Ordinance No. 26-16

AN ORDINANCE GRANTING BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/ABLACK HILLS ENERGY, A KANSAS 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 SOUTH HUTCHINSON, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS:

Section 1. FRANCHISE GRANTED

The City of South Hutchinson, Kansas (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy, a Kansas 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, above, 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 corporate 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, poles, communication devices, 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.

Section 2. TERM

The rights and privileges granted herein shall remain in effect for a period of twenty (20) years from the effective date of this Ordinance.

Section 3. FRANCHISE FEES OR TAXES

a. In exchange for the franchise granted herein, Grantee shall collect from its gas customers located within the corporate limits of Grantor and pay to Grantor an amount equal to five percent (5.0%) of gross receipts Grantee derives from the sale, distribution, or transportation of gas delivered within the present or future corporate limits of Grantor.

Gross receipts as used herein are revenues received from the sale, distribution, or transportation of gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other fees, charges, taxes, or assessments which the Grantor may impose for the privilege of doing business within the present or future corporate limits of Grantor, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Grantor imposes any such fee, charge, tax, or assessment, the payment to be made by Grantee in accordance with this section shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the present or future corporate limits of Grantor shall not be deemed to affect Grantee's obligations under this section.

b. Grantee shall report and pay any amount payable under this section on a semi-annual basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance.

c. Grantee shall list the franchise fee collected from customers as a separate item on bills for utility service issued to its customers. If at any time the Kansas Corporation Commission or other authority having proper jurisdiction prohibits such recovery, then Grantee will no longer be obligated to collect and pay the franchise fee. Any customer refunds ordered by the Commission or other authority due to an unlawful or prohibited collection of the franchise fee collected by Grantee and remitted to Grantor shall be refunded by Grantor.

d. Within ten (10) days of the passage date of this ordinance, Grantor shall provide Grantee with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether their customers reside within Grantor's corporate limits. The Map along with Grantee's Geographic Information System ("GIS") mapping information shall serve as the basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Grantor's corporate limits are changed by annexation or otherwise, it shall be the Grantor's sole responsibility to update the Map so that the changes are included therein, and provide the updated Map to the Grantee.

e. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after Grantee's receipt from the Grantor of an updated Map including the annexed area, or (b) after Grantee's receipt from the Grantor of an updated Map including the annexed area as is reasonably necessary for Grantee to identify the customers in the annexed area obligated to pay the franchise fee; provided, further that neither party shall have the obligation to correct a mistake, including but not limited to collection of the fee by Grantee from its customers or remittance of that fee by Grantee to Grantor, that is discovered more than one (1) year after the occurrence thereof. Grantor shall indemnify Grantee from claims of any nature, including attorney fees, arising out of or related to the imposition and collection of the franchise fee. In addition, Grantee shall not be liable for paying

franchise fees from or to any customer originally or subsequently identified, or incorrectly identified, by Grantor or by Grantee, as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

f. Grantor shall have access to and the right to examine, during normal business hours, such of Grantee's books, receipts, files, records, and documents as is necessary to verify the accuracy of payments due herein. If it is determined that a mistake was made in the payment of any franchise fee required herein, the mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by Grantee to Grantor.

Section 4. 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 state or federal law. 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.

Section 5. PROVISION FOR INADEQUATE ENERGY SUPPLIES

If an energy supplier is unable to furnish an adequate supply of energy 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 energy to any customers or prospective customers, and withholding the supply of energy 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.

Section 6. CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES

a. 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 a condition as existed immediately prior to excavation.

b. 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 energy 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.

c. 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.

Section 7. 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 Kansas Corporation Commission, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

Section 8. RELOCATION OF GRANTEE'S FACILITIES

a. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way, or public place for a public purpose, unless otherwise 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.

b. 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 for the cost of such relocation as a precondition to relocating its facilities or equipment.

c. 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 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) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

Section 9. 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.

Section 10. 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.

Section 11. 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.

Section 12. SUCCESSORS AND ASSIGNS

All rights, privileges, and authority granted to Grantee herein 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.

Section 13. 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.

Section 14. 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.

Section 15. 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.

Section 16. 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. 06-740 of the City of South Hutchinson, Kansas, is hereby repealed as of the effective date hereof.

Section 17. 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.

Section 18. EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, publication on the City of South Hutchinson website, www.southhutchinson.gov, the official City newspaper, and upon Grantee's acceptance by written instrument, within sixty (60) days of passage by the Governing Body, and filing such acceptance with the Clerk of the City of South Hutchinson, Kansas. The Clerk of the City of South Hutchinson, Kansas, 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) 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 by the Governing Body of the City of South Hutchinson, Kansas, this 14th day of September, 2026.

THE GOVERNING BODY OF THE
CITY OF SOUTH HUTCHINSON, KANSAS

Kyle Cokeley, Mayor

(Seal)
Attest:

Katie Marcum, City Clerk