

ORDINANCE NO. 993

AN ORDINANCE, WHICH UPON ADOPTION, SHALL BE CODIFIED AS CHAPTER 13.38 OF THE DEVILS LAKE MUNICIPAL CODE.

BE IT ORDAINED, by the City Commission of the City of Devils Lake, North Dakota, pursuant to the Home Rule Charter of the City of Devils Lake, that this Ordinance shall be codified as Chapter 13.38 of the Municipal Code, and shall provide as follows:

13.38.010 Statement of intent and purpose. This is an ordinance granting to Montana-Dakota Utilities Co., a corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Devils Lake, ND a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

13.38.020 Definitions. The following shall be definitions for purposes of this ordinance:

- A. "City" shall be the City of Devils Lake, ND.
- B. "Company" shall be Montana-Dakota Utilities Co.

13.38.030 Purpose and Jurisdiction. Company shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

13.38.040 Term. This franchise shall continue and remain in full force and effect for a period of fifteen (15) years from the date of acceptance by Company, unless renewed, revoked, or terminated sooner as herein provided.

13.38.050 Nonexclusive Franchise. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party, or prevent the City itself, the right to use the streets, alleys, and public grounds of the City for like purposes.

13.38.060 Governing Public Ways and Places, Grants of Access and Use of Public Rights OfWay

A. All gas pipes, mains, regulators and other property and facilities shall be located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon the use of public ways of the City. In installing, repairing, maintaining, removing, or replacing said gas pipes, mains and appurtenances, Company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.

B. Company shall provide filed locations for all its underground facilities when requested by City within a reasonable period of time. The period of time will be considered reasonable if it compares favorable with the average time required to locate municipal underground facilities for Company.

C. Company shall notify City of the proposed route, prior to installing or replacing pipe or facilities within public right of way to allow City the ability to review proposed installation locations. Review by City is limited to identifying future conflicts or relocations that could be caused by future City utility or street work. Said notification is not required for repair, maintenance, or emergency work by Company.

D. Company shall fully comply with all City of Devils Lake Ordinances governing Public Ways and Places, including but not limited to access and public use of streets, sidewalks, and public places.

E. In those instances when City's Fire Department members are providing assistance at the scene of a gas leak:

1. For gas leakage occurrences involving Company's jurisdictional area, which area ends at the customer's meter shutoff, the City may require reimbursement by the Company to the City for all Fire Department expenses incurred at the then existing Fire Department rate for personnel and equipment responding to the gas leakage occurrence when the Company does not timely provide at the site of the leakage a service representative(s) capable of evaluating the incident (i.e. service technician). Reimbursement may be requested for the time period commencing 45 minutes from when the Company receives notice of the potential gas leakage situation or from when the time the Fire Department is dispatched, whichever is later, and ending at the time the service representative(s) arrives at the scene. The City may seek reimbursement for its entire cost of responding to the incident if the cause of the leakage is a result of the negligence of the Company or if its agent or employee requests the services of the Fire Department in addressing the situation. If the Fire Department is required to remain on the

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site and the Company's construction crew arrives to repair a gas leakage, reimbursement may be requested for the time period commencing one and one-half hours from the time the Fire Department is dispatched and up until the time as such construction personnel are on site, after which time no further reimbursement shall be sought, unless the cause of the leakage is as a result of the negligence of the Company and/or its agents or employees and the representative(s) requests the services of the Fire Department.

2. The City may seek reimbursement from the responsible party, for all Fire Department expenses incurred at the then existing City rate for personnel and equipment used in responding to a gas leakage occurrence when the gas leakage is caused by the negligent and/or intentional acts or omissions of such responsible party i.e. including corporate and business entities. Except for the time requirements as provided for in Section 13.38.060(E)(1), City will not hold Company responsible for leakages caused by others.

3. The determination as to whether or not to seek reimbursement as provided for in paragraphs 1 and 2 above shall be in the discretion of the City Fire Chief.

4. Subsections 1 and 2 above apply only to gas leakage calls involving the Company's jurisdictional area which would be up to the customer's meter shutoff.

13.38.070 Relocating. A. Whenever the City shall grade, regrade, or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to reasonable working conditions, when necessary order Company to relocate permanently its mains, services and other property located in said public way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any City utility system. 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. Company shall take necessary steps to determine whether their pipe and facilities will be impacted by proposed work by City and coordinate a relocation plan that is acceptable to the City.

The Notice will be given to 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 Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary. The Company shall have the right to request any 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., and City shall have the sole right to determine if the Company request is granted.

B. Any relocation, removal or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of North Dakota or federal statutes as supplemented or amended.

C. Nothing contained herein shall relieve any person, persons, or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any City utility system.

13.38.080 Indemnification. Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair or operations of Company's gas facilities located on, over, under, or across the public ways and public grounds of the City, unless such injury or damage grows out of the negligence of City, its employees, or agents, results from the performance in a proper manner of acts reasonably deemed hazardous by Company, but such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreements to indemnify applies, company at its sole cost and expense shall defend City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, Company shall have no duty to either indemnify or defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but company may not settle such litigation without the consent of City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to Company; and every defense or immunity that City could assert in its own behalf.

13.38.090 Vacation of Public Ways. Except where required solely for a City

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improvement project, the vacation of any public way or public ground, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such 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 party requesting the relocation.

13.38.100 Franchise Fee. The City reserves the right, if not prohibited by the laws of the State of North Dakota, to charge the Company a franchise fee for this franchise not to exceed three percent (3%) of the gross revenue received by the Company in the City from the users of natural gas services distributed by the Company in the City of Devils Lake each year. This charge shall be set by the Fees and Rates adopted by the City each year, which Fees and Rates may be amended by the City, as provided by law.

13.38.110 Assignment. The Company shall have the right to assign this franchise to any party, or corporation, but all obligations of the Company shall be binding upon its successors and assigns.

13.38.120 Written Acceptancy. Within thirty (30) days after Company is notified of passage and final approval of this Ordinance, Company shall file with the City Auditor its written acceptance of this franchise.

Passed First Reading: December 18, 2023

Passed Second Reading: January 2, 2024

Final Passage and Adoption: January 2, 2024

CITY OF DEVILS LAKE

By: _____
Jim Moe, President
Devils Lake City Commission

ATTEST:

By: _____
Spencer Halvorson
City Administrator / Auditor