

CITY OF GOTHENBURG, NEBRASKA

ORDINANCE NO. 926

AN ORDINANCE GRANTING TO SOURCEGAS DISTRIBUTION LLC, ITS SUCCESSORS AND ASSIGNS, 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 GOTHENBURG, NEBRASKA 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. 284.

**BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL
OF THE CITY OF GOTHENBURG, NEBRASKA**

SECTION 1. That in consideration of the benefits to be derived by the City of Gothenburg, Nebraska, hereinafter referred to as "Municipality", and its inhabitants from the construction and operation of a gas transmission and distribution system in said Municipality there be and hereby are granted to SourceGas Distribution LLC, its successors and assigns, hereinafter collectively referred to as "Grantee", 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 a period of twenty-five (25) years from and after the final passage date of this Ordinance; provided, however, that the Municipality reserves the right at the end of each ten (10) year period from and after the effective date of the Ordinance, to renegotiate the provisions of this Ordinance with Grantee, its successors and assigns. In the event such renegotiations have not resulted in a mutually agreeable amendment to the Ordinance within a period of ninety (90) days after the end of such ten (10) year period, then and in such event, the Municipality, through its City Council, reserves the right to extend the negotiation period by up to sixty (60) days or to cancel this franchise by repeal of the Ordinance within sixty (60) days following the said ninety (90) day period. If no renegotiation is instituted by the City Council within said ninety (90) day period and completed by the end of that period or any such extended period, or if the franchise is not cancelled within the sixty (60) day period, this franchise shall continue in full force and effect.

For said purpose there are 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 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 cities, villages and customers.

SECTION 2. That all mains, services, and pipes laid or installed under this grant shall be so located and laid 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 Committee on streets and alleys or other authorized representatives of said Municipality.

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, and where the paving or surface of any street, alley or public place is 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 condition as before such work was commenced.

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 relay its mains or service pipes at Grantee's own expense; provided, however, that Municipality shall confer with Grantee and seek Grantee's input during the initial planning and engineering phase of any such Municipality project, and Municipality and Grantee shall take reasonable steps to explore means of reducing the costs to Grantee and to avoid or minimize the need for Grantee to move or relay its mains or service pipes. Municipality and Grantee understand that Grantee may include any costs incurred herein for recovery in its rate case proceedings before the Nebraska Public Service Commission (the "Commission").

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 without limitation 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 said Municipality to parties making application therefor; but Grantee shall not be required to make any extension for the

purpose of serving any consumer or consumers if Grantee is, for any reason, unable to obtain an adequate supply of gas to warrant the construction of said extension nor where the estimated revenue to be derived from serving such new consumer or consumers is not sufficient to show an adequate return upon the total additional investment required to serve such consumer or consumers.

Grantee shall provide gas distribution service in accordance with the rules and regulation of the Commission and Grantee's Nebraska Tariff as revised from time to time.

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.

To the extent allowed by law, Grantee shall have the right to enter the premises of consumers at reasonable times for the purpose of reading meters, inspecting gas appliances, pipes and equipment and for the purpose of ascertaining loads, making necessary tests and installing, disconnecting, or removing meters.

SECTION 4. Grantee in the construction of said gas system within the limits of said Municipality shall use tested and approved pipes, material and equipment.

SECTION 5. Grantee at all times will keep a map in the office of Grantee or of the Clerk of said Municipality, showing the size and location of its mains laid in said distribution system in said Municipality. This map will be replaced each May with a revised map showing new construction for the previous calendar year or if no new construction took place, as requested by the Municipality.

SECTION 6. 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 to remove any and all of its pipe 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 condition as before such removal, and will hold said Municipality harmless from damage and expense incident to such removal.

SECTION 7. Grantee shall be required, and by the acceptance hereof agrees, to save harmless said Municipality from and against all lawful claims and demands, and from all loss and expense necessarily incurred as a result thereof, arising out of the negligence of Grantee in the construction, removal, replacement,

inspection or repair of any mains, pipes, services or appliances of Grantee, or in the use and operation thereof during the term of this Ordinance. The obligations under this paragraph shall not extend to any negligence directly or indirectly caused by the Municipality, elected or appointed officials, its officers, agents, boards or its employees.

SECTION 8. In consideration of the rights and privileges herein granted, the Grantee shall assess, effective the first billing cycle after this franchise becomes effective, to residential (commonly known as domestic) and commercial customers within the City of Gothenburg, Nebraska, a franchise fee equivalent to **\$.01** per therm for gas delivered to residential and commercial customers within the Municipality on Grantee's distribution system. Grantee shall pay to the City Treasurer an annual payment for each year of the duration of this franchise, in an amount equal to the franchise fee collected by Grantee hereunder. Payment shall be made on or before April 1st of each year for the preceding year and each such payment shall be accompanied by a statement supporting the payment. The Municipality reserves the right to renegotiate the franchise fee leading up to each five (5) year anniversary of this franchise. In order to exercise the right to renegotiate the franchise fee, the Municipality must provide to Grantee written notice of such exercise by a duly authorized representative, no sooner than one-hundred eighty (180) days, and no later than sixty (60) days, prior to the applicable annual anniversary date of this Ordinance. Upon Grantee receiving a duly authorized notice from the Municipality that complies with the above-stated limitations, Grantee and the Municipality shall negotiate in good faith, and the Municipality shall select, no later than thirty (30) days prior to the applicable annual anniversary date of this Ordinance, a reasonable per therm franchise fee to replace the franchise fee then in effect. The replacement franchise fee shall become effective upon the annual anniversary date that immediately follows the year in which the Municipality exercised this right. For illustrative purposes only, if the Municipality were to exercise this right ninety (90) days prior to the fifth annual anniversary date of this Ordinance, the reasonable per therm replacement franchise fee that the Municipality selected would become effective on the fifth annual anniversary date of this Ordinance. Unless and until the franchise fee is replaced pursuant to this subsection, the then-current franchise fee shall remain in full force and effect.

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 or for the privilege of doing business within the Municipality and, in the event any such fee, charge, license, tax or assessment shall be imposed by the Municipality, the payment to be made in accordance with the provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license, tax or

assessment imposed upon the Grantee. 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.

SECTION 9. 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 10. 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; also
- (b) if and when, after such acceptance Grantee shall file with the Clerk of said Municipality a surrender hereof in writing.

SECTION 11. Ordinance No. 284, passed under date of November 4, 1975, is hereby repealed and of no further force or effect.

SECTION 12. Wherever the term "Grantee" is used herein it shall be held to mean and include SourceGas Distribution LLC, its successors and assigns.

SECTION 13. 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.

Passed this 15th day of December, 2015.

James E. Hudson
Mayor
City of Gothenburg, Nebraska

ATTEST:

Connie L. Matyngale
Clerk

(SEAL)

Hubert A. F...
city attorney

CERTIFICATE AS TO ORDINANCE

The undersigned hereby certifies that she/he is the duly appointed, qualified and acting Clerk of the City of Gothenburg, Nebraska, and that the within and foregoing is a true and correct copy of Ordinance No. 926 passed by the Mayor and City Council of the City of Gothenburg, Nebraska, this 15th day of December, 2015.

Connie L. Malynpik
City Clerk

(SEAL)

ACCEPTANCE OF ORDINANCE NO. 926

GOTHENBURG, NEBRASKA

SourceGas Distribution LLC, for itself, its successors and assigns, hereby accepts a certain ordinance, designated Ordinance No.926 passed by the governing body of the City of Gothenburg, Nebraska, on the 15th day of December, 2015, and approved by the Mayor of said City on said date, and entitled:

ORDINANCE NO. 926

AN ORDINANCE GRANTING TO SOURCEGAS DISTRIBUTION LLC, ITS SUCCESSORS AND ASSIGNS, 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 GOTHENBURG, NEBRASKA 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. 284.

and the right, authority and franchise therein and thereby granted, all in accordance with the terms and provisions of said Ordinance.

IN WITNESS WHEREOF, SourceGas Distribution LLC, has caused these presents to be duly subscribed in its corporate name by its Vice President and attested by its Secretary thereunto duly authorized, this 17 day of December, 2015.

ATTEST:

SOURCEGAS DISTRIBUTION LLC

Secretary

By:

Vice President

EWN 12/15

The undersigned hereby certifies that ~~he~~she is the City Clerk of the City of Gothenburg, and that the within and foregoing is a true and correct copy of the Acceptance of Ordinance No. 926 of said City the original of which Acceptance was filed by SourceGas Distribution LLC, in the Clerk's office on January 4, 2016.

(SEAL)

Connie L. Daley
City Clerk