

ORDINANCE NO. 2019-03

AN ORDINANCE GRANTING TO NORTHWESTERN CORPORATON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF HARRISBURG, SOUTH DAKOTA, A NATURAL GAS SYSTEM AND TO FURNISH AND SELL NATURAL GAS TO THE CITY AND ITS INHABITANTS.

BE IT ORDAINED BY THE CITY OF HARRISBURG, SD:

That a new Chapter 10.03B of the Revised Ordinances of Harrisburg, SD, is hereby added to read as follows:

10.0301B Grant of Franchise. There is hereby granted to Northwestern Corporation, a Delaware corporation, hereinafter called “Company,” and to its successors and assigns the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Harrisburg, South Dakota, hereinafter called the “City,” a gas distribution system, to furnish natural gas along, under the streets, avenues, alleys and upon public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. This franchise shall be effective for a twenty (20) year period from and after the effective date of this ordinance.

10.0302B Applicable Law. The rights and privileges hereby granted are subject to the restrictions and limitations of South Dakota law, or as subsequently amended or changed.

10.0303B Facilities in Right-of-Way. Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to unreasonably interfere with the construction of any water pipes, drain or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City, with construction, repair, laying, relaying or extending of gas pipes, mains, conduits, and other facilities being in form and manner authorized by the city.

10.0304B Relocation of Facilities in Right-of-Way. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with South Dakota law including Company’s tariff on file with and made effective by the South Dakota Public Utilities Commission as may subsequently be amended (“Tariff,”) at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction reconstruction, maintenance or repair of the street or alley or any other public property owned by the city. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested the City shall provide, for the

reasonable cost to reproduction, to the Company, copies of its relocation plan and profile and cross section drawings.

10.0305B Construction in Right-of-Way. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or adjacent to the project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition to the extent any alterations are required for the City to comply with city, state or federal rules, regulations or laws.

10.0306B Vacating of Right-of-Way by City. Vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has facilities in the vicinity, the City shall provide Company with notice upon receipt of a vacate petition.

10.0307B Relocation of Facilities in Last 10 Years. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City at any time during the previous 10 years.

10.0308B Relocation of Non-Public Entity. The Company shall not be required at its expense to relocate Company facilities or equipment in order to facilitate a project of a commercial or private developer or other non-public entity.

10.0309B Insurance; Indemnification. The Company shall maintain insurance, which may be through a program of self-insurance, which will, among other things, indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

10.0310B Information Requests. Upon request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in city right of way, including documents, maps and other information in paper or electronic or other forms ("Information.")

10.0311B Maintenance Pursuant to Regulations. The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the South Dakota Public Utilities Commission or its successors and state law and federal law.

10.0312B Compliance with Tariff. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and in accordance with the applicable regulations of the South Dakota Utilities Commission the Company's tariff made effective by the South Dakota Utilities Commission or its successors and state law and federal law.

10.0313B Policing of Facilities. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

10.0314B Termination. Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have 60 days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

10.0315B Savings Clause. If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

10.0316B Effective Date. This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with South Dakota law and the written acceptance by the Company. The City shall provide Company with an original signed and sealed copy of this ordinance within 10-days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the Code of South Dakota. The effective date of this ordinance shall be twenty (20) days after publication of the ordinance. In the event that Northwestern Corporation does not file its written acceptance of this ordinance within 30 days after its approval by the City Council, this ordinance shall be void and of no effect.

10.0317B Repeal of Prior Franchise. Upon the effective date of this ordinance, all prior natural gas franchises granted to the Company to furnish natural gas to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

Adopted this 18th day of March, 2019.

Julie Burke – Van Luvanee
Mayor

ATTEST:

Mary McClung
Finance Officer

Seal

First Reading: March 4, 2019
Second Reading & Adoption: March 18, 2019
Publication: March 28, 2019
Effective Date: April 18, 2019

Published once at the approximate cost of _____.