

ORDINANCE NO. 346

NATURAL GAS FRANCHISE AGREEMENT

This NATURAL GAS FRANCHISE AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2024, by and between the City of Aurora, and NorthWestern Energy Public Service Corporation, doing business as NorthWestern Energy, a South Dakota corporation, to furnish and sell natural gas to the City and its inhabitants.

Section 1.01. Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

A. “City” shall mean City of Aurora, South Dakota, which includes the area within the City Limits, as the same now exists or as may be extended from time to time by annexation or other legal means.

B. “City Limits” shall mean the official map showing the boundaries and limits of the City on file in the City Office.

C. “Consumer” shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, public corporation, and any other legal or non-legal entity served by Franchisee.

D. “Construction” shall mean, without limitation, constructing, acquiring, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using a natural gas Distribution System.

E. “Distribution System” shall mean a system of pipes, pipelines, apparatus, machinery, structures, appliances or fixtures, and appurtenances, which in any way relate to or are reasonably necessary for the distribution of natural gas by Franchisee to Consumers.

F. “Franchise” shall mean the rights and privileges granted by the City to the Franchisee under this Agreement.

G. “Franchisee” shall mean NorthWestern Energy Public Service Corporation, doing business as NorthWestern Energy, and its successors and assigns.

H. "Install, operate, and maintain" shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.

I. "Public Ways" shall mean any street, alley, avenue, boulevard, lane, park, parkway, parking strip, sidewalk, driveway, utility easement, right-of-way, and any other public ways, places, areas, or grounds within the City Limits of the City as the same now exists or as may be extended from time to time by annexation or other legal means.

J. "South Dakota Natural Gas Tariff" shall mean Franchisee's South Dakota Gas Rate Schedule on file with and made effective by the South Dakota Public Utilities Commission from time to time.

K. The terms "gas" and "natural gas" as found herein shall be fully interchangeable in meaning.

Section 1.02. Franchise Granted

Franchisee is hereby granted a non-exclusive Franchise, right, and privilege for a period of ten (10) years to install, maintain, and operate a gas Distribution System in, upon, over, under, across, and along the City's public ways, as the same now are or may hereafter be extended for the distribution and sale of gas, whether artificial, natural, or otherwise, for cooking, heating, industrial, and all other uses and purposes. The term of this Franchise Agreement may be extended for no more than one (1) – five (5) year period only upon written approval of both parties at least 30 days before the last day of the initial ten (10) year term. The rights and privileges hereby granted are subject to the restrictions and limitations of South Dakota law, now in effect or which may be subsequently adopted.

Section 1.03. Franchisee's Agreement to Serve

Franchisee agrees, that for and during the term and period of this Franchise Agreement, it will maintain in the City an adequate, standard, and sufficient Distribution System and equipment and maintain and operate the same in a manner to meet the necessities and requirements of the City, its industries, and inhabitants. Franchisee, on behalf of itself, its successors and assigns, will be deemed to have accepted the terms and conditions of this Franchise by supplying service to any customer within the City Limits after the effective date of

this Agreement. Notwithstanding the foregoing, Franchisee does not guarantee uninterrupted or undisturbed service of gas and is not liable for causes beyond its reasonable control.

Section 1.04. Compliance with Right-of-Way Laws Required by Franchisee

Franchisee shall have the right to excavate, subject to compliance with the Code of Ordinances of City of Aurora, South Dakota, now in effect or which may be subsequently adopted, with respect to construction within the City's right-of-ways and shall obtain all necessary permits and licenses required there under or by other applicable laws, ordinances, and rules and as required of other like users of the right-of-way before commencing construction.

Section 1.05. Franchisee Information

Upon request, Franchisee shall provide to the City, at no cost to the City, information indicating the location and size of Franchisee's facilities that are located in the City's right-of-way, including documents, maps, drawings and/or Geographic Information System data in the event the City of Aurora uses GIS data in the future ("Information").

The Franchisee and City recognize the Information delivered to the City pursuant to this Agreement is proprietary and confidential. The City shall restrict access to the Information to employees with a defined business need for review of the Information. The City shall not disclose or disseminate the Information to any third parties without express written consent of the Franchisee. In the event it is believed that the Information has been accessed by an unauthorized person or entity, the City shall provide prompt notice to the Franchisee and shall take all reasonable action to mitigate any such breach of confidentiality. The City agrees to return or destroy all Information received from Franchisee upon termination of this Franchise Agreement.

The Information delivered to or inspected by the City pursuant to this Section is for informational purposes only, and Franchisee does not warrant the accuracy thereof. To the extent the Information delivered to the City identifies Franchisee facilities, such Franchisee facilities are shown in an approximate location. Nothing herein is intended or may be construed to relieve the City or any person with access to or in receipt of the Information of its respective obligation

under SDCL § 49-7A-5 to notify the one-call notification center of a proposed excavation to determine the location of underground utilities.

Section 1.06. Changes to Physical Plant-Extension of Service

Franchisee shall and hereby agrees to make such reasonable extensions of the Distribution System as may be reasonably required to furnish service to parties making application therefor located within the City Limits of the City. Franchisee shall not be required to make any such extensions of the Distribution System nor install service lines for the purpose of serving any new customer or customers where the estimated revenue to be derived from such service is not sufficient to provide an adequate return upon the investment (after recognizing any customer Contribution in Aid of Construction) required to serve such customer or customers. All extensions of the Distribution System shall be made in compliance with the South Dakota Natural Gas Tariff.

Section 1.07. Furnishing Natural Gas

During the term of this Franchise Agreement, Franchisee shall furnish natural gas in the quantity and quality consistent with and in accordance with the applicable regulations of the South Dakota Public Utilities Commission and Franchisee's tariff made effective by the South Dakota Public Utilities Commission or its successors and state law and federal law.

Section 1.08. Non duplication of Distribution Facilities

To minimize risk to the citizens of the City and to avoid unnecessary duplication of natural gas facilities within the City, Franchisee shall not construct Distribution Facilities in, along, under, or down any Public Way wherein another natural gas line already exists, except: (i) where service requirements necessitate additional distribution facilities; (ii) upon verification to the City that the installation, operation, and maintenance of such additional distribution facilities shall be in conformance with all then current industry standards, and all applicable codes, rules, regulations, statutes, and orders of local, state, and federal agencies having authority in such matters; and (iii) upon review and approval by the City.

Section 1.09. Relocation When Street Vacated

In the event that City receives a petition to vacate any Public Way, including any and all utility easements in such Public Way, City agrees that Franchisee will receive notice of such petition no fewer than ten (10) days prior to any hearing, regarding such petition. In the event the City vacates any Public Way, a utility easement will remain in effect unless the private property owner(s) on either side of the Public Way petition the City to vacate the utility easement. If the City grants petitioner's request to vacate a utility easement in any Public Way, the Franchisee shall work with the petitioning property owner(s) to relocate all of its facilities and equipment within such vacated Public Way, and Franchisee shall be reimbursed by petitioners for the costs of such relocation, pursuant to state law.

In the event that the City requests relocation of Franchisee's facilities and equipment within any Public Way, Franchisee shall relocate its facilities and equipment located within such vacated Public Way at no cost to the City.

Section 1.10. Public Emergency

If a public emergency arises involving the Franchisee's system, the City shall promptly notify the Franchisee. If the Franchisee does not act or is unable to take the necessary action, the City shall have the right to shut off service to affected consumers, without prior notice. The City's actions shall only be performed by its authorized Fire Department personnel and only in the event Franchisee cannot act or requests the City to take action, and the action taken shall be limited to shutting the gas meter down by closing the riser valve.

Public emergency means any condition that, in the opinion of the City Fire Department, poses an immediate threat to the lives or property of the residents of City, caused by any natural or man-made disaster, including but not limited to storms, floods, fire, accidents, explosions, sewer or water main breaks, hazardous material spills, and other similar occurrences. Provided it received Notice, Franchisee shall be responsible for repair, at its sole expense, of any of its facilities damaged pursuant to any such action taken by Franchisee or City, except for damage that is the result of sole negligence or willful misconduct of City.

Section 1.11. Emergency Response Plan / Service Valves

The Franchisee shall provide to the City those portions of its Emergency Management Plan applicable to the City within sixty (60) days of the effective date of the ordinance approving this Agreement. The Franchisee shall ensure that any future updates of its Emergency Management Plan, applicable to the City, during the term of this Agreement, are provided to the City within thirty (30) days of the update.

The Franchisee shall ensure that Construction of Distribution Systems, subsequent to the date of this Agreement, are equipped with service valves used to shut off services at the meter and the service valves are accessible to authorized Fire Department personnel in time of an emergency and at no cost to the City. To the extent the existing Distribution System is equipped with inaccessible service valve(s) and Construction occurs in those areas, the Franchisee shall either relocate or require its customer to relocate the inaccessible service valve(s), at no cost to the City.

Section 1.12. Restoration of Streets

In doing any work in connection with exercising the privileges herein granted, Franchisee shall avoid, so far as may be practicable, interfering with the use of any Public Way. Where paving or surface of the street is disturbed, Franchisee shall, at its own expense and in a manner reasonably satisfactory to the City, and in compliance with City specifications, replace such pavement or surface of the Public Way in as a good condition as it was in before such work was commenced. The Franchisee shall not be required to restore or modify public right of way, sidewalks, or other areas within the Franchisee's project area to a condition superior to its previously existing condition, unless such alterations are required for the City to comply with City, state, or federal rules, regulations, laws, permits, and/or specifications.

Section 1.13. Installation of Equipment

Franchisee shall install, maintain, and operate the Distribution System in a manner which does not interfere with or obstruct the use of any water or gas pipes, drains, sewers, or other structures already installed and which is acceptable to City. Franchisee further agrees to install, operate, and maintain all underground piping according to current industry standards, and all

applicable codes, rules, regulations, statutes, and orders of local, state, and federal agencies having authority in such matters.

Section 1.14. Installation and Ownership of Service Lines

Franchisee shall, at its own expense, furnish and install service pipe of suitable capacity to the Consumer's point of delivery herein defined as the inlet side of the first connection with Consumer's premises, or the outlet side of the meter if located beside, within, or attached to the premises. This delivery location shall be defined as "Consumer's Point of Delivery." Service lines or gas main extensions may be subject to a Contribution in Aid of Construction. Ownership of all service lines shall remain with Franchisee. Franchisee shall install, furnish, and maintain service pipe to Consumer's Point of Delivery in compliance with all terms and conditions of Franchisee's Tariff with the South Dakota Public Utilities Commission.

Section 1.15. Allocation of Gas Supplies

In the event of a shortage in the supply of natural gas for any reason beyond the control of Franchisee, it will allocate the available gas in a manner which conforms to the general interest of the public as required by applicable laws and regulations.

Section 1.16. Insurance Requirements

Franchisee shall self-insure or secure and maintain the insurance specified below. The insurance specified in this section may be in a policy or policies of insurance and may be primary coverage or excess coverage. Certificates of all required insurance shall be provided to the City upon execution of this Agreement.

1. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.

2. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and a property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage.

The policy shall by separate endorsement name City as an additional insured. If “occurrence form” insurance is not available, “claims made” insurance will be acceptable. The policy shall be maintained for three years after completion of this Agreement.

3. Automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.

Franchisee will provide the City with at least 30 days’ written notice of an insurer’s intent to cancel or not renew any of the insurance coverage required above. Franchisee agrees to hold the City harmless from any liability assumed under this agreement, including additional premium due, because of Franchisee’s failure to maintain the coverage limits required. City’s approval or acceptance of certificates of insurance does not constitute City’s assumption of responsibility for the validity of any insurance policies, nor does City represent that the above coverages are adequate to protect any individual/group/business, its consultants’ and assumes no liability therefor.

Section 1.17. Nondiscrimination

Franchisee will provide equal employment opportunities in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. Franchisee prohibits discrimination against any person or class of persons based on race, color, religion, sex (including pregnancy and related conditions, sexual orientation, or gender identity), national origin, age (40 or older), disability, genetic information or other characteristic protected by federal, state or local laws in its employment practices.

Section 1.18. Indemnification

Franchisee shall, at its sole cost and expense, defend, indemnify, and hold harmless City, all departments of City now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (“the indemnitees”), from and against any and all liability, obligation, damages, penalties, claims, liens, limitations, reasonable fees and expenses of attorneys, expert witnesses, and consultants, which may be imposed upon,

incurred by, or be asserted by any third party against the indemnitees by reason of any negligent or otherwise wrongful act or omission of Franchisee, its personnel, employees, agents, contractors, or subcontractors, resulting in personal injury, bodily injury, sickness, disease, or death to any person or damage to, loss of, or destruction of property, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, or condition of the gas Distribution System or Franchisee's failure to comply with any federal, state, or local statute, ordinance, or regulation.

Notwithstanding the foregoing, Franchisee shall not be required to indemnify the City for negligence on the part of the City or its officials, agents, contractors, or employees.

Section 1.19. Disclaimer of Liability

City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition, or dismantling of Franchisee's gas Distribution System, except for those injuries or damages that arise from the negligence of City or its agents, contractors, or subcontractors.

Section 1.20. Notice, Cooperation, and Expenses

In the event that a claim is made against the City resulting from and/or pertaining to any act or omission of the Franchisee, its personnel, employees, agents, contractors, subcontractors, or designees, the following shall apply:

1. City shall give Franchisee prompt notice of any claim or the commencement of any action, suit, or other proceeding covered by the provisions of this section.

2. City shall cooperate with Franchisee and may participate in the defense of any litigation by City's own counsel, at City's own expense.

3. To the extent Franchisee has asked City to participate in the defense of litigation, or to the extent Franchisee has refused to defend, indemnify, and hold harmless the City, Franchisee shall pay all expenses incurred by City defending itself with regard to any such actions, suits, or proceedings. These expenses shall include all out-of-pocket expenses, such as reasonable attorney fees, and shall also include the reasonable value of any services rendered by or on

behalf of the City Attorney, and the actual expenses of City's agents, employees, or expert witnesses, and disbursements and liability assumed by City in connection with such suits, actions, or proceedings.

Section 1.21. Assignment

Franchisee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Franchisee or in connection with a corporate reorganization authorized by the South Dakota Public Utilities Commission, without the prior consent of City, with consent not to be unreasonably withheld. No 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 Franchisee in the Franchise in order to secure indebtedness. Within 30 days of receiving a request for transfer, City shall notify Franchisee in writing of any additional information it reasonably requires to determine the legal, financial, and technical qualifications of the transferee.

Franchisee shall reimburse the City for costs and expenses for any proposed transfer of this Agreement. At the City's request, the Franchisee shall reimburse the City for reasonable expenses incurred with respect to any proposed transfer of this Agreement, including, without limitation, attorney fees, consultant fees, publication of notices and ordinances, and copying of documents in connection with a proposed transfer of this Agreement.

Section 1.22. Municipal Authority

Franchisee agrees that all authority and rights in this Agreement shall at all times be subject to all rights, power, and authority now or hereafter possessed by City, to regulate, control and direct, or otherwise by ordinance or resolution legislate concerning the manner in which Franchisee shall use the Public Way.

Section 1.23. Termination

Either City or Franchisee ("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 to cure the breach. If the breaching party is not in compliance after the expiration of the designated time period, the non-breaching party may, after affording the breaching party a reasonable opportunity to be heard, terminate this Agreement; provided, however, that if any failure to comply cannot with reasonable and appropriate efforts by the breaching party be corrected within the designated time period, the non-breaching party shall reasonably extend that period upon appropriate representations and assurances by the breaching party that corrections are being made. Such extension will not be considered or deemed a waiver by the non-breaching party of any such lack of compliance. The non-breaching party may allow continuation of this Agreement for as long as it deems appropriate, despite a breach or forfeiture as described herein, in order to ensure continuation of service to consumers; such continuation of the arrangement will not be deemed a waiver of the City's right to terminate pursuant to this paragraph.

A party shall not be considered to be in breach of this Franchise if it has operated in compliance with local, 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.

Section 1.24. Dispute Resolution

If either party to this Franchise asserts that the other party is in default in the performance of any obligation imposed by it, the complaining party shall notify the other party in writing of the default and the desired remedy. The parties shall meet and attempt in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within 60 days of the initial notification, City and Franchisee may agree to seek non-binding mediation before litigation. All parties must agree to the mediator and all parties agree to equally share the cost of the mediation. Mediation shall be completed within One Hundred and Eighty (180) Days from initial notification of the dispute and request for mediation. If the parties are still unable to resolve the dispute or choose not to pursue mediation, either party may commence an action in circuit court to interpret and enforce this Franchise, or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

Section 1.25. Venue

This Franchise Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the state of South Dakota without regard to its choice of law provisions. Jurisdiction and venue of any legal proceeding involving the parties in connection with this Franchise will lie exclusively with the state courts located in Brookings County, South Dakota.

Section 1.26. Franchise Amendable

This Franchise Agreement may not be enlarged, modified, or altered unless approved by the governing body in accordance with law and by written acceptance by Franchisee pursuant to Section 1.32 below.

Section 1.27. Notices

All notices and communications pursuant hereto shall be deemed validly given, served, or delivered, upon delivery in person or by courier service, and if mailed upon three (3) days after deposit in the United States mail, certified and with proper postage and certified fee prepaid, addressed as follows:

CITY

City of Aurora
Attn: Finance Officer
PO Box 335
Aurora, SD 57002

FRANCHISEE

NorthWestern Energy Public Service Corporation
Attn: District Manager
1232 22nd Avenue
Brookings, SD 57006

or to such other address as the addressee may designate in writing by notice to the other party delivered in accordance with the provisions of this paragraph.

Section 1.28. No Right of Property

Anything contained herein to the contrary notwithstanding, the award of this Franchise shall not impart to Franchisee any right of ownership of right-of-way or City-owned property.

Section 1.29. Captions

Captions and other headings contained in this Franchise Agreement are for reference and identification purposes only and in no way alter, modify, amend, limit, or restrict the contractual obligation of the parties hereto.

Section 1.30. Compliance with Laws

Franchisee agrees to conduct its business under the terms of this Agreement in such a manner that it does not violate any federal state or local laws or regulations, including the applicable regulations of the South Dakota Public Utilities Commission, in the conduct of its operations under the terms of this Franchise Agreement.

Section 1.31. Validity of Franchise

If any section, subsection, sentence, clause, phrase, or portion of this Franchise Agreement shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 1.32. Acceptance

This Agreement 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 Franchisee. City shall provide Franchisee with an original signed copy of this Agreement within ten (10) days of its final passage. Franchisee shall, within thirty (30) days after City Council approval of this Agreement, file Franchisee's written acceptance of all the terms and provisions of this Agreement in the office of the City Finance Officer. Following City Council approval, this Agreement shall be published in accordance with the South Dakota state law. The effective date of the ordinance approving this Agreement shall be twenty (20) days after publication of the ordinance. In the event that Franchisee does not file its written acceptance of this Agreement within thirty (30) days after the City Council approves the Ordinance authorizing the Mayor to sign this Agreement, the Agreement shall be void and no effect.

Section 1.33. Repeal

Upon the effective date of the enabling ordinance, all prior natural gas franchises granted to the Franchisee to furnish natural gas to the City and its inhabitants are hereby repealed.

ACKNOWLEDGEMENT AND ACCEPTANCE OF AGREEMENT
CITY OF AURORA, SOUTH DAKOTA

Dated this __ day of _____, 2024.

City of Aurora

Josh Jones, Mayor of the City of Aurora

(SEAL)

ATTEST:
SHANNON FRENG
Finance Officer
City of Aurora, South Dakota

ACKNOWLEDGEMENT AND ACCEPTANCE OF AGREEMENT
NORTHWESTERN ENERGY PUBLIC SERVICE CORPORATION, DOING BUSINESS AS
NORTHWESTERN ENERGY

Dated this __ day of _____, 2024.

NorthWestern Energy Public Service Corporation

Jason Merkel
Printed Name

Vice President – Distribution
Title:

Signature