

**NATURAL GAS FRANCHISE
UNITED NATURAL GAS, LLC**

**ORDINANCE NO. 15-102
CITY OF COURTLAND, MINNESOTA**

AN ORDINANCE GRANTING UNITED NATURAL GAS, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, 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 THE PUBLIC WAYS AND GROUNDS OF THE CITY OF COURTLAND, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF COURTLAND, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Courtland, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

Company. UNITED NATURAL GAS, LLC 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.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.

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

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities.

Notice. A writing personally delivered or mailed by United States mail by the City or Company to the other. Notice to Company shall be mailed to 705 East 4th Street, P.O. Box 461,

Winthrop, MN. Attention: Vice – President of Energy. Notice to the City shall be mailed to 300 Railroad Street, Courtland, MN 56021. Either City or Company may change its respective address for the purpose of this Ordinance by written notice to the other.

Public Way. Public right-of-way within the City as defined in MINN. STAT. § 237.162, subd. 3.

Public Ground. Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public.

SECTION 2. ADOPTION OF FRANCHISE.

2.1. **Grant of Franchise.** City hereby grants Company, for a period of 10 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. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchased and delivered by the Company or (iii) purchased from another source by the retail customer and delivered by the Company. 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 lawful regulations as may be adopted by separate ordinance.

2.2. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its 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 90 Days after the date the City Council adopts this Ordinance, or otherwise places the City on written notice, at any time, that the Company does not accept all terms of this franchise, the City Council by resolution may either repeal this ordinance 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 City are subject to the jurisdiction of a local Utilities Board of which the City shall assign one representative to represent the City or any succeeding regulatory authority assigned by law or regulation. The City further agrees to provide a request to the Minnesota Public Utilities Commission requesting Company be exempt from State Rate Regulation and subject to Local Jurisdiction.

2.4. **Publication Expense.** The expense of publication of this Ordinance shall be paid by Company.

2.5. **Dispute Resolution.** If either the City or the Company asserts that the other is in default in the performance of any obligation hereunder, the complaining entity shall, in writing, notify the other of the default and the desired remedy. Representatives of the City and Company must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the City and Company shall jointly select a mediator to facilitate further discussion. The City and Company will equally share the fees and expenses of this mediator. If a mediator is not used or if the dispute is not resolved within 30 days after first meeting with the selected mediator, either the City or Company may commence an action in Nicollet County District Court to interpret and enforce this franchise ordinance or for such other relief permitted by law.

2.6. **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 their intention to allow the franchise agreement to expire.

2.7. **Non exclusive Franchise.** This ordinance does not grant an exclusive franchise

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1. **Location of Facilities.** Gas Facilities in the Public Way shall be located, constructed, and maintained so as not to disrupt normal operation of any City Utility System or the safety and convenience of ordinary travel along and over Public Ways. Gas Facilities may be located on Public Grounds as determined by the City. Facilities located on private property will comply with all City Permit Ordinances and Codes.

3.2 **Street Openings.** Company shall not open or disturb the surface of any public rights-of-way for any purpose except in accordance with the public right-of-way regulations as set forth in the City's General Regulations.

3.3 **Restoration of Public Ways and Public Ground.** After completing work requiring the opening of Public Ground, the Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for twelve (12) months thereafter. All work shall be completed as promptly as weather permits. If Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five days, have the right to make the restoration of the Public Ground at the expense of the Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this section.

3.4 **Avoid Damage to Gas Facilities.** The Company shall take reasonable measures to prevent the gas facilities from causing damage to persons or property. The Company shall take reasonable measures to protect the gas facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The Company shall 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. Such measures shall include marking of Company facility locations within 48 hours of request by City. City agrees to take reasonable measures to avoid the 48 hour period being over weekends or public holidays.

3.5 **Mapping Information.** The Company must promptly provide complete and accurate mapping information for any of its gas facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100 and the City's public right-of-way regulations.

3.6 **Abandoned Facilities.** The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds 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 not located in Public Ways and Public Grounds.

3.7. **Permit Required.** The Company may not open or disturb the surface of any Public Way or Public Ground without first having obtained a permit from the City, for which the City may impose a reasonable fee irrespective of any franchise fee imposed pursuant to Section 7. Company will comply with all permit conditions established by the City. The permit conditions and fees imposed on the Company may not be more burdensome than those imposed on other utilities for similar facilities or work, however, when establishing permit fees, the City may take into account the renewal dates of existing franchises and whether the Company is also paying a franchise fee to the City. The Company may, however open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives notice to the City before, if possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company must apply for any required permits and pay the required fees.

SECTION 4. RELOCATIONS.

4.1. **Relocation of Gas Facilities.** Relocation of Gas Facilities in Public Ways shall be subject to Minnesota Rule 7819.3100. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Grounds upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Grounds. Relocation of Gas Facilities in Public Ground shall comply with applicable City ordinances consistent with law.

4.2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46, as supplemented or amended. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless agreement is made that the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting therefrom will be paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

4.3. **No Waiver.** The provisions of Section 4 apply only to Gas Facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. INDEMNIFICATION AND LIABILITY.

5.1 **Limitation of Liability.** Upon the effective date of this ordinance, the City does not assume any liability (1) for injuries to persons, damage to property or loss of service claims by parties other than the Company or the City, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by the Company or its agents.

5.2 **Indemnification.** Company shall indemnify and keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, or out of any delay thereof, whether or not any act or omission complained of is authorized, allowed or prohibited by permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing any permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

5.3 **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense, shall defend the 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 Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in 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 under Minnesota Statutes, Chapter 466.

5.4 **Delay Damage Fee.** The City may establish and impose a damage fee for unreasonable delays in completion of any right-of-way excavation, obstruction, patching, restoration, removal, or relocation. The delay damage fee shall be established from time to time by a resolution of the City Council based upon its reasonable estimation of the actual costs that would be incurred due to any delay, the actual amount being undeterminable. The Company shall be advised in writing by facsimile, with the original to follow by United States mail, of the perceived delay and of the period within which the work must be completed to avoid a delay damage fee. A delay damage fee shall not be imposed if the delay in project completion is due to circumstances beyond the control of Company, including without limitation inclement weather, acts of God, or civil strife.

SECTION 6. 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 7. FRANCHISE FEE.

7.1. **Reservation of Rights.** The City reserves all rights under MINN. STAT. § 216B.36, to require a franchise fee at any time after the initial terms of this original franchise agreement. Subject to the statutory rights of the City to require a franchise fee, if the City elects to require a franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee agreement. The fee terms shall be set forth in a separate ordinance and not be adopted until at least 60 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or on any terms related thereto, each hereby consents to the jurisdiction of State District Court, Nicollet County, to construe their respective rights under the law, subject to all rights of appeal.

7.2. **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 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 an agreed-upon franchise.

7.3. **Collection of Fee.** The franchise fee shall be payable not less than quarterly 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 and acceptance 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 shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. 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.** 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. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this Franchise. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

SECTION 8. LIMITATION ON APPLICABILITY; NO WAIVER.

This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. No provision of this franchise agreement 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. 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 under Minnesota Statutes, Chapter 466.

SECTION 9. AMENDMENT PROCEDURE.

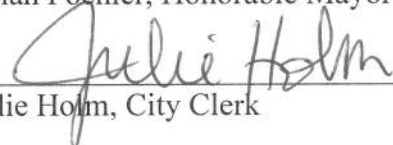
Either the City or Company may at any time propose that this Ordinance be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance.

Adopted this 3rd day of December by the City Council of the City of Courtland.



Allan Poehler, Honorable Mayor

ATTEST:



Julie Holm, City Clerk

Ordinance published in the legal newspaper on the 10th day of December, 2015.