

City Council Agenda Memo

From: John R. Thompson, Public Works Director

Council Meeting: February 14, 2022 / February 28, 2023

Subject: Ordinance 23-005: Franchise Agreement – NorthWestern Energy

Presenter: John R. Thompson, Public Works Director

Summary:

This Ordinance will provide NorthWestern Corporation, doing business as NorthWestern Energy (NWE), a non-exclusive franchise to continue providing natural gas services to the City of Brookings (City) and its residents for a period of up to 15 years.

Background:

In 2013, City Council approved Ordinance 32-12, which granted authority to NorthWestern Corporation (NWE) to provide, transmit, or distribute natural gas upon and within City property and the streets and public rights-of-way for a period of 10 years. Ordinance 32-12 will terminate on March 21, 2023. In late 2022, City staff started working with NWE representatives and legal counsel to develop the language for the proposed ordinance and associated agreement (Ordinance).

Item Details:

In 2013, the City made significant improvements to the Ordinance language to better address public safety considerations and legal protections for the City. The proposed Ordinance includes the public safety and legal protection aspects found in the 2013 Ordinance and further clarifies the responsibilities of NWE. Additional language has been added to address current nondiscrimination laws and sharing of NWE's proprietary facility infrastructure with City staff. The term of the proposed Ordinance is 10 years, with the option for one five-year extension.

If the proposed Ordinance is approved, the Ordinance shall become effective and binding upon its approval and passage in accordance with South Dakota law and the written acceptance by NWE.

Legal Consideration:

The City Attorney has reviewed the proposed Ordinance and contributed to the development of the Franchise Agreement.

Strategic Plan Consideration:

Safe, Inclusive, and Connected - The proposed Ordinance includes language that addresses public safety considerations and emergency response.

Service and Innovation Excellence – The proposed Ordinance will ensure that the residents of the City continue to have access to natural gas services for essential everyday quality of life tasks such as heating and cooking.

Sustainability – The proposed Ordinance ensures that existing infrastructure continues to be maintained, and new infrastructure is properly planned to meet community's needs in the future.

Financial Consideration:

There is no increase in Net City Cost associated with the proposed action. The cost to develop the proposed Ordinance will be absorbed in the adopted 2022 and 2023 Public Works budget, Org. 430.

Options and Recommendation:

The City Council has the following options:

1. Approve as presented
2. Amend
3. Deny
4. Move the item to a Study Session
5. Discuss / take no action / table

Staff recommends approval of the proposed Ordinance as presented.

Supporting Documentation:

Memo
Ordinance
Exhibit A
Ordinance 32-12