

ORDINANCE NO. 536

AN ORDINANCE GRANTING TO GREAT PLAINS NATURAL GAS CO., A DIVISION OF MONTANA-DAKOTA UTILITIES CO., 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 BRECKENRIDGE, MINNESOTA DOES ORDAIN:

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

1.1 CITY. The City of Breckenridge, County of Wilkin, 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, sanitary sewer, storm sewer, water service, street lighting, and traffic signals, 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 Montana-Dakota Utilities Co., 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 Breckenridge 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. Notice to Company, when required, must be mailed to Great Plains Natural Gas Co., Attn: Region Director, 909 Airport Rd., P.O. Box 1457 Bismarck, ND 58502-1457. Notice to City, when required, must be mailed to P.O. Box 350, Breckenridge, MN 56520. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

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 PERMIT. Means the permit required by this ordinance and issued pursuant to City's permit ordinance if such exists.

Subd.2 FRANCHISE

2.1 GRANT OF FRANCHISE. The City hereby grants Company for a period of twenty (20) years from the date of 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. 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.

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

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

2.5 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 to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

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

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 ninety (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 (1) year after expiration of the twenty (20) year term set forth in Section 2.1.

Subd. 3 CONDITIONS OF USE.

3.1 LOCATION OF FACILITIES. Gas Facilities must be located, constructed, installed and maintained so as not to interfere with or disrupt the City Utility System or the safety and convenience of ordinary travel along, over and under Public Ways. Gas facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities is subject to other 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 MAPPING DATA INFORMATION. Upon request of the City the Company must promptly provide complete and accurate location mapping information for any of its Gas Facilities, as is available in Company records at the time of the request. On an annual basis, Company shall provide to the City supplemental mapping information depicting the acquisition, installation, or construction of additional Gas Facilities or any relocation, abandonment, or disuse of existing Gas Facilities. Company's mapping information is not intended to be used in lieu of contacting an authorized "one-call" center. The City shall maintain the confidentiality and prevent disclosure of such information to the extent permitted by law and shall execute a data sharing agreement setting forth this obligation to be provided by the Company. Company acknowledges that the City is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Section 13 ("MDPA") and nothing herein shall in any way modify the City's obligations to comply with the MDPA.

3.3 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.

3.4 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. Contact to Gopher State One-Call shall be sufficient notification under this paragraph. Within two business days after commencing the repair, the Company must apply for any required permits and pay the required fees.

3.5 RESTORATION. After completing work requiring the opening of a Public Way or Public Ground, the Company must restore the same, including paving and its foundation, to the condition formerly existing and maintain the same in good condition for one (1) year thereafter. The work must be completed as promptly as weather permits. If the Company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the Public Way or Public Ground, the City may make a demand to the Company to cure. If the parties cannot mutually agree on the type and timing of the repairs within ten (10) calendar days, the City has the option to make reasonable restoration at the expense of the Company. Company shall pay to the City the reasonable cost of such work done for or performed by the City. 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 any Right-of-way-Permit.

3.6 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.

3.7 NOTICE OF IMPROVEMENTS. The City must give the Company reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. 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 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 the Company a sufficient length of time,

considering seasonal working conditions, material availability, labor, and other relevant circumstances, in advance of the actual commencement of the work to permit the 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.

Subd.4 RELOCATIONS.

4.1 RELOCATION OF GAS FACILITIES IN PUBLIC WAYS. If the City determines to vacate a Public Way or Public Ground for a City improvement project, or to grade, regrade or change the alignment of any Public Way or Public Ground, or construct or reconstruct any City Utility System in any Public Way or Public Ground, the City may order the Company to relocate its Gas Facilities located therein. The City must give 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 conflict. 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 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 within or remove Gas Facilities from Public Ground or any other property under the control of the City upon a finding by City that the Gas Facilities have become or will become a substantial impairment of the public use or enjoyment to which the Public Ground is or will be put. The relocation or removal will be at the Company's expense, except as otherwise provided herein. The provisions of this Section 4.2 apply 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 the proposed vacation of a Public Way. 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 trunk highway project will be governed by the provisions of Minnesota Statutes §161.46

Subd.5 DEFENSE AND INDEMNIFICATION.

5.1 INDEMNIFICATION OF CITY. Company shall defend, indemnify and hold harmless the City from any and all liability, losses, claims, proceedings or actions occasioned by the construction, maintenance, repair, inspection of, the issuance of permits for or the operation of the Gas Facilities. The City shall not be defended, indemnified, or held harmless for liability, losses, claims, proceedings or actions arising out of the City's negligence, including to the extent arising from the City's negligence as to the issuance of permits for or inspection of the Gas Facilities.

5.2 DEFENSE OF CITY. In the event a suit, action, claim or proceeding is brought with respect to the City which is occasioned by the construction, maintenance, repair, inspection of, the issuance of permits for or the operation of the Gas Facilities, the Company shall, at its sole cost and expense, defend the City in such suit, action, claim or proceeding if written notice thereof is 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 defend the City, the Company shall have control of the defense. Company may not settle such suit, action, claim or proceeding without the written 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.

Subd.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, conditioned, or delayed.

Subd. 7 FRANCHISE FEE.

7.1 SEPARATE ORDINANCE. The City hereby reserves the right to implement, by passage of a separate ordinance, a franchise fee, not to exceed 5% of gross revenues, to be collected and remitted by the Company to the City. Said franchise fee will be in accordance with state law and regulations. The Company shall have at least ninety (90) days after adoption within which to implement any new franchise fee. 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.

7.2 FORM. During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. The fee may be a percentage of gross revenues but shall not exceed 5%, received by the Company for its operations within the City.

7.3 COLLECTION OF FEE. The franchise fee shall be payable quarterly during complete billing months of the period for which payment is to be made. The franchise fee amount 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.

7.4 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 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.

7.5 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 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.

Subd. 8 ADDITIONS TO CITY AND AREA DEVELOPMENT ZONES.

8.1 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 Commission, which may be amended from time to time, all of which are by reference made part of this franchise.

Subd. 9 PREVIOUS FRANCHISES SUPERSEDED. This franchise supersedes and replaces previous franchises granted to the Company or its predecessors.

Subd. 10 AMENDMENTS. This Ordinance may be amended at any time by mutual agreement between the City and the Company. Any amendatory Ordinance shall become effective upon the filing of the Company's written consent thereto.

Subd. 11 SEVERABILITY. If any portion of this franchise is found to be unenforceable for any reason, the validity of the remaining provisions will not be affected.

Subd. 12 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.

Section 3. Effective date. The effective date of this ordinance shall be the 21st day of April, 2025.

THIS ORDINANCE was introduced on April 7, 2025, and adopted by the City Council of the City of Breckenridge, Minnesota on the April 21, 2025, by the following vote: unanimously.

RUSSELL WILSON, Mayor

ATTEST:

SYDNEY WIERTZEMA, City Administrator

First Reading:	<u>April 7, 2025</u>
Posted after 1 st reading:	<u>April 8, 2025</u>
Second Reading:	<u>April 21, 2025</u>
Adopted & Passed:	<u>April 21, 2025</u>
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Posted after published:	<u>May 19, 2025</u>