# CITY COUNCIL MEETING
# DECEMBER 22, 1955

The City Council of the City of Idaho Falls, Idaho, met in Recessed Session, December 22, 1955, at 8 P.M. in the Council Chambers at Idaho Falls, Idaho. Present: E. W. Fanning, Mayor; Councilmen Freeman, Foote, and Rogers; Absent, Petersen. Also present: S. R. Rostad, City Clerk; Arthur L. Smith, City Attorney; C. R. Black, City Engineer.

Charles R. Stark and Karl Page, in behalf of the Chamber of Commerce, appeared before the Council, thanking the Mayor and Council for their cooperation during the past year.

It was moved by Councilman Freeman and seconded by Rogers, that the City of Idaho Falls join with the Chamber of Commerce intervening before the Civil Aeronautics Board, in favor of an airlines service from Phoenix, AZ. to Great Falls, MT. via Salt Lake City and Idaho Falls. Roll call resulted as follows: Yes, Councilmen Freeman, Foote and Rogers; No, None; Motion carried.

The following applications for BEER licenses were presented, to-wit:

E. J. Guderjohn, Corner Grocery, $25.00; C. N. McNeill, Bon Villa, 100.00; Earl J. Wochner, The Lobby, 100.00; Charles R. Jachetta, Topper Supper Club, 75.00; Ray Metcalf, Capital Club, 75.00 It was moved by Councilman Rogers and seconded by Foote, that the above BEER licenses be granted. Roll call resulted as follows: Yes, 3; No, None; Motion carried.

The following license applications were presented, to-wit:

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| SOFT DRINK: | Ray Metcalf, Capital Club; Charles R. Jachettta, Topper Supper Club; Earl J. Wochner, Lobby Cigar Store; C. B. McNeill, Bon Villa; E. J. Guderjohn, Corner Grocery. |
| MEAT MARKET: | E. J. Guderjohn, Corner Grocery. |
| JOURNEYMAN ELECTRICIAN: | N. R. Turner. |
| ROOMING HOUSE: | Helen Sharp, Gem Rooms |

It was moved by Councilman Freeman and seconded by Foote, that the above licenses be granted. Roll call resulted as follows: Yes, 3; No, None; Motion carried.

## ORDINANCE NO. 854
## NINTH STREET SCHOOL

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING SAID LANDS AND DECLARING SAME A PART OF THE CITY OF IDAHO FALLS, IDAHO

The foregoing Ordinance was read by the City Clerk. It was moved by Councilman Foote, seconded by Freeman, that the provisions of Section 50-2004 of the Idaho Code requiring all Ordinances to be fully and distinctly read on three several days be dispensed with. The question being, "SHALL THE PROVISIONS OF SECTION 50-2004 OF THE IDAHO CODE REQUIRING ALL ORDINANCES TO BE READ ON THREE SEVERAL DAYS BE DISPENSED WITH?" Roll call as follows: Ayes, Foote, Rogers, and Freeman; No, None. The majority of all the members of the Council present having voted in the affirmative, the Mayor declared the

rule dispensed with and ordered the Ordinance placed before the Council for final consideration the question being, "SHALL THE ORDINANCE PASS?" Roll call as follows: Ayes, Foote, Rogers, Freeman; No, None. The majority of all the members of the Council having voted in the affirmative, the Mayor declared the Ordinance passed.

Idaho Falls, Idaho
December 22, 1955

The City Council of the City of Idaho Falls, Bonneville County, Idaho, met in Recessed Session at the regular meeting place of the Council in the City Hall in the City of Idaho Falls at 7 o'clock P.M. on December 22, 1955. The roll was called and the following found to be present: E. W. Fanning, Mayor; R. A. Freeman, Councilman, John B. Rogers, Councilman, Donald R. Foote, Councilman. Absent: George C. Petersen, Jr., Councilman. There were also present: S. R. Rostad, City Clerk; A. L. Smith, City Attorney.

After the Meeting had been duly called to order and after the roll had been called with the above result and the minutes of the proceeding Meeting read and approved, the following proposed Ordinance (providing for the granting of a gas franchise by the City to the Idaho Falls Cooperative Gas Association, Inc.) was introduced in written form by D. F. Richards and was read by title. The Mayor announced that because the said proposed Ordinance related to the granting of a franchise, such franchise could not be passed by the City Council for at least thirty (30) days after the same shall have been published in full compliance with law.

Councilman R. A. Freeman moved that the said proposed Ordinance be published at the expense of said Association, which motion was adopted by the following vote of the Councilmen present: Yes, R. A. Freeman, John B. Rogers, Donald R. Foote; No, None.

The Mayor thereupon directed the City Clerk to arrange for such publication of the said proposed Ordinance which is as follows:

**GAS FRANCHISE**
**ORDINANCE NO.**
**By: City of Idaho Falls**

AN ORDINANCE GRANTING TO IDAHO FALLS COOPERATIVE GAS ASSOCIATION , INC. (HEREINAFTER COLLECTIVELY REFERRED TO AS "GRANTEE") FOR A PERIOD OF THIRTY (30) YEARS FROM THE DAY IT TAKES EFFECT, THE FRANCHISE AND RIGHT TO CONSTRUCT, INSTALL, MAINTAIN AND OPERATE A GAS PRODUCTION, TRANSMISSION AND DISTRIBUTION SYSTEM AND APPURTENANCES, PRESENT AND FUTURE CORPORATE LIMITS OF THE CITY OF IDAHO FALLS, IDAHO (HEREINAFTER CALLED "MUNICIPALITY), SAID FRANCHISE AND RIGHT (TO EXTENT PERMITTED BY APPLICABLE LAW) TO BE EXCLUSIVE AND PRESCRIBING THE TERMS AND CONDITIONS THEREOF;

PROVIDING THAT NOTHING IN THE ORDINANCE SHALL BE CONSTRUED TO PREVENT SAID MUNICIPALITY EXERCISING RIGHT OF EMINENT DOMAIN BUT THAT THE MUNICIPALITY SHALL NOT ENGAGE IN THE BUSINESS OF PRODUCING, TRANSMITTING OR SELLING GAS IN COMPETITION WITH GRANTEE: PRESCRIBING THE TIMES FOR COMMENCEMENT AND COMPLETION OF CERTAIN WORK HEREUNDER PROVIDING FOR VARIOUS BENEFITS AND CONSIDERATIONS TO THE MUNICIPALITY THROUGH THE PAYMENT OF CERTAIN ANNUAL PAYMENTS ON INDEBTEDNESS OF GRANTEE WHICH INURE TO MUNICIPALITY'S BENEFIT: REQUIRING GRANTEE TO FILE CERTAIN ANNUAL REPORTS WITH THE CLERK OF THE MUNICIPALITY; PRESCRIBING THE METHOD, MANNER AND PROTECTION OF WORK UNDERTAKEN OR DONE BY GRANTEE HEREUNDER IN THE STREETS, ALLEYS AND OTHER PUBLIC PLACES AND FOR REPAIR OF DAMAGES DONE BY GRANTEE, AND FOR GRANTEE'S INDEMNIFYING THE MUNICIPALITY FOR ALL LOSS OR DAMAGE SUFFERED BY IT CAUSED BY GRANTEE HEREUNDER; PROVIDING FOR FILING EVIDENCE OF INSURANCE AGAINST PROPERTY DAMAGE AND BODILY INJURY; REQUIRING GRANTEE TO CONFORM TO CERTAIN ORDINANCES; PROVIDING FOR THE ACCEPTANCE OF THIS FRANCHISE, BY MORTGAGE, TRUST DEED OR OTHER LIEN CREATED TO SECURE INDEBTEDNESS FOR MONEY BORROWED FOR CORPORATE OBJECTS; PROVIDING FOR A CONTRACT BETWEEN MUNICIPALITY AND GRANTEE SPECIFYING THAT THE PROPERTIES AND ASSETS OF GRANTEE SHALL BECOME THE PROPERTY OF MUNICIPALITY, WITHOUT ANY COMPENSATION TO GRANTEE, UPON THE TERMS AND CONDITIONS THEREIN PROVIDED; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND SPECIFYING THE DATE ON WHICH THE ORDINANCE SHALL TAKE EFFECT.

Be it ordained by the Mayor and Council of the City of Idaho Falls that:

**SECTION 1**. There is hereby granted to Idaho Falls Cooperative Gas Association, Inc., a non-profit cooperative gas corporation, its successors and assigns (hereinafter collectively called "Grantee"), the right and authority to construct, install, maintain and operate a gas production, transmission and distribution system (including mains, pipes, conduits, services, and other necessary structures and appliances, appertaining thereto) in, under, upon, over, across, and along the streets, alleys, bridges, and public places within the present and future corporate limits of the City of Idaho Falls, Idaho (hereafter called "Municipality"), for 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 said Municipality. The franchise privileges, rights, authorities, and grants herein and hereby made to the Grantee shall be granted for and limited in time to, a period of thirty (30) years from the day it takes effect, and, if and to the extent permitted by applicable law, the franchise privileges and other rights, authorities and grants shall be deemed to be exclusive; provided that, without limiting the generality of the foregoing and in consideration of the Grantee's undertakings hereunder and in the contract described in Section 2 hereof (to be evidenced by the execution and delivery of the said contract by the Grantee as prescribed in said Section 2), Municipality agrees not to engage in the business of producing, distributing or selling gas during the life of this franchise, or any extension thereof, in competition with Grantee, its successors and assigns; but nothing herein contained shall be construed or deemed to prevent the Municipality from exercising at any time any power of eminent domain now or hereafter granted to it under the laws of the State of Idaho.

**SECTION 2**. A condition precedent to this franchise and grant becoming effective is the execution and delivery to Municipality by the Grantee of a contract in the form thereof attached hereto as Exhibit A, whereby, upon the terms and provisions thereof and as consideration heretofore, the Grantee will agree to pay the therein prescribed annual fees to the Municipality and ultimately transfer the properties and assets of the Grantee to the Municipality, all in accordance with the conditions thereof. The agreements of the Grantee to be contained in the said contract shall (to the extent permitted by applicable law) be in lieu of any and all other fees, charges, licenses or taxes (exclusive of ad valor em taxes) which the Municipality may impose for the rights and privileges herein granted or for the privilege of doing business within the Municipality.

**SECTION 3**. As further consideration for this franchise and grant, Grantee agrees that (except as otherwise provided in Section 7 hereof), as soon as reasonably possible after a gas supply is available to Grantee from the pipeline source as hereinafter in this Section prescribed and after all requisite certificates of convenience and necessity and other authorizations and approvals, if any, shall have been obtained from the Federal Power Commission and all other public regulatory authorities having jurisdiction over any of the operations of the Grantee or the acquisition of gas by or the furnishing of gas to the Grantee, it will construct its plant, works, gas main or other facilities for the purchase and transmission, distribution and sale of gas hereunder, and otherwise comply with the terms of this franchise; provided, however, that notwithstanding the foregoing provisions of this Section 3, Grantee shall be under no obligation to begin the construction of its facilities until all such requisite certificates, authorizations and approvals have been obtained or until such time as natural gas in available for purchase by Grantee at such point of delivery and at such price or prices, and in such quantities as Grantee in its sole discretion deems satisfactory and approved.

**SECTION 4**. All mains, pipes, fixtures, and other facilities installed by virtue of this Ordinance shall be so installed, erected and maintained to as to interfere as little as possible with normal traffic over the streets, avenues, alleys and public places of Municipality. Grantee shall secure a permit for any opening it shall make in streets, avenues, alleys, and public places of Municipality, and shall be subject to all applicable Ordinances, but no additional payment shall be required of Grantee for any such permit. The location and relocation of any and all facilities shall be fixed and remain under the supervision and be with the approval of such representatives of the governing body of Municipality s Municipality may designate for such purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and services. Grantee shall properly protect all excavations which it shall make in the streets, avenues, alleys or public places of Municipality at its own expense, refill such excavations and restore the streets, avenues or public places wherever the same are disturbed to the former condition as nearly as practicable, and within the shortest practicable time, and shall maintain, repair and keep in good condition for a period of one year all portions of streets, avenues and alleys disturbed by it or its agents, provided that in case Grantee shall fail after reasonable notice to repair or restore same to its original condition, Municipality shall have the right to make such repairs and restorations and the cost thereof shall be paid by Grantee; provided further, Grantee shall in the construction, maintenance and operation of its gas system in Municipality use all reasonable and proper precautions to avoid damage or injury to persons or property and shall hold the Municipality safe and harmless from any and all damage, injury and expense caused by the negligence of Grantee or its agents or servants in the installation, maintenance and operation of its facilities; provided the Grantee shall have been notified by the Municipality in writing of any claim against the Municipality on account thereof and shall have been given ample opportunity to defend the same.

Whenever the Municipality shall pave or repave any street or shall change the grade or line of any street or public place or shall construct or reconstruct any conduit, water main, sewer or water connection or other Municipality, public works or utility, it shall be the duty of Grantee when so ordered by Municipality to change its mains, services and other property in the streets or public places at its own expense so as to conform to the established grade or line of such streets or public places and so as not to interfere with the conduits, sewers and other mains as constructed or reconstructed; however, Grantee shall not be required to relocate pipes, mains and appurtenances when the street, alley or public ground in which they are located is vacated for the convenience of abutting property owners and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting there from is first paid to Grantee. Whenever Municipality grants a permit for an excavation in a street, alley or other public ground and the work contemplated by the permit may expose gas pipes, mains and appurtenances of Grantee, Municipality shall promptly furnish a copy of the permit to Grantee.

**SECTION 5**. If and to the extent the same is obtainable with premium and other term which, in the opinion of the Grantee, are reasonable, Grantee shall, so long as this franchise shall be in effect, keep and maintain in force, in reputable insurers, public liability

and property damage insurance against liability for bodily injury, with limits of not less than $25,000 as to each person and $500,000 as to each accident, and against liability for property damage, with limits of not less than $10,000 as to each accident, and if so requested by the Municipality, the Grantee shall file with the Clerk of the Municipality a certificate evidencing the aforesaid insurance then maintained by the Grantee.

**SECTION 6.** Municipality shall have access at all reasonable hours to all Grantee's plans, contracts and engineering, accounting, financial, statistical, member and service records relating to the property and operation of Grantee.

**SECTION 7**. Grantee shall within thirty (30) days after the adoption of this Ordinance, file with the Clerk of the Municipality an executed counterpart of the said contract substantially in the form thereof attached hereto as Exhibit A (which contract, among other things, will contain an acceptance hereof by the Grantee, signed by its proper officers and attested by its corporate seal , and shall begin to supply gas service under this franchise within 18 months after natural gas is made available (as prescribed in Section 3 hereof) to Grantee for distribution and after the requisite certificates, authorizations and approvals also described in Section 3 have been obtained as prescribed therein; provided, however, that such 18 months period shall be extended by the addition of any time reasonably lost due to litigation instituted by others or due to the action of Municipality, its officers or governing body, or of any other governmental body of authority, or due to strikes or other causes reasonably beyond control of Grantee. Otherwise the provisions of this franchise shall be null and void.

**SECTION 8**. The Grantee shall not sell, assign, lease or otherwise dispose of any part or all of its interest in this franchise, except that nothing contained shall prevent or restrict the Grantee from (or require the consent of the Municipality in connection therewith) assigning its right, title and interest herein under any one or more mortgages, trust deeds or other liens created to secure any indebtedness of the Grantee incurred or to the incurred for money borrowed for corporate objects.

**SECTION 9**. Consistent with its interest in the gas system and the operation thereof, Municipality agrees that its legal, engineering and other branches of City government will cooperate with Grantee for the benefit of the inhabitants of Municipality.

**SECTION 10**. The invalidity of any provision or provisions of this Ordinance shall not affect the validity of the remaining provisions hereof, but in such event this Ordinance shall be construed and applied as if the provisions thereof which are invalid were not a part hereof.

**SECTION 11**. All Ordinances and parts of Ordinances of Municipality in conflict wherewith shall be and the same are hereby repealed.

Adopted and approved _____, 195____
ATTEST: s/_____ s/_____
CITY CLERK MAYOR

City of Idaho Falls
Idaho Falls, Idaho

Gentlemen:

**EXHIBIT "A"**

Reference is made to the franchise and grant from your City to the undersigned, Idaho Falls Cooperative Gas Association, Inc., an Idaho Cooperative Association, granted by Ordinance No.____ enacted by your City Council on _____, 195_, authorizing the undersigned to operate a gas system in your City as therein provided.

In consideration of the said Franchise and other rights and privileges granted and provided for the undersigned by the said Ordinance, the undersigned hereby acknowledges its acceptance of said Ordinance and all the terms, provisions and conditions thereof and also acknowledges and agrees that a part of the consideration for the said franchise rights and privileges and a condition to the same becoming effective is the execution and delivery of this contract (whereby the undersigned agrees to provide for the ultimate transfer to your City of the properties and assets of the undersigned and also to pay the hereinafter provided additional franchise fees, all in the manner and upon the term and conditions hereinafter set forth).

For and in consideration of the foregoing, the undersigned, for itself, its successors and assigns, hereby covenants and agrees that:

1) As the primary consideration for the said franchise rights and privileges, whenever either of the following events shall occur:

(a) All indebtedness of the undersigned (except for current operating liabilities ) shall be paid or satisfied in full; or

(b) The undersigned shall lose all or substantially all of its properties and assets through the enforcement of any rights or remedies by any creditor of the undersigned:

(i) The event provided in foregoing subparagraph (A) of this Paragraph 1 shall be deemed to have occurred at anytime at or prior to the initial issuance by the undersigned of indebtedness secured by a lien upon all or substantially all of its properties and assets nor because of the temporary occurrence of the therein described condition in connection with any refunding or refinancing program of the undersigned;

(ii) The undersigned hereby reserves the right to create any indebtedness it may deem necessary or desirable in connection with the undersigned's gas business to be conducted pursuant to said franchise or in connection with the operation, preservation or extension of its properties, but the undersigned agrees that it will not voluntarily create any indebtedness which is not pre-payable or redeemable at the option of the undersigned at any time on or after 10 years from the effective date of said franchise (at a pre-payment or redemption price which may include a premium) nor any indebtedness (except for current operating liabilities) which shall be expressed to mature subsequent to the date the said franchise is initially provided to expire;

(iii) In order that such conveyance, transfer and assignment may be effected upon the occurrence of the event specified in foregoing subparagraph (a), your City shall have the option to make the therein prescribed full payment of all indebtedness of the undersigned ( in accordance with the terms and provision thereof) but shall not be deemed in any manner or to any extent to have assumed or agreed to assume any obligations or liabilities of the undersigned whatsoever; and

(iv) At any time that your City shall request the undersigned so to do, by appropriate resolution or other action of your City Council (or whatever body may then perform similar functions for your City), the undersigned will, in order further to assure your City that the herein provided conveyance, transfer and assignment shall be made to your City in accordance with the terms and provisions hereof, deposit in escrow (with any bank or trust company, having a capital and surplus of at least $1,000,000, doing business in the State of Idaho, and designated for that purpose by your City in a written instrument delivered to the undersigned) appropriate deeds and instruments of conveyance and transfer of all of the properties and assets of the undersigned to your City, subject to all the terms, provisions and conditions hereof with respect to such conveyance, transfer and assignment, and do such other acts and things as may reasonably be requested by your City (as evidenced by any such Resolution or other appropriate action) in order to further assure your City that the herein provided conveyance, transfer and assignment shall (subject to the terms and conditions hereof) be made to your City as herein provided.

2. In order, particularly, that the conveyance, transfer and assignment to your City provided in foregoing paragraph 1 hereof may be effected at the earliest possible time

contemplated by the terms and conditions hereof, the undersigned agrees, that, in further consideration of the said franchise and other rights and privileges and as a benefit to your City;

(a) As an annual obligation of the undersigned to your City until such conveyance, transfer and assignment shall be so effected, the undersigned will annually set aside from its revenues (to the extent of the portion thereof remaining after paying, or establishing appropriate reserves for, all interest , expenses and other corporate charges of the undersigned and all amounts deemed necessary or desirable by the undersigned for additions to or improvements of the properties and assets of the undersigned), and in due course apply toward the payment or prepayments of its indebtedness, which annual payments and pre-payments shall be deemed to constitute annual franchise payments and shall also be deemed to constitute a part of the cost of operations of the undersigned for such year:

(i) Such payments of principal and interest as may be necessary to retire such indebtedness in accordance with the terms and provisions thereof; and

(ii) Beginning with the first fiscal year of the undersigned next succeeding the fifth anniversary of the effective date of the said franchise, such further payments or pre-payments of the principal of and interest (and premium, if applicable) on any indebtedness (other than Operating Debt) for which any such revenues may be applicable under the conditions hereinbefore in this subparagraph (a) provided;

Provided, however, that the maximum amount of the payments or pre-payments which the undersigned shall be obligated to make in any fiscal year pursuant to the provisions of immediately preceding clause (ii) of this subparagraph (a) shall be in an aggregate amount thereof which when added to all payments (other than payments of Operating Debt) made in the fiscal year concerned pursuant to the provisions of foregoing clause (i) of this subparagraph (a), would equal an amount determined as follows:

Multiply the aggregate principal mount of all indebtedness of the undersigned (other than Operating Debt) which shall be outstanding at the end of the fiscal year concerned by a fraction whose numerator is the number twelve and whose denominator is the total number of full or fractional months in the unexpired term of the said franchise remaining after the end of the fiscal year concerned;

It being understood and agreed that the term "Operating Debt", as hereinbefore used, shall mean indebtedness for current operating liabilities incurred by the undersigned in the ordinary course of its business;

(b) No refunds or rebates will be made by the undersigned to any members of undersigned until after the hereinbefore in subparagraph (a) of this paragraph 2 provided amounts shall have been set aside and applied as therein prescribed, and

(c) The undersigned will, to the extent permitted by applicable law, endeavor to place in effect and maintain such rates and charges as may be necessary in order that the revenues of the undersigned shall be at least sufficient to pay all proper corporate charges, interest and expenses, including the amortization of its indebtedness as hereinbefore in this paragraph 2 prescribed.

3. During the entire period that such franchise rights and privileges shall be effective, it shall (within forty-five (45) days after the end of each fiscal year of the undersigned) pay, in cash, to your City, as an addition annual fee for such franchise rights and privileges (including the therein provided use of the streets and alleys of your City), the amount by which 3% of the gross revenues of the undersigned from the sale of gas during the preceding fiscal year concerned to customers located within the corporate limits of your City shall exceed the amount of any fees, charges, licenses, taxes (exclusive of as valor em taxes) or other impositions levied or imposed by your City (or any subdivision or agency thereof) against the property, business or operations of the undersigned for the tax year ending within the fiscal year of the undersigned concerned; provided that the foregoing provisions of this paragraph 3 shall not (in any manner or to any extent) limit or restrict the generality of the provisions of the last sentence of Section 2 of the said franchise.

The undersigned also agrees that so long as this contract shall be effective, the undersigned will on or before November 1st of each year (commencing with the November 1st next succeeding the year in which the said franchise shall become effective) file with your City a report prepared by the Chief accounting officer of the undersigned and verified by the affidavit of the general manager, auditor, treasurer or an assistant treasurer of the undersigned (in form prepared in accordance with generally accepted principals of accounting and otherwise in such form and detail as shall from time to time be specified by your City), containing a balance sheet of the undersigned as at the close of the last preceding fiscal year of the undersigned and an income and expense statement of the undersigned for such preceding fiscal year.

4. This agreement shall be binding upon the undersigned and its successors and assigns and shall inure to the benefit of your City and its successors.

WITNESS the execution hereof by the undersigned this ___ day of _____, 195_.

IDAHO FALLS COOPERATIVE
GAS ASSOCIATION, INC.

By: _____
Its _____

It was moved by Councilman Rogers and seconded by Foote, that the Council adjourn, Motion carried.

ATTEST: s/ S. R. Rostad
CITY CLERK

s/ E. W. Fanning
MAYOR

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