

**CITY OF FARIBAULT  
ORDINANCE No. 2018-xx**

AN ORDINANCE GRANTING TO GREATER MINNESOTA GAS, INC., ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF FARIBAULT, MINNESOTA, A GAS TRANSMISSION OR DISTRIBUTION SYSTEM INCLUDING NECESSARY GAS PIPES, MAINS AND APPURTENANCES, FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TRANSMITTING GAS INTO AND THROUGH THE CITY, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

**THE CITY COUNCIL OF THE CITY OF FARIBAULT, 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 Faribault, 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, but excluding facilities for providing heating, lighting, or other forms of energy.

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

*Company.* Greater Minnesota Gas, Inc., its successors and assigns, including all successors or assignees that own or operate any part or parts of the gas facilities subject to this franchise.

*Gas Facilities.* Gas transmission and distribution pipes, mains, regulators and necessary appurtenances owned or operated by Company for the purpose of the transmission of natural gas, manufactured gas, or other form of gaseous energy or distribution of same for public use.

*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, taking into consideration salvage value of facilities removed.

*Notice.* A writing served by one party on the other party referencing one or more provisions of this ordinance.

Notice to Company shall be mailed to: Greater Minnesota Gas, Inc.  
202 South Main Street  
P.O. Box 68  
Le Sueur, MN 56058

Notice to the City shall be mailed to: City Administrator  
City of Faribault  
208 NW 1st Avenue  
Faribault, MN 55021

Either party may change its respective address for the purpose of this ordinance by written notice to the other party.

*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.

*Public Way.* Public right-of-way within the City as defined in Minn. Stat. § 237.163, subd. 3.

## **Section 2. Adoption of Franchise**

*2.1 Grant of Franchise.* In accordance with the City Charter, Section 10.01, which requires that the Company obtain a franchise in order to place or maintain gas facilities in the City, 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 and privilege of erecting a gas distribution system and using the public ways and public grounds for the purpose of installing, operating, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of the City as its boundaries exist or as they may be extended in the future. 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 and to 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 ninety (90) days after the date the City Council adopts this ordinance, or otherwise places the City on notice, before that time, that the Company does not accept all terms of this franchise, the City Council by resolution may revoke this ordinance or seek its enforcement in a

court of competent jurisdiction.

*2.3 Service and 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.

*2.4 Publication Expense.* The expense of publication of this ordinance shall be paid by City and reimbursed to City by Company within thirty (30) days.

*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 shall notify the other party in writing of the default and the desired remedy. 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 date of written notice, the parties may jointly select 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 Continuation of Franchise.* If the City and 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 Company serves written notice to the other party of its intention to allow the franchise to expire, but 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. Regulation of Use of Public Grounds and Public Ways**

*3.1 Regulation and Permitting of Facilities.* Company shall fully comply with Chapter 25 of the City Code as may be amended from time to time, including specifically Article VI establishing requirements for the use of public grounds and public ways. Any violation of Chapter 25 of the City Code shall also be a violation of this ordinance. Company's construction, reconstruction, location and relocation of gas facilities shall be subject to City's approval, which approval shall not be unreasonably withheld.

*3.2 Emergency Repairs.* Notwithstanding any contrary provision of the City Code, Company may 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) if reasonably possible, Company gives telephone, e-mail or similar notice to the City before commencement of the emergency repair. Company shall apply for any required permits and pay any required fees within two (2) business days after commencing the repair.

*3.3 Damage to Gas Facilities.* Nothing in this ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging gas facilities while performing any activity.

*3.4 Notice of Improvements.* The City must give Company reasonable notice of plans for improvements to public ways or public ground where gas facilities will be affected by such improvement. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its gas facilities.

## **Section 4. Relocations**

*4.1 Relocation in Public Grounds and Public Ways.* In accordance with the City's rights to require relocation under Chapter 25 of the City Code, the City may require Company, at Company's expense, to relocate or remove Company's gas facilities when it is necessary to prevent interference, and not merely for the convenience of the City, in connection with: (1) a present or future City use of public grounds or public ways for a public project; (2) the public health or safety; or (3) the safety and convenience of the travel over the public ways.

*4.2 No Waiver.* By entering this franchise agreement with the City, Company does not waive its rights under an easement or prescriptive right or state or county permit.

*4.3 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 Minn. Stat. § 161.46, as supplemented or amended.

## **Section 5. Indemnification**

*5.1 Indemnity of City.* Company shall indemnify and hold harmless the City from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the gas facilities located in the public ways and public grounds.

*5.2 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. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and 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 ordinance 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 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 Purpose.* The City Council has determined that it is in the best interest of the City to impose a franchise fee on public utilities providing natural gas and electric services within the City of Faribault. Pursuant to this Section 7.1 of City Ordinance No. 2018-\_\_\_\_, this natural gas franchise between the City and the Company, the City exercises its right to impose franchise fees and establishes such franchise fees herein.

*7.2 Franchise Fee Amount.* Commencing with the Company's January 1, 2019 billing cycles, a franchise fee is hereby imposed on the Company as herein provided. The franchise fee shall be in addition to, not in lieu of, any other fees, payments or amounts owed to the City by the Company, including right-of-way permit fees.

This ordinance establishes a monthly per meter fee. If a premises has two (2) or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one (1) franchise fee assessment for natural gas service to that premises.

The City Council may annually adjust the fees in the Fee Schedule with proper notice to Company and sufficient time for Company to meet regulatory requirements as they may exist from time to time. The fee amounts for 2020 shall remain in effect for subsequent years until such time as they would be changed by the City Council.

FEE SCHEDULE

Class	2019 Fee Per Meter	2020 Fee Per Meter
Residential Service (RS1)	\$1.78	\$1.96
Small Commercial Service (SCS1)	\$4.16	\$4.57
Commercial Service (CS1)	\$35.64	\$39.20
Mid Commercial Service (MS1)	\$35.64	\$39.20
Large Commercial Service (LS1)	\$35.64	\$39.20

Agricultural Service – Interruptible (AG1)	\$100.98	\$111.08
Industrial – Interruptible (IND1)	\$297.00	\$326.70
Transportation Service (TR1)	Same as applicable rate class	Same as applicable rate class
Franchise fees are to be collected in the amounts set forth above and remitted to the City on a quarterly basis as follows:		
January—March	Collections due by April 30	
April—June	Collections due by July 31	
July—September	Collections due by October 31	
October—December	Collections due by January 31	

*7.3 Payment.* The franchise fee shall be payable to the City as provided herein.

*7.4 Surcharge.* The City recognizes that the Minnesota Public Utilities Commission allows the Company to add a surcharge to customer rates to recover the cost of franchise fees. The City is not required to pay franchise fees. The Company shall not include a franchise fee surcharge on invoices to the City, or in relation to meters on City facilities or property.

*7.5 Record Support for Payment.* The Company shall make payments when due and, if requested by the City, shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectables, refunds or error corrections.

*7.6 Enforcement.* Any dispute, including enforcement of a default regarding this ordinance, will be resolved in accordance with Section 2.5 the Franchise.

*7.7 Effective Date of Franchise Fee.* Notwithstanding the effective date of this ordinance, fee collection will commence no later than the January 1, 2019, billing cycle.

*7.8 Ordinance Review.* The City Council shall review this ordinance at such times it deems appropriate to determine whether to continue, terminate or modify the fee. If the Council deems it to be in the City's best interest to continue the fee in its current form, no Council action is necessary. If the Council deems it to be in the City's best interest to terminate or modify the fee, the Council shall give Company at least sixty (60) days written notice prior to the proposed change.

**Section 8. Provisions of Ordinance**

*8.1 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; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. If a provision of any other City ordinance conflicts with the provisions of this ordinance, the provisions of this ordinance shall prevail.

*8.2 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 9. Amendment Procedure**

Either party to this franchise agreement may, at any time, propose that the agreement 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 after City

This ordinance shall take effect and be in force after its passage and publication in accordance with Section 3.05 of the City Charter.

First Reading:

Second Reading:

Publication Date:

**Faribault City Council**

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Kevin F. Voracek, Mayor

**ATTEST:**

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Timothy C. Murray, City Administrator