ORDINANCE NUMBER 20-044

An ordinance granting Black Hills Gas Distribution, LLC d/b/a Black Hills Energy, a Delaware corporation, its lessees, successors and assigns, a natural gas franchise and the authority to construct, operate, maintain, and extend a natural gas distribution plant and system, and granting the right to use the streets, alleys, and other public places within the present or future corporate limits of the City of Beatrice, Nebraska; and repealing all conflicting ordinances and to provide for publication in pamphlet form and an effective date of this ordinance.

Be it ordained by the Mayor and City Council of the City of Beatrice, Nebraska, as follows:

FRANCHISE GRANTED

The City of Beatrice, Nebraska (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills Gas Distribution, LLC d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business. The authority granted by this Franchise shall not include the right, permission or authority to lay, install, maintain and operate a natural gas transmission line within the City of Beatrice unless permission is obtained from the City; provided however, such permission from Grantor may not be unreasonably withheld or contrary to the provisions of the State Natural Gas Regulation Act.

TERM

The franchise granted hereunder shall remain in effect for a period of ten (10) years from the effective date of this Ordinance (the "Initial Term"), and for three (3) successive additional five (5) year periods ("Renewal Term") after the expiration of the Initial Term, unless Grantor, notifies Grantee in writing at least one hundred eighty (180) calendar days before the expiration of the Initial Term or a Renewal Term, that Grantor, desires not to renew the franchise and specifies the reasons for non-renewal. The effective date of this Ordinance shall be determined pursuant to state law.

GOVERNING RULES AND REGULATIONS

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by

local, state, or federal law. Grantee's mains, pipes, and services located in the public rights-of-way shall be constructed, installed, maintained, renovated or replaced in accordance with the such lawful rules and regulations as Grantor may issue or revise from time to time. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

PROVISION FOR INADEQUATE ENERGY SUPPLIES

If Grantee is unable to furnish an adequate supply of natural gas due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of natural gas to any customers or prospective customers, and withholding the supply of natural gas to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future natural gas requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request, and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation. If Grantee does not promptly perform and complete the necessary work to restore the public right-of-way, then after notification by Grantor and an opportunity to restore

the excavation, then Grantor shall have the right to do so at the reasonable expense of the Grantee.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities. Grantor and Grantee will cooperate to discuss long-term projects that impact the public rights-of-way and shall make reasonable efforts to communicate with each other on projects that impact either Grantor or Grantee.

DEFAULT

If either Grantor or Grantee asserts that the other is in material breach which is significant enough to give the aggrieved party the right to sue for breach of contract in the performance of this Ordinance, the complaining party must, within ninety (90) calendar days of the date it discovers such default, notify the other party in writing of the nature of the default and the desired remedy. The notice shall be served in the manner provided under the laws of Nebraska for the service of original notices in civil actions. The defaulting party shall have a reasonable amount of time, pursuant to applicable state laws, but in no event more than one hundred twenty (120) calendar days after service of the notice, to cure the default, resolve any disputes with respect thereto, or agree to amend or terminate this Ordinance. If the default is not resolved within the one hundred twenty (120) calendar day period, the parties may seek all remedies available at laws, including, but not limited to, non-binding arbitration, mediation or litigation.

EXTENSION OF GRANTEE'S FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as approved by the Nebraska Public Service Commission make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

RELOCATION OF GRANTEE'S FACILITIES

If Grantor elects to change the grade, repairs a street, or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise expressly allowed to be reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference with Grantor's facilities. Grantor's use of local tax revenues to repair a street may not be used as a basis for Grantee to seek reimbursement of the cost of Grantee's facility relocation from Grantor.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with such project, then Grantee shall receive payment from the party other than Grantee for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is reasonably available, Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it (a) if applicable, receives the reasonable cost of relocating the same and (b) acting in diligent manner, obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities. However, Grantor is under no obligation to exercise its power of eminent domain to secure alternative right-of-way for Grantee.

CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

FORCE MAJEURE

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and 4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

HOLD HARMLESS

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

Grantee shall maintain insurance at all times during the term of this franchise and any extensions hereof in an adequate amount to cover and protect itself and others to whom Grantee may be held legally liable in the performance of its duties. Grantee shall provide Grantor with a certificate of insurance evidencing such coverage and naming Grantor as an additional insured thereunder.

SUCCESSORS AND ASSIGNS

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

NO THIRD-PARTY BENEFICIARIES

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

NON-WAIVER

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

REPEAL CONFLICTING ORDINANCES

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 95-51 of the City of Beatrice, Nebraska, is hereby repealed as of the effective date hereof.

EFFECT AND INTERPRETATION OF ORDINANCE

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be binding between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon Grantee's acceptance by written instrument, within sixty (60) calendar days of passage by the Mayor and City Council, and filing with the Clerk of the City of Beatrice, Nebraska. The Clerk of the City of Beatrice, Nebraska shall sign and affix the community seal to acknowledge receipt of such acceptance and return one copy to Grantee. If Grantee does not, within sixty (60) calendar days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

PASSED AND APPROVED this 7th day of December, 2020.

Attest:

Erin Saathoff, CMC, City Clerk

Stan Wirth, Mayor

STAKE YOUR CLAIM

BEATRICE

CITY • BOARD OF PUBLIC WORKS

MEMORANDUM

To: Mayor and City Council

Date Submitted: November 24, 2020

From: Tobias J. Tempelmeyer
City Administrator & General Manager

For Agenda of: December 7, 2020

Subject: Black Hills Franchise Agreement and Franchise Fee

Exhibit(s):

The City's current franchise agreement with Black Hills has been in place since 1995. The proposed franchise agreement is for a period of ten (10) years and has the option for up to an additional fifteen (15) years. The franchise agreement is non-exclusive, but it gives Black Hills the ability to install a natural gas distribution system in Beatrice.

Today the City imposes a 5% occupation tax on the gross receipts of natural gas companies doing business in Beatrice. While Black Hills has a physical presence in Beatrice, other natural gas companies simply sell gas and use Black Hills facilities to transport the gas. These companies have not been charged the City's occupation tax.

The proposed ordinance would impose a franchise fee on every natural gas company operating in Beatrice. The fee would be 5% of their gross receipts. There would also be a fee of $0.05/Mcf for transportation customers. This would help the City collect from those natural gas companies that simply sell natural gas in Beatrice but do not have a physical presence. It is estimated that this change will result in an additional $13,000 per year of revenue for the City.