

ORDINANCE NO. 899

AN ORDINANCE GRANTING TO NORTHWESTERN CORPORATION d/b/a/ NORTHWESTERN ENERGY A NON-EXCLUSIVE FRANCHISE AND FIXING THE TERMS UNDER WHICH THE COMPANY MAY CONSTRUCT, EQUIP, LAY, MAINTAIN AND OPERATE NATURAL GAS DELIVERY FACILITIES IN, UNDER, UPON, OVER AND ACROSS STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES, EASEMENTS AND OTHER PUBLIC PLACES IN THE CITY OF RED LODGE, MONTANA, AND MAY DELIVER AND SELL NATURAL GAS TO THE CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA:

Section 1 – Grant of Franchise. There is hereby granted to NorthWestern Corporation d/b/a NorthWestern Energy, its successors, and assigns (“Franchisee”), the right, privilege, and franchise (collectively the “Franchise”) under the terms contained herein to construct, equip, lay, maintain and operate in, under, upon, over and across the streets, avenues, alleys, highways, bridges, easements and other public places in the City of Red Lodge, Montana, (“City”), as now or hereafter constituted, natural gas delivery facilities for the purposes of transporting, conveying, distributing, supplying and selling natural gas services for heat, power and other purposes. Such natural gas services shall be provided at rates fixed and allowed by the Montana Public Service Commission (“Commission”), and Franchisee agrees to make publicly available the schedules of rates thus fixed or allowed as required by the laws of Montana.

Franchisee shall extend its natural gas delivery facilities to such parts of the City as the provision of Franchisee’s natural gas services shall justify.

Section 2 – Compliance with Applicable Standards, Codes, and Rules. Franchisee agrees to construct and maintain all natural gas delivery facilities in good order and condition and according to the current industry standards and in compliance with all applicable codes, rules, regulations, statutes, and orders of local, state, and federal agencies having jurisdiction in such matters.

The following is a non-exhaustive list of the applicable standards and codes to which the Franchisee agrees to comply pursuant to this Section:

- a) Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety; CFR 49 Part 192 *Minimum Federal Safety Standards* for the installation and operation of its Natural Gas Distribution Pipeline systems
- b) Montana Public Service Commission, Approved NorthWestern Energy Natural Gas Tariffs
- c) Occupational Safety and Health Administration, General Industry Standards 29 CFR 1910 and Construction Industry Standards 29 CFR 1926

The following Northwestern Energy documents contain the specific company guidelines, standards and procedures developed in accordance with the list above.

- a) NorthWestern Energy, Gas Transmission Operation and Maintenance Manual

- b) NorthWestern Energy, Gas Distribution Construction Standards and Guidelines
- c) NorthWestern Energy, Gas Distribution Operations and Maintenance Manual
- d) NorthWestern Energy, Safety, Health and Environmental Handbook

Franchisee recognizes that the standards and codes, listed above, may be amended from time to time and therefore, Franchisee agrees to comply with the most current version applicable at the time any work is to be performed by Franchisee hereunder.

If any provision of this Franchise shall conflict with Federal or State law, the Federal and State law shall control.

Section 3 – Non-exclusive Franchise. This Franchise is non-exclusive, and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm, or corporation.

Section 4 – Service. Franchisee, at all times during the existence of this Franchise, shall use its best efforts to obtain, deliver and supply a continuous, sufficient and adequate quantity of natural gas for use by said City and Franchisee's customers, provided, however, that Franchisee shall not be liable to said City or to Franchisee's customers because of the interruption or discontinuance of the supply of natural gas by causes beyond the reasonable control of Franchisee.

Franchisee shall not discontinue the delivery of natural gas through its natural gas delivery facilities, or any portion thereof, for an unreasonable length of time for the purpose of making repairs and extensions, but Franchisee shall not be liable to the City or any of Franchisee's customers for damages caused by such temporary discontinuance or interruption of the delivery of natural gas, provided that such repairs and extensions are made with reasonable efforts.

The service to be furnished to the public hereunder, and all rates and charges therefore, and all regulation of the Franchisee hereunder, shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the Commission or by any other governmental authority now or hereafter having jurisdiction over such matters.

Section 5 – Construction, Maintenance and Restoration of Right-of-Ways; Relocation of Facilities. All work done in, under, upon, over, and across the present and future streets, avenues, alleys, highways, bridges, easements, and other public places in the City by Franchisee for the purposes of carrying out the provisions of this Franchise shall be done and performed in a safe and professional manner. Except for emergency, situations Franchisee shall provide advanced notification to the City of all plans for work to be performed pursuant to this Franchise and when possible, coordinate with the City in order to minimize public inconvenience, disruption, and damages.

When any street, alley, or other public place in said City is excavated or damaged by Franchisee by reason of such work, Franchisee shall promptly restore, at its own costs, such street, alley, or public place to its former condition. If such restoration is not completed within a reasonable time or it does not meet the City's currently adopted public work standard, the City may, after prior notice to Franchisee, perform the necessary restoration either through its own forces or through a hired contractor, and Franchisee agrees to reimburse the City for its costs and expenses in so doing. Prior to the City taking action under this Section, the Franchisee shall

have thirty (30) days from receipt of the notice to cure the issue set forth in said notice. If the Franchisee disagrees with the City's position on this matter, then Franchisee shall seek to resolve the dispute as outlined in Section 9 of the Franchise.

All facilities constructed under this Franchise shall be placed and maintained at such places and positions in or upon such public ways and public places as shall not interfere with the passage of traffic and shall conform to all applicable laws, rules, and regulations.

If at any time a change in the grade or plan of any street, alley, or public place shall be made by order of the proper City officials, Franchisee shall, without expense to the City, make such changes in the location of its natural gas delivery facilities as the change of the grade or plan of the street, alley, or public place makes necessary, which said changes shall be made as soon as possible after said Franchisee shall have received notice from the proper City official having the charge of the same. In the event federal, state, or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Franchisee will be reimbursed to the extent any such funds are actually obtained.

Section 6 - Permits Required. Except during emergencies and only when and if the City requires permits for work within its Public Ways, Franchisee shall secure all necessary permits for any work within the City's Public Ways prior to the commencement of said work.

Section 7 – Copies of Maps and Records. Franchisee agrees to provide City with record plans, maps, and records that show horizontal locations of its facilities within the rights-of-way. This information shall be used by City only for the purpose of planning City construction projects and shall not be used to circumvent any applicable Federal or State laws pertaining to underground facility locates. The City acknowledges that this information must be validated by requesting locates using the 811 system. The City agrees to keep this information confidential to the extent allowed by law. If the City gets a records request demanding disclosure of the Franchisee's system information previously provided to the City, then the City will provide the Franchisee notice of such request and provide Franchisee with the opportunity to seek an order preventing the disclosure of said information.

Section 8 – Abandonment. All underground abandoned lines shall continue to remain the property of the Franchisee, unless the Franchisee specifically acknowledges otherwise to the City. Franchisee shall identify to the City the location of any lines that become abandoned during the term of the Franchise. Franchisee shall remove, at its own costs, abandoned lines at the request of the City when required to facilitate construction of any municipal project or as the City determines is reasonably necessary to protect public health and safety.

Section 9 – Indemnification. Except to the extent of City's negligence, Franchisee shall indemnify, defend and hold the City harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, incurred by the City as a result of Franchisee's operations under this Franchise. Further, Franchisee shall hold the City, its officers, employees and agents, harmless from all costs and damages which shall or may accrue to the City in connection with the exercise of Franchisee's rights hereunder, provided, however, that such costs and damages are not the result of any negligent acts of the City, its officers, employees and agents.

The Franchisee covenants and agrees to 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 Distribution System.

Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of the covenants of indemnification discussed in this Section.

Section 10 - Insurance. Franchisee shall maintain throughout the term of this Franchise general liability insurance in the minimum amount required by Franchisee's Risk Management Department to adequately insure and/or protect the legal liability of Franchisee with respect to the installation, operation and maintenance of the natural gas delivery facilities together with all the necessary and desirable appurtenances authorized herein to occupy the public rights-of-way or public utility easements. Such insurance will provide protection for bodily injury and property damage including, without limitation, contractual liability and legal liability for damages arising from collapse and underground incidents.

Franchisee shall file with the City, within thirty (30) days following the effective date of this Franchise, a Certificate of Insurance evidencing proof of said insurance required pursuant to this Section and thereafter upon request of the City.

Section 11 - Transfer of Franchise. Assignment of this franchise is prohibited unless Franchisee provides written notification to the City and the City consents to the transfer, which shall not be unreasonably withheld. If the Commission has issued an Order authorizing the sale and/or merger of the Franchisee's assets, the City Council must similarly approve the transfer of the Franchise.

Section 12 - Annual Meeting. Annually, the City's designated representatives and Franchisee shall hold at least one (1) joint planning session to view and discuss plans and any other matters for the purpose of understanding and coordinating pending infrastructure projects within the City of Red Lodge. At a minimum, this meeting shall include the Operations Manager, Construction Manager, and Local/Regional Manager from the Franchisee and the City's Community Development Director, Public Works Director, Mayor, and Council Representative.

Section 13 - Default/Forfeiture; Alternative Dispute Resolution. Failure or unreasonable delay by any Party to perform any term or provision of this Franchise for a period of thirty (30) days after written notice thereof from the other Party shall constitute a default under this Franchise. If the default is capable of being cured within a reasonable time, the cure shall be commenced and diligently pursued to completion. The notice mentioned in this Section shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured.

If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding mediator agreed to by the Parties. Unless otherwise agreed to between the Parties or determined herein, the cost of that process shall be shared equally and at an agreeable location.

Notwithstanding the foregoing, in the event of a default hereunder that is not cured and not resolved by the process mentioned above, the non-defaulting Party shall be entitled to all remedies at both law and equity, including without limitation, specific performance, ordered from the appropriate judicial forum.

Section 14 – Effective Date. This ordinance shall take effect and be in force from and after thirty (30) days after the final passage and approval hereof, provided Franchisee shall file with the City Clerk a written acceptance of this ordinance within said thirty (30) day period, but if such acceptance is not so filed, this ordinance shall be void.

Section 15 - Term. This Franchise shall be hereby granted for an initial term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Franchisee. Thereafter, this Franchise will automatically renew for additional terms of five (5) years, unless cancelled by either party by written notice to the other party, no less than one (1) year prior to the end of the then-current term.

Section 16 – Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective upon mailing to the following addresses:

Franchisee: NorthWestern Energy
Attn: Regional Manager (MT)
40 East Broadway
Butte, Montana 59701

City: Mayor
City of Red Lodge
P.O. Box 9
Red Lodge, Montana 59068

Finally passed by the City Council of the City of Red Lodge, Montana, and approved this _____ day of _____, _____.

MAYOR

ATTEST:

CITY CLERK

I hereby certify that the within and foregoing is a full, true, correct and complete copy of Ordinance No. _____, passed at the regular meeting of the City Council of the City of Red Lodge, Montana, on the _____ day of _____, _____.

CITY CLERK

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public for the State of _____

Residing at _____

My Commission expires _____