

July 23, 2009

SENT VIA FAX AND OVERNIGHT DELIVERY

Mr. Jeff Derouen
Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RECEIVED

JUL 2 4 2009

PUBLIC SERVICE

COMMISSION

RE: Case No. 2009-00278

Dear Mr. Derouen,

Enclosed for filing are the original and eleven (11) copies of Columbia Gas of Kentucky, Inc.'s Amended Application in this case. Compared to the original application filed in this docket, Paragraphs D and F have been amended, and Attachment C is new. One copy is being faxed, and the original and eleven (11) copies are being sent by overnight delivery. Please docket the fax copy, and upon receipt of the overnight delivery please docket the original and ten (10) copies and return the extra copy to me in the self addressed stamped envelope enclosed. Should you have any questions about this filing, please contact me at 614-460-4648. Thank you.

Sincerely,

Stephen B. Seiple

Assistant General Counsel

Enclosures

cc: Hon. Richard S. Taylor

PECEIVED

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

JUL 24 2009
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF COLUMBIA GAS OF KENTUCKY, INC.)	
FOR ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY)	Case No. 2009-0278
TO BID ON A GAS DISTRIBUTION)	
FRANCHISE IN THE CORPORATION)	
LIMITS OF THE CITY OF ASHLAND,)	
KENTUCKY)	

AMENDED APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC. AND REQUEST FOR EXPEDITED TREATMENT

The petition of Columbia Gas of Kentucky, Inc. ("Columbia") respectfully states:

- (A) That applicant is engaged in the business of furnishing natural gas services to the public in certain counties in the Commonwealth of Kentucky, pursuant to authority granted by the Commission.
 - (B) That applicant's full name and post office address is:

Columbia Gas of Kentucky, Inc. 2001 Mercer Road P.O. Box 14241 Lexington, KY 40512-4241

- (C) That Columbia's Articles of Incorporation previously have been filed with the Commission in Case No. 2000-129 and are incorporated herein by reference.
- (D) Columbia believes that another gas distribution utility, Natural Energy Utility Corporation ("NEUC") also serves a portion of Ashland; however, Columbia does not have

actual knowledge of the boundaries of NEUC's service area, nor details about the customers it serves.

- (E) Attached A hereto is Ordinance No. 73, 2009 enacted by the City of Ashland, Kentucky on June 18, 2009. Said Ordinance reflects the decision of the Board of Commissioners to advertise for bids for a natural gas franchise. Said advertisement was published as a legal notice in *The Independent* on July 10, 2009, as shown in Attachment B.
- (F) Columbia Gas of Kentucky's management only became aware of this Ordinance within the last week. Columbia's counsel only became aware of the Ordinance late on July 14, and obtained a copy of the Ordinance advertisement on July 15, 2009. The Ordinance provides that bids must be submitted by July 16, 2009. Columbia asked the City to extend this deadline by twenty (20) days until August 5, 2009, and the City extended the deadline for bids to August 6, 2009 (see Attachment C). Given the deadline for the submission of bids, Columbia requests that the Commission approve this Application as expeditiously as possible.
- (G) The need and demand for gas distribution service within the corporation limits of the City of Ashland is shown by the fact that Columbia serves approximately 7,582 customers in the city at the present time. There exists a public necessity for adequate service of natural gas to the citizens of Ashland, Kentucky.
- (H) Columbia desires to acquire said franchise for gas distribution service in the City of Ashland, Kentucky and submit a bid pursuant to the city's published legal notice. In order to do so, the Commission must first issue a certificate of public convenience and necessity authorizing Columbia to acquire the gas distribution franchise from the City of Ashland, Kentucky, pursuant to KRS § 278.020(4).

WHEREFORE, Columbia respectfully requests that the Public Service Commission make its order issuing a certificate of public convenience and necessity that authorizes Columbia to acquire the gas distribution franchise from the City of Ashland, Kentucky, for the reasons described herein. Columbia also requests that the Commission act upon this Application as expeditiously as possible given the City of Ashland's deadline for the submission of bids.

Dated at Columbus, Ohio, this 23rd day of July 2009.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By:

Stephen B. Seiple

Stephen B. Seiple, Assistant General Counsel

200 Civic Center Drive

P.O. Box 117

Columbus, Ohio 43216-0117

Telephone: (614) 460-4648

Fax: (614) 460-6986

Email: sseiple@nisource.com

Richard S. Taylor

225 Capital Avenue

Frankfort, Kentucky 40602

Telephone: (502) 223-8967

Attorneys for

COLUMBIA GAS OF KENTUCKY, INC.

ATTACHMENT A ORDINANCE NO. 73, 2009

ADVERTISEMENT FOR BIDS FOR GAS DISTRIBUTION FRANCHISES

Notice is hereby given that, pursuant to Ordinance No. 73, 2009, written bids and proposals for the purchase and acquisition of non-exclusive gas distribution franchises in the City of Ashland, Kentucky, shall be received at the Office of the City Clerk of the City of Ashland, 1700 Greenup Avenue, P.O. Box 1839, Ashland, Kentucky, 41105-1839.

Said bids must be received by 3:00 P.M., on <u>July 16, 2009</u>. All bids shall be publicly opened and read aloud at 3:15 P.M. on <u>July 16, 2009</u> in the Commission Chambers on the 3rd Floor at the same address. Said franchises will be sold to the highest and best bidders. The City of Ashland reserves the right to reject all bids.

The terms, conditions and other matters incidental to the bids and the franchises in question are contained in Ordinance No. 73, 2009, enacted by the City of Ashland on June 18, 2009, which is incorporated herein by reference as though set out herein in full. A copy of said Ordinance with the full text of the franchise may be obtained at the Office of the City Clerk.

City of Ashland Stephen W. Corbitt, P.E. City Manager

Published: June 30, July 5, 2009

Received

JUN 30 2009

Cut Mail

NiSource

Corporate Secretary

ORDINANCE NO. <u>13</u>, 2009

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, PROVIDING FOR THE ADVERTISEMENT AND SALE OF A FRANCHISE AUTHORIZING THE OWNER THEREOF TO OWN, MAINTAIN, CONSTRUCT AND OPERATE A GAS DISTRIBUTION SYSTEM UPON, ALONG, OVER AND UNDER THE STREETS, THOROUGHFARES, ALLEYS, SIDEWALKS, BRIDGES, PUBLIC WAYS AND OTHER PUBLIC PLACES OF SAID CITY.

BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. There is hereby created a franchise to construct, erect, operate and maintain upon, through, along, under, and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of the City of Ashland, Kentucky, a gas distribution system embracing underground lines, manholes, fixtures, and other apparatus, equipment and facilities necessary, essential, used, or useful to and in the operation of a gas distribution system, subject to all of the provisions of this ordinance.

SECTION 2. For brevity, the person, firm or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall be referred to as the "company", the City of Ashland, Kentucky shall be referred to as the "City"; the public streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks, and other public ways, as the same now exist and including all which may be established or created, within the territorial limits of the City shall be referred to as the "streets"; the underground lines, manholes, fixtures, and any other apparatus, equipment and facilities necessary, essential, used, or useful to and in the operation of the gas distribution system shall be referred to as the "equipment and apparatus."

SECTION 3. Any company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and maintaining a gas distribution system, equipment and apparatus, upon, through, along, under, and over the streets within the corporate boundaries of the City as they now exist or may hereafter be extended,

subject to the provisions hereof and to all powers including police power inherent in, conferred upon, or reserved to said City.

SECTION 4. (1) No pavements, sidewalks, curbs, gutters, or other such street installations shall be disturbed and no excavation in any of the said streets will be made, except with the written permission of the City through a designated employee or official.

(2) When an emergency arises which requires immediate repair, the company may disturb or excavate a street without first obtaining written permission from the City; provided that the City is notified in writing of said repair within five (5) days of the start of such disturbance or excavation. This notification shall include at least the time, date, location, and extent of excavation or other work performed.

the purpose of constructing, erecting, operating, maintaining, and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence to protect the public and the City. The company shall dig and close up all trenches and exposed places as rapidly as possible, provide temporary access when reasonable to limit inconvenience, and shall leave the streets in the same or better condition as prior to its entry. All such repairs shall be maintained by the company for one (1) year in as good condition as the remainder of said street. In the event the company fails, refuses, or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the company or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the City by the company within thirty (30) days from the date on which an itemized bill is presented to the company.

(4) (a) In the construction, reconstruction, maintenance, or removal of any of said equipment and apparatus, the company shall have the due regard for the rights of the City and others, and shall avoid interference with and injury to the property of the City or others. Said franchisee shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals, barricades, or warning signs. Such work by the company shall be done in a

workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.

(b) All underground construction shall be accomplished between the hours of 9:00 AM and 3:00 PM unless otherwise authorized in writing by the City. However, the franchisee must provide notice to the City seven (7) days in advance of such underground construction. Notwithstanding these construction hours, construction shall not interfere with the services of the City or third parties.

SECTION 5. (1) Whenever the City or any of its departments, agencies, and/or agents, servants, or employees shall grade, regrade, construct, reconstruct, widen, or alter any street or shall construct, reconstruct, repair, maintain, or alter any other municipal public works therein, including but not limited to storm sewers, sanitary sewers, and street lights, it shall be the duty of the company, when so ordered by the City, within a reasonable time to change its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street so as not to interfere with such municipal public works so constructed, reconstructed, or altered.

(2) The company shall be given access to the street plans and specifications, and any proposed modifications to such, in the possession of the City.

SECTION 6. Upon notice from the City, given reasonable in advance, that any street is planned to be constructed, reconstructed, widened, altered, paved, or repaved, the company shall make such extensions or changes in its equipment and apparatus, ahead of any paving, as shall be reasonable expected during the following one (1) year period; provided that if the company deems that no extension or change will be required during such period, it may refrain from doing so, but shall be precluded from disturbing the paving for such purposes for a period of one (1) year unless permission of the City is obtained. Any emergency repairs during this one (1) year period shall be cause for a full width restoration of any street to minimize the effect of company activity if so ordered by the City.

SECTION 7. The minimum clearance of all lines placed above the streets, and also the placement of underground facilities, shall conform to the latest industry standards including Code of Federal Regulations, 49 CFR Part 192 for

installation of transmission and distribution piping. The City reserves the right to require, by ordinance, observation of greater standards of safety than those contained in such industry standards.

SECTION 8. The company agrees by the acceptance of this franchise to indemnify, keep, and save the City free and harmless from liability on account of injuries or damage to persons or property growing out of the construction, maintenance, repair, and operation of its equipment and apparatus located upon, through, along, under, or over the City's streets. If any suit to enforce such liability shall be brought against the City, either independently or jointly with the company, upon notice by the City the company shall defend the City at the cost of the company and, in the event of final judgment being obtained against the City either independently or jointly with the company, the company shall pay such judgment with all costs and hold the City harmless therefrom.

SECTION 9. The City, through its City Commission, City Manager, or such assistants as it may employ or designate, at all reasonable times, may have access to the equipment and apparatus installed under this franchise for the purpose of inspecting or examining it, and may inspect, examine, or verify all or any of the accounts, books, records, contracts, documents, or papers of the company reasonable necessary to the administration of this franchise.

SECTION 10. The franchise hereby created shall be for a set term of ten (10) years from and after July 1, 2010, but is not exclusive, and the City reserves the right to sell similar franchises to others.

SECTION 11. The company is hereby given the right to assign the franchise created by this ordinance to any person, firm, or corporation able, ready, and willing to carry out the terms of this franchise, but prior to such assignment, shall obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

SECTION 12.

(1) As consideration for the rights conferred by the granting of this franchise, and to compensate the City for the use of its streets and rights-of-way and its superintendence of the franchise, the successful bidder for the term from July 1, 2010 through June 30, 2020 shall pay to the City a

fee, equal to three percent (3%) of the gross annual revenues received by the franchisee from the sale of gas to all customers within the territorial limits of the City or any other revenue generated by or attributable to facilities or equipment or apparatus located within the territorial limits of the City. Gross revenues shall also include compensation from any ancillary services, including, but not limited to, advertising stuffers inserted into periodic billing statements or other notices.

- (3) (a) Such fees shall be initially fixed by separate ordinance which shall state the City's acceptance of the Company's bid.
 - (b) The Company shall remit to the City, monthly, all amounts due under this franchise. The first such remittance shall be based upon revenues received by the Company during the first month following the effective date of the franchise as set forth in Section 19 hereof and shall be paid within thirty (30) days following such period. Thereafter, payments shall be made within thirty (30) days after each subsequent one month period. The final payment shall be paid within thirty (30) days following the expiration of this franchise.
 - (c) If the franchisee does not already have tariffs approved by the Kentucky Public Service Commission as of the date of acceptance of its bid by the City, then no later than ten (10) working days after final acceptance of its bid by the City, the franchisee shall file an application or tariff with the Public Service Commission to provide for prompt and satisfactory cost recovery of the amount payable under this Section. The franchisee shall provide the City with copies of its currently approved tariffs or such tariffs that it files with the Public Service Commission in order to satisfy the obligations created by this subsection. If the franchisee fails to file its application or tariff within the specified time

- period, the City may, at its option, terminate the Franchise Agreement upon thirty (30) days written notice to the franchisee.
- (b) If, after a period of sixty (60) days from the filing of franchisee's application, the Public Service Commission shall have made no final determination concerning the prompt and satisfactory recovery of amounts payable under this section herein by the franchisee, then the franchisee's obligation to pay the amount specified in this section shall be suspended, provided the franchisee shall first give the City ten (10) days written notice of its intention to suspend payment pending the decision of the said Commission. In the event of suspension of the franchisee's obligation as herein provided, the City, shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the franchisee.
- (c) If it is determined by the Public Service Commission (or its successor or court having jurisdiction) that all or any portion of said fee set forth in this section shall not be promptly and satisfactorily recoverable by the franchisee, the franchisee, at its election, shall thereafter be relieved of its obligation to pay such portion of the agreed franchise fee and in such case shall so notify the City in writing within five (5) working days of receipt by the franchisee of such order of the Public Service Commission or of such court decision. In such event, the City shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company.
- (d) If, however, the Public Service Commission or other tribunal shall make a final determination providing for the prompt and satisfactory recovery by the franchisee of amounts payable under this section and the City has not cancelled the franchise in the

- interim, then the franchisee's obligation to make payment of such amounts shall resume from and after the date of notification by the City of such determination; provided, however, that any such notice shall be given in timely fashion.
- No acceptance of any franchise fee payment by the City shall be (e) construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim the City may have for future or additional sums pursuant to this Ordinance. The City shall have the right to inspect the franchisee's income, financial, and gas consumption records relating to gross revenues in order to audit and to recomputed any amounts determined to be payable under this Ordinance. Any additional amount due to the City as a result of the audit shall be paid within ten (10) days following written notice to the franchisee by the City which notice shall include a copy of the audit report. If as a result of such audit or review the City determines that the franchisee has intentionally underpaid its franchise fee by five percent (5%) or more for any calendar month then in addition to making full payment of the relevant obligation, the franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants. However, if such audit or review is performed in connection with a granting of a franchise, a transfer of control, or a modification, the franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review.
- (f) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). Overpayments discovered by the City or the

franchisee shall be an adjustment on the next monthly payment without interest.

(g) The City reserves the right to require the franchisee to collect any consumer or other tax or other fee that may be imposed on subscribers by the City.

SECTION 13. (1) The consideration set forth in the preceding section shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental, or any other character of charge for the use and occupancy of the streets. It shall further be in lieu of any inspection fee tax, easement tax, franchise tax whether levied as an ad valorem, special, or other character of tax, and any other tax, license, fee, or imposition other than the usual general or special ad valorem property taxes now or hereafter levied.

(2) Should the City not have the legal power to declare that the payment of the foregoing consideration shall be in lieu of such taxes, licenses, fees, and impositions, then the City declares that, should any such tax, license, fee, or other imposition be imposed upon the company, then to the extent necessary, the consideration to be paid hereunder may be applied toward the satisfaction of such obligations.

SECTION 14. It shall be the duty of the City Manager, or a subordinate designated by the City Manager, as soon as practicable after the passage of this ordinance, to offer for sale said franchise and privilege. Said franchises and privilege shall be sold to the highest and best bidders at a time and place fixed by the City Manager after due notice thereof has been given by advertisement in at least one (1) issue of a newspaper of general circulation within the territorial limits of the City. Such advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date bids are to be received. In addition to such advertisement, written notice of the proposed sale shall be given to the holders of the current or most recently expired gas distribution franchise at least twenty-one (21) days before the date bids are to be received.

SECTION 15. (1) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Clerk or designated subordinate upon the date and at the time fixed in said advertisement for the receipt of such.

- (2) Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this ordinance.
- (3) Any cash or check remitted by an unsuccessful bidder shall be returned.

SECTION 16. At the first regular meeting of the City Commission following the receipt of such bids, the City Manager shall report and submit to the City omission all bids and proposals for acceptance of bids. Acceptance of a bid shall be expressed by an ordinance. The City Commission reserves the right, for and in behalf of the City, to reject any and all bids for said franchise and privilege. In case the bids reported by the City Manager shall be rejected by the City Commission, it may direct, by resolution or ordinance, that said franchise and privilege be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and accepted.

SECTION 17. Any granting of the franchise created hereby shall include the obligation of the City to provide, at least eighteen (18) months before its expiration, for the sale of a new franchise to the highest and best bidder on terms that are fair ad reasonable to the City, to the existing holder of the franchise, and to its patrons.

SECTION 18.

- 1. Any violation by the company, its vendee, lessee, or successor of the provisions of this franchise 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 all rights hereunder after written notice to the company and continuation of such violation, failure or default.
- 2. For violation of any of the following provisions of this Ordinance, the penalties shall be recoverable as follows:

- (a) For failure to complete any construction requiring a permit in accordance with the time constraints, set forth in this Ordinance, unless the City Manager specifically approves the delay by resolution because of reasons beyond the control of the franchisee, the franchisee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) For failure to provide data and reports as requested by the City and as required in this Ordinance the franchisee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.
- (c) For failure to comply with the operational standards following the City Manager directing franchisee to make improvements pursuant to this Ordinance, the franchisee shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.
- (d) For failure to complete any construction or alteration of Equipment and Apparatus pursuant to the time constraints set forth in this Ordinance or within such time as is set by the City Manager, the franchisee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (e) For failure to pay the franchise fee when due pursuant to Section 12 or any itemized bill presented by the Government pursuant to this Ordinance, the franchisee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.
- (f) For failure to comply within thirty (30) days of any City Commission resolution directing compliance with any other provisions of this Ordinance, the franchisee shall forfeit

- one hundred dollars (\$100.00) per day or part thereof that the violation continues.
- (g) The franchisee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the franchisee's performance or to see franchisee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the City to seek and collect penalties as set forth in this section are in addition to its right to terminate and cancel as set forth in this Ordinance.

SECTION 19. The franchise created by this ordinance shall become effective upon acceptance of the company's bid, as expressed in the ordinance of acceptance which additionally fixes the fees to be paid.

SECTION 20. The City reserves all rights it might presently have, or which it may hereafter acquire, to regulate the franchisee's rates and services.

SECTION 21. Should any section, subsection, sentence, clause, or phrase of this ordinance be held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect any other portion of this ordinance, it being the intention of the Board of Commissioners to enact this ordinance section by section, subsection by subsection, and all sentences, clauses or phrases hereof independently of any other section, subsection, sentence, clause or phrase.

SECTION 22. This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.

MAYOR ENERGY

ATTEST:

CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS:

READOPTED BY THE BOARD OF COMMISSIONERS:

PUBLISHED:

1 8 2009

REQUESTED/SPONSORED BY: STEPHEN W. CORBITT, CITY MANAGER

/ORDINANCE/Franchise.Gas.Advertisement.2009

ATTACHMENT B ADVERTISEMENT OF ORDINANCE

6863262681

81 ij

07/15/2009

.. 42

ORDINANCE NO. 73, 2009

AN ORDINANCE OF THE CITT OF ASHLAND, KENTUCKY, PROVIDING FOR THE ADVERTISEMENT AND BALE OF A FRANCHISE AUTHORIZING THE COVER THEREOF TO DAY, MAINTAIN, CONSTRUCT AND OPERATE A GAS DISTRIBUTION SYSTEM UPON, ALONG, OVER AND UNDER THE STREETS, THOROUGHFARES, ALLEYS, SIDEWALKS, BRIDGES, PUBLIC WAYS AND OTHER RUBLIC PLACES OF SAID CITY.

BE IT ORDANNED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1: There is hereby created a franchise to construct, exect, operate and maintain upon, through, along, under, and over the streets, alleys, avenues, public roads, highways, bridges, vialuets, citewall's and other public ways of the City of Ashland, Kentucky, a gas distribution system embracing underground lines, manholes, fixtures, and other apparatus, equipment and facilities necessary, essential, used, or itseful to and the public ways of the City of Ashland, Kentucky, a gas distribution system embracing underground lines, manholes, fixtures, and other public ways, piblic to all of the provisions of this ordinance.

BERGTION 2: Politoristy, the person, firm or corporation which shall become the purchaser of said franchise, or any successor of a single of the City the person, time or corporation which shall become the purchaser of said franchises, or any successor of a single of the City the person, time or corporation which shall become the purchaser of said franchises, or any successor of a single of such person, shall be referred to as the successor of a single of such person, time of the City shall be referred to as the strength of a single of said the public ways, pride or a single of said the price of the City shall be referred to as the "strength," which is the underground lines, manifoles, fixtures, and only other apparatus, can be presented to said distribution system shall be referred to as the "equipment and apparatus," used, of useful to and in the operation of the gas distribution system shall be referred to as the "equipment and apparatus," such as the operation of the gas distribution system shall be referred to as the "equipment and apparatus," such as the provisions herefor and to all powers including police power inherent in all shall be referred to as the city as they now construction, greating operating and over the streets within the comparate boundaries of the City as they now construction shall be disturbed and no excavation in an

(4) (a) In the construction, reconstruction, maintenance, or removal of any of said equipment and apparatus, the company shall have the due regard for the rights of the City and others, and shall avoid interference with and injury to the property of the City or others. Said franchisee shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals,

ORDINANCE NO. 73, 2009

AN ORDINANCE OF THE CITY OF ASHLAND, RENTUCKY, PROVIDING FOR THE ADVERTISEMENT AND SALE OF A FRANCHISE AUTHORIZING THE OWNER THEREOF TO OWN, MAINTAIN; CONSTRUCT AND OPERATE A GAS DISTRIBUTION SYSTEM UPON, ALONG, OVER AND UNDER THE STREETS, THOROUGHPARES, ALLEYS, SIDEWALKS, BRIDGES, PUBLIC WAYS AND OTHER PUBLIC PLACES OF SAID CITY.

BE IT OBDAINED BY THE CITY OF ASHLAND, KENTUCKY:

BETTORDALLED BY THE CITY OF ASHLAND, KENTUCKY:
SECTION: There is hereby created a franchise to construct, erect, operate and maintain upon, through, along under, and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of the City of Ashland, Kentucky, agas distribution system embracing underground lines, manboles, fixtures, and other apparatus, equipment and facilities necessary, essential, used, or useful to and in the operation of a gas distribution system, subject to all of the provisions of this ordinance.

SECTION 2: Fortier by the person, firm or corporation which shall become the purchaser of said franchise, or any successor of a signet of such person, shall be referred to us the "company", the City of Ashland, Kentucky shall be referred to us the "company", the City of Ashland, Kentucky shall be referred to us the "company", the City of Ashland, Kentucky shall be referred to us the "company", the City of Ashland, Kentucky shall be referred to as the "streets, in the underground lines, manboles, fixtures, and any other apparatus, equipment and facilities necessary, essential, which will be referred to as the "streets, the underground lines, manboles, fixtures, and any other apparatus, equipment and facilities necessary, essential, and other apparatus, equipment and the city of the company", the city of Ashland and the city of Ashland a

used, or useful to and in the operation of the gas distribution system shall be referred to as the "equipment and apparatus."

SECTION 3. Any company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisatining a gas distribution system, equipment and apparatus, "SECTION 3. Any company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisatining a gas distribution system, equipment and apparatus, upon, thirdigh, along, under, and over the right are comparated by the company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisatining a gas distribution system and apparatus in the company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisatining a gas distribution system and apparatus in the company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisation is gas distribution by the company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and multisation is gas distribution gas acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and operating a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise shall be referred to as the "city shall appear a gas distribution gas acquiring this franchise sha conferred upon, or reserved to said City.

SECTION 4. (1) No paraments, sidewalks, curbs, gotters, or other such street installations shall be disturbed and no excavation it any of the said streets will be made, except with the written permission of the City through a designated employee or official.

City through a designated employee or official.

(e) When an empergency arises which requires immediate repair, the company may disturb or excavate a street without first obtaining written permission from the City; provided that the City is notified in writing of said repair within five (s) days of the start of such disturbance or excevation. This notification shall include at least the time, date, location, and extent of excevation or other work performed.

(a) When the company shall enter upon any street for the pumpose of constructing, erecting, operating, and termoving equipment and apparatus; it shall prosecute the work, at its own cost and expense, with the diligione to protect the public and tie City. The company shall dig and close up all transes and exposed places as rapidly as possible, provide temporary access when reasonable to limit inconvenience, and shall leave the streets in the same or better condition as prior to its entry. All such repairs shall be maintained by the company for one (i) year in as good condition as the reminder of said street, in the event the company for, or reglects to comply with the above proteins one, the street is not writing advanging that beging given to the company of any officer or against representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the City by the company within thirty (30) days from the date of which an itemized bill is presented to the cum-

pany.

(4) (a) In the construction, reconstruction, maintenance, or removal of any of said equipment and apparatus, the company shall have the doe regard for the city of the City and others, said figure the company shall be avoid interference with and injury to the property of the City of their. Said figure the shall comply with all the laws of the Commonwealth of Kenticly and ordinances of the City as to placing lights, danger signals, barricades, or warning signs. Such work by the company shall be adopted in a workmanilke manner and so as not to immeessarily interfere with public use of any of said streets.

(b) All undergoined construction shall be accomplished between the hours of 9:00 All and 3:00 PM unless of the City street with public use of any of said streets.

(c) All undergoined construction shall be accomplished between the hours of 9:00 All and 3:00 PM unless of the City street with public use of any of said streets.

(c) All undergoined construction shall be accomplished between the hours of 9:00 All and 3:00 PM unless of the City of the City

SECTION 8. The company agrees by the acceptance of this franchise to indemnify, keep, and save the City free and harmless from liability on account of injuries or damage to persons or property growing out of the construction, maintenance, repair, and operation of its equipment and apparatus located upon, through, along, under, or over the City's streets if any suit is enforce such liability shall be brought against the City, either independently or jointly with the company, upon notice by the City is company shall defend the City at the cost of the company and, in the event of final judgment being obtained against the City either independently or jointly with the company, the company shall pay such judgment with all tosts and hold the City harmless thereform.

SECTION 9. The City, through its City Commission, City Manager, or such assistants as it may employ or designate, at all reasonable times, may have access to the equipment and apparatus installed under this franchise for the purpose of inspecting or examining it, and may inspect, examine, or verify all or any of the accounts, books, records, contracts, discuments, or papers of the company reasonable necessary to the administration of this franchise for the purpose of the company reasonable necessary to the administration of this franchise.

ministration of this franchise.

SECTION 10. The franchise hereby created shall be for a set term of ten (10) years from and after July 1, 2010, but is not exclusive, and the City reserves the night to sell similar franchises to others.

SECTION 11. The company is hereby given the right to assign the franchise created by this ordinance to any person, firm, or corporation able, leady, and willing to carry out the terms of this franchise, but prior to accept a suggringent, shall obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

SECTION 12.

(1) As consideration for the rights conferred by the granting of this franchise, and to compensate the City for the use of its streets and rights of way and its superintendence of the franchise, the successful bidder for the term from July 1, 2010 through June 30, 2020 shall pay to the City a fae, equal to three percent (3%) of the gross annual revenues received by the franchise from the cale of gas to all englowers within the territorial limits of the City or any other revenue generated by or attributable to facilities or equipment or apparatus located within the territorial limits of the City or any other revenue generated by or attributable to facilities or equipment or apparatus located within the territorial limits of the City or any other revenues shall also include compensation from any ancillarly services, including, but not limited to, advertising stuffers inserted into periodic billing statements or other notices.

(3) (a) Such fees shall be initially fixed by separate ordinance which shall state the City's acceptance of the Company's bid.

(b) The Company shall remit to the City, monthly, all amounts due under this franchise. The first such remittance shall be passed upon revenues received by the Company during the first monthly following the effective date of the franchises as set forth in Section 19 bereof and shall be paid within thirty (30) days following such period. Thereafter, payments shall be juide within thirty (30) days after each subsequently be month pairiod. The final payment shall be paid within thirty (30) days following such period. The reaches, payments shall be juided within thirty (30) days after each subsequently be month pairiod. The final payment shall be paid within thirty (30) days following such period. The date of acceptance of its bid by the City, the non later than ten (10) working days after final acceptance of its bid by the City, the City, the application or tariff with the Public Service Commission to provide for prompt and astisfactory control with a sub

Topics.

pensition from any ancillary services, including, but not limited to, advertising stuffers inserted into periodic billing statements or other notices.

(3) (a) Such fees shall be initially fixed by separate ordinance which shall state the City's acceptance of the Company's bid.

(3) (a) Such fees shall be initially fixed by separate ordinance which shall state the City's acceptance of the Company's hid.

(b) The Company shall remit to the City, monthly, all amounts due under this franchise. The first such remittance shall be hissed upon revenues received by the Company during the first month following the effective date of the franchises est forth in Section 19 bereaf and shell be paid within thirty (30) days following such period. Thereafter, payments shall be made within thirty (30) days after each subsciplination month period. The final payment shall be paid within thirty (30) days (following the expiration of this franchise.

(c) If the franchisee does not already have tariffs approved by the Kentucky Fublic Service Commission as of the date of acceptance of its bid by the City, then no later than ten (10) working days after final acceptance of its bid by the City, the franchises hall file an application of tariff with the Public Service Commission in provide for prompt and estigatory cost recovery of the amount payable under this II the franchises fails to file its application or tariff within the specified time period, the City may, at its option, terminate the Franchise Agreement upon thirty (30) days written notice to the franchises.

(b) If, after a period of sixty (60) days from the filing of franchises's application, the Public Service Commission, shall have made no inabiliteering the prompt and estigatory ten (id) days written notice of its intention to suspend payment pending the decision of the said Commission. In the event of suspension of this franchises's obligation as herein provided, the City, shall have the public franchises within thirty (30) days of receipt of said written notification from the franchises.

ten (10) 1425 written nouse or us meanton to suspend payment pending the decision of the said commission. In the event of suspension by the intrinsects obligation as nere in provided, the city, small nave the option in terminate this franchise within thirty (30) days of receipt of said written notification from the franchises.

(c) If it is determined by the Public Service Commission (or its successor or court having juits diction), that all or any portion of said fee set forth in this section shall not be promptly and satisfacturily recordingly the franchises, at its election, shall thereafter be relieved of its obligation to pay such portion of the agreed framblise fee and in such case shall so notify the City in writing within five of the franchises of such order of the Public Service Commission or of such court decision. In such event, the City shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company.

(d) If however the Public Service Commission or other tribunds hall make a first determined to the public Service Commission or other tribunds hall make a first determined to the public Service Commission or other tribunds hall make a first determined to the public Service Commission or other tribunds have the public Service Commission or other tribunds have the public Service Commission or other tribunds hall make a first determined to the public Service Commission or other tribunds have the public Service Commissio

on receipt nearest nonneation from the company.

(i) If, however, the Public Service Commission or other tribunal shall make a final determination providing for the prompt and satisfactory recovery by the franchises of amounts payable under this section and the City has not cancelled the franchise in the interim, then the franchises of biguing to make payment of such amounts shall regume from and after the date of notification by the City of such de-

termination; provided, however, that any such notice shall be given in timely fashion.

(e) No acceptance of any franchise fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a

(e) No acceptance of any tranchise fee payment by the City shall be construed as an accord and saustaction that the amount paid is in fact the correct amount not small acceptance of a release to any claim, the City may have for future or additional stons pursuant to this Ordinance. The City shall have the right to inspect the franchisee's income, financial, and gas consumption records relating to goes reconsuse in order to audit and to recomputed any amounts determined to be payable under this Ordinance. Any additional amount due to the City as a result of the addit shall be paid within ten (to) days franchise by the City which notice shall include a copy the audit report. If as a result of such audit or review the City determines that the franchises had be paid within ten (to) days franchise by the percent (5%) or more for any calcular month then in addition to making full payment of the relevant of highly in the franchises shall reimburse the City for all of the reasonable costs associated with the polity of the constitution of a franchise of a franchis with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants. However, if such sudit or review is performed in connection with a granting of a frenchise, a transfer of control, or a modification, the franchisee shall reimburse the City for all of the reasonable costs associated with the audit of review.

win the angular of review, including all out-of-pocket costs for attorneys, accountants and other consultants. However, if such and it or review is performed in connection with a granting of a franchise, a transfer of cointrol, or amodification, the Granchise shall temburse the City for all of the reasonable costs associated with the audit of review?

[6] In the event that any franchise payment or recomputed amount is not made on or before the applicable dates increations specified, interest shall be charged from such date at the annual rate—
[7] The City reserves the right to require the franchises et all be an adjustment on the next monthly payment without interest.

[8] The City reserves the right to require the franchises et collect any consumer or other tax or other tex that this be imposed on subscribers by the City.

[8] The City reserves the right to require the franchises et all be an adjustment on the next monthly payment without interest.

[9] The City reserves the right to require the franchise explosion shall be paid and received in fiscil only tax [licenses that it has be imposed on subscribers by the City.

[9] The City reserves the right to require the franchise explosion shall be paid and received in fiscil only tax [licenses] therefore the quality of the city of the state of ruley retail, or only the charged for the use and occupantly the usual general or special ad valorem property taxes may or be reading levided.

[9] Bloould the City not have the legal power to declare that the payment of the foregoing consideration shall be in lied of right taxes; licenses, fees, and impositions, then the City declares that thould—any such tax, license fee, or other imposition to be imposed upon the company, then to the extrent necessary, the consideration shall be in lied of right taxes; licenses, fees, and impositions, then the City declares that thould—shall be intended and the company of the company, then to the extrent necessary, the consideration to be paid becoming much admitted to the city of the C

cerved.
SECTION 15: (1) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Clerk or designated subordinate upon the

date and at the time fixed in said advertisement for the receipt of shift.

(a) Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this ordinance.

(a) Any cash or check remitted by an unsuccessful bidder shall be returned.

SECTION 16. At the first regular meeting of the City Commission following the receipt of such bids, the City Manager shall report and submit to the City omission all bids and proposals for acceptance of bids. Acceptance of a bid shall be expressed by an ordinance. The City Commission reserves the right, for and in behalf of the City, to reject any and all bids for ead franchise and privilege. In case the bids reported by the City Manager shall be rejected by the City Commission, it may direct, by resolution or ordinance, that said franchise and privilege he again offered for sale, from time to time, until a satisfactory bid therefore shall be captered by the City Commission.

SECTION 17. Any granting of the firstchise created hereby shall include the obligation of the City to provide, at least eighteen (18) months before its expiration, for the sale of a new franchise to the highest and best bidder on terms that are fair ad reasonable to the City, to the existing holder of the franchise, and to its patrons.

SECTION 18.

2. Any violation by the company, its vendee, lessee, or successor of the provisions of this franchise or any insterial portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeigne of this franchise and all rights hereunder after written notice to the company, and continuation of such violation, failure or default.

2. For violation of any of the following provisions of this Ordinance, the penalties shall be recoverable as follows:

(a) For failure to complete any construction requiring a permit in accordance with the time construction; set forth in this Ordinance, unless the City Manager specifically approves the delay by resolution because of reasons beyond the control of the franchisee, the franchisee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(b) For failure to provide data and reports as requested by the City and as required in this Ordinance the franchisee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(c) For failure to comply with the operational standards following the City Manager directing franchises to make improvements pursuant to this Ordinance, the franchises shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.

(d) For failure to complete any construction or alteration of Equipment and Apparatus pursuant to the time constraints set forth in this Ordinance or within such time as is set by the City Manager, the franchises shall fortest five hundred dollars (\$500,00) per day or part thereof that the violation continues,

(e) For failure to pay the franchise fee when due pursuent to Section 12 or any itemized bill presented by the Government pursuant to this Ordinance, the franchisee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(f) For failure to comply within thirty (go) days of any City Commission resolution directing compliance with any other provisions of this Ordinance, the franchisee shell forfeit one bundred

(f) For railure to comply within thurty (30) days of any City Commission resolution directing compliance with any other provisions of this Crimines, the manchines and minimals.

(g) The franchises shall not be expused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the franchises performance or to see franchises's compliance with any one or more of such terms or conditions. Fayment of genalties shall not excuse non-performance under this Ordinance. The right of the City to seek and collect penalties as set forth in this section are in addition to its right to terminate and cancel as set forth in this failure of the City to seek the collection of the City of the City to seek the collection of the City of the City to seek the collection of the City of the City to seek the collection of the City of the City to seek the collection of the collection of the City to seek the collection of the city to seek the collection of the city to seek the city

6863252681

SECTION 8. The company agrees by the acceptance of this tranchise to indemnify, keep, and save the City free and harmless from hability on account of injuries or damage to persons or property growing out of the construction, maintenance, repair, and operation of its equipment and apparatus located upon, through, along, under, or over the City's streams if any suit to inforce such liability shall be brought against the City, either independently or jointly with the company, upon notice by the City the company shall defend the City at the cost of the company and, in the event of final judgment being obtained against the City either independently or jointly with the company, the company shall pay such judgment with all costs and hold the City harmless therefrom.

SECTION 9. The City, through its City Commission, City Manager, or such assistants as it may employ or designate, at all reasonable times, may have access to the equipment and apparatus installed under this

franchise for the purpose of inspecting or examining it, and may inspect, examine, or verify all or any of the accounts, books, records, contracts, documents, or papers of the company reasonable necessary to the ad-

SECTION 10. The franchise bereby created shall be for a set term of ten (10) years from and efter July 1, 2010, but is not exclusive, and the City reserves the right to sell similar franchises to others.

SECTION 11. The company is hereby given the right to assign the franchise created by this ordinance to any person, firm, or corporation able, ready, and willing to carry out the terms of this franchise, but prior, to such assignified, shall obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

SUCTION 12.

(2) As consideration for the rights conferred by the granting of this franchise, and to compensate the City for the use of its streets and rights—of way and its superintendence of the franchise, the successful bidder for the term from July 2, 2010 drawugh June 30, 2020 shall pay to the City a fee, equal to three percent (3%) of the gross annual reviewes received by the franchises from the sale of gas to all uniformers within the territorial limits of the City or any other reverue generated by or attributable to reclitive or equipment or apparatus located within the territorial limits of the City or any other reverue generated by or attributable to reclitive or equipment or apparatus located within the territorial limits of the City, Gross revenues shall also including one—pensation from any ancillad; services, including, but not limited to, advertising suffers inverted into periodic billing statements or other notices.

(3) Such frees shall be initially fixed by separate ordinance which shall state the City's acceptance of the Company's bid.

(b) The Company shall remit to the City, quantity, all amounts doe under this franchise. The first such remittance shall be liased upon revenues received by the Campany during the first much sequence of the bid of the franchises are set for bid section as because it with the section of the franchise of the franchise does not already have tariffs approved as the franchise of the franchise does not already have tariffs approved by the Kentucky Public Service Commission to provide for prompt and satisfactory cost receivery of the amount payable under this Section. The franchises of the bid by the City with copies of its currently service of its contractive of the franchise of the provide the City with copies of its currently provide the

(b) Yorking days of receipt by the franchisee of such order of the Public Service Commission or of such court decision. In such coverage the and in such assess shall so notify the City in writing within five of receipt of said vortices notification from the Company.

(d) If however, the Public Service Commission or other tribund shall make a final determination providing for the prompt and setisfactory recovery by the franchises within thirty (30) days.

(d) If however, the Public Service Commission or other tribund shall make a final determination providing for the prompt and setisfactory recovery by the franchises of aniomate payable under termination; provided, however, that any such notice shall be given in timely fashion.

(e) No acceptance of any franchise fee payment by the City shall be construed as an accord and satisfaction that the unmorn plant is first the correct amount nor shall acceptance be deemed a grays reconstruction of the tribundance. The City is fall have the right to inspect the franchises is nonzonamption records relating to following written notice to the franchises by the City which the notice shall not notice to the franchises by the City which then in addition to making full payment of the review the City determined in connection with a grainting of a franchises ball remined in control of the franchises by five percent (5%) or more for any calendar month then in addition to making full payment of the relevant citigation, the franchises ball reimburse the City of a franchises of aniomate payable under this Ordinance. The city is fall beginned in connection with a grainting of a franchises of such addition to making full payment of the relevant citigation. The figure review is partnered in connection with a grainting of a franchises of the reasonable costs associated with the audit or review is partnered in connection with a grainting of a franchise of the cost of a franchise of the cost of a franchise of the cost of the r

control, or a modification, the franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review.

(f) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). Overpayments discovered by the City or the franchisee shall be an adjustment on the next monthly payment without interest.

(g) The City reserves the right to require the franchisee to collect any consumer or other tax or of other fact or office refer that may be imposed on substribers by the City.

SECTION 13. (1) The consideration set forth in the preceding section shall be paid and received in lieu of any max, license, charge, fee, street or alley rental, or any other character of charge for the use and occupancy of the streets. It shall further be in lieu of any imposed on fee tax, easement tax, franchise tax whether levied as an advancem, special; or other character of tax, and any other tax, license, fee; or imposition officer than

of the streets. It shall purious be in lieu of any suspection see tax, easement tax, transmise tax whether levied as an or valuers, special, and valorem property taxes now or hereafter levied.

(2) Should the City not have the legal power to declare that the payment of the foregoing consideration shall be in lieu of such interest, it causes, fees, and impositions, then the City declares that, should any such tax, licenses, feed or other imposition be imposed upon the company, then to the extent necessary, the consideration to be paid hereinder may be applied toward the sutisfaction of such obligations. SECTION 14, 11 shall be the duty of the City Manager, or such obligations, and privilege shall be sold to the highest and best bidders at a time and place fixed by the City Manager, as soon as practicable after the passage of this ordinates upon the company of the city manager, as soon as practicable after the passage of this ordinates upon the company of the city of the city manager, as soon as practicable after the passage of this ordinates and privilege. Said franchises and privilege shall be sold to the highest and best bidders at a time and place fixed by the City Manager, in the fixed of the city by adventisement in all least one (1) issue of a newspaper of the city of the city by adventisement in all least one (2) issue of a newspaper of the city of the city by adventisement in all least one (2) issue of a newspaper of the city o transmiss and privacy small be sold to the buggest and new broads at a time and passe axed by the Lity remarker measured entertion and passed on the control of the City. Such advertisement shall appear not less than seven (y) days nor more than twenty-one (21) days before the date bids are to be received. In addition to such advertisement, written notice of the proposed sale shall be given to the holders of the current or most recently expired gas distribution franchise at least twenty-one (21) days before the date bids are to be re-

SECTION 15. (1) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Clerk or designated subordinate upon the date and at the time fixed in said advertisement for the receipt of such.

(2) Bids offered for purchase of this franchise shall state the hidder's acceptance of the conditions set forth in this ordinance.

13) Any each or check remitted by an unsuccessful bidder shall be returned.

SECTION 16. At the first regular meeting of the City Commission following the receipt of such bids, the City Manager shall report and submit to the City omission all bids and proposals for acceptance of bids. Acceptance of a bid shall be expressed by an ordinance. The City Commission reserves the right, for and in behalf of the City, to reject any and all bids for said franchise and privilege. In case the bids reported by the City Manager shall be rejected by the City Commission, it may direct, by resolution or ordinance, that said franchise and privilege be again offered for sale, from time to time, until a satisfactory bid therefore shall.

SECTION 17: Any granting of the franchise created hereby shall include the obligation of the City to provide, at least eighteen (18) months before its expiration, for the sale of a new franchise to the highest and best bidder on terms that are fair ad reasonable to the City, to the existing holder of the franchise, and to its patrons.

1. Any violation by the company, its vendee, lessee, or successor of the provisions of this franchise 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 all rights hereunder after written notice to the company and continuation of such violation, failure or default.

2. For violation of any of the following provisions of this Ordinance, the penalties shall be recoverable as follows:

(a) For failure to complete any construction requiring a permit in accordance with the time constraints, set forth in this Ordinance, imless the City Manager specifically approves the delay by res-

6863262681 15:01 2889 07/15/

of eight percent (8%). Overpayments discovered by the City or the franchises shall be an adjustment on the next monthly payment without interest.

(g) The City reserves the right to require the franchises to collect any consumer or other text or other text or other text. It shall further be in the or other text of the paid and received in the usual general or incident and in the presenting section shall be paid and received in the usual general or incident and or only incident and or other text. It shall further be in the or of other text or other text. It shall further be in the or only inspection fee tax, easement tax, franchise tax whether levied as an advalorem, special, or other character of charge for the use and occupancy the usual general or inscitled advalorem property taxes now or hereafter levied.

(a) Should the City not have the leval owner to declarate the text payment of the formal or of the character of tax, and any other tax, license, fee, or imposition other than

٠...

The control of the co

the usual general or special ad valorem property taxes now or hetesafer levied.

(2) Should the City not have the legal power to declare that the payment of the foregoing consideration shall be in lieu of such taxes, ficenses, fices, and impositions, then the City declares that, should specifically a such taxes, it is not the company, then to the extent necessary, the consideration to be paid heterother may be applied this and the satisfaction of such obligations.

SECTION 14. It shall be the duty of the City Manager, or a subondinate designated by the City Manager, as soon as practicable after the passage of this ordinance, in the satisfaction of such obligations. franchises and privilege shall be said to the highest and best bidders at a time and place fixed by the City Manager after due notice thereof him been given by offer for sale said franchise and privilege. Said advertisement, written notice of the proposed sale shall be given to the holders of the current or most recently expired gas distribution franchise at least twenty-one (21) days before the date bids are to be received. In addition to

cerved.

SECTION 15. (1) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Clerk or designated subordinate upon the date and at the time fixed in said advertisement for the receipt of such.

(2) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Clerk or designated subordinate upon the

(2) Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set form in this organization.

(3) Any cash of check remitted by an unsuccessful bidder shall be returned.

(3) Any cash of check remitted by an unsuccessful bidder shall be returned.

(4) SECTION 16. At the first regular meeting of the City Commission following the receipt of such bids, the City Manager shall be reported by the City orders of the City Commission reserves the right, for and in behalf of the City, to reject any and all bids for said franchise and privilege. In case the bids reported by the City Commission, it may direct, by resolution or ordinance, that said franchise and privilege be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and accepted.

be received and accepted.

SECTION 37: Any granting of the franchise created hereby shall include the obligation of the City to provide, at least eighteen (18) months before its expiration, for the sale of a new franchise to the highest and concurrence.

best bidder on terms that are fair ad reasonable to the City, to the existing holder of the franchise, and to its patrons.

SECTION 1.

Any violation by the company, its vendes, lesses, or successor of the provisions of this franchise or any maintain portions thereof, or the failure promptly to perform any of the provisions of the Critical Company and continuation of such violation, failure or default.

2. For violation of gas up of the following provisions of this Ordinance, the peaking shall be recoverable as reallows:

(a) For failure to employ or mornicion requiring a permit in the recoverable are failure.

(b) Hote failure to provide data and report as required by the time constraint, set forth, this Ordinance unless the City Manager specifically approves the delay by results of the continuous.

(b) For failure to comply with the operational standards following the City Manager directing franchises to make the violation continues.

(c) For failure to comply with the operational standards following the City Manager directing franchises to make improvements pursuant to this Ordinance, the franchises that the violation continues.

(d) For failure to comply with the operational standards following the City Manager directing franchises to make improvements pursuant to this Ordinance, the franchises that the violation of the standard following the City Manager directing franchises to make improvements pursuant to this Ordinance, the franchises that for the comply within the operation of disputance of the providence of the providence of the providence of the comply within the providence of the comply within the operation of disputance of the comply within the operation of the ope

Thomas E Kelley.

Thomas E. Kelley Mayor ATTEST: Deboteh muser Deborah Musserl City Clerk

ADOPTED BY THE ROARD OF COMMISSIONERS: June 4, 2009 READOPTED BY THE BOARD OF COMMISSIONERS: June 18, 2009 Published: July 10, 2009

ATTACHMENT C AMENDED BID DEADLINE

AMENDED BID OPENING DATE

ADVERTISEMENT FOR BIDS FOR GAS DISTRIBUTION FRANCHISES

Notice is hereby given that, pursuant to Ordinance No. 73, 2009, written bids and proposals for the purchase and acquisition of non-exclusive gas distribution franchises in the City of Ashland, Kentucky, shall be received at the Office of the City Clerk of the City of Ashland, 1700 Greenup Avenue, P.O. Box 1839, Ashland, Kentucky, 41105-1839.

Said bids must be received by 3:00 P.M., on <u>August 6, 2009</u>. All bids shall be publicly opened and read aloud at 3:15 P.M. on <u>August 6, 2009</u> in the Commission Chambers on the 3rd Floor at the same address. Said franchises will be sold to the highest and best bidders. The City of Ashland reserves the right to reject all bids.

The terms, conditions and other matters incidental to the bids and the franchises in question are contained in Ordinance No. 73, 2009, enacted by the City of Ashland on June 18, 2009, which is incorporated herein by reference as though set out herein in full. A copy of said Ordinance with the full text of the franchise may be obtained at the Office of the City Clerk.

City of Ashland Stephen W. Corbitt, P.E. City Manager

Published: July 22, 26, 2009

Received

NiSource Corporate Secretary