ORDINANCE NO. 422

AN ORDINANCE granting to Portland Gas & Coke Company, its successors and assigns, for a period of 20 years, the license and franchise to construct, maintain and operate gas pipes, conduits, mains, apparatus and appurtenances in, on, over, and under the present and future streets, alleys, bridges and public places of Milwaukie, Oregon, and by means thereof to convey and distribute gas for public and private use for heat and other purposes for compensation, upon and subject to the terms and conditions set forth in the ordinance.

MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Milwaukie does hereby grant to Portland Gas & Coke Company, a corporation, and to its successors and assigns, hereinafter called Grantee, for the period of 20 years from and after the date on which Grantee shall file its acceptance hereof as hereinafter provided, the right and franchise to lay, maintain and operate gas mains, pipes and appurtenances, with all necessary service connections, in and on the present and future streets, alleys and public highways within the City of Milwaukie for the purpose of supplying gas as a public utility to said City and the inhabitants thereof, and to persons living beyond the limits thereof, for light, heat, and other purposes, subject to the terms and conditions as hereinafter specified.

Section 2. Grantee, under the direction of the City Engineer or of such other representative as Milwaukie shall appoint for the purpose, may make all necessary excavations in any streets, alleys or public highways of Milwaukie for the purpose of laying down, repairing and operating such gas pipes, conduits, mains, apparatus and appurtenances, and for making connections thereto, but shall promptly restore any portion of any street, alley or public highway so excavated to as good condition as the same was in prior to such excavation, and all such work shall be done in strict compliance with any applicable rules, regulations, ordinances, or orders of Milwaukie

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or of any other authority having jurisdiction in the premises.

Section 3. The exercise of the license and franchise hereby granted shall at all times be subject to reasonable regulation in the public interest by the Public Utilities Commissioner of Oregon and his successors in authority, and by such other public authority as may be vested with jurisdiction in the premises.

Section 4. The license and franchise granted hereby shall not be construed as preventing Milwaukie from doing such work, in, on, or under the streets, alleys, or public highways as the public interest may require, but all such work shall be done in such manner as not unreasonably to interfere with the use and operation of the Grantee's system. If the performance of such work requires the alteration or relocation of any portion of the Grantee's system of pipes, conduits, or mains, the Grantee after proper notice from Milwaukie shall promptly make such necessary changes at its own cost and expense; and if the Grantee shall fail, neglect or refuse to make such changes, after proper notice, such work may be done by Milwaukie and the cost shall be charged to and paid by the Grantee.

Section 5. Grantee will indemnify and save harmless the City of Milwaukie and its officers and employees, from and against any and all claims or demands for injury or damage attributable to any failure or neglect on the part of the grantee in connection with its exercise of the license and franchise granted hereby.

Section 6. The license and franchise granted hereby is not exclusive, and shall not preclude Milwaukie from granting similar licenses and franchises to other persons or corporations; but the Grantee shall not be required to remove, alter or relocate its system or any part thereof at its own expense

for the benefit or accommodation of any such future grantees or licensees of Milwaukie.

Section 7. Grantee shall at all times be subject to all of the provisions of the charter of Milwaukie relating to or governing the exercise of the license and franchise granted hereby.

Section 8. The Grantee shall pay to the City of Milwaukie a fee of One Hundred Fifty ($150.00) Dollars annually during the term of the right and franchise hereby granted, the first such payment to be due and payable concurrently with the filing of the Grantee's written acceptance of this ordinance; provided however, that, beginning with the year 1952, the Grantee shall pay to the City of Milwaukie in each year, in addition to the fee of $150.00 hereinbefore specified, an amount equivalent to $10.00 for each $1,000.00 or fraction thereof, if any, by which the Grantee's gross receipts from the sale of gas within the corporate limits of the City of Milwaukie in the calendar year immediately preceding shall have exceeded the sum of $15,000.00. After the year 1942, the fee herein provided to be paid shall be due and payable on or before the first day of March of each calendar year, and shall be in lieu of all other license, occupation, franchise or excise fees or charges which might otherwise be levied or collected by the City of Milwaukie in respect of the conduct of the gas business of the Grantee, or of the exercise of the right and franchise hereby granted, within the corporate limits of the City of Milwaukie.

Section 9. During the period of the first five years of this franchise the rates for all gas or gas service which Grantee, its successors or assigns, may furnish to consumers within the corporate limits of Milwaukie, as said corporate limits now are or may hereafter become, shall be no greater than the rates contemporaneously charged or to be contempor-

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aneously charged by the Grantee, its successors or assigns for the furnishing or supplying gas of gas service to consumers in the same class located within the City of Portland, Oregon.

Since Section 112-461 O.C.L.A. provides in part as follows:

> "Every city and town in Oregon shall have power ******
> 3. To fix by contract, to prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by any public utility, furnishing any product or service within such town or city. No such schedule of rates, charges or tolls, fixed in the manner herein, shall be so fixed for a longer period than five (5) years ******".

Now, therefore, Milwaukie hereby expressly reserves the right to extend the provisions of this section for an additional five (5) year period from and after the expiration of the five year period above set forth in this section by means of an ordinance amendatory of this franchise and/or in any other lawful manner.

Section 10. Within thirty (30) days after this ordinance becomes effective, the Grantee shall file in the office of the Recorder of Milwaukie its written acceptance hereof; and in the event of the failure of the Grantee so to do, this ordinance shall become void and of no further force or effect.

Section 11. If Grantee shall fail to perform or comply with any of the obligations and requirements imposed by this ordinance, after the receipt of written notice from Milwaukie specifying the respect in which the Grantee is deemed to be in default hereunder and demanding that such default be remedied within a reasonable time so fixed in such notice, the license and franchise granted hereby may be terminated and annulled by the legislative authority of Milwaukie after reasonable opportunity for the Grantee to be heard and appropriate determination with respect to such alleged default.

Introduced before the Council Mar 9, 1942.

Passed by the Council Mar. 9, 1942.

Approved by the Mayor Mar 9., 1942.

Fred O Robertson
Mayor

ATTEST:

Ellen Martin.
Recorder

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