

ORDINANCE NO. 124, SERIES 1998

AN ORDINANCE CREATING A FRANCHISE FOR LAYING, MAINTAINING AND OPERATING IN THE STREETS, AVENUES, ALLEYS AND PUBLIC WAYS OF THE CITY OF LOUISVILLE, KENTUCKY, A SYSTEM OF MAINS, PIPES AND APPLIANCES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS: AND ALSO PROVIDING FOR THE SALE OF SAID FRANCHISE, AND DECLARING AN EMERGENCY.

SPONSORED BY: ALDERMAN BOB BUTLER
ALDERMAN STEVE MAGRE

WHEREAS, the Board of Aldermen passed Ordinance No. 288, Series 1997, to create a franchise for the transmission, distribution and sale of gas; and

WHEREAS, the City received one bid for the franchise which has been determined to be non-responsive and no award of the franchise has been made; and

WHEREAS, the City needs to award a franchise for the transmission, distribution and sale of gas as quickly as possible to continue to provide for the regulated use of the City's rights-of-way and the continued provision of gas services to City residents;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF LOUISVILLE:

Section 1. There is hereby created a franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of the City of Louisville, Kentucky, a system of mains, pipes, fixtures and appliances for the transmission, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Ordinance.

Section 2. The person, firm or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall for brevity hereinafter be referred to as the "company" herein, and the public streets, avenues, alleys and other public ways (as the same now exist and including all streets, avenues, alleys and public ways hereinafter established or created) in the City of Louisville, Kentucky, shall for brevity be hereinafter referred to as the "streets."

Section 3. The company acquiring this franchise shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under and across (but not above) the said streets, and to transmit, distribute and sell gas through said pipes, within the corporate boundaries of the City of Louisville as they now exist or may hereafter be extended; subject to the provisions hereof, city regulations or laws on the use of the right of way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said City.

Section 4. No pavements or sidewalks shall be disturbed and no excavation in any of the said streets will be made, except in accordance with the City's regulations and laws on the use of the right of way and with the written permission of the Director of Public Works and under his supervision, and such mains, pipes and appurtenances shall be located in such portion of said streets as may be designated by the Director of Public Works, using alleys as far as reasonably feasible, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the company to City standards or prior condition, as required by the Director of Public Works. All such replacements shall be maintained by company for five (5) years in as

good condition as the remainder of said street. Should the company fail or refuse to replace or restore said pavement, sidewalk or excavation to City standards or condition as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by the City under the direction of the Director of Public Works at the cost and expense of the company. Work by the company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.

Section 5. Whenever the City or any of its departments or agencies shall grade, regrade, widen or alter any street or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the company, when so ordered by the City, to change its mains, pipes and appurtenances in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the company shall not be required to make any such change when the street in which its facilities are located is vacated or when the street is altered for the convenience of abutting property owners or for private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the company.

Section 6. The company acquiring this franchise, and its successors and assigns, shall indemnify the City of Louisville for any and all damage that may legally arise from the presence or operation of its gas pipes, mains or appliances so constructed or maintained on or along said public ways, and defend all actions which may be brought

against said City by reason of or arising out of the construction or operation of said gas facilities.

Section 7. When requested to do so by the City of Louisville, company shall make available to the City copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this franchise, and such other reports as City may reasonably request.

The City of Louisville reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by company hereunder as it shall deem necessary or advisable.

The company agrees further to furnish the Mayor and the Director of Law of the City of Louisville written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in rates; and such notice shall specify amount and type of increase to be sought and alerting to the City that such a filing is being made. The company agrees to maintain "as-built" drawings of all facilities within the right-of-way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to cooperate with state and local government low-income energy assistance efforts, including modification of bills to conform with state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. If any street is about to be paved or repaved by the City of Louisville, the company shall, on notice from the Director of Public Works, make any extensions of mains and pipes ahead of paving; provided that if company deems it unnecessary to make such an extension, it may refrain from doing so, but shall thereafter be precluded for a period of five (5) years from disturbing such paving, and if company makes any extensions of mains and pipes, including connections to property lines within such five-year period, same shall be made in the unpaved portion of the street and any connections to property lines shall be tunneled under such paving.

Section 10. The franchise hereby created shall be of a term of no greater than seven years, but is not exclusive, and the City reserves the right to sell similar franchises to others.

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 shall, prior to such assignment, obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

Section 11. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over company's gas rates and service and no other regulatory authority shall have by law such jurisdiction over gas rates and service in the City of Louisville, then the Board of Aldermen of the City of Louisville shall have regulatory jurisdiction over company's gas rates and service in the City of Louisville within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, company shall have the right to seek

redress in court by appeal or otherwise from any regulatory order or action of the Board of Aldermen of the City of Louisville on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If the Board of Aldermen acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of the Board of Aldermen or of court, or unless and until changed by agreement between the City of Louisville and the company.

In the event that the provision of gas service is deregulated by state legislation, then this franchise may be terminated upon ninety (90) days written notice by the City to the Company if it is determined by the City that continuation of the franchise would be unfair and unreasonable to the City or to the customers of the utility, or upon the agreement between the City and the Company.

Section 12. It shall be the duty of the Director of Public Works as soon as practical after the passage of this Ordinance, to advertise by publication, said publication shall occur not less than seven days nor more than twenty-one days before the sale of the franchise herein set out and to sell the same at public auction to the highest and best bidder at a time and place to be fixed by said Director. The right to reject any and all bids shall be reserved. The highest bid made by each bidder shall be transmitted to the Board of Aldermen at its next meeting following receipt of same with the recommendations of

the Director of Public Works as to which bid the said Director considers the highest and best, and the Board of Aldermen may accept that bid which in its judgment is the highest and best.

No bid for this franchise shall be received or considered by the Director of Public Works unless the bidder making same shall at the time set for such sale deposit with the Director of Public Works a certified check, payable to the City of Louisville, for the sum of Five Thousand Dollars (\$5,000.00) duly certified by some bank doing business in the City of Louisville. Any check which may be deposited by an unsuccessful bidder shall be returned to him when the Board of Aldermen shall have accepted the bid which in its judgment is the highest and best. The minimum price of said franchise (hereinafter referred to as the "base franchise fee") shall be and the same is hereby fixed at Four Hundred Thousand Dollars (\$400,000.00) annually for the term of this franchise, adjusted annually for inflation as set out below, and the Director of Public Works shall not entertain any bid for less than that amount. Upon acceptance by the Board of Aldermen, the \$5,000.00 deposit by the successful bidder shall be credited against the first year's payment. During each year of this franchise, the annual franchise fee shall be paid on or before the 15th day of February, and the franchise fee shall be the greater of (i) the base franchise fee, (ii) the franchise fee during the previous year of the franchise, or (iii) the franchise fee during the previous year plus an additional fee adjustment, as calculated herein based on the increase in the Consumer Price Index for all Urban Consumers, U.S. City Average, all items, not seasonally adjusted ("the CPI"), which is published by the Bureau of Labor Statistics of the United States Department of Labor. During each year of

this franchise beginning with the initial year, the additional fee adjustment shall be calculated by multiplying the percentage increase, if any, in the previous year's CPI by the greater of (i) the base franchise fee or (ii) the franchise fee during the previous year, the previous year's CPI increase being defined as the increase in the calendar year immediately preceding the February 15 payment date. If the current CPI is not available at the time of any necessary computation, the adjusted franchise fee shall be estimated by the City of Louisville and readjustment shall be made as soon as the current CPI is available. If the CPI is discontinued or supplemented, then the most nearly comparable successor index thereto shall be used.

Section 13. In case the successful bidder for said franchise shall fail within thirty (30) days after his bid shall have been accepted to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such franchise for sale in the manner in which the first sale was made and shall again sell said franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such franchise for sale in the manner prescribed herein and may continue to do so until said franchise is purchased by some bidder who shall comply with the terms of said sale.

Section 14. The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Board of Aldermen.

Section 15. That this Ordinance shall become effective upon its passage and approval.

Section 16. That The Board of Aldermen has determined that due to the immediate need to award a franchise for the transmission, distribution and sale of gas, that a state of emergency exists and that pursuant to the provisions of KRS 83A.060(7), the requirement for a second reading of this Ordinance is hereby suspended.

Cheri B. Hamilton C.B.A. William C. Stone P.B.A.
APPROVED: 6-29-98 William C. Stone MAYOR

APPROVED AS TO FORM:

Barbara E. Elliott
WILLIAM C. STONE
DIRECTOR OF LAW
CITY OF LOUISVILLE

1200546

**BOARD OF ALDERMEN
READ AND PASSED**
6-23-98