

## ORDINANCE NO. 872

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF DACONO, COLORADO TO BLACK HILLS COLORADO GAS, INC., D/B/A BLACK HILLS ENERGY, SUCCESSOR TO BLACK HILLS GAS DISTRIBUTION, LLC F/K/A SOURCEGAS DISTRIBUTION LLC, ITS SUCCESSORS AND ASSIGNS, OF THE RIGHT TO USE THE STREETS WITHIN THE CITY TO FURNISH, SELL, TRANSMIT, TRANSPORT, AND DISTRIBUTE GAS WITHIN AND THROUGH THE PRESENT AND FUTURE CORPORATE LIMITS OF SAID CITY OF DACONO, WELD COUNTY, COLORADO, GRANTING THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH THE CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE SAID GAS TO THE CITY OF DACONO AND THE INHABITANTS THEREOF, FIXING THE TERMS AND CONDITIONS THEREOF, AND REPEALING ORDINANCE NOS. 283, 703 AND 847.**

**WHEREAS**, pursuant to Article IX of the Dacono Charter, the City is authorized to grant franchises by ordinance for the non-exclusive right to use the rights-of-way within the City to furnish, transmit, transport and distribute gas within and through the City; and

**WHEREAS**, the City and Black Hills Colorado Gas, Inc. have agreed to the terms upon which the parties will enter into a franchise agreement for the provision of gasworks, gas plant or systems, as more fully set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:**

**Section 1.** This Ordinance shall be known and may be cited as the Black Hills Gas Franchise Ordinance.

**Section 2.** Chapter 3, Article 5 of the Dacono Municipal Code is hereby repealed and replaced, to read as follows:

### **Article 3 – Gas Service**

- Sec. 5-90. Definitions.
- Sec. 5-91. Grant of franchise.
- Sec. 5-92. Supply, construction and design.
- Sec. 5-93. Indemnity and Insurance.
- Sec. 5-94. Relocation of facilities.
- Sec. 5-95. Non-exclusivity of franchise.
- Sec. 5-96. Service standards.
- Sec. 5-97. Continuation of service.
- Sec. 5-98. Franchise fee.
- Sec. 5-99. Franchise fee payment not in lieu of other fees or permits.

- Sec. 5-100. Surcharge fees.
- Sec. 5-101. City's right to condemn.
- Sec. 5-102. Franchise term.
- Sec. 5-103. Right to removal of facilities.
- Sec. 5-104. Assignment.
- Sec. 5-105. Forfeiture.
- Sec. 5-106. Severability.
- Sec. 5-107. Reserved rights.
- Sec. 5-108. Regulation.
- Sec. 5-109. No third party beneficiaries.
- Sec. 5-110. Amendments to franchise.

**Sec. 5-90.- Definitions.**

As used in this Article, the following terms shall have the following meanings:

“Council” or “City Council” means the city council of the City of Dacono, Colorado.

“Facility” or “Facilities” means all apparatuses reasonably necessary for the Grantee to provide gas service into, within and throughout the City, including but not limited to plants, works, systems, distribution structures, equipment, pipes, mains, gas compressors, meters, meter reading devices, communications and data transfer equipment, and gas regulator stations.

"Grantee" or “Company” means Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy, its successors and assigns, the grantee of rights under this franchise.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

“Residents” means all persons, businesses, industries, governmental agencies, and any other entities whatsoever, presently located or hereinafter to be located, in whole or in part, within the territory of the City.

“Streets” refers to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the City, excluding any easements the terms of which do not permit the use thereof by the Company.

"City" means the City of Dacono, Colorado, the grantor of rights under this franchise.

**Sec. 5-91.- Grant of Franchise.**

The City hereby grants to the Grantee the non-exclusive right to use the Streets within the City to furnish, transmit, transport and distribute gas – whether natural, artificial or a combination thereof – within and through the City. The City also hereby grants to the Grantee the non-exclusive right, privilege and authority to locate, install, build, construct, acquire, purchase, extend, maintain and operate into, within and through said Streets within the City as the same now exists or may hereafter be extended, all Facilities reasonably necessary for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the City and the inhabitants thereof, for heating or other purposes. These rights shall extend to all areas of the City as now constituted and to any and all such new Streets as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said City.

#### **Sec. 5-92.- Supply, construction and design.**

The Grantee shall locate its Facilities within the City in a manner to meet with the approval of the City. All excavation and construction work performed by the Grantee shall be done in accordance with all ordinances, resolutions, rules, regulations and standards of the City and further in such manner as to cause minimum interference with the City's use of Streets and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets or other public ways and places. All work on Grantee Facilities in the Streets is subject to inspection and approval by the City to ensure that said work has been performed in accordance with applicable City ordinances, resolutions, rules, regulations and standards. Such inspections and approvals may include, but are not limited to, proposed locations for Facilities in the Streets, disturbance of pavements, sidewalks and surfaces of the Streets or adjoining landscaping. Should it become necessary for the Grantee, in exercising its rights and performing its duties hereunder, to interfere with then existing Streets or other public or private improvements, including but not limited to water mains, sewers, landscaping or other improvements, the Grantee shall repair promptly any damage to said improvements or Streets at its own expense in a workmanlike manner subject to the approval by the City and in accordance with all ordinances, resolutions, rules, regulations and standards of the City. If the Grantee fails to repair the Streets or improvements which are damaged through the action of Grantee, the City may make such repairs and charge the reasonable cost thereof to the Grantee.

#### **Sec. 5-93.- Indemnity and Insurance**

The Grantee shall indemnify, defend and hold harmless the City from and against all liability or damage and all claims, demands or liens arising out

of the Grantee's operations within the City or related to or arising out of the exercise by the Grantee of any rights and privileges hereby granted. The obligation of this Section shall not extend to any liability or damage and all reasonable expenses accruing against the Grantee arising out of the negligence, recklessness, or willful and wanton misconduct of the City, its officers, employees, agents, representatives, or contractors. .

Grantee shall procure policies of insurance, or in the case of the required General Liability Insurance policy maintain self-insurance, to provide for the minimum insurance coverages listed below. Upon request of the City, Grantee shall furnish an informational certificate of insurance to the City so showing. The Grantee shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this section by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types. All insurance coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Grantee pursuant to Chapter 5, Article 3 of the Dacono Municipal Code. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The required coverages are:

- A. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this franchise, and Employers' liability coverage with minimum limits of TWO MILLION DOLLARS (\$2,000,000 each accident, TWO MILLION DOLLARS (\$2,000,000) disease - policy limit, and TWO MILLION DOLLARS (\$2,000,000) disease - each employee. Evidence for qualified self-insured status may be substituted for the Worker's Compensation requirements stated herein.
- B. General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards.
- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000) each

occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in performance of the services provided in accordance with this franchise. If the Grantee has no owned automobiles, the requirements as set forth herein shall be met by each employee of the Grantee providing services to the City under this franchise.

- D. Excess Liability Insurance with minimum combined single limits of THIRTY-FIVE MILLION DOLLARS (\$35,000,000) each occurrence and THIRTY-FIVE MILLION DOLLARS (\$35,000,000) aggregate.

The policies required above, except for the Workers' Compensation insurance, shall include the City, the City's officers and employees as additional insureds. Each such policy shall contain a severability of interests provision, and a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Every policy required above shall be primary insurance and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Grantee. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Grantee shall be solely responsible for any deductible losses under any policy required above.

Failure on the part of the Grantee to procure or maintain self-insurance or other policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of the franchise after the City has provided Grantee written notice of the failure, and upon sixty (60) days thereafter, to cure any failure as so noticed. Thereafter, if Grantee has failed to cure, the City may terminate this franchise, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Grantee to the City upon demand, or the City may offset the cost of the premiums against any monies due to Grantee from the City.

The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this franchise, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., as from time to time amended.

**Sec. 5-94.- Relocation of facilities.**

A. If at any time it shall be necessary to change the position of any gas main or service connection of the Grantee to permit the City to lay, make or change street grades, pavements, sanitary or storm sewers, water mains or other City public works, such changes shall be made by the Grantee at its own expense. Such relocation shall be completed within a reasonable time, not to exceed 120 days from the date on which the City requests that such relocation work commence, unless weather, scope of the project, availability of materials, or other causes beyond the parties' control prevents completion in this period. The Grantee shall bear all costs associated with relocation of any gas main or service connection that is the result of public works construction including but not limited to the alteration of street alignment, grades or pavement. The City shall make reasonable efforts to confer, in its usual course of managing public works projects, with the Grantee in regards to impending public works projects that may require relocation of Grantee Facilities and seek the Grantee's input during the initial planning and engineering phase of any such City project. The City shall make reasonable efforts to mitigate the financial impact of any such project on the Grantee.

B. The City may request Grantee relocate its facilities in less than 90 days if needed by the City. Should the City request such an expedited relocation for reasons other than safety or emergency circumstances that require immediate action to prevent loss of life or significant damage to property or preserve integrity of an asset, Grantee and City shall confirm the time frame within which Grantee will relocate the facilities, and assess whether Grantee will incur any additional costs in the relocation as a result of the City's expedited schedule. If Grantee will incur additional costs directly related to relocating the facilities within the time frame needed by the City for such expedited relocation, the City will pay these additional costs, provided that Grantee and City agree to the amount of the additional costs prior to the relocation. Any expedited relocation as a result of a safety or emergency circumstance that requires immediate action to prevent loss of life or significant damage to property or preserve the integrity of an asset, will be at the Grantee's cost.

C. The City will not oppose just and reasonable recovery of substantial costs the Grantee incurs in complying herewith that the Grantee requests from the Public Utilities Commission of the State of Colorado (PUC).

D. The City may order or request Grantee to temporarily or permanently 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, if such removal is necessary to prevent interference with the commercial or private project; provided that: (A) the reasonable expense of such temporary or permanent

relocation is paid by the developer or other non-public entity; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, “reasonable advance written notice” shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**Sec. 5-95.- Non-exclusivity of franchise.**

This franchise and the right to use and occupy said Streets shall not be exclusive, and the City reserves the right to grant the use of said Streets to any person during the period of this franchise.

**Sec. 5-96.- Service Standards.**

A. The Grantee shall maintain and operate its Facilities and render efficient service in accordance with the rules and regulations of the Colorado PUC and the terms and conditions of the City Code, other regulations and this franchise.

B. Maps. Subject to applicable Confidentiality protections, the Grantee shall prepare and submit to the City a map showing the location of its distribution system within the City, showing location of the distribution system, so far as such facilities can reasonably be projected. Such map and the information contained therein shall be considered confidential, and except as provided in section 5-111 of this code, shall not be disclosed by the City to any third party without the prior written consent of Grantee. The map shall be kept current and filed with the City Clerk's office by May 1 of each year, when necessary. The City may request a more detailed map or description of facilities for limited planning purposes, which Grantee shall reasonably attempt to provide so far as such facilities can be reasonably projected or identified by Grantee, within no more than one hundred twenty (120) days. The City shall (if and to the extent available) provide Grantee annually a map showing the location of the following features and attributes: parcels, structures, boundaries, utilities, transportation, natural features, community development planning, hazards, parks and recreation, public safety, topography and imagery.

C. Plans. Before commencement of installation of pipes in the City Streets, the Grantee shall prepare and submit to the City a map showing the location, size, and appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. In addition, the Grantee shall submit a construction plan including a construction schedule, showing the dimensions of the area to be occupied by Grantee, its agents and equipment for performance of the installation, the streets and alleys where excavations will be simultaneously open at any given time, making

provision for traffic routing in the event of interruption, setting forth the places where pavement cuts are expected, and where underground boring will occur for pipe installation. Such map and plan and the information contained therein shall be considered confidential, and except as provided in section 5-111 of this code, shall not be disclosed by the City to any third party without the prior written consent of Grantee. Construction may then proceed upon approval of said map and plan and the issuance of a street cut permit by the City. Nothing herein shall be construed to limit application of the City's ordinances pertaining to installation of pipelines, conduits, transmission lines and cables as well as ordinances pertaining to excavation to the activities of the Grantee, except as provided herein. Grantee understands that its franchise granted hereunder is granted subject to all easements and other interests of record applicable to the City Streets. Grantee shall be solely responsible for coordinating its activities hereunder with the holders of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such easements or other interests.

D. Access to Premises. To the extent allowed by law, Grantee shall have the right to enter the premises of consumers at reasonable times for the purpose of reading meters, inspecting gas appliances, pipes and equipment and for the purpose of ascertaining loads, making necessary tests and installing, disconnecting or removing meters.

**Sec. 5-97.- Continuation of service.** If during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to the Grantee because of depletion of such supply, the Grantee shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Grantee, and if unable to procure same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If Grantee, within a reasonable period after failure of the supply of natural gas, shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate.

**Sec. 5-98.- Franchise fee.**

A. In consideration of the rights and privileges herein granted, the Grantee shall assess, effective the first billing cycle after this franchise becomes effective, to all customers of Grantee within the City of Dacono, Colorado, a franchise tax or fee equivalent to \$0.0259 per therm of gas delivered to all customers within the present and future limits of the City of Dacono, Colorado on Grantee's distribution system, except that gas delivered to the City will not be assessed a franchise fee. The City shall provide a list of City accounts to Grantee that should not be assessed the franchise fee. Grantee shall list the franchise fee collected from customers



as a separate item on bills for utility service issued to its customers. Grantee shall pay to the City Treasurer an amount equal to the franchise fee or tax funds collected by Grantee hereunder. Payments to the City of the franchise fee collected shall be made quarterly within 60 days of each calendar quarter and each such payment shall be accompanied by a statement supporting the payment.

B. Such payment shall be in lieu of any and all other fees (including pipeline, conduit, transmission line, cable and excavation permit fees), charges, licenses, taxes or assessments which City may impose for the rights and privileges herein granted or for the privilege of doing business within the City and for the use of the Streets, and in no event shall any such franchise tax or fee be imposed upon the City's own natural gas service accounts with Grantee. Ad Valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect the obligation of the Grantee under this section.

C. Within ten (10) days of the date of this ordinance, City 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 the City'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 City's corporate limits are changed by annexation or otherwise, it shall be the City's sole responsibility to (a) update the Map so that the changes are included therein, and (b) provide the updated Map to the Grantee.

D. 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 City of an updated Map including the annexed area, or (b) after Grantee's receipt from the City 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 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 the City, that is discovered more than one (1) year after the occurrence thereof. Grantee shall be entitled to rely on written information, materials, and documents provided by the City for purposes of imposition and collection of the franchise fee. Grantee shall not be liable for paying franchise fees from or to any customer incorrectly identified by the City, originally or subsequently, 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, and the City shall indemnify Grantee from claims arising out of the Grantee's reliance on written information, materials, and documents

prepared by the City for purposes of identifying customers for the imposition and collection of the franchise fee.

E. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the City Manager or the City Manager's designee shall have access to the books, accounts and other records of Grantee for the purpose of checking the gross revenue received and volume of gas sold and delivered from operations within the City.

F. If at any time during the term of this franchise the manner in which the franchise fee is calculated, collected or paid is changed, whether by action of the Grantee, the PUC, or any entity having jurisdiction thereof, the Grantee agrees to cooperate with the City in modifying the franchise to assure that the Grantee collects from its Customers, and the City receives an amount in franchise fees or some other form that is the same amount or more than the amount of franchise fees collected by the Grantee and paid to the City as of the date of such change and required modification, to the extent permitted by law.

**Sec. 5-99.- Franchise fee payment not in lieu of other fees or permits.**

Payment of the franchise fee by the Grantee as accepted by the City does not exempt the Grantee from sales tax, license fees, sales and use taxes, head taxes, building permit fees, land use fees, development impact fees, or other fees and charges that are required to be paid pursuant to ordinances of general application that are not pursuant to the rights and privileges herein granted or for the privilege of doing business within the City and for the use of the Streets. Grantee shall be responsible for obtaining all applicable City approvals and permits for the installation of pipelines, conduits, transmission lines and cables, and for excavation, although the permit fee for such excavation or installation of pipelines, conduits, transmission lines or cables, shall not be applicable pursuant to Section 5-98 of this Code.

**Sec. 5-100.- Surcharge fees.**

The Grantee shall be permitted to surcharge the franchise fee to the Residents of the City that use Facilities of the Grantee in the Streets to obtain gas. The Grantee shall be permitted to surcharge Residents of the City any other payments it makes to the City; provided that, such surcharge(s) are permitted by law and have been approved by the Colorado Public Utilities Commission.

**Sec. 5-101.- City's right to condemn.**

The City shall have the right to condemn the Facilities of the Grantee or to otherwise restrict the Grantee's opportunity to conduct business in the City as provided in the City Charter, or other applicable law.

**Sec. 5-102.- Term of franchise.**

A. This franchise shall take effect on the first day of the month following the date this Ordinance is finally approved by Grantee, but such effectiveness is thereafter subject to Colorado law and required approval of the Colorado Public Utilities Commission (the "Effective Date"), at which time the Grantee will begin to collect the franchise fee set forth herein and this franchise shall remain in effect for a period of ten (10) years from the Effective Date of this Ordinance. Upon final passage and approval of this Ordinance by City, in accordance with applicable laws and regulations, Grantee shall file its acceptance by written instrument, within sixty (60) days of passage by the City Council, with the Clerk of the City of Dacono, Colorado. 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.

B. Council may conduct periodic reviews of the franchise.

**Sec. 5-103.- Right to removal of facilities.** Upon the termination of this franchise, if the Grantee has not acquired an extension or renewal thereof and accepted same, Grantee may remove its Facilities from the Streets and other public places of the City, provided that the City has had ample time and opportunity to purchase, condemn or replace said Facilities. In so removing its Facilities, the Grantee shall, at its own expense and within a reasonable time not to exceed 180 days, restore all property affected by removal operations to their pre-existing condition, to the satisfaction of the City.

**Sec. 5-104.- Assignment.**

The Grantee shall not assign this franchise, or the rights granted hereunder without first providing ninety (90) days' written notice to the City. This section shall not be construed to restrict or prevent the issuance of bonds, debentures, or other evidence of indebtedness, or the issue of additional stock, needed or useful for the purpose of financing the system or any portion thereof.

**Sec. 5-105.- Forfeiture.**

If the Grantee materially fails to perform any of the terms and

conditions of this franchise, the City may notify the Grantee of the specific failure and shall allow the Grantee a reasonable time within which to remedy the failure, not to exceed 120 days or additional days if agreed to by the parties. The City reserves the right to declare a forfeiture of this franchise for the material breach of a substantial and material provision thereof. No forfeiture shall be declared until the Grantee shall have had an opportunity to be heard and to correct or justify the alleged material breach. Upon failure of the Grantee to exercise reasonable diligence to correct such condition, the City may declare this franchise forfeited and notify Grantee in writing. In the event that this franchise is forfeited, then the Grantee agrees to continue to render service as theretofore provided until (1) the City makes alternative arrangements for such services, or (2) Grantee is permitted to abandon service by authority of the Colorado PUC or a Court of competent jurisdiction. Neither the City nor the Grantee shall be in material breach or forfeiture of this franchise if failure to perform is due to uncontrollable forces, which shall include but not be limited to accidents, acts of God, floods, storms, fires, sabotage, terrorist attack, labor disputes, riots, war, forces of nature and other causes or contingencies of whatever nature beyond the reasonable control of the parties affected, which could not reasonably have been anticipated and avoided.

**Sec. 5-106.- Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid, unconstitutional or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof. The City Council declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Sec. 5-107.- Reserved rights.**

The right is hereby reserved by the City to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power to protect the health, safety and welfare of the public, including but not limited to ordinances to control and regulate the use of the Streets and the space above and beneath the Streets. Neither the City nor the Grantee waives any rights under the statutes and constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

**Sec. 5-108.- Regulation.**

This Ordinance and the respective rights and obligations of the

parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this Ordinance, one or both of the parties, or any transaction hereunder.

**Sec. 5-109.- No third party beneficiaries.**

Nothing contained in this franchise shall be construed to provide rights to third parties.

**Sec. 5-110.- Amendments to franchise.**

This franchise may be amended only by a writing signed by both the Grantee and the City, which is approved in the same manner as is required for the passage for the ordinance adopting this franchise.

**Sec. 5-111.- Confidential Information.**

City 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 City be kept confidential due to its proprietary or commercial value, City and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If City is requested or required by law, including but not limited to the Colorado Open Records Act, Section 24-72-201, *et seq.*, C.R.S., or legal or administrative process to disclose any such proprietary or confidential information, City shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

**Section 3.** Ordinance No. 282, passed under date of June 11, 1984, Ordinance No. 703, passed under the date of February 11, 2008, and Ordinance No. 847, passed under the date of April 23, 2018, are hereby repealed and of no further force or effect. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are repealed to the extent of such inconsistency or conflict.

**Section 4.** The repeal or modification of any provision of the Municipal Code of the City of Dacono by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED IN FULL this 24th day of June, 2019.**

**PUBLIC HEARING AND SECOND READING WILL BE THE 8th day of July, 2019, AT 6:00 P.M. AT DACONO CITY HALL, 512 CHERRY STREET, DACONO, CO.**

**READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this \_\_\_\_ day of \_\_\_\_\_, 2019.**

CITY OF DACONO, COLORADO

\_\_\_\_\_  
Joe Baker, Mayor

Attest:

\_\_\_\_\_  
Valerie Taylor, City Clerk

**ACCEPTED AND EXECUTED** by Black Hills Colorado Gas, Inc. this \_\_\_\_ day of \_\_\_\_\_, 2019.

BLACK HILLS COLORADO GAS,  
INC.

\_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE

State of Colorado            )  
  )ss  
County of Weld                )

I, Valerie Taylor, City Clerk of the City of Dacono, Colorado do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 872 of said City, granting a

franchise by the City of Dacono, Colorado, to Black Hills Colorado Gas, Inc., formerly duly passed and published in the manner provided by law.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the City of Dacono, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
City Clerk

(SEAL)

Summary of Ordinance No. 872, “**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF DACONO, COLORADO TO BLACK HILLS COLORADO GAS, INC., D/B/A BLACK HILLS ENERGY, SUCCESSOR TO BLACK HILLS GAS DISTRIBUTION, LLC F/K/A SOURCEGAS DISTRIBUTION LLC, ITS SUCCESSORS AND ASSIGNS, OF THE RIGHT TO USE THE STREETS WITHIN THE CITY TO FURNISH, SELL, TRANSMIT, TRANSPORT, AND DISTRIBUTE GAS WITHIN AND THROUGH THE PRESENT AND FUTURE CORPORATE LIMITS OF SAID CITY OF DACONO, WELD COUNTY, COLORADO, GRANTING THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH THE CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE SAID GAS TO THE CITY OF DACONO AND THE INHABITANTS THEREOF, FIXING THE TERMS AND CONDITIONS THEREOF, AND REPEALING ORDINANCE NOS. 283, 703 AND 847.**”: Authorizes the grant of a non-exclusive franchise to furnish, sell, transmit, transport and distribute gas within the City of Dacono to Black Hills Colorado Gas, Inc. for a period of ten years. The proposed franchise would assess a franchise fee equivalent to \$0.0259 per therm of gas delivered to all customers of Black Hills Colorado Gas, Inc. within the City.