

**TOWN OF BERNALILLO
MUNICIPAL FRANCHISE**

ORDINANCE NO. 213

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NEW MEXICO, A CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, GRANTEE HEREIN, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN IN THE TOWN OF BERNALILLO, NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE HANDLING, PRODUCTION, MANUFACTURING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF NATURAL GAS INTO, OUT OF AND THROUGH SAID MUNICIPALITY TO ITS INHABITANTS, AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND AND OUTSIDE THE LIMITS OF SAID MUNICIPALITY; AND TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, PATHS, BRIDGES AND OTHER STRUCTURES AND PUBLIC PLACES AND GROUNDS IN SAID MUNICIPALITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED, AND PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS HEREIN.

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNALILLO, SANDOVAL COUNTY, NEW MEXICO.

SECTION I.

That the Town of Bernalillo, New Mexico (hereinafter called "Municipality," which term includes all areas within the boundaries of said Municipality, as now existing or hereafter extended), hereby grants to and vests in Public Service Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico, and duly qualified to do business in the State of New Mexico (hereinafter called the "Company"), its legal representatives, successors, lessees and assigns, a franchise and the authority, license, right, power and privilege to maintain, construct, equip, extend, alter, install, remove, change, improve and otherwise establish and operate in the Municipality, works, systems, plants, pipes and all related facilities (including those now in service) as may be necessary or reasonably convenient, to sell, manufacture, store, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants of the Municipality and others, and to the Municipality, whenever the Municipality or its inhabitants may desire to contract therefor, gas for light, fuel, power, heat and any and all other useful purposes, and the said Company is hereby granted passage and rights-of-way, under, in, upon, along and across, and the right to occupy and use in any lawful way during the life of this franchise any and all streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places of the Municipality, both above and beneath the surface of the same, as said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places of the Municipality now or may

hereafter exist, for every and any such service, use, effect and lawful purpose as herein mentioned, provided the Company complies with all federal, state and local laws, ordinances and regulations, pertaining to the conditions and terms of this franchise.

SECTION II.

The Company is hereby authorized, licensed and empowered to do any and all things as may be necessary or reasonably convenient to be done and performed in executing the powers and utilizing the rights, powers and privileges herein mentioned and granted by this franchise, provided the same do not unreasonably interfere with pre-existing water, sewer and other authorized installations, and provided that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places of the Municipality by the Company shall be done diligently and in accordance with good engineering practices and governmental regulations, and the Company shall, within a reasonable time, restore as nearly as practicable all places excavated by it to the condition existing immediately prior to excavation and said work shall be done subject to the approval and supervision of the Municipality or such person as it may designate.

SECTION III.

The Company shall have the right and privilege of transferring this franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as including its successors, assigns and lessees so long as any successor, assign or lessee continues to serve the Municipality as a public utility. Nothing contained in this section shall be construed to impair the right of the Municipality to appear and object to any such transfer before the New Mexico Public Regulation Commission or any other public authority having lawful jurisdiction over the transfer.

SECTION IV.

The Company, for and in consideration of the granting of this franchise and as rental for the occupation and use or easement over, upon and beneath the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places in the Municipality, and, except as set forth herein, in lieu of any and all "other Municipal taxes" as hereinafter defined, shall, for the term of this franchise, pay to the Municipality each year a total aggregate sum of two percent (2%) of the Company's gross receipts (exclusive of sales or gross receipts taxes) collected during each year for:

- (a) gas sold to end users and consumers within the corporate limits of the Municipality under the Company's approved rates, effective from time to time, excepting therefrom, however, the gross receipts from gas sold to the Municipality for its own use, and
- (b) transportation service provided by the Company to a third-party marketer for natural gas transported on the Company's system to a delivery point located within the corporate limits of the Municipality and for ultimate sale and consumption by end users located therein.

The two percent (2%) rate set forth above shall continue during the term of this franchise, except that on the fifth anniversary of the date of acceptance of this franchise by the Company, and at

five-year intervals thereafter, each party shall have the option, exercisable by delivery of written notice to the other party within sixty days prior to the five-year review date, to require a review of the franchise fee only. The Municipality may during this franchise review elect to increase by the amount of any increase in fees provided for in the renewal of the electric utility franchise, provided that such increase shall not exceed two percent (2%) for a total franchise fee of four percent (4%) of gross receipts, provided also that no other part of this agreement be changed, and provided also that such change may lawfully be passed on, selectively and preferentially, to the Company's customers located within the boundaries of the Municipality. In no event shall the rate be less than two percent (2%), nor shall the rate be in excess of the franchise tax fee paid to the Municipality by other energy suppliers. The Company shall make such payments monthly during the term of this franchise.

For the purpose of determining said gross receipts, the books of the Company shall at reasonable times be subject to inspection by duly authorized officials of the Municipality, upon written request, giving reasonable notice. Notwithstanding anything herein to the contrary, the payments by the Company, provided for above, shall continue only so long as the Company is not prohibited from making the same by any lawful authority having jurisdiction in the premises. As used in this Section, the term, "other Municipal taxes" means and includes any and all other franchise, license, privilege, instrument, occupation, excise or revenue taxes and any and all other fees, charges or exactions (except excise taxes imposed by the Municipality and actually collected by the Company from its consumers, municipal occupation taxes lawfully assessed and collected on a non-utility business of the Company, general ad valorem taxes and special assessments for local improvements imposed by ordinance of the Municipality and uniformly imposed and collected from other persons engaging in the same or similar activities and except for such other compensatory service fees which may be agreed to by the parties, separately, and in writing) upon all or any portion of the business, revenue, property or activities of the Company located or conducted within the Municipality during the term of this franchise.

SECTION V.

The Company shall indemnify and save harmless the Municipality, its governing body officers, agents and employees from and against the pro-rata share of all claims, obligations, judgments, costs and expenses attributable to the negligence of the Company, its officers, agents or employees, contractors or subcontractors in connection with the installation, repair, operation or maintenance of any of the Company's facilities or in any work done as authorized for this franchise. The Municipality shall give prompt notice to the Company of any claim or suit arising under this indemnity agreement and the Company or its insurer shall have the option to compromise and defend the same to the extent of their own interests. Nothing in this indemnity agreement shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

SECTION VI.

(a) The Company shall, within thirty (30) days after the passage and approval of this ordinance, file in the office of the County Clerk of the County of Sandoval, and the Municipal Clerk of the Municipality, a written statement of acceptance duly signed and acknowledged by the proper officer of the Company authorized to execute such acceptance.

(b) In the event such acceptance is not filed within said period, this ordinance and the rights, privileges, powers and obligations contained herein shall be terminated and void; PROVIDED, HOWEVER, the Municipality may by resolution extend the time herein for the filing of such acceptance for an additional period.

(c) This ordinance, if accepted by the Company as hereinbefore provided, as adopted pursuant to N.M.S.A. § 3-43-1 (1978), shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to the Company or any predecessor companies or assignors of the Company to construct, operate and maintain any system for the sale, manufacture, storage, distribution, conveyance and supply of pipeline gas for light, fuel, power, heat or other purpose within the Municipality, including Ordinance No. 141, adopted and passed March 28, 1994.

SECTION VII.

Except as otherwise provided in paragraph (b) of Section VI, all grants and privileges herein granted and conferred upon the Company, its legal representatives, successors and assigns, shall continue in full force and effect for a period of twenty-five (25) years from the date of this ordinance.

SECTION VIII.

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

SECTION IX.

The Municipality, in granting this franchise, surrenders no privileges or rights that it may have of owning or installing any system of light, heat, power, or communication and furnishing the same to the Municipality and its inhabitants.

SECTION X.

In the event of breach of this agreement by either party hereto, the prevailing party shall enjoy all rights and remedies allowed in law or equity and shall recover reasonable attorneys' fees in any suit arising from the breach or enforcement of this agreement.

ADOPTED AND PASSED THIS _____ DAY OF _____, 2005.

Mayor,
Town of Bernalillo, New Mexico

ATTEST:

Municipal Clerk,
Town of Bernalillo, New Mexico

ACCEPTANCE OF FRANCHISE

KNOW ALL BY THESE PRESENTS:

THAT, in compliance with Section VI of the Town of Bernalillo Municipal Franchise approved and adopted by the Governing Body of the Town of Bernalillo, New Mexico as Ordinance No. 213 on the 26th day of September, 2005, Public Service Company of New Mexico, grantee of said Franchise, does hereby accept same together with all terms and provisions therein contained.

This Acceptance is signed and sealed this 13th day of December, 2005, with the intent that it be filed with the Municipal Clerk of the Town of Bernalillo, New Mexico, as required by the aforesaid Franchise.

PUBLIC SERVICE COMPANY
OF NEW MEXICO

By: *Edward Padilla*
[Print name:] EDWARD PADILLA
Its: VICE PRESIDENT

ATTEST:

K. J. Campbell
Assistant Secretary

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on December 12, 2005, by Edward Padilla, Vice President, Public Service Company of New Mexico.

John Dan Bl...
NOTARY PUBLIC

My Commission Expires:
10/29/07

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANDOVAL)

I, Ida Fierro, Municipal Clerk of the Town of Bernalillo, New Mexico, do hereby certify that the foregoing is a true, full and correct copy of the Acceptance by Public Service Company of New Mexico, of the Franchise passed and adopted by the Governing Body of the Town of Bernalillo, New Mexico as Ordinance No. 213 on the 26th day of September, 2005, and I further certify that the original Acceptance of which this is a true copy was duly filed in the records of my office as Municipal Clerk of the Town of Bernalillo, New Mexico on the 14 day of December, 2005.

(seal)

Ida Fierro by SK
Municipal Clerk of the
Town of Bernalillo, New Mexico

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