

ORIGINAL IN RED

**FRANCHISE AGREEMENT**  
**(Gas Transmission and Distribution Services)**

This Franchise Agreement ("Agreement") is made and entered into this 12<sup>th</sup> day of December, 2005, by and between the City of Hailey, a municipal corporation ("Hailey") and Intermountain Gas Company ("Franchisee").

RECITALS

A. Hailey is a municipal corporation and political subdivision of the State of Idaho, and has authority to enter into this Agreement. Susan McBryant is the duly elected Mayor of Hailey. The Hailey City Council has authorized the Mayor to execute this Agreement.

B. Franchisee is a duly organized and acting corporation in the State of Idaho. Tim Clark is the duly appointed and acting Vice President of Franchisee and has the authority to enter into this Agreement.

C. The Franchisee and its employees are independent contractors and are not, under this Agreement, employees or agents of Hailey.

D. Subject to the terms and conditions set forth herein and Hailey Ordinance No. 931, the parties hereto are desirous of entering into a non-exclusive ten (10) year franchise agreement, with Franchisee providing gas transmission and distribution services within the city limits of Hailey, Idaho.

E. The parties desire to enter into this Agreement with the Franchisee for the construction and operation of a Gas Service on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the parties agree as follows:

I.  
DEFINITIONS

For the purposes of this Agreement, the following terms have the meanings set forth herein:

"Council" shall mean the City Council of the City of Hailey, Idaho.

"Customer" shall mean a person or user of the Gas Transmission and Distribution System who lawfully receives Gas Service within the Service Area with Franchisee's permission.

"Franchise" shall mean the authorization, or renewal thereof, by Hailey under Hailey Ordinance No. 931, or as amended, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, authorizing the installation, construction, maintenance or operation of the gas transmission and distribution system for the purpose of offering Gas Service to Customers.

“Franchisee” shall mean Intermountain Gas Company, the person to whom the Franchise is granted by the Council under Hailey Ordinance No. 931, and the lawful agent, successor, transferee or assignee of said person, subject to such conditions as may be prescribed by the City.

“Gas Transmission and Distribution System” shall mean a connected set of transmission and distribution pipes and appurtenant equipment designed to provide Gas Services to Customers within the corporate limits of Hailey.

“Gas Service” shall mean the furnishing, transmission, distribution and sale of gas, whether artificial, natural, mixed or otherwise, for heating, domestic, industrial and other purposes and for transmitting gas into, through and beyond the corporate limits of Hailey to a Customer.

“Gross Revenues” shall mean any and all receipts and revenues received by Franchisee from all sales of gas and transportation charges to Customers receiving the gas within the corporate limits of Hailey.

“Hailey” shall mean the City of Hailey, a municipal corporation and political subdivision of the State of Idaho.

“Person” shall mean any individual, firm, partnership, corporation, organization, association, trust, limited liability company or other legal entity.

“Property of Franchisee” shall mean all property owned, installed or used by Franchisee in the conduct of its Gas Service business in Hailey under the authority of the Franchise.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public rights-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by Hailey in the Service Area which shall entitle Hailey and the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Gas Service.

“Service Area” shall mean the present municipal boundaries of Hailey, and shall include any additions thereto by annexation or other legal means.

“Shall” shall mean mandatory, not merely advisory.

## II.

### GRANT OF FRANCHISE

Hailey hereby grants to the Franchisee, during the term of this Agreement and Hailey Ordinance No. 931, a non-exclusive Franchise which grants the Franchisee the right and privilege to construct and operate a Gas Transmission and Distribution System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area, and for that

purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such transmission and distribution pipes and regulator stations, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the Gas Transmission and Distribution System. The Franchise granted shall not preclude Hailey from granting other or further franchises or permits or preclude Hailey from using any Public Way or affect its jurisdiction over them or any part of them, or limit the full power of Hailey to make such changes, as Hailey shall reasonably deem necessary, including but not limited to the dedication, establishment, maintenance and improvement of all new Public Ways.

### III.

#### TERM

The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of this Agreement as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Agreement. The effective date of this Franchise is December 15, 2005, pursuant to the provisions of applicable law. This Franchise shall expire midnight on December 14, 2015, unless extended by the mutual agreement of the parties.

### IV.

#### DUTIES AND RESPONSIBILITIES OF FRANCHISEE

4.1 Conditions of Occupancy. The Gas Transmission and Distribution System installed by the Franchisee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Any obstruction in the Public Way that interferes with the proper use of Public Ways that, after proper notice to Franchisee demanding removal, is not promptly removed by Franchisee may be removed by Hailey and the costs thereof shall be immediately paid by Franchisee. All of the Gas Transmission and Distribution System presently or in the future located, maintained or installed in the Public Ways within the Service Area shall at all times be maintained in good order and condition, in accordance with standard engineering practices and in compliance with all applicable safety codes and lawful governmental regulations.

4.2 Restoration of Public Ways. If during the course of the Franchisee's construction, operation or maintenance of the Gas Transmission and Distribution System there occurs a disturbance of any Public Way by the Franchisee or its employees, contractors or agents, the Franchisee shall not unnecessarily or unreasonably obstruct the use of or damage any Public Way, and shall within a reasonable time as early as practicable replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance and in accordance with applicable city standards. Franchisee shall warrant and guarantee the portions of the Public Ways disturbed by Franchisee for a period of two (2) years following the repair and replacement of the Public Way.

4.3 Relocation at Request of Hailey. The Franchisee shall, at its sole expense, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, as necessary,

any of the Property of Franchisee when lawfully requested by Hailey for a public purpose. The request to relocate by Hailey shall be preceded by the receipt of reasonable advance written notice, not to be less than sixty (60) business days, except in an emergency in which case shall be preceded by such notice as is practicable. Whenever Hailey shall pave or repave a Public Way, shall change the grade or line of any Public Way or shall construct or reconstruct any conduit, sewer or water main, sewer or water connection or other public works or utility, it shall be the duty of the Franchisee when requested by Hailey to change any portion of the Gas Transmission and Distribution System or other property of Franchisee at its own expense so as to conform to the established grade or line of the Public Way and so as not to interfere with the conduits, sewer or water main, sewer or water connection or other public works or utility as constructed or reconstructed; however, Franchisee shall not be required to relocate pipes, mains and appurtenances when the Public Way in which they are located is vacated for the convenience of abutting property owners and not as an incident to the public improvement, unless the reasonable cost of such relocation and the loss and expenses resulting therefrom is first paid to Franchisee.. The City will make a reasonable effort to avoid the need for such moving or changing whenever possible. In the event federal, state or other funds are available in whole or in part for utility relocation or alteration purposes, Hailey may apply for such funds and the Franchisee will be reimbursed to the extent any such funds are actually expended.

4.4 Permit Required. Franchisee shall secure all necessary permits within the Public Ways within the Service Area and shall be subject to all applicable ordinances, but no fee shall be required of Franchisee for any such permit.

4.5 Customer Inquiries. Franchisee shall comply with all rules and regulations of the Idaho Public Utility Commission relating to Customer requests about service options and procedures, fees, start-up or termination of service, conversion of accounts and billing and payment inquiries in a prompt and reasonable fashion.

## V.

### REGULATION BY HAILEY

The Franchisee shall pay to Hailey a franchise fee equal to three percent (3%) of Gross Revenues received by the Franchisee from the operation of the Gas Transmission and Distribution System to provide Gas Services on a quarterly basis. The quarterly payment for the franchise fee shall be due and payable at the end of the calendar quarter which shall terminate at midnight on March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be paid within thirty (30) days after the end of each calendar quarter and shall be accompanied by a brief report from a representative of the Franchisee showing the basis for the computation. Such quarterly payments shall be in lieu of taxes, fees or charges (other than ad valorem taxes) related to easements, franchises, rights-of-way, permits, utility lines and equipment installation, maintenance and removal during the term of Franchisee's franchise with Hailey, which Hailey may impose for the rights and privileges herein granted or for the privilege of doing business within Hailey. All sums which become delinquent shall accumulate interest established by the Idaho Public Utility Commission for customer deposits, as may be amended.. In addition, where the Franchisee has underpaid the Franchise Fee and where payment was not received by Hailey when due, Franchisee may be required to pay all Franchise Fees and interest due on the total amount owed. The accrual of interest is not intended to waive or in any

manner restrict Hailey's ability to elect any procedure or method of collection permissible by law or under this Agreement to enforce all the terms and conditions of this Agreement and the Franchise.

## VI. COMPLIANCE AND MONITORING

The Franchisee agrees that Hailey, upon thirty (30) days prior written notice to the Franchisee, may review such of its books and records as is necessary to ensure compliance with the terms of this Franchise. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any affiliate. Upon request by Hailey, the Franchisee shall furnish Hailey with a complete set of maps, including plans and profiles of the Gas Transmission and Distribution System.

## VII. INSURANCE AND INDEMNIFICATION

7.1 Insurance Requirements. The Franchisee shall maintain in full force and effect, at its sole cost and expense, during the term of this Agreement, commercial general liability insurance for the purpose of protecting Hailey against liability for loss or damage, for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions, relating to the operations of the Franchisee under this Agreement or the Franchise. Such policy shall provide insurance against property damage in an amount not less than \$1,000,000.00 and bodily injury with limits of not less \$1,000,000.00 per person and \$2,000,000.00 total for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of Hailey are increased pursuant to the Idaho Tort Claims Act (*Idaho Code Sections 6-901 et seq.*). Such insurance shall be noncancellable except upon thirty (30) days prior written notice to Hailey. Franchisee shall also secure and maintain at least the statutory amounts of worker's compensation in accordance with the laws of the State of Idaho. The Franchisee shall provide evidence of acceptable insurance at limits listed above to City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

### 7.2 Indemnification/Hold Harmless.

A. The Franchisee covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, sustained by Hailey and caused, directly or indirectly, by any act or omission on the part of Franchisee, its agents, employees, assigns or anyone subcontracting with Franchisee in the installation, construction, operation, or maintenance of the Gas Transmission and Distribution System. Hailey shall notify, in writing, Franchisee within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against Hailey caused by any of the aforesaid acts or omissions on the part of the Franchisee. Franchisee shall thereupon have the duty to appear and defend any such demand, claim, suit or action on behalf of Hailey, without cost or expense to Hailey.

B. Hailey covenants and agrees to indemnify, defend and hold Franchisee harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, sustained by Franchisee and caused, directly or indirectly, by any act or omission on the part of Hailey, its agents, employees, assigns or anyone subcontracting with Hailey, in the installation, construction, operation, or maintenance of the Gas Transmission and Distribution System. Franchisee shall notify, in writing, Hailey within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against Franchisee caused by any of the aforesaid acts or omissions on the part of Hailey. Hailey shall thereupon have the duty to appear and defend any such demand, claim, suit or action on behalf of Franchisee, without cost or expense to Franchisee.

## VIII. ANNEXATION

In the event Hailey annexes additional territory during the term of this Agreement, the Franchisee shall have the non-exclusive authority and privilege to engage in Gas Services, in the annexed territory for the remainder of the term of this Agreement.

## IX. DEFAULT AND REMEDIES

9.1 Termination for Cause. Either party may terminate this Agreement for cause if the other party fails to perform or defaults on any of the material duties or responsibilities set forth in this Agreement.

9.2 Corrective Action. If the either party finds that Franchisee has failed to perform or defaulted on any or all of the material duties or responsibilities set forth in this Agreement, the non-defaulting party shall provide defaulting party a written "Notice of Default" in accordance with paragraph 10.13 of this Agreement. The Notice of Default shall describe with sufficient detail the defaulting party's failure to perform and/or default. The defaulting party shall have a period of sixty (60) days from the receipt or delivery of the Notice of Default to correct the failure to perform or default. If the defaulting party fails to correct the failure to perform and/or default within sixty (60) days, the non-defaulting party may terminate this Agreement. If Hailey terminates this Agreement, Hailey may revoke the Franchise in accordance with the procedures described in paragraph 9.4 of this Agreement.

9.3 Enforcement. Subject to applicable federal and state law, in the event either party is in default of any provision of the Franchise, the other party may:

A. Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages;

B. Commence an action at law for monetary damages or seek other equitable relief;  
and/or

C. In the case of a substantial default of a material provision of this Agreement or the Franchise, seek to terminate this Agreement and revoke the Franchise in accordance with Section 9.4 of this Agreement.

#### 9.4 Revocation.

A. Should Hailey seek to revoke the Franchise after complying with the procedures set forth in Section 9.2 of this Agreement, Hailey shall give written notice to the Franchisee of its intent to terminate this Agreement and to revoke the Franchise (“Notice of Intent to Revoke”) based on a substantial default of a material provision of this Agreement or the Franchise. The Notice of Intent to Revoke shall contain the following:

- (1) A description of the specific nature of the default(s);
- (2) A statement of intent to revoke the Franchise;
- (3) A statement that a public hearing shall be held to consider the grounds for the termination of this Agreement and the revocation of the Franchise; and
- (4) The date, time and place of a hearing.

The public hearing described herein shall be scheduled between ninety (90) days and one hundred twenty (120) days from the date of the Franchisee’s receipt of the Notice of Intent to Revoke. The Franchisee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection.

B. At the designated hearing, Hailey shall give the Franchisee a full and fair opportunity to state its position on the matter, including without limitation the right to introduce evidence, to require the production of evidence, to question witnesses and to obtain a transcript of the proceeding, after which Hailey shall determine whether this Agreement shall be terminated and the Franchise revoked.

## X.

### MISCELLANEOUS PROVISIONS

10.1 Paragraph headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

10.2 Provisions Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

10.3 Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.4 Attorney's Fees. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees incurred therein, and on any appeals, and in any bankruptcy proceeding.

10.5 Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

10.6 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

10.7 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

10.8 Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

10.9 No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

10.10 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties. Neither party may unilaterally alter the material rights and obligations set forth in this Agreement.

10.12 Savings Clause. If any of the provisions of this Agreement shall be held to be unenforceable or unconstitutional, the remaining provisions shall nevertheless be enforceable.

10.13 Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, airmail if the address is outside the state in which the same is mailed, postage prepaid, with return receipt requested, addressed as follows:



HAILEY: City of Hailey  
c/o City Clerk  
115 South Main Street  
Suite H  
Hailey, Idaho 83333

FRANCHISEE: Intermountain Gas Company  
P.O. Box 7608  
Boise, Idaho 83704  
Attention: Vice President for Regions

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

10.14 Assignment. The parties agree that this Agreement shall not be assigned, in whole or in part, to any other person or entity without the prior written consent of Hailey, which consent cannot be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or Gas Transmission and Distribution System in order to secure indebtedness.

10.15 Force Majeure. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by Franchisee, whether now existing or hereafter created.

10.16 Compliance with Laws. Franchisee shall comply with all applicable federal, state and local statutes, laws, rules, regulations and ordinances.

10.17 Publication Costs. Franchisee shall assume all costs of publication required by law for the grant of the Franchise.

10.18 Agreement Not To Compete, Power of Eminent Domain and Other Powers. In consideration of Franchisee's undertaking hereunder, Hailey agrees not to engage in the business of distributing and selling gas during the term of the Franchise or any extension thereof in competition with Franchisee; but nothing herein contained shall be construed or deemed to prevent Hailey from exercising at any time any power of eminent domain or any other power or powers granted to it under the laws of the State of Idaho.

10.19 Surrender of Franchise. In the event natural gas at any time shall cease to be available to Franchisee for the distribution and sale hereunder, Franchisee reserves the right to surrender the Franchise. In the event of such surrender, or of the expiration or termination of the Franchise, or in any of such events, Franchisee reserves the right to salvage all of its property and will restore the

Public Ways damaged by such salvage operation to substantially the same order and condition, as deemed by Hailey, as they were before the salvage was made.

10.20 Changes, Alterations and Amendments. In the event of an amendment to the laws, rules or regulations of the State of Idaho or the Public Utilities Commission of Idaho applicable to this Agreement and the Franchise, the terms of this Agreement and the Franchise and the right and privileges thereby conferred and reserved may be changed, altered, amended or modified upon mutual agreement between Hailey and the Franchisee, which agreement shall not be unreasonably withheld.

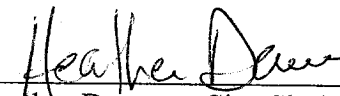
IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement on the day and year first above written.

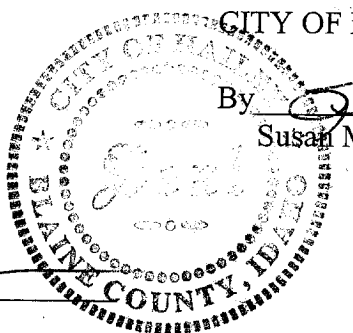
CITY OF HAILEY

By

  
Susan McBryant, Mayor

ATTEST:

  
Heather Dawson, City Clerk



FRANCHISEE

Intermountain Gas Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_