

ORDINANCE NO. 90-34

AN ORDINANCE OF THE CITY OF RICHMOND, KENTUCKY, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE DISTRIBUTION OF NATURAL GAS WITHIN THE CITY OF RICHMOND, KENTUCKY, DEFINING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR A BID PROCEDURE THEREFOR

WHEREAS, the Constitution of the Commonwealth of Kentucky, Section 163, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities operating within their boundaries to operate under franchise agreements which grant the right to use public properties on such conditions as seem proper, and further, K.R.S. 82.082 authorizes the City to exercise such powers within its boundaries as are not in conflict with other state law,

NOW, THEREFORE, be it ordained by the City of Richmond, Kentucky, as follows:

SECTION I

CREATION OF FRANCHISE. There is hereby created a franchise granting the right, privilege and franchise for furnishing and to furnish to customers of Delta Natural Gas Company, Inc. located within the City of Richmond, Kentucky, natural gas for heat, fuel and power purposes by one or more persons, companies, or corporations, or other entities capable and willing to provide such service by and through a non-exclusive franchise, and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to lay, maintain, operate and remove fittings, fixtures, meters, regulators, pipes, valves, pipelines or any other appurtenance necessary to distribute natural gas. This franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. Further, the City reserves the right to continue operating its own natural gas distribution system.



The City does not intend through this franchise to create any presumption in favor of Delta Natural Gas Company, Inc. or the City, regarding the right to serve gas to persons or entities within the City who are not now customers of Delta Natural Gas Company, Inc. or the City.

## SECTION II

TERM OF FRANCHISE. The franchise herein shall be for a term of five (5) years from the date of the franchise as awarded by the Board of Commissioners.

## SECTION III

OPERATION AND MAINTENANCE. In the maintenance and operation of its transportation and distribution system in the streets, alleys and other public places, franchisee shall proceed so as to cause the least possible inconvenience to the general public.

## SECTION IV

FRANCHISE REQUIREMENTS. In addition to any other franchise requirements hereunder or made or adopted herein as provided, the following requirements shall apply to any franchise granted hereunder:

(a) Franchise fee. In consideration of the granting and exercise of a franchise herein, and in further consideration of the grant to franchisee of the right to make use of the public streets, alleys, or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to



franchisee of the right to use same is a valuable property right without which the franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, franchisee shall pay to the City during the entire life of the franchise a sum equal to 3% of the franchisee's gross annual service revenues for sales of natural gas generated within the corporate limits. Franchisee shall pay such sum quarterly, on the 30th day after the end of each quarter and shall furnish to the City a statement setting forth the amount of its gross revenues received.

(b) Other taxes. Any franchise payments to the City by franchisee shall not be in lieu of any occupational, income, license, or property tax, or similar levy, assessment, fee, or charge which would otherwise apply to or be payable by franchisee.

(c) Insurance. Franchisee shall file with the City Clerk of the City of Richmond, Kentucky, and shall thereafter during the entire term of this franchise, maintain in full force and effect a single limit comprehensive liability policy of insurance with limits of not less than one million each occurrence and three million aggregate, which shall insure franchisee and provide primary coverage for the City, its officers, boards, commissions, agents, and employees against liability for loss or damage for personal injury, death, and property damage occasioned by any activity or operation of franchisee under this franchise. The policy shall contain and include a standard cross-liability endorsement thereto.



(d) Indemnification. Franchisee shall indemnify and hold harmless, the City of Richmond, Kentucky, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and against any loss, costs and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the action of franchisee in the exercise or the enjoyment of this franchise.

(e) Defense of Litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of franchisee in the exercise or the enjoyment of this franchise.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against franchisee, ~~TARFF BRANCH~~ its officers, boards, commissions, agents, or employees in any of these



premises, and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, or other assurance required hereunder, or otherwise; provided, that neither franchisee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.

(f) Franchisee shall abide by all provisions of this franchise, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of this franchise are unreasonable, arbitrary or void.

(g) An application for exemption from the franchise fee imposed hereunder may be filed by a customer who pays industrial rates for natural gas in accordance with the rate schedule established by the franchisee. The application shall be filed by the customer with the franchisee and with the City Clerk of the City of Richmond. The application shall be reviewed by the City Commission, which may approve the exemption if it is deemed to be in the best interests of the citizens, considering all relevant economic factors, including the creation of new jobs as a result of industrial expansion within the corporate limits.

#### SECTION V

The purchaser or purchasers of the franchise or franchises created hereunder shall provide the highest and best service in accordance with accepted standards of the industry, and shall keep and maintain such personnel as are reasonably necessary



to provide the service so franchised hereby and to respond to customer complaints and to correct defective service.

SECTION VI

The purchaser or purchasers of the franchise created hereby shall have the right to break, take up and remove such portion or part of any pavement, to make such excavation in the streets and public ways of the City as may be deemed necessary to distribute natural gas; provided, however, that any such work must first be properly approved by the Superintendent of the Street Department, pursuant to Section 20.45-46 of the Richmond City Code, except during emergencies, and further provided that any such work or project so commenced by franchisee hereunder be promptly and diligently prosecuted to completion and upon such completion the streets, alleys, sidewalks and public ways of the City shall exist in as good condition and repair as before such work was commenced. Further, the franchisee shall, upon request by the City, move and adjust any of its facilities or properties as shall be located on City property or right-of-way at franchisee's own expense, during City construction or reconstruction of the improvements on such property or right-of-way, and such movement or adjustment shall be accomplished within sixty (60) days after request by the City. If the movement or adjustment cannot be accomplished within sixty (60) days, then the franchisee may request an extension of time in writing, which extension shall not be unreasonably withheld by the City.

SECTION VII



The consideration paid by franchisee hereunder shall be the full and complete consideration for the franchise, privilege, and right granted by the City of Richmond, and shall be expressly in lieu of any street or alley rental or of any charge for the use of occupancy or said streets, alleys, or public places in the City.

SECTION VIII

The franchise created hereby shall not be transferred, assigned, nor delegated without the written consent of the City.

SECTION IX

Any franchisee hereunder shall furnish to the City written notice of the filing of any application with the Public Service Commission of Kentucky for a general increase in rates and charges or for a certificate of public convenience and necessity for capital investment within the corporate limits of the City of Richmond, which notice shall be given concurrently with such filing.

SECTION X

An invitation to receive sealed bids until 5: P.M. (E.D.T.) on October 12, 1990, shall be advertised pursuant to K.R.S. Chapter 424. The right to reject any or all bids for any reason deemed advisable by this Board of Commissioners shall be expressly reserved by the City. All bids for this franchise shall be subject to the terms and conditions of this ordinance. Award of the franchise, if made, will be made to the highest and best bidder for the franchise. The minimum bid acceptable for this franchise shall be in the amount of the franchise fee stated in Section IV,

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paragraph A of this ordinance.

SECTION XI

Bids shall be received on an Official Bid Form, as follows, which form is hereby approved:

OFFICIAL BID FORM

Re: INVITATION FOR BIDS  
CITY OF RICHMOND  
Madison County, Kentucky  
Sale of Natural Gas Distribution Franchise

Subject to the terms and conditions set forth in Ordinance No. 90-\_\_\_\_\_ (this Ordinance) of the Board of Commissioners of the City of Richmond, Kentucky, providing for the receipt of sealed bids on a Franchise for distribution of natural gas to the customers of Delta Natural Gas Company, Inc. within the city limits, and in accordance with the Invitation for Bids, as advertised, to all of which the undersigned agrees, the undersigned hereby submits the following offer to purchase a Franchise for the distribution of natural gas to customers of Delta Natural Gas Company, Inc. within the corporate limits of Richmond, Kentucky.

I.

FRANCHISE

We hereby bid for the non-exclusive Franchise to distribute natural gas within the corporate limits of the City of Richmond, Kentucky, an amount equal to \_\_\_\_\_ percent of the annual gross service revenues generated from sales of natural gas within the corporate limits. (The minimum acceptable bid is 3% of the annual gross service revenues).

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_

ACCEPTANCE OF BID BY CITY

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_





ANN L. DURHAM, MAYOR

CITY CLERK

SECTION XII

All the terms and conditions of Ordinance No. 89-57 and 90-07 are hereby repealed. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION XIII

This ordinance shall be effective upon its publication as required by law.

FIRST READING: August 21, 1990

MOTION BY: Commissioner Hacker

SECONDED BY: Commissioner Tobler

VOTE:	YES	NO
Commissioner Tobler	x	
Commissioner Strong	x	
Commissioner Carrier	x	
Commissioner Hacker	x	
Mayor Durham	x	

SECOND READING: September 4, 1990

MOTION BY: Commissioner Tobler

SECONDED BY: Commissioner Hacker

VOTE:	YES	NO
Commissioner Tobler	x	
Commissioner Strong	x	
Commissioner Carrier		absent
Commissioner Hacker	x	
Mayor Durham	x	



  
ANN L. DURHAM, MAYOR

ATTEST:

  
CITY CLERK

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Ordinance No. 90-34 creates a franchise for the distribution of natural gas within the City of Richmond to customers of Delta Natural Gas Company, Inc. The franchise created is a five-year non-exclusive franchise, with the City reserving the right to continue operating its own natural gas distribution system. The minimum franchise fee is equal to 3% of the franchisee's gross annual service revenues for sales of natural gas generated within the city limits. All other terms and conditions of the franchise can be found in the complete text of the ordinance which is available during regular business hours at the City Clerk's Office, City Hall, Main Street, Richmond, Kentucky.

Introduced and given First Reading: August 21, 1990

Given Second Reading and Enacted: September 4, 1990

/s/ Ann L. Durham, Mayor

Attest:

City Clerk

