individual, firm, partnership, corporation, organization, association of other legal entity.

I. "PROPERTY OF FRANCHISEE" means all property owned, installed or used by Franchisee in the conduct of its gas service business in the City under the authority of the Franchise granted pursuant to this Ordinance.

J. "PUBLIC WAY" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public rights-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses.

K. "SHALL" means mandatory, not merely advisory.

L. "STATE" means the State of Idaho.

SECTION 3. GRANT OF NON-EXCLUSIVE FRANCHISE.

A. There is hereby granted to Intermountain Gas Company, a corporation, its successors and assigns, a ten (10) year non-exclusive Franchise 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 public ways within the present and future corporate limits of the 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 said City.

B. The City represents that it has the sole power and authority to make this grant of authority and agrees to notify Franchisee in writing if the City should cease to have this power.

C. The Franchise granted pursuant to this Ordinance shall be non-exclusive and shall not preclude the City from granting other or further Franchises or permits or preclude the City from using any public way or affect its jurisdiction over them or any part of them, or limit the

full power of the City to make such changes, as the City shall reasonable deem necessary, including but not limited to the dedication, establishment, maintenance, and improvement of all new public ways.

SECTION 4. USE OF THE PUBLIC WAYS.

A. Franchisee shall secure a permit for any construction it shall make in the public way in the City and shall be subject to all applicable ordinances, but no fee shall be required of the Franchisee for any such permit.

B. The location or relocation of all property of Franchisee shall be made under the supervision and with the approval of such representatives as the City may designate for such purpose, but not so as unreasonably to interfere with the proper operation of Franchisee's gas service.

C. Franchisee shall not unnecessarily or unreasonably obstruct the use of or damage any public way, and shall within a reasonable time as early as practicable (per current standards; see dig/excavation permit) upon completion of any construction or repair work, restore all City public ways to substantially the same order or better condition, as deemed by the City, as they were before the excavation was made.

D. All property of Franchisee constructed under this Franchise shall be placed and maintained at such places and positions in or upon such public ways so as not to interfere with the passage of traffic and the use of the public ways.

E. Franchisee shall be responsible for any obstruction to a public way caused by it in the installation, construction, operation and maintenance of its property occurring at any time and shall promptly remove such obstruction. Any such obstruction which, after proper notice to Franchisee demanding removal, is not promptly removed by Franchisee may be removed by the City and the costs thereof shall be charged against Franchisee and may be enforced as a lien upon any of its properties or assets.
Franchisee shall provide proper traffic control for all maintenance and construction activities per the Manual of Traffic Control Devices.

F. Franchisee shall maintain, repair and keep in good condition for a period of three (3) years from the date of acceptance by the City, those portions of public ways disturbed by Franchisee or its agents.

G. Whenever the City shall pave or repave any public way or shall change to grade or line of any public way 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 Franchisee when so ordered by the City to change its mains, services and other property of Franchisee in the public ways at its own expense so as to conform to the established grade or line of such public way and so as not to interfere with the conduits, sewers and other mains of the City as constructed or reconstructed; however, Franchisee shall not be required to relocate pipes, mains and appurtenances when the public way 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

Franchisee. The City will make reasonable effort to avoid the need for such moving or changing whenever possible.

H. Whenever, in the reasonable opinion of the City, any of Franchisee's property needs to be relocated or altered due to a construction or repair project by the City in a public way, Franchisee shall move or relocate said property within sixty (60) days from receiving written notice from the City, unless the extent of the project and the health, safety and welfare of the public dictate another reasonable time period. However, in the event such relocation is required due to emergency repairs deemed necessary by the City, such relocation or moving shall be accomplished within twenty-four (24) hours, unless the extent of the project and the health, safety and welfare of the public dictate another reasonable time period.

I. In the event Federal, State or other funds are available in whole or in part for utility relocation or alteration purposes, the City may apply for such funds and the Franchisee will be reimbursed to the extent any such funds are actually obtained.

J. Whenever the City grants a permit for any excavation in a public way and the work contemplated by the permit may expose property of the Franchisee or the facilities of any public provider within the City, the Franchisee, or the entity conducting the excavation, after obtaining the necessary City permit therefore, shall comply in every respect with the terms and conditions of Title 55, Chapter 22, Idaho Code, as may be amended.

SECTION 5. *POWERS OF THE CITY.*

The exercise of privileges herein granted shall be subject at all times to all of the powers of the City and all regulatory ordinances and resolutions adopted pursuant thereto. Provided however, the City retains the right to modify this agreement to include any provision granted by Franchisee to another jurisdiction in Idaho that is deemed by the City to be of public benefit.

SECTION 6. *TERM OF FRANCHISE.*

The Franchise herein and hereby made to said Franchisee is granted for, and limited in time to, a period of ten (10) years from July 1, 2015 through and including June 30, 2025.

SECTION 7. *INSPECTION OF RECORDS-FRANCHISEE TO FURNISH MAPS.*

A. Upon reasonable advance notice, the City shall have the right to inspect and audit the records of Franchisee necessary for the enforcement of the Franchise and verification of the accuracy of Franchise fee payments at any time during the normal business hours, provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of Franchisee. Such documents shall be limited specifically to records pertaining to the calculation of Franchise payments to the City.

B. Upon request, Franchisee shall furnish the City with a complete set of maps, including plans and profile of the gas system of Franchisee and any known future extensions within the City. Provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information and maps shall not be used for locating gas facilities with the intent of excavating.

SECTION 8. *FRANCHISE FEE*

A. As consideration for this Franchise, Franchisee, during the Franchise period, shall pay to the City three percent (3%) of the gross revenue as that term is defined in Section 2 herein.

B. Franchisee shall pay the Franchise fee to the City quarterly for the preceding three (3) months.

C. Such quarterly payments shall be in lieu of taxes, fees or charges (other than ad valorem taxes) related to easements, Franchises, rights-of-way, permits, utility lines and equipment installation, maintenance and removal during the term of Franchisee's Franchise with the City, which the City may impose for the rights and privileges herein granted or for the privilege of doing business within the City.

D. Franchisee shall file within thirty (30) days after the end of each calendar quarter a report with the City for the preceding calendar quarter, verified by the affidavit of the general manager, auditor, treasurer, or assistant treasurer of said Franchisee, 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 revenue received by said Franchisee within the City for the calendar quarter preceding such report, and at the same time the Franchisee shall pay to the City the stipulated percentage of the gross quarterly revenue due for the quarter for which said report is made and filed.

E. All sums which become delinquent shall accumulate interest at the rate of interest established by the Idaho Public Utilities Commission for customer deposits, as may be amended. This accrual of interest is not intended to waive or in any manner restrict City's ability to elect any procedure or method of collection permissible by law to enforce all the terms and conditions of this Ordinance and Franchise.

SECTION 9. *REMOVAL OF PROPERTY OF FRANCHISEE.*

A. In the event the Franchisee removes its property, Franchisee shall promptly restore the public way or other areas in accordance with local regulations and standards from which such property has been removed to a condition similar to that existing before such removal and satisfactory to the City.

SECTION 10. *REVOCAION FOR CAUSE.*

A. If Franchisee violates or fails to comply with any material provision of this Franchise, the City shall give written notice to Franchisee of the alleged non-compliance of the Franchise. Franchisee shall have sixty (60) days, or such lesser time if reasonably deemed an emergency by the City, from the date of notice of non-compliance to cure such alleged default or, if such default cannot be cured within sixty (60) days, or such lesser time if reasonably deemed an emergency by the City, to present to the City a plan of action whereby such default can be promptly cured.

B. If such default continues beyond the applicable dates agreed to for such cure, the City shall give Franchisee written notice that all rights conferred under this Ordinance and the Franchise may be revoked or terminated by the Council after a public hearing. Franchisee shall be entitled to not less than thirty (30) days prior notice of the date, time and place of the public hearing. The City may elect. In lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the district court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and recover damages and costs incurred by the City by reason of Franchisee's failure to comply.

SECTION 11. *FRANCHISE LIABILITY-INDEMNIFICATION.*

It is expressly understood and agreed by and between the Franchisee and the City that the Franchisee shall save the City harmless from, and defend the City from all loss or damages sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, caused by acts or omissions of the Franchisee in the installation, construction, operation or maintenance of Franchisee's property or its gas service or any other actions of Franchisee in the City. The City shall notify, in writing, Franchisee within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the City caused by any of the aforesaid acts or omissions on the part of the Franchisee. Franchisee shall thereupon have the duty to appear and defend any such suit or action on behalf of the City, without cost or expense to the City:

SECTION 12. *INSURANCE.*

A. Franchisee shall, concurrently with the filing of an acceptance of this Franchise granted hereunder, furnish to the City Clerk, and at all times during the existence of the Franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, for the purpose of protecting the City and all persons against liability for loss or damage, for personal injury, death and property damage, civil rights violations, and errors or omissions, caused by the operations of Franchisee under this Franchise. Such policy shall name the city as an insured with regard to the aforementioned losses or damages caused by Franchisee.

B. Such policy shall provide insurance 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.

C. The certificate of insurance reflecting the policy mentioned in the foregoing subsections shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof.

D. All of the above-described insurance policies shall contain provisions that the insurance carriers shall have no right of recovery or subrogation against the City, or the City's insurance carriers with regard to the aforementioned losses or damages caused by Franchisee.

SECTION 13. SAFETY REGULATION COMPLIANCE.

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

SECTION 14. AGREEMENT NOT TO COMPETE, POWER OF EMINENT DOMAIN AND OTHER POWERS.

In consideration of Franchisee'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 Franchisee; but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain or any other power or powers granted to it under the laws of the State of Idaho.

SECTION 15. SURRENDER OF FRANCHISE.

In the event natural gas at any time shall cease to be available to Franchisee for the distribution and sale hereunder, Franchisee reserves the right to surrender this Franchise. In the event of such surrender, or of the expiration or termination of this Franchise, or in any of such events, Franchisee reserves the right to salvage all of its property and will restore City's public ways damaged by such salvage operation to substantially the same order and condition, as deemed by the City, as they were before the salvage was made.

SECTION 16. CHANGES, ALTERATION, AMENDMENTS.

In the event of an amendment to the laws, rules or regulations of the State of Idaho or the Public Utilities Commission of Idaho applicable to this Ordinance and Franchise, the terms of this Ordinance and Franchise and the right and privileges hereby conferred and reserved may be changed, altered, amended or modified upon mutual agreement between the City and the Franchisee, which agreement shall not be unreasonably withheld.

SECTION 17. WRITTEN ACCEPTANCE.

Franchisee shall within twenty (20) 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, together with the certificates of insurance required by Section 11, herein.

SECTION 18. SALE OR ASSIGNMENT OF FRANCHISE.

This Franchise shall not be sold, assigned or otherwise alienated without the express consent of the city, which consent shall not be unreasonably withheld, and no dealings with an assignee on the part of the City to require the performance of any act or payment of any compensation by the assignee shall be deemed to operate as such consent; provided, that nothing herein shall be construed to prevent Franchisee of this Franchise from including it in a mortgage or trust deed executed for the purpose of obtaining money for corporate objects.

SECTION 19. PUBLICATIONS COSTS.

Franchisee shall assume the cost of publication of this Franchise as such publication is required by law.

SECTION 20. SAVINGS AND SEVERABILITY CLAUSE.

If any part or parts of this Ordinance or the application thereof to any particular circumstance shall ever be held invalid or Unenforceable by Court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

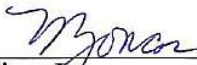
SECTION 21. REPEALER CLAUSE.

City of Ketchum, Ordinance Number 950, Adopted June 27, 2005, granting a gas Franchise to Intermountain Gas Company, together with all ordinances and parts of ordinances of City in conflict herewith shall be, and the same are hereby repealed.

SECTION 22. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its passage, approval and due application according to law.

PASSED by the Ketchum City Council and APPROVED by the Mayor on this 15th day of June, 2015.



Nina Jonas
Mayor

ATTEST:



Sandra Cady, CMC
City Clerk

