

**ORDINANCE # 300-008**  
**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO NORTHERN MINNESOTA UTILITIES, DIVISION OF UTILICORP UNITED INC.**

The City Council of the City of Hewitt, does ordain as follows:

- SECTION 1:** The City Council of the City of Hewitt hereby grants to Northern Minnesota Utilities, Division of UtiliCorp United Inc., its lessees and/or successors, hereinafter Grantee, and assigns a non-exclusive franchise authority for a period of twenty-five (25) years from the date of the original Ordinance (March 5, 1991), to erect, maintain and operate a gas distribution system and any and all necessary mains, pipes, services and other appurtenances thereunto appertaining in, upon, over, across and along the streets, alleys, bridges and public places of the City of Hewitt, and for the transmission, distribution and sale of natural gas and/or mixed gas for lighting, heating and industrial and all other uses and purposes in the City and for the purpose of transmitting, transporting and conveying such gas into, through and beyond the immediate limits of the City and to other cities, towns and customers and prescribing the terms and conditions under which the said company is to operate.
- SECTION 2:** Whenever the Grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or shall make any excavation in any street, avenue, alley or public place, within the limits of the City of Hewitt, the same shall be done in a manner so as not to unreasonably interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled and all obstructions shall be removed at the expense of the Grantee and to the satisfaction of the Grantor. In the event that the Grantee shall fail to comply with the provisions of this Section, after having been given reasonable notice, the Grantor may do such work as may be needed to properly repair said thoroughfare and the cost thereof shall be repaid to the Grantor by the Grantee.
- SECTION 3:** The Grantee, in constructing and maintaining said gas distribution system, and in entering and using said streets, highways, avenues, alleys and public places within the City of Hewitt, and in laying and installing its mains, services, piping and related appurtenances and equipment, shall not, in any manner, interfere with or injure any improvement which said City now has or may hereafter have upon any of its streets, alleys, highways or public places.
- SECTION 4:**
- 4.01: Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that for and during the term and period of this grant, it will maintain in the City, and adequate, modern, standard and sufficient gas system and equipment and to maintain and operate the same in a modern and adequate fashion consistent with its General Terms and Conditions as provided for in its Minnesota Public Utilities Commission approved tariff, as may be amended from time to time.
- 4.02: Grantee will, from time to time, during the term of this Ordinance, make such enlargements and extensions of its distribution system as the business of Grantee and the growth of City justify, in accordance with its General Terms and Conditions relating to customer connections and main and service line extensions currently in effect and on file with the Minnesota Public Utilities Commission or other competent authority having jurisdiction in the premises; provided, however, that no obligation shall extend to, or be binding upon the Grantee, to construct or extend its mains or furnish natural gas or natural gas service within City if Grantee is, for any reason, unable to obtain delivery of

natural gas at or near the Corporate limits of the City of Hewitt or an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service; provided that Grantee shall not be liable to the City of Hewitt, or its inhabitants, by reason of the failure of Grantee to deliver, or of the City or by a customer to receive, natural gas as a result of acts of God, or the public enemy, inability of a pipeline supplier to furnish an adequate supply due to an emergency, or to a decision of public regulatory body, labor dispute, or other acts beyond the control of the party affected; and provided further, that whenever any of the occurrences named above take place, Grantee shall have the right and authority and it shall be its duty to adopt reasonable rules and regulations in connection with limiting, curtailing or allocating extensions of service or supplying gas to any customers or prospective customers, and withholding the supplying of new customers, providing that such rules and regulations may be uniform as applied to each class of customers or prospective customers, and shall be nondiscriminatory as between communities receiving services from Grantee.

SECTION 5: Grantee agrees for, and in behalf of itself, its lessees, successors and assigns, that all authority and rights in this Ordinance contained shall at all times be subject to all rights, powers and authority now or hereafter possessed by the City of Hewitt, to regulate the manner in which Grantee shall use the streets, alleys, bridges and public places of said City and concerning the manner in which Grantee shall use and enjoy the franchise herein granted.

SECTION 6: Grantee shall, at all times, maintain an adequate pressure and adequate supply of clean, standard gas of the British Thermal Unit heating value of not less than that prescribed in its General Terms and Conditions relating thereto in effect and on file with the Minnesota Public Utilities commission or other competent authority having jurisdiction in the premises. Should the British Thermal Units fall below the limitation set forth in its appropriate Rules and Regulations, the rate then in effect shall be automatically and correspondingly lowered and reduced during any period or periods of time in which such lower British Thermal Unit value shall be furnished. The City shall have the privilege of requesting Grantee to furnish satisfactory proof of British Thermal Unit content of the gas.

SECTION 7: The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation and maintenance by the Grantee of its mains, pipes, lines and other appurtenances and appliances hereunder and the Grantee, its successors, and assigns shall indemnify the City and hold City harmless against any and all liabilities, loss, cost, damage or expense which may accrue to the City by reason of any act or omission of the Grantee in the construction, operation and maintenance of its mains, pipes, lines and other appurtenances and appliances hereunder, or by the ownership by the Grantee of such facilities.

SECTION 8: If the Grantee shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than ninety (90) days after receiving notice of such default from the City of Hewitt, the City may, by ordinance duly passed and adopted, terminate all rights granted to Grantee under this Ordinance. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State of Minnesota for the service of original notices in civil actions.

SECTION 9: The right and authority granted herein shall be non-exclusive and shall continue for a period of twenty-five (25) years from the date of the original Ordinance (March 5, 1991).

SECTION 10: The Grantee, upon notice to the City of Hewitt, shall have the right and authority to assign all rights conferred upon Grantee by this franchise to any person. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this franchise.

SECTION 11: If any portion of this Ordinance is found to be invalid for any reason whatsoever, the validity of the rest of this franchise shall not be affected.

Passed and adopted by a majority vote of the City Council of the City of Hewitt this \_\_\_ day of May, 2009.

By Juanita Mitchell, Mayor

Attest: Miriam A. Collom, City Clerk/Treasurer