

**ORDINANCE NO. 58, FOURTH SERIES,
AN ORDINANCE GRANTING TO GREAT PLAINS NATURAL GAS CO.,
A DIVISION OF MDU RESOURCES GROUP, INC.,
A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS,
A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR
AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION,
DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC
AND PRIVATE USE AND TO USE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR
SUCH PURPOSES; AND PRESCRIBING
CERTAIN TERMS AND CONDITIONS THEREOF**

THE CITY OF REDWOOD FALLS ORDAINS:

SECTION 1: DEFINITIONS. For purpose of this Ordinance, the following capitalized terms shall have the following meanings:

1.1 CITY. The City of REDWOOD FALLS, County of Redwood, State of Minnesota.

1.2 CITY UTILITY SYSTEM. Facilities used for providing public utility service owned or operated by City or agency thereof, including, but not necessarily limited to, sewer, storm sewer, water service, street lighting, traffic signals and telecommunications, but excluding facilities for providing heating, lighting, or other forms of energy.

1.3 COMMISSION. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government that preempts all or part of the authority to regulate gas retail rates now vested in the Commission.

1.4 COMPANY. Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., a Delaware corporation, its successors and assigns, including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.

1.5 EFFECTIVE DATE. The date on which the Ordinance becomes effective under Section 2.2.

1.6 ENGINEER. The Redwood Falls City Engineer, or his or her designee.

1.7 GAS. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

1.8 GAS FACILITIES. Gas transmission and distribution pipes, mains, lines, ducts, fixtures and all necessary facilities, equipment and appurtenances owned or operated by the Company or its agents for the purpose of providing gas energy for public or private use.

1.9 NOTICE. A writing served by a party or parties on another party or parties. Any party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Notice to Company, when required, must be mailed to: 705 West Fir Ave. PO Box 176, Fergus Falls, MN 56538-0176.

Notice to City, when required, must be mailed to: 333 South Washington Street, PO Box 526, Redwood Falls, MN 56283-0526.

1.10 PUBLIC WAY. Any street, alley or other public right-of-way within the City.

1.11 PUBLIC GROUND. Land owned or otherwise controlled by the City for parks, open space or similar public purpose which is held for use in common by the public.

1.12 "RIGHT-OF-WAY." The surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements owned by the City for City utility purposes.

1.13 "RIGHT-OF-WAY PERMIT" means the permit required by this ordinance and issued pursuant to City's permit ordinance.

SECTION 2. FRANCHISE.

2.1 GRANT OF FRANCHISE. The City hereby grants Company for a period of twenty (20) years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities, in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

2.2 EFFECTIVE DATE, WRITTEN ACCEPTANCE. This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise informs the City, at any time, that the Company does not accept this franchise, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.

2.3 SERVICE AND GAS RATES. The service to be provided and the rates to be charged by Company for gas service in the City are subject to the jurisdiction of the Commission.

2.4 NONEXCLUSIVE FRANCHISE. This Ordinance does not grant an exclusive franchise.

2.5 PUBLICATION EXPENSE. Company shall pay the expense of publication of this Ordinance.

2.6 DISPUTE RESOLUTION. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party must notify the other party of the default and the desired remedy. Notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days of the written notice, the parties may jointly seek a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court of Redwood County to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.7 CONTINUATION OF FRANCHISE. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the twenty year term set forth in Section 2.1.

SECTION 3. CONDITIONS OF USE.

3.1 LOCATION OF FACILITIES. Gas Facilities must be located, constructed, installed and maintained so as not to interfere with the City Utility System or the safety and convenience of ordinary travel along, over and under Public Ways. The Company's construction, reconstruction, operation, repair, maintenance, location, and relocation of Gas Facilities is subject to other reasonable ordinances and regulations of the City consistent with authority granted to the City to manage its Public Ways and Public Grounds under state law and to the extent not inconsistent with a specific term of this franchise.

3.2 FIELD LOCATION. Field locations for their respective facilities will be provided by the Company and City in accordance with Minnesota Statutes 216D, under the Gopher State One Call system.

3.3 RIGHT-OF-WAY PERMIT REQUIRED. Except for the verification of Field location, the Company may not open or disturb the surface of any Public Way or Public Ground without first having obtained a Right-of-Way Permit from the City for which the City may impose a reasonable fee. The permit conditions imposed on the Company may not be more burdensome than those imposed on other entities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Way or Public Ground without a Right-of-Way Permit if (1) an emergency exists requiring the immediate repair of Gas Facilities and (2) the Company gives notice to the City before, if possible, commencement of the emergency repair. Within two business days after commencing the repair, the Company must apply for any required permits and pay the required fees.

3.4 RESTORATION. After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Way or Public Ground in accordance with Minnesota Administrative Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore a Public Way or Public Ground to as good a condition as formerly existed. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five business days, the right to make the restoration of the Public Way or Public Ground at the expense of Company. If the City exercises such right, the Company shall reimburse the City 150% of the City's actual cost for labor and materials incurred to complete the restoration of Public Way or Public Ground.

This remedy is in addition to any other remedies available to the City for noncompliance with this section, including, but not limited to, adherence to the requirements of the Right-of-Way Permit.

3.5 AVOID DAMAGE TO GAS FACILITIES. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable notice by the City of such work prior to its commencement. Excavations and the responsibilities of each party related to the Gas

Facilities and for work done in and around the Gas Facilities shall be governed by Minnesota Statutes §216D under the Gopher State One Call System.

3.6 NOTICE OF IMPROVEMENTS. The City must give the Company reasonable written notice of plans for improvements to Public Ways or Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice will contain: (1) the nature and character of the improvements, (2) the Public Ways or Public Grounds upon which the improvements are to be made, (3) the extent of the improvements, (4) the time when the City will start the work, and (5) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice will be given to Company at least 180 days or otherwise a sufficient length of time, considering seasonal working conditions, prior to the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary. The Company shall have the right to request additional time in advance of the actual commencement of the work if required to make any necessary additions, alterations or repairs to its Gas Facilities.

No later than the 31st day of each and every calendar year, Company shall give the City written notice of all known major capital improvements to the Gas Facilities which the Company intends to undertake during the calendar year for which the notice is provided. The notice must contain: (1) the nature and character of the improvements, (2) the Public Ways or Public Grounds upon which the improvements are to be made, (3) the extent of the improvements, (4) the time when the Company will start the work, and (5) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. Failure to give notice will result in a denial of any applicable permit.

3.7 MAPPING INFORMATION. The City may require the Company to provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4100. At the request of Company, any information requested by the Engineer which qualifies as a "trade-secret" under Minn.Stat. § 13.37(b) shall be treated as trade secret information as detailed therein.

SECTION 4. RELOCATIONS.

4.1 RELOCATION OF GAS FACILITIES IN PUBLIC WAYS. The Company shall comply with Minnesota Rules, Part 7819.3100 and applicable City Ordinances consistent with law. The City must give reasonable written notice to the Company that a possible relocation of Gas Facilities is required. The Engineer and Company representatives will meet in an attempt to resolve facilities conflicts. To the extent that an alternative to relocation of Gas Facilities which is reasonably acceptable to City cannot be developed, the Company must relocate its Gas Facilities at its own expense. The City must give the Company reasonable written notice of plans to vacate for a City improvement project, or to grade, regrade or change the alignment of any Public Way, or to construct or reconstruct any City Utility System.

4.2 RELOCATION OF GAS FACILITIES IN PUBLIC GROUND. The City may require the Company to relocate Gas Facilities from Public Ground upon a finding by the City that the Gas Facilities have become or will become a substantial impairment of the public use to which the Public Ground is or will be put. The relocation or removal will be at the Company's expense and shall comply with applicable City Ordinances consistent with law. The provision of this Section 4.2 applies only to Gas Facilities constructed in reliance on this franchise and the Company does not waive its rights under an easement or prescriptive right in the Public Ground.

4.3 VACATION OF PUBLIC WAYS. The City must give the Company at least two weeks' Notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules 7819.3200 and applicable ordinances consistent with law. Except where required for a City street or other improvement project or as otherwise provided in Section 4.2, the vacation of a Public Way, after the installation of Gas Facilities, does not deprive the Company of its rights to operate and maintain the Gas Facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company by the City or the party requesting the vacation. The City is not liable to the Company for failure to specifically preserve a right-of-way in the manner permitted by law.

4.4 PROJECTS WITH FEDERAL FUNDING. Relocation, removal or rearrangement of any Gas Facilities made necessary because of the extension into or through the City of a federally-aided highway project will be governed by the provisions of Minnesota Statutes §161.46.

SECTION 5. DEFENSE AND INDEMNIFICATION.

5.1 INDEMNIFICATION OF CITY. Company shall indemnify and hold harmless the City from any and all liability, losses or claims arising out of an injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection of, the issuance of a Right-Of-Way Permit, or the operation of the Gas Facilities when said items are performed by the Company, its employees or agents. The Company shall indemnify and hold harmless from any and all liability, losses or claims arising out of or alleging the City's negligence as to the City's inspection of the Company's plans or work. The City shall not be indemnified by the Company for losses or claims in which the City is determined to be negligent in the construction, maintenance, operation, or repair of Public Grounds, Public Way, or Right-Of-Way when said items are performed by the City, its employees, or agents.

5.2 DEFENSE OF CITY. In the event a suit, action, claim or proceeding is brought against the City under circumstances where this agreement to indemnify applies, the Company shall, at its sole cost and expense, defend the City in such suit, action, claim or proceeding if written notice thereof is promptly given to the Company within a period of time wherein the Company is not prejudiced by lack of such notice. If the Company is required to indemnify and defend the City, the Company shall have control of the defense. Company may not settle such suit, action, claim or proceeding without the consent of the City, which consent shall not be unreasonably withheld. This section is not, and shall not be interpreted or shall not constitute as to third parties, a waiver of any defense or immunity available to the City. The Company, in defending any suit, action, claim or proceeding on behalf of the City, shall be entitled to assert in such suit, action, claim or proceeding every defense or immunity the City could assert on its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability pursuant to Minnesota law or statute.

SECTION 6. SUCCESSORS IN INTEREST. This Ordinance and the rights and obligations conferred hereby, is binding on and inures to the benefit of the City and its successors and on the Company and its successors and permitted assigns. This Ordinance and the franchise it confers may not be assigned by the Company without the written consent of the City, said consent shall not be unreasonably withheld.

SECTION 7. CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 8. FRANCHISE FEE.

8.1 SEPARATE ORDINANCE. The City hereby reserves the right to implement, by passage of a separate ordinance, a franchise fee to be collected and remitted by the Company to the City. Said franchise fee will be in accordance with state law and regulations. In the event such a franchise fee is implemented, the Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.2 CONDITION OF FEE. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of gas energy within the City by any other gas energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed upon franchise.

8.3 COLLECTION OF FEE. The franchise fee shall be payable monthly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.4 CONTINUATION OF FRANCHISE FEE. The franchise fee, if any, being imposed by the City at the time the most recent of any previous franchise granted to the Company by the City expired remains in effect until it is changed in the manner provided for implementation of such fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any, being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

SECTION 9. ADDITIONS OF TERRITORY. In case any additions of territory are made to the City, Company shall serve all inhabitants of such additional territory in the same manner and on the same terms as those of the territory now within its limits. In the event that such additional service requires extension of the Gas Facilities, such extensions shall be subject to the provisions of the applicable rate schedules and general terms attached to the rate schedules as filed by the Company with the Minnesota Public Utilities Commission, all of which are by reference made part of this franchise. Should said extension of Gas Facilities be deemed by the Company as not economically feasible, Company shall allow a third party to make a contribution in aid of construction in the amount of the difference in cost between the total project cost and the amount that is determined to be financially feasible by the Company. This contribution in aid of construction shall not constitute an ownership position of the Gas Facilities by the contributing third party. Failure on the part of the Company to allow a third party to make such a contribution may be considered a default in the performance hereof, subject to Section 2.6.

SECTION 10. ABANDONED FACILITIES. The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq., and Minnesota Rules Part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the City, produce such records at the City's request and

comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities.

SECTION 11. PREVIOUS FRANCHISES SUPERSEDED. This franchise supersedes and replaces previous franchises granted to the Company or its predecessors.

SECTION 12. AMENDMENTS. This Ordinance may be amended at any time by mutual agreement between the City and the Company.

SECTION 13. SEVERABILITY. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part.

SECTION 14. LIMITATION ON APPLICABILITY. This ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

PASSED AND ADOPTED by the City Council of the City of Redwood Falls, Minnesota this 1st day of August, 2017.

ATTEST

Corey Theis
Mayor

Keith Muetzel
City Administrator

Introduced:	July 18, 2017
Public Hearing:	August 1, 2017
Approved:	August 1, 2017
Summary Publication:	August 3, 2017