

ORDINANCE NO. 2015-_____

AN ORDINANCE GRANTING NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF BLOOMINGTON, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES, THEREBY AMENDING CHAPTER 20 OF THE CITY CODE

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 20, Article III of the City Code is hereby amended by deleting those words that are contained in brackets [] and adding those words that are underlined, to read as follows:

ARTICLE III. NORTHERN STATES POWER FRANCHISE

~~[SEC. 20.58. DEFINITIONS.~~

- (a) ~~"City". In this ordinance, "City" means the City of Bloomington, County of Hennepin, State of Minnesota.~~
- (b) ~~"City Utility System" means the facilities used for providing sewer, water, or any other public utility service owned or operated by City or agency thereof.~~
- (c) ~~"Company" means NORTHERN STATES POWER COMPANY, a Minnesota corporation, its successors and assigns.~~
- (d) ~~"Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the Division General Manager thereof at 5309 West 70th Street, Edina, Minnesota, 55435. Notice to City shall be mailed to the City Clerk thereof at 2215 West Old Shakopee Road, Bloomington, Minnesota, 55431.~~
- (e) ~~"Public Way" means any street, alley, or other public right-of-way within the City.~~
- (f) ~~"Public Ground" means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.~~
- (g) ~~"Electric Facilities" means electric transmission and distribution towers, poles, lines, guys, anchors, ducts, fixtures, and necessary appurtenances owned or operated by the Company for the purpose of providing electric energy for public use.~~

~~SEC. 20.59. FRANCHISE.~~

- (a) ~~**Grant of Franchise.** City hereby grants Company, for a period of twenty years from April 1, 1987, the right to transmit and furnish electric energy for light, heat, power and other purposes 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. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City subject to the provisions of this ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to zoning ordinances, other applicable ordinances, permit procedures, and to the further provisions of this franchise.~~
- (b) ~~**Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its passage and its acceptance by the Company, and its publication as required by law (and the City Charter). An acceptance by the Company must be filed with the City Clerk within 90 days after publication.~~

- (c) ~~**Service Rates and Area.** The service to be provided and the rates to be charged by Company for electric service in City currently are subject to the jurisdiction of the Minnesota Public Utilities Commission. The area within the City in which the Company may provide electric service currently is subject to the provisions of Minnesota Statutes, Section 216B.40.~~
- (d) ~~**Publication Expense.** The expense of publication of this ordinance shall be paid by the Company.~~
- (e) ~~Default. 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 of the default and the desired remedy. The notification shall be written. If the dispute is not resolved within 30 days of the written notice, 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 for breach of contract, or either party may take any other action permitted by law.~~

SEC. 20.60. LOCATION, OTHER REGULATIONS.

- (a) ~~**Location of Facilities.** Electric Facilities shall be located and constructed so as not to interfere with the safety and conveniences of ordinary travel along and over Public Ways and they shall be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to other reasonable regulations of the City.~~
- (b) ~~**Field Locations.** The Company shall provide field locations for any of its underground Electric Facilities within a reasonable period of time on request by the City. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the same county to locate municipal underground facilities for the Company.~~
- (c) ~~**Street Openings.** The Company shall not open or disturb the paved surface of any Public Way or Public Ground for any purpose without first having obtained permission from the City, for which the City may impose a reasonable fee. Permit conditions imposed on the Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the paved surface of any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event the Company shall notify the City by telephone to the office designated by the City before opening or disturbing a paved surface of a Public Way or Public Ground. Not later than the second working day thereafter, the Company shall obtain any required permits and pay any required fees.~~
- (d) ~~**Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if the Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to the Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of the Company. The Company shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead, plus ten percent additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City.~~
- (e) ~~**Shared Use of Poles.** The Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by the Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by the Company because of such use by City.~~

SEC. 20.61. RELOCATIONS.

- (a) ~~**Relocation of Electric Facilities in Public Ways.** Except as provided in Section 20.61(c), if the City determines to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order the Company to relocate its Electric Facilities located therein. The Company shall relocate its Electric Facilities at its own expense. The City shall give the Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a~~

~~prior relocation of the same Electrical Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment expenses on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this ordinance requires Company to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.~~

- ~~(b) **Relocation of Electric Facilities in Public Ground.** Except as may be provided in Section 20.61(c), City may require the Company to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment of the public use to which the Public Ground is or will be put. The relocation or removal shall be at the Company's expense. The provisions of Section 20.61(b) apply only to Electric Facilities constructed in reliance on a franchise and the Company does not waive its rights under an easement or prescriptive right.~~
- ~~(c) **Projects With State or Federal Funding.** 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 Minnesota Statutes Section 161.46 as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove, or relocate its 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 the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.~~
- ~~(d) **Liability.** Nothing in the ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.~~

SEC. 20.62. TREE TRIMMING.

~~The Company may trim all trees and shrubs in the Public Ways and Public Grounds of City interfering with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that the Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.~~

SEC. 20.63. INDEMNIFICATION.

- ~~(a) The Company shall indemnify, keep and hold the 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, inspection, the issuance of permits, or the operation of the Electric Facilities located in the City. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, the Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.~~
- ~~(b) In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, the Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the 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 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.~~

SEC. 20.64. VACATION OF PUBLIC WAYS.

~~The City shall give the Company at least two weeks' prior written notice of a proposed vacation of a Public Way. Except where required for a City street or other improvement project, the vacation of any~~

~~Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electrical Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29.~~

~~SEC. 20.65. 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 the Company, succeed to all of the rights and obligations of the City provided in this ordinance.~~

~~SEC. 20.66. FRANCHISE FEE.~~

- ~~(a) **Separate Ordinance.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the City may impose on the Company a franchise fee of not more than five percent of the Company's gross revenues as hereinafter defined. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon the Company by regular mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon the Company by regular mail.~~
- ~~(b) **Terms Defined.** The term "gross revenues" means all sums, excluding any surcharge or similar addition to the Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of electricity to its retail customers within the corporate limits of the City.~~
- ~~(c) **Collection of the Fee.** The franchise fee shall be payable not less often than quarterly, and shall be based on the gross revenues of the Company during complete billing months during the period for which payment is to be made. The percent fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and the percentage may not be changed more often than annually. Such fee shall not exceed any amount which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. The Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee is subject to the approval of the Public Utilities Commission, which the Company agrees to use best efforts to obtain. The Company agrees to make its gross revenues records available for inspection by the City at reasonable times.~~
- ~~(d) **Conditions on the Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.~~

~~SEC. 20.67. SEVERABILITY.~~

~~If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.~~

~~SEC. 20.68. AMENDMENT.~~

~~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 the company's written consent thereto with the City Clerk within 90 days after the effective date of the amendatory ordinance.~~

~~SEC. 20.69. PREVIOUS FRANCHISES SUPERSEDED.~~

~~This franchise supersedes any previous electric franchise granted to the Company or its predecessor.~~

~~SEC. 20.70. RESERVED.~~

~~SEC. 20.71. RESERVED.~~

~~SEC. 20.72. RESERVED.~~

~~SEC. 20.73. RESERVED.~~

~~SEC. 20.74. RESERVED.~~

~~SEC. 20.75. RESERVED.~~

~~SEC. 20.76. RESERVED.~~

~~SEC. 20.77. RESERVED.~~

~~SEC. 20.78. RESERVED.~~

~~SEC. 20.79. RESERVED.~~

~~SEC. 20.80. RESERVED.~~

~~SEC. 20.81. RESERVED.~~

~~SEC. 20.82. RESERVED.~~

~~SEC. 20.83. RESERVED.~~

~~SEC. 20.84. RESERVED.~~

~~SEC. 20.85. RESERVED.]~~

SEC. 20.58. DEFINITIONS.

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

- (a) "City" The City of Bloomington, County of Hennepin, State of Minnesota.
- (b) "City Utility System" Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- (c) "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 electric retail rates now vested in the Minnesota Public Utilities Commission.
- (d) "Company" Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.
- (e) "Electric Facilities" Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public or private use.

- (f) "Notice" A writing, served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor Minneapolis, Minnesota 55401. Notice to the City shall be mailed to the City Manager, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431-3071. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.
- (g) "Public Way" Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3.
- (h) "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 and not a Public Way.

SEC. 20.59. ADOPTION OF FRANCHISE.

- (a) **Grant of Franchise.** 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 to transmit and furnish electric energy for light, heat, and power or similar electric energy purposes 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. For these purposes, Company may construct, operate, repair and maintain Electric 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 reasonable regulations as may be imposed by the City pursuant to ordinance or other applicable law and to the further provisions of this franchise agreement.
- (b) **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 60 days after the date the City Council adopts this Ordinance, the City Council by resolution may revoke this franchise, seek its enforcement in a competent jurisdiction or pursue other remedies in law or in equity.
- (c) **Service Rates and Area.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.37-40.
- (d) **Publication Expense.** Company shall pay the expense of publication of this Ordinance.
- (e) **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 of the default and the desired remedy. The notification shall be written. 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 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.
- (f) **Continuation of Franchise Ordinance.** 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 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 20.59(a).

SEC. 20.60. LOCATION, OTHER REGULATIONS.

- (a) **Location of Facilities.** Electric Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt the normal operation of any City Utility System or street lighting or traffic signal systems of the City. Electric Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. Company may abandon underground Electric Facilities in place, provided, at the City's request, Company will removed abandoned Electric Facilities interfering with a City improvement project, but only to the extent such facilities are uncovered or will be uncovered by excavation as part of the City improvement project.

- (b) **Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. 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 Electric Facilities and (ii) Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. With two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.
- (c) **Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable City ordinances consistent with law. Company shall restore Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits, and 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, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of 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 20.60(c). City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
- (d) **Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City Facilities upon reasonable terms and conditions whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, be a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.
- (e) **Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.
- (f) **Notice of Improvements to Streets.** The City must give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Electric Facilities the Company deems necessary.
- (g) **Mapping Information.** The Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules parts 7819.4000 and 7819.4100.

SEC. 20.61. FACILITIES RELOCATIONS.

- (a) **Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.
- (b) **Relocation in Public Ground.** City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law.
- (c) **Projects with Federal Funding.** Relocation, removal or rearrangement of any Electric 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. It is understood that the right herein granted to Company is a valuable property right. City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned 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 the reasonable non-betterment costs allocated for of such relocation are paid to Company. The City is obligated to pay Company, however, only for the portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company. Notwithstanding the foregoing, the City may seek funding from the federal government for City project purposes other than utility relocation and has no obligation to support any such utility relocation allocation in the application process.

- (d) **No Waiver.** By entering this or any prior franchise agreement with City, Company does not waive its rights under an easement or prescriptive right or State or County permit.

SEC. 20.62. TREE TRIMMING.

Unless otherwise provided in any permit or other reasonable regulation required by the City under separate ordinance, Company may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall hold the City harmless from any liability arising therefrom.

SEC. 20.63. INDEMNIFICATION.

- (a) **Indemnity of the City.** Company shall indemnify and hold the City, its elected officials, employees and agents, harmless 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 Electric Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.
- (b) **Defense of the 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 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.

SEC. 20.64. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances to the extent consistent with law.

SEC. 20.65. 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.

SEC. 20.66. FRANCHISE FEE.

- (a) **Fee Schedule.** During the term of the franchise hereby granted, the City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the initial franchise fee collected by the Company and paid to the City in accordance with this Section 20.66 shall be the following amounts.

Class	Fee Per Premise Per Month
Residential	\$ 3.75
Sm C & I – Non-Dem	\$ 7.50
Sm C & I – Demand	\$ 40.00
Large C & I	\$115.00

- (b) **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 20.59(e) shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. The separate ordinance may be modified not more than annually to increase or decrease the fee. If the City increases the fee set forth in Section 20.66(a) above or subsequent schedule adopted pursuant to this Section 20.66, all notice requirements shall be in effect. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 20.66(a) above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.
- (c) **Terms Defined.** For the purpose of this Section 20.66, the following definitions apply:
- 1 Customer Class. Shall refer to the classes listed on the Fee Schedule and as defined or determined in Company's electric tariffs on file with the Commission.
 - 2 Fee Schedule. Refers to the schedule in Section 20.66(a) setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.
- (d) **Collection of Fee.** The franchise fee shall be payable to the City quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 20.66. The customer notice, billing description and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.
- (e) **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company unless the City lawfully imposes a similarly collected fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in

writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 20.66(e), the foregoing conditions will be waived to the extent of such written consent.

SEC. 20.67. SERVICE RELIABILITY, INFRASTRUCTURE REPORTING.

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to this Franchise, including not limited to, reliability, performance, infrastructure plans for the coming year and other matters raised by the City or the Company. Annually upon request by City, the Company shall provide to City reporting information on service reliability, including System Average Interruption Duration Index (SAIDI), Customers Experiencing Multiple Interruptions (CEMI) and municipal pumping station and general customer outage date for the previous year, the exact format and content of which shall be mutually agreed to by City and Company.

SEC. 20.68. PROVISIONS OF ORDINANCE.

- (a) **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. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
- (b) **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.

SEC. 20.69. 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 Council adoption of the amendatory ordinance.

Passed and adopted this _____ day of _____, 2015.

Mayor

ATTEST:

APPROVED:

Secretary to the Council

City Attorney