

**AN ORDINANCE GRANTING A FRANCHISE TO USE THE STREETS AND
OTHER PUBLIC LANDS OF THE CITY OF HARRISONBURG FOR THE
TRANSMISSION, DISTRIBUTION AND SALE OF GAS**

Granting to Columbia Gas of Virginia, Inc., a Virginia Corporation, ("Grantee"), its successors and assigns, upon the express written approval of the City Council of the City of Harrisonburg, Virginia, a franchise to use the streets, alleys, and other public ways of the City of Harrisonburg, Virginia, for the purposes of laying, constructing, extending, repairing, replacing, renewing, and maintaining along and under the same, pipes and such other facilities as may be necessary or desirable for the maintenance, distribution, and transmission of natural gas within and through the City of Harrisonburg, Virginia.

Be it ordained by the Council of the City of Harrisonburg, Virginia:

Section 1. A franchise is hereby granted to Columbia Gas of Virginia, Inc., a corporation organized and existing under the laws of the Commonwealth of Virginia, its successors and assigns (Grantee), to use and occupy the streets, alleys, and other public grounds in the City of Harrisonburg, Virginia, (the "City") as now existing or hereafter extended (including by annexation), for the construction, maintenance and operation, on, under, along and through said streets, alleys and other public grounds, of a system of pipes, mains, manholes, connections, meters and other equipment, facilities and appliances (collectively, the "Facilities") necessary or convenient for the transmission, distribution and sale of gas in, through or to any part of the City.

Section 2. The materials to be used and the manner of construction and repair to be followed under this franchise shall be such as are commonly used in comparable circumstances and shall conform substantially to the Minimum Federal Safety Standards for the Transportation of Natural and Other Gas by Pipeline, 49 Code of Federal Regulations Part 192.1 *et seq.* or successor regulations.

Section 3. The work to be done under this franchise shall be done in such manner as not to damage any other underground construction of any other public service corporation holding a franchise from the City or any construction performed by the City itself, or by the Virginia Department of Transportation, or unnecessarily interfere with the making of connections by the City or by the citizens thereof with water or sewerage pipes which may now or hereafter be laid or constructed by the City or by any other public

service corporation holding a franchise from the City. When the streets, alleys and other public grounds are used for any underground construction, the surface thereof shall be restored within a reasonable time from completion of the work to, as nearly as possible, the same condition as existed prior to such construction.

Section 4. Grantee shall obtain Public Access Permits from the City prior to installing, repairing, or otherwise modifying its facilities within the public rights-of-way. The City shall not unreasonably withhold such permits. Grantee may perform all emergency work necessary to ensure the public health, safety, or welfare and to restore service without first obtaining Public Access Permits from the City; in such cases, Grantee shall afterward apply for a Public Access Permit to be retroactive to the date when the work occurred.

Section 5. Whenever any of Grantee's Facilities shall unnecessarily interfere with public street improvements or sidewalks actually being constructed in the City, whether such improvements be new or in the nature of changing any location of or repairing existing streets, sidewalks, alleys or public grounds in the City, the City may upon reasonable notice require the Grantee at its cost to move so much of its Facilities as may unreasonably interfere with the progress of such improvements, and upon the failure of the Grantee to do so in a timely manner, the City may, after one hundred twenty (120) day's written notice to the Grantee, itself make or cause to be made such necessary changes in the Facilities of the Grantee at the cost and expense of the Grantee.

Section 6. The Grantee, its successors and assigns, shall, at its own proper cost, promptly replace, relay, repair and restore as nearly as possible to their original condition all streets, sidewalks, water mains or sewers (provided that such water mains and sewers have been properly marked in accordance with the Virginia Underground Utility Damage Prevention Act §56-265.14 *et seq.* of the Virginia Code) disturbed or damaged in the construction of the work authorized to be done by this franchise; and upon failure to do so, after sixty (60) days' notice in writing shall have been given by the City, or any duly authorized officer of the City, the City may replace, relay, repair or restore such

portion of the streets, sidewalks, water mains or sewers as may be so damaged or disturbed and collect the reasonable cost so incurred from the Grantee, its successors and assigns.

Section 7. By accepting this ordinance and franchise, the Grantee, its successors and assigns, hereby agrees to indemnify and hold harmless the City of Harrisonburg, Virginia from any and all claims; damages, losses, costs, expenses, or judgments which may be awarded in any legal action, and to pay all expenses including, but not limited to, reasonable attorney fees, reasonable investigative costs and court costs, due to personal injuries or property damage arising from the construction, operation or maintenance of the works herein authorized, the exercise of any right or privilege granted by this franchise, or the performance of any duty hereby imposed; PROVIDED, Grantee has received actual notice of such claim or loss, or received lawful service of process in any legal action or proceeding for which Grantee may be required to reimburse the City under the terms of this provision, and provided further that the Grantee has control of the defense of any such claim or suit. However, no provision of this ordinance shall be construed to render the Grantee liable for the negligence or willful misconduct of the City, its agents or employees, its contractors, or any other persons. The Grantee, its successors and assigns, shall obtain and keep in full force and effect during the life of this franchise a policy or policies of liability insurance including the City as Additional Insured, in the amount of Five Million Dollars (\$5,000,000.00) through a combination of primary and excess liability coverage amounts, and file certificate(s) thereof in the office of the City Clerk.

Section 8. This franchise is granted under the express condition that the Grantee, its successors and assigns, shall maintain its system for the transmission, distribution and sale of gas in the City subject to (a) the rules, regulations, orders and directives of the State Corporation Commission of the Commonwealth of Virginia, ("Commission"), (b) the rates, and general terms and conditions of service contained in the Grantee's tariff, as modified from time to time, on file with the Commission, and (c) the rules, regulations and orders of the City Council of the City of Harrisonburg, Virginia, including terms and conditions contained in written approvals given by the City Council for the construction, maintenance

and operation of Grantee's Facilities. In addition, to avoid accidental damage to Grantee's Facilities, Grantee agrees promptly to comply with any reasonable request from the City, its agents, employees, or its contractors that Grantee locate the position of specific portion(s) of Grantee's Facilities.

Section 9. The right of the City to impose any lawful franchise, license, property or other tax upon the franchise herein granted and upon properties constructed or installed by the Grantee hereunder shall not be deemed to be waived, abridged or in any way affected by this ordinance.

Section 10. This franchise and the rights and privileges hereby granted and conferred are conditioned upon the Grantee maintaining or obtaining from the State Corporation Commission of Virginia

Section 11. Any person, firm or corporation bidding for this franchise shall deposit with the bid his or its check in the sum of \$1,000.00, payable to the Treasurer of the City of Harrisonburg, Virginia, which check, on the part of the Grantee awarded this franchise, shall be security to the City that said Grantee will accept the franchise within thirty (30) days after the adoption of the ordinance granting the same. Such acceptance shall be in writing, signed by an officer of the Grantee duly authorized so to do. Upon the failure of the Grantee to accept this franchise pursuant to the provisions of this section, such Grantee shall forfeit to the City the said sum of \$1,000.00 required to be deposited with the bid. The checks of all other bidders shall be returned upon the award of this franchise to the Grantee.

Section 12. The privileges hereby granted shall continue for a period of twenty nine (29) years from the date of the approval of this ordinance.

Section 13. This ordinance shall be in force from its passage

This ordinance shall be effective from the _____ day of _____, 2021.

Adopted and approved this _____ day of _____, 2021.

MAYOR

ATTESTE:

CLERK