

RESOLUTION NO. 276-2003

A RESOLUTION ACCEPTING THE BID OF COLUMBIA GAS OF KENTUCKY, INC., IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 125-2003; CREATING AND OFFERING FOR SALE A FIVE YEAR FRANCHISE FOR THE OPERATION OF A NON-EXCLUSIVE GAS DISTRIBUTION SYSTEM IN FAYETTE COUNTY, AND AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A FRANCHISE AGREEMENT WITH COLUMBIA GAS OF KENTUCKY, INC., INCORPORATING THE TERMS AND CONDITIONS OF ORDINANCE NO. 125-2003.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the bid of Columbia Gas of Kentucky, Inc., submitted in accordance with the provisions of Ordinance No. 125-2003, creating and offering for sale a five year franchise for the operation of a non-exclusive gas distribution system in Fayette County, a copy of which is attached to the Franchise Agreement as Exhibit "B", is hereby declared to be a highest and best bidder for said franchise; and said franchise is hereby sold to and vested in Columbia Gas of Kentucky, Inc., its successors and assigns, for the full period of five years from and after the date of adoption of this Resolution.

Section 2 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to execute the Franchise Agreement with Columbia Gas of Kentucky, Inc., which is attached hereto and incorporated herein by reference, which agreement incorporates by reference in its entirety Ordinance No. 125-2003 passed by the Urban County Council on May 29, 2003.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 26, 2003

/s/ Teresa Ann Isaac
MAYOR

ATTEST:
/s/ Liz Damrell
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: July 2, 2003-1t

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 06 2004

PURSUANT TO 007 KAR 5.011
SECTION 9 (1)

BY Charles L. Dorn
EXECUTIVE DIRECTOR

FRANCHISE AGREEMENT

THIS AGREEMENT made and entered into this 26th day of June, 2003, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes (hereinafter the "Government"), and **COLUMBIA GAS OF KENTUCKY, INC.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 2001 Mercer Road, Lexington, Kentucky 40512-4241 (hereinafter "Columbia").

WITNESSETH:

WHEREAS, by Ordinance No. 125-2003, enacted May 29, 2003, the Government created a non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining a gas distribution system in Lexington-Fayette Urban County, Kentucky, for a period not to exceed five (5) years; and

WHEREAS, by Ordinance No. 125-2003, the Government authorized the advertising for bids on said franchise; and

WHEREAS, on June 9, 2003, Columbia submitted a bid to acquire said franchise; and

WHEREAS, by Resolution No. 276-2003, enacted June 26, 2003, the Government accepted the bid of Columbia as substantially responsive to Ordinance No. 125-2003 and in the best interest of the citizens of Lexington-Fayette Urban County; and

WHEREAS, the Government and Columbia have agreed to accept the following as the terms of this Agreement and as those of the franchise.

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BY Charles G. Dorn
EXECUTIVE DIRECTOR

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of all of which are hereby acknowledged, the Government and Columbia agree as follows:

1. Ordinance No. 125-2003, which is attached hereto as Exhibit "A" (the "Ordinance"), is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Columbia for this franchise, which is attached hereto as Exhibit "B", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. The Government hereby grants unto Columbia a non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining a gas distribution system upon, through, along, under and over the public streets, alleys, avenues, public roads, highways, sidewalks, and other public ways of the Lexington-Fayette Urban County Government in accordance with the terms of the Ordinance.

4. This Agreement shall commence on June 24, 2003, and shall expire on June 25, 2008.

5. In consideration of the granting of this franchise, Columbia agrees to pay to the Government a sum equal to three percent (3%) of the gross annual revenues received by Columbia from the sale, distribution, and/or delivery of gas within Fayette County.

6. Columbia, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in this

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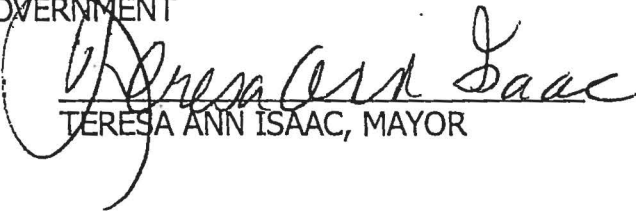
BY Charles L. Dorn
EXECUTIVE DIRECTOR

Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

7. This Agreement contains and embodies the entire agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto. No changes, modifications or other deletions in this Agreement shall be effective unless and until the same are reduced to writing and approved, adopted, and executed in the same fashion as this Agreement.

IN TESTIMONY WHEREOF, the Lexington-Fayette Urban County Government has caused its name to be affixed hereto by the Mayor and Columbia Gas of Kentucky, Inc., has caused its name to be affixed hereto by Joseph W. Kelly, its properly authorized officer.

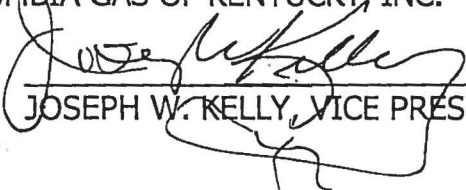
LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: 
TERESA ANN ISAAC, MAYOR

ATTEST:


LIZ DAMRELL, COUNCIL CLERK

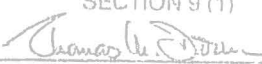
COLUMBIA GAS OF KENTUCKY, INC.

BY: 
JOSEPH W. KELLY, VICE PRESIDENT

STATE OF KENTUCKY)
)
COUNTY OF Fayette)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Joseph W. Kelly, as Vice President of Columbia Gas of Kentucky, Inc., on this the 20th FEB 06 2004

PUBLIC SERVICE COMMISSION
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PURSUANT TO 807 KAR 5.011
SECTION 9 (1)
BY: 
EXECUTIVE DIRECTOR

day of June, 2003.

My commission expires: June 8, 2004.

Sheri Bronson Warner

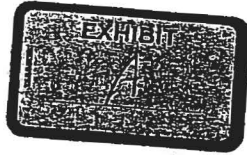
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KENTUCKY, STATE-AT-LARGE

PUBLIC SERVICE COMMISSION
OF KENTUCKY
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FEB 06 2004

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Charles L. Don
EXECUTIVE DIRECTOR



ORDINANCE NO. 125-2003

AN ORDINANCE CREATING AND ESTABLISHING A NON-EXCLUSIVE GAS FRANCHISE AND PROVIDING FOR: THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS FOR HEATING AND OTHER PURPOSES WITHIN THE PUBLIC RIGHTS-OF-WAY; THE INCORPORATION OF THE PROVISIONS OF THE PUBLIC RIGHT-OF-WAY ORDINANCE (CHAPTER 17C OF THE CODE OF ORDINANCES); DEFINITIONS; CONSTRUCTION, INSTALLATION, MAINTENANCE AND FACILITY STANDARDS; ADDITIONAL PERFORMANCE GUARANTEES ON PROJECTS WITH CONSTRUCTION COSTS EXCEEDING \$100,000; AN INDEMNIFICATION AND HOLD HARMLESS AGREEMENT; COMMERCIAL GENERAL LIABILITY INSURANCE POLICY IN THE AMOUNT OF AT LEAST \$1,000,000; ACCESS, INSPECTION AND AUDITING BY THE GOVERNMENT; A FIVE YEAR DURATION; NO VESTED RIGHTS FOR EMPLACEMENT OF FACILITIES; ASSIGNMENT WITH CONSENT; PENALTIES IN THE AMOUNT OF \$100 PER DAY FOR INTENTIONAL FAILURE TO PAY FRANCHISE OR OTHER FEES, OR INTENTIONAL FAILURE TO COMPLY WITH A COUNCIL RESOLUTION DIRECTING COMPLIANCE WITH THIS ORDINANCE; CONTINUED ENFORCEMENT UPON THE GOVERNMENT'S FAILURE TO INSIST ON PERFORMANCE; THE PAYMENT OF PENALTIES NOT AN EXCUSE FOR NON-PERFORMANCE; THE RESERVATION OF THE GOVERNMENT'S CURRENT AND FUTURE RIGHTS TO REGULATE RATES AND SERVICES; TERMINATION UPON WILLFUL VIOLATIONS OF THE FRANCHISE, WILLFUL EVASION OF PROVISIONS OF THE FRANCHISE, FRAUD AND DECEIT UPON THE GOVERNMENT, KNOWINGLY MAKING MATERIAL MISREPRESENTATIONS, OR FAILING TO BEGIN SERVICE RESTORATION FOLLOWING SEVENTY-TWO CONSECUTIVE HOURS OF INTERRUPTED SERVICE WITHOUT GOVERNMENT APPROVAL, AND PROCEDURES FOR TERMINATING THE FRANCHISE; SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE FORECLOSURE OR OTHER JUDICIAL SALE OF THE COMPANY'S FACILITIES; RIGHT TO CANCEL FRANCHISE THIRTY DAYS AFTER THE APPOINTMENT OF A RECEIVER OR TRUSTEE UNLESS CERTAIN CONDITIONS ARE MET; SALE AT PUBLIC AUCTION OF THE FRANCHISE AND DUE ADVERTISEMENT REQUIREMENTS THEREON; WRITTEN BIDS, RIGHT TO REJECT, PAYMENT OF FIVE PERCENT OF THE ESTIMATED COST OF THE SYSTEM UNLESS THE COMPANY ALREADY HAS SUFFICIENT FACILITIES TO PROVIDE THE FRANCHISE SERVICES, AND PAYMENT OF \$500 FOR ADVERTISEMENT AND ADMINISTRATIVE COSTS; PAYMENT OF THE SUM OF AT LEAST THREE PERCENT OF THE COMPANY'S GROSS ANNUAL REVENUES FROM THE SALE, DISTRIBUTION, AND/OR DELIVERY OF GAS WITHIN FAYETTE COUNTY BEGINNING WITH THE FIRST BILLING PERIOD FOLLOWING TARIFF APPROVAL BY THE KENTUCKY PUBLIC SERVICE COMMISSION; PAYMENT OF PERMITTING FEES; THE FILING OF AN APPLICATION OR TARIFF WITH THE KENTUCKY PUBLIC SERVICE COMMISSION WITHIN TEN DAYS OF ACCEPTANCE OF THE BID; SUSPENSION OF PAYMENT OF THE FRANCHISE FEE IF NO FINAL DETERMINATION REGARDING TARIFF APPROVAL IS MADE AND ALLOWING THE GOVERNMENT TO TERMINATE THE FRANCHISE UPON SUCH CONDITION; ALL PAYMENTS TO BE MADE WITHIN THIRTY DAYS OF THE PRECEDING CALENDAR MONTH; PAYMENT IS NOT AN ACCORD AND SATISFACTION, RIGHT TO AUDIT AND TO PAYMENT OF COSTS IF THE COMPANY IS FOUND TO HAVE INTENTIONALLY WITHHELD FIVE PERCENT OR MORE; INTEREST OF EIGHT PERCENT ON ANY LATE OR RECOMPUTED PAYMENTS; BIDS MUST ACCEPT THE CONDITIONS OF THIS ORDINANCE AND MAY INCLUDE ADDITIONAL CONSIDERATION PAYMENTS; VIOLATIONS OF THE FRANCHISE SHALL BE CONDITIONS FOR FORFEITURE, AND FRANCHISE EFFECTIVE WHEN THE COUNCIL ACCEPTS THE BID(S); ALL EFFECTIVE ON DATE OF PASSAGE.

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PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Charles L. Dorn
EXECUTIVE DIRECTOR

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created a non-exclusive franchise to acquire, lay, maintain and operate in the public streets, alleys, avenues, public roads, highways,

sidewalks and other public ways of the Lexington-Fayette Urban County Government, 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. The terms and provisions of Chapter 17C of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Public Right-of-way Ordinance") are incorporated herein by reference, and shall apply as if fully set forth herein to the extent that there is no express conflict with the terms or provisions of this Ordinance.

Section 2 - The person, firm or corporation that shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company" herein. The definitions and terminology contained in the provisions of the Public Right-of-way Ordinance are hereby incorporated herein by reference.

Section 3 - The Company acquiring this franchise shall have the right and privilege of laying, maintaining and operating gas mains and pipes, equipment and apparatus, and appurtenances necessary or appropriate in connection therewith, in, along and under the Rights-of-way within the corporate boundaries of the Government 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 Government, including but not limited to those contained in the Public Right-of-way Ordinance.

Section 4 - In addition to the requirements contained in the Public Right-of-way Ordinance:

(a) all working facilities and conditions used during construction, installation and maintenance of Facilities shall comply with the standards of the Occupational Safety and Health Administration;

(b) the Company shall construct and operate the system and related Facilities in accordance with all generally accepted related industry codes and standards that are applicable;

(c) the Company guarantees the first-class quality of all construction and of all materials and equipment used or installed. In case of any defect in the work, materials or equipment, whether latent or patent, the Company will forthwith remedy such defects without cost to Government;

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BY Chas. L. Dorn
EXECUTIVE DIRECTOR

(d) in the construction or reconstruction or maintenance or removal of any of said Facilities, the Company shall have due regard for the rights of the Government and others, and shall not interfere with, or in any way injure the property of the Government or others under, on, or above the ground. The Company shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws.

Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of the Rights-of-way.

Section 5 – The Company shall comply with all of the requirements of Section 17C-19 of the Public Right-of-way Ordinance pertaining to Government construction and/or street projects.

Section 6 – In addition to any performance bond(s) required pursuant to Section 17C-23 of the Public Right-of-way Ordinance, the Company may be required to provide a performance guarantee for significant projects with construction costs of one hundred thousand dollars (\$100,000) or more involving the Rights-of-way. This performance guarantee shall be set in an amount and duration to be determined by the Director upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such performance guarantee exceed two hundred thousand dollars (\$200,000).

Section 7 – The Company agrees by the acceptance of this franchise to defend, indemnify, keep and save the Government, its officials, boards, members, agents, and employees free and harmless against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, including reasonable attorney's fees arising from liability or claims of liability on account of injuries or damage to persons or property growing out of the construction, maintenance, repair and operation of its gas system. In the event that suit shall be brought against the Government either independently or jointly with the Company on account hereof, the said Company, upon notice by the Government, shall defend the Government in any such suit.

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the cost of the Company and in the event of final judgment being obtained against the Government either independently or jointly with the Company, the Company shall pay such judgment with all costs and hold the Government harmless therefrom.

Section 8 - The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to the Government's Division of Risk Management with a minimum policy limit of one million dollars (\$1,000,000) per occurrence and shall provide the Government with a certificate of insurance evidencing the insurance policy required by this section. The certificate shall state that the insurance policy shall not be canceled, materially changed or non-renewed until after thirty (30) days written notice has been provided to the Government; however, insurance may be canceled and replaced with a policy that continues to meet or exceed the requirements of this section. The Company may satisfy the insurance requirements and conditions of this section under a self-insurance plan that is acceptable to the Government's Division of Risk Management.

Section 9 - (a) The Government, through its Chief Administrative Officer or designee or through such assistants as the Government may employ or designate, may, at all reasonable times, have access to all or any of the property owned or used in part or in whole by the Company in its operating and maintaining the gas system under this franchise. In like manner, the Government's above-mentioned officers and assistants may at all reasonable times enter in or upon said property to inspect or examine it, and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the Company reasonably necessary to the administration of this franchise. In the event that the Government determines that it desires an audit of this franchise, the Company agrees to comply with all reasonable requests of the Government pertaining to obtaining any necessary information or documentation from the Company.

(b) The Company agrees further to furnish the Government's Chief Administrative Officer timely written notice of its filing an application with the Public Service Commission for an increase in general rates concurrent with said filing. Should the Government choose to intervene in the Commission action it shall be given access to records related to said application, as required by the Commission.

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BY Charles L. Dorn
EXECUTIVE DIRECTOR

Section 10 - (a) The franchise hereby created shall be a period of five years (5) years from the date of acceptance by the Urban County Council. This franchise is not exclusive and the Government reserves the right to grant similar franchises to more than one Company.

(b) This franchise creates no vested rights in the Company and any installation or emplacements of Facilities by the Company in the Rights-of-way is at the Company's risk.

(c) 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 shall, prior to such assignment, provide at least sixty (60) days advance written notice to the Government and obtain consent from the Government to such assignment, which consent shall not be unreasonably withheld.

Section 11 - (a) For violation of any of the following provisions of this Ordinance, the penalties shall be recoverable as follows:

(1) For intentional failure to pay the franchise fee when due pursuant to Section 18 or any itemized bill presented by the Government pursuant to Section 5 or this section, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(2) For intentional failure to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(b) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company'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 Government 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 Section 13.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

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PURSUANT TO 007 KAR 5:011
SECTION 9 (1)

BY Charles W. Doremus
EXECUTIVE DIRECTOR

Section 12 -- The Government reserves all rights it might presently have, or which it may hereafter acquire, to regulate the Company's rates and services.

Section 13 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any material provision of the franchise or any

material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;

(2) Willfully attempts to evade any material provision of the

franchise or practices any fraud or deceit upon the Government;

(3) Knowingly makes a material misrepresentation of any fact in the

application, proposal for renewal, or negotiation of the franchise; or

(4) Fails to begin service restoration following seventy-two (72)

consecutive hours of interrupted service, except when approval of such interruption is obtained from the Government. Such approval shall not be unreasonably withheld. In cases of force majeure or acts beyond the Company's control approval shall be granted. The Company shall provide, at a minimum, daily restoration status reports.

(b) The Government may make a written demand that the Company do

or comply with any such provision, rule, order or determination. If the violation, found in Section 13(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky.

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PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Charles L. Dow
EXECUTIVE DIRECTOR

(1) The Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(2) If such violation by the Company is found to have been with just cause, the Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(3) If the Council determines such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the Council may fix.

Section 14 – The Company shall provide the Government at least sixty (60) days advance written notice of the foreclosure or other judicial sale of all or a substantial part of the Company's Facilities, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of Section 10 of the Ordinance, governing the consent of the Council to such change in control of the Company, shall apply.

Section 15 – The Council shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

(a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Company.

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SECTION 9 (1)

BY Thomas H. Don
EXECUTIVE DIRECTOR

Section 16 - It shall be the duty of the Mayor or his or her designated subordinate, soon as practicable after the passage of this Ordinance to offer for sale at public auction said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor after he or she has given due notice thereof by advertisement in at least one (1) issue of the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky. This advertisement shall appear not less than seven (7) days or more than twenty-one (21) days before the date of bid opening.

Section 17 - 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 Mayor or his or her designated subordinate upon the date and at the time fixed by him or her in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Urban County Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The said Urban County Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the Urban County Council, it may direct, by resolution or ordinance, said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Each bid shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Government reserves the right to review any of bidder's supporting documentation which justifies bidder's

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BY Chowdhury S. Durrani
EXECUTIVE DIRECTOR

determination of said estimated cost. Such deposit need not be made by a corporation or person already owning within the territorial limits of Fayette County a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars (\$500.00) to cover the Government's cost of advertising and other administrative expenses incurred.

Section 18 - (a) In consideration of the granting of the franchise for sale, distribution, and/or delivery of gas within Fayette County the Company agrees to pay to the Government a sum equal to at least three percent (3%) of the gross annual revenues received by the Company from the sale, distribution, and/or delivery of gas within Fayette County. Calculations of amounts payable hereunder and payments shall commence with the first billing period following tariff approval by the Kentucky Public Service Commission. The Company is otherwise required to continue submitting payments to the Government under the terms of its existing tariff and/or franchise until such time as this tariff approval is obtained.

(b) Pursuant to Section 17C-22 of the Public Right-of-way Ordinance, the Company is also required to pay the Government an additional amount intended to adequately compensate the Government for the Company's anticipated level of annual permitting. This amount is to be separately paid to the Government at the same time and under the same terms as its franchise fees, except for the amount of the Annual General Permit as set forth in the Public Right-of-way Ordinance, which is immediately due and payable to the Government. These permitting fees shall be in addition to the franchise fee in Section 18(a). These permitting fees may be calculated as an appropriate percentage of gross revenues at the option of the Company. Notwithstanding the foregoing, the Company may elect to pay for its permit fees upon application for each respective permit upon approval of the Director. These permitting fees are subject to change for the future term of the franchise based upon an audit of the actual level of permitting of the Company or a change in the amount of the respective permitting fees found in Section 17C-22 of the Public Right-of-way Ordinance. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.

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BY Thomas G. Dorn
EXECUTIVE DIRECTOR

(c) No later than ten (10) working days after final acceptance of its bid Government, the Company shall file an application or tariff with the Kentucky Service Commission to provide for prompt and satisfactory cost recovery of the amount(s) payable under Section 18(a) and, if desired by the Company, Section 18(b). The Company shall provide Government with copies of any tariffs it files with the Kentucky Public Service Commission related to the franchise in order to satisfy the obligations created by this subsection.

(d) If, after a period of sixty (60) days from the filing of the Company's application, the Kentucky Public Service Commission shall have made no final determination concerning the prompt and satisfactory recovery of amounts payable under Section 18(a) by the Company, then the Company's obligation to pay the amount specified in Section 18(a) shall be suspended, provided the Company shall first give the Urban County Government 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 Company's obligation as herein provided, the Government shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company.

Section 19 - (a) Payment of any amount due under this Ordinance shall be made monthly, within thirty (30) days of the end of the preceding calendar month. In the event of suspension of the Company's obligation pursuant to Section 18(d) herein, said suspension shall not have application to any amount due hereunder for the preceding calendar month, and the gross income received by the Company during any such suspension period shall be excluded from the Company's annual gross revenues for the purpose of calculating amounts due under Section 18(a) herein.

(b) No acceptance of any franchise fee payment by the Government shall be 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 Government may have for future or additional sums pursuant to this Ordinance. The Government shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit and to recompute any amounts determined to be payable

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PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

BY Chambers W. Dorman
EXECUTIVE DIRECTOR

under this Ordinance. Any additional amount due to the Government as a result of the audit shall be paid within ten (10) days following written notice to the Company by the Government which notice shall include a copy of the audit report. If as a result of such audit or review the Government determines that the Company 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 Company shall reimburse the Government for all of the reasonable costs associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants.

(c) 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 Government or the Company shall be an adjustment on the next monthly payment without interest.

Section 20 – Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for payments contained in Sections 17 and 18, which shall be considered as a condition of this franchise. Any check deposited by an unsuccessful bidder shall be returned when the Urban County Council shall have accepted the bid or bids, which in its judgment is or are the highest and best.

Section 21 – 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 violations, failure or default, as set forth in Section 13.

Section 22 - The franchise created by this Ordinance shall become effective when the Urban County Council accepts the bid(s) for it.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 06 2004

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Charles W. Stone
EXECUTIVE DIRECTOR

Section 23 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 29, 2003

/s/ Teresa Ann Isaac
MAYOR

TEST:

/s/ Liz Damrell
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 2, 2003-14

Ord111(gas)

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 06 2004

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Charles L. Dore
EXECUTIVE DIRECTOR

Columbia Gas[®]
of Kentucky

A NiSource Company

P.O. Box 14241
2001 Mercer Road
Lexington, KY 40512-4241

Lexington-Fayette Urban County Government
Division of Central Purchasing
200 East Main Street
Room 338
Lexington, KY 40507

June 9, 2003

HAND-DELIVERED

To Whom It May Concern:

Please find enclosed the bid of Columbia Gas of Kentucky, Inc. in response to the request for bids for a natural gas franchise as advertised in the June 2, 2003 issue of *The Lexington Herald-Leader*. Pursuant to Ordinance No. 125-2003, Section 17, the bid is submitted with a check in the amount of \$500.00. If you have any questions you may contact me at (859) 288-0242. Thank you for your assistance.

Sincerely,

Judy M. Cooper

Judy M. Cooper
Manager, Regulatory Policy

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 06 2004

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY *Charles L. Dorn*
EXECUTIVE DIRECTOR

Enclosures (Sealed Envelope)



BID OF COLUMBIA GAS OF KENTUCKY, INC.

To the Mayor and Urban County Council of Lexington-Fayette County, Kentucky:

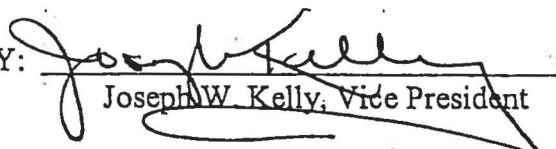
Upon the terms and conditions hereinafter set forth, Columbia Gas of Kentucky, Inc., ("Columbia") submits the following bid for the gas distribution franchise authorized by the Lexington-Fayette Urban County Government ("Government") in Ordinance No. 125-2003 on May 29, 2003 and advertised in *The Lexington Herald-Leader* on June 2, 2003.

Columbia hereby accepts the terms and conditions of Ordinance No. 125-2003. In consideration of the granting of the franchise for sale, distribution, and/or delivery of natural gas within Fayette County, Columbia agrees to pay to the Government a sum equal to three percent (3%) of the gross annual revenues received from the sale, distribution, and/or delivery of gas within Fayette County.

Columbia represents and warrants that it has obtained a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission dated June 3, 2003, which authorizes it to bid on the subject franchise offered by the Government, as required under KRS 278.020 (3).

Columbia further represents and warrants that it presently owns plant, facilities and equipment within the corporate limits of the Government sufficient to render the service required by Ordinance 125-2003.

COLUMBIA GAS OF KENTUCKY, INC.

BY: 
Joseph W. Kelly, Vice President

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 06 2004

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY: 
EXECUTIVE DIRECTOR