

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Appendix A FRANCHISES

ARTICLE I. - CABLE COMMUNICATIONS FRANCHISE

ARTICLE II. - STEARNS COOPERATIVE ELECTRIC ASSOCIATION ELECTRIC FRANCHISE

ARTICLE III. - CENTERPOINT ENERGY GAS FRANCHISE

ARTICLE I. CABLE COMMUNICATIONS FRANCHISE ¹¹

[Sec. 1. Definitions.](#)

[Sec. 2. Grant of authority.](#)

[Sec. 3. Compliance with state and federal laws.](#)

[Sec. 4. Franchise terms.](#)

[Sec. 5. Renegotiation of franchise terms.](#)

[Sec. 6. Franchise exclusivity.](#)

[Sec. 7. Transfer of the franchise, transfer of stock, lease and assignment.](#)

[Sec. 8. Access to financial records.](#)

[Sec. 9. Rates, rate change procedure and residential subscriber contracts.](#)

[Sec. 10. Administration of franchise.](#)

[Sec. 11. Liability insurance.](#)

[Sec. 12. Performance bond.](#)

[Sec. 13. Liability for damage to franchisee's facilities.](#)

[Sec. 14. Public hearing.](#)

[Sec. 15. Channel capacity.](#)

[Sec. 16. Construction.](#)

[Sec. 17. Construction standards.](#)

[Sec. 18. Technical standards.](#)

[Sec. 19. Special testing.](#)

[Sec. 20. Non-voice return capability.](#)

[Sec. 21. Subscriber privacy.](#)

[Sec. 22. Subscriber complaints.](#)

[Sec. 23. Repairs and complaints.](#)

[Sec. 24. Termination.](#)

[Sec. 25. Abandonment.](#)

[Sec. 26. Removal upon termination or forfeiture.](#)

[Sec. 27. Municipal right to purchase system.](#)

[Sec. 28. Access channel.](#)

[Sec. 29. Franchise fees.](#)

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

[Sec. 30. Non-interference.](#)

[Sec. 31. Obscenity.](#)

[Sec. 32. Free drops.](#)

[Sec. 33. Notice.](#)

[Sec. 34. Effective date.](#)

Sec. 1. Definitions.

For purposes of this ordinance, the following terms have the designated meaning:

Subd. 1. "Franchisor" or "city" is the City of Richmond, Minnesota.

Subd. 2. "Franchisee" is Melrose Telephone Company, a wholly owned subsidiary of Diversicom, LLC, its agents, employees, lawful successors, transferees or assignees.

Subd. 3. "FCC" is the Federal Communications Commission of the United States.

Subd. 4. "Class IV Channel" means a signaling path provided by a cable communication system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

Subd. 5. "Non-voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

Subd. 6. The words "shall" and "must" are mandatory.

Subd. 7. The word "may" is permissive.

Subd. 8. The words "may not" are unconditionally prohibitive.

Sec. 2. Grant of authority.

The city hereby authorizes the grant of a cable communications franchise for the installation, operation and maintenance of a cable communications system within the limits of the city to franchisee subject to the terms and performance conditions of this ordinance.

Sec. 3. Compliance with state and federal laws.

The franchise shall at all times comply with the standards of Minnesota Statute Chapter 238 [Minn. Stats. ch. 238]. The franchisee and the city shall conform to all state laws and rules regarding cable communications not later than one year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable communications as they become effective.

Sec. 4. Franchise terms.

The franchise shall have an initial franchise term of ten years effective from the date of the grant of authority, and any renewal term if granted by the franchising authority, shall be for a period of ten years.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 5. Renegotiation of franchise terms.

Renegotiation between the city and franchisee shall occur at least one year before the end of the franchise term, unless the city determines not to reissue the franchise to the franchisee or desires to consider additional applications for a franchise.

Sec. 6. Franchise exclusivity.

This franchise is non-exclusive.

Sec. 7. Transfer of the franchise, transfer of stock, lease and assignment.

Subd. 1. Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the city and in compliance with state and federal law.

Subd. 2. No lease or assignment of the rights granted herein shall be effective until the assignee or leasee an instrument with the city, reciting the facts of such sale or lease, accepting the terms contained herein, and agreeing to perform all conditions of the franchise required by this ordinance. The city may also require the assignee or leasee to provide a performance bond consistent with the requirements of this ordinance.

Sec. 8. Access to financial records.

The city is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice. The franchisee shall file annually with the city, no later than April 1 of each year, reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

Sec. 9. Rates, rate change procedure and residential subscriber contracts.

Subd. 1. *Rates.* Prior to offering service to any member of the general public, the franchisee shall prepare a clear and concise list of all current subscription rates and charges, including all installation and disconnect charges, charges for optional services and charges or deposits for the use of equipment offered to subscribers for use with the service. A verified copy of this list of rates and charges shall then be filed with the city and shall be available for public inspection at the city.

Subd. 2. *Rate change.* An amended list of rates and charges shall be prepared and filed with the city at any time there is any change or adjustment in the subscription rates and charges. franchisee shall provide the city and subscribers with written notice of any charge or rate change at least 30 days before the effective date of the change.

Subd. 3. *Residential subscriber contract.* The franchisee shall file with the city a copy of the current residential subscriber contract, if a written subscriber contract is utilized by franchisee. The subscriber contract on file with the city shall be open to inspection by the public and shall govern the contractual relationship between the franchisee and all subscribers receiving service under the authority of this ordinance, except service provided to institutions, business premises or multiple housing locations, which service may be governed by separate written contract.

Sec. 10. Administration of franchise.

The city shall be responsible for the continuing administration of this franchise. The city may delegate its authority to an advisory body or joint powers entity. The franchisee shall cooperate with any delegation of authority by the city.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 11. Liability insurance.

Subd. 1. *Insurance.* The franchisee shall at all time carry workers' compensation insurance for its employees engaged in any manner in the installation of servicing of its plants and equipment within the city in statutory amounts general liability insurance.

Subd. 2. *Coverage limits.* The franchisee's insurance policies shall have minimum coverage limits in the amount of \$500,000.00 for injury or death to any one person and \$1,000,000.00 as to any one occurrence, and property damage insurance in the amount of \$100,000.00 as to any one person and \$300,000.00 as to any one occurrence.

Subd. 3. *Terms.* Franchisee's policies shall name the city as an additional insured party. The franchisee shall indemnify and hold harmless the city, its elected officials, employees and agents at all times during the term of this franchise and shall maintain the above insurance throughout the term of the agreement insuring both the city and the franchisee with regard to all damages and penalties which they may be legally required to pay as a result of the exercise of the franchise. The insurance policies must require the insurer to provide the city with 30 days' written notice before canceling a policy.

Sec. 12. Performance bond.

A performance bond from franchisee shall not initially be required. A performance bond from franchisee may be required in the future, consistent with city ordinances.

Sec. 13. Liability for damage to franchisee's facilities.

Nothing in this ordinance shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

Sec. 14. Public hearing.

The franchisee's technical ability, financial condition and legal qualifications were considered and approved by the city after a properly noticed and properly conducted public hearing which afforded interested parties and the franchisee notice and an opportunity to be heard.

Sec. 15. Channel capacity.

The franchisee shall operate a cable system using internet protocol technology which will allow the system to deliver an unlimited number of cable channels to subscribers. A minimum of 54 channels of programming shall be immediately available to subscribers.

Sec. 16. Construction.

The services provided by the franchisee under this franchise shall be made available by it to all points within the corporate limits of the city no later than February 1, 2010. To the extent possible, the franchisee shall not be required to make any extensions for the purpose of providing service where: (a) service is not desired in the area; or (b) the extension will require the installation of more than 400 feet of distribution cable for each potential customer to be served.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 17. Construction standards.

- Subd. 1. *Permits.* The franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the franchisee fails to meet the conditions of the permit, the city, after reasonable notice to the franchisee, and providing franchisee the opportunity to remedy said complaint, can cause said problem to be remedied and bill the franchisee for the costs incurred in so remedying.
- Subd. 2. *Compliance with codes.* All wires, conduits, cables and other property and facilities of the franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.
- Subd. 3. *Relocation of wires.* In the event it becomes necessary for the franchising authority to relocate or remove the franchisee's wires, conduits, cables and other property located in any street, right-of-way or public place to facilitate the undertaking of a public improvement which affects the cable equipment, franchisee shall make all necessary changes in its equipment at its own expense, as requested, upon due notice from the city or its designated officer.
- Subd. 4. *Conditions of right-of-way use.* Any of franchisee's facilities located in city right-of-way, must not obstruct or interfere with the use of the right-of-way. If a city project necessitates the relocation of franchisee's facilities, franchisee shall promptly relocate such facilities at franchisee's cost.
- Subd. 5. *Repair of right-of-way.* Franchisee shall promptly restore all right-of-way disturbed by the installation of franchisee's facilities. If franchisee fails to promptly restore disturbed right-of-way, the city may perform the restoration and charge the franchisee for all costs associated with the restoration work.

Sec. 18. Technical standards.

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated herein by reference. The results of any tests required by the Federal Communications Commission shall, upon request of the city, be filed within ten days of the conduct of such tests with the franchising authority.

Sec. 19. Special testing.

At any time after commencement of service to subscribers, the city may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or noncompliance; and such tests will be limited to the particular matter in controversy. In the event that special testing is required by the city to determine the source of technical difficulties, the cost of said testing shall be borne by the franchisee, if the testing reveals the franchisee to be responsible. If the testing reveals the difficulties to be caused by factors beyond the control of the franchisee, the cost of testing shall be borne by the city.

Sec. 20. Non-voice return capability.

The franchisee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 21. Subscriber privacy.

Subd. 1. No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

Subd. 2. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than the Franchisee and its employees for internal business use, or to the subscriber subject of that information, unless the franchisee has received specific written authorization from the subscriber to make the data available.

Subd. 3. Written permission from the subscriber shall not be required for the systems conducting system wide or individually addressed electron sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in state and federal law.

Sec. 22. Subscriber complaints.

All complaints by the city, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the franchisee within two business days and resolved by the franchisee. Any complaints not resolved to the satisfaction of the complaining party, shall be communicated to the city. A record of unresolved complaints may be retained by the city and may be considered by the city in making any discretionary decisions relating to the franchise.

Sec. 23. Repairs and complaints.

The franchisee shall provide to the subscriber at least a toll-free or collect telephone number for the reception of subscriber complaints and the franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs and adjustment shall be borne by the franchisee unless it can be clearly determined that the repair or adjustment was made necessary by abuse or intentional misuse of the system by the subscriber, in which case the costs of installation shall be borne by the subscriber.

Sec. 24. Termination.

The city shall have the right to terminate and cancel the franchise and all rights and privileges of this ordinance, if the franchisee substantially violates this ordinance. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days after service of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the city council prior to the termination of the franchise. In the event that the city determines to terminate the franchise, the franchisee has thirty days from the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal. During the thirty day period, if an appeal is taken, the franchise remains in full force and effect, unless the term of the franchise ends sooner.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 25. Abandonment.

The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three months prior written notice to the franchising authority. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

Sec. 26. Removal upon termination or forfeiture.

Upon termination or forfeiture of a franchise, the franchisee shall, within 90 days of a request by the city, remove all of its plants, structures, works, pipes, mains, conduits, cables, poles and wires related solely to the provision of cable services and refill at its own expense any excavation that shall be made by it and shall leave said streets, alleys, public ways and places, in as good condition as that prevailing prior to the franchisee's removal of equipment and appliances: in the event the franchisee fails to do so, the franchisee shall pay the city as liquidated damages the cost of removal.

Sec. 27. Municipal right to purchase system.

If the franchise or cable system is offered for sale, the city shall have the right to purchase the system.

Sec. 28. Access channel.

Subd. 1. The franchisee shall provide one designated channel for a local, public, educational, and city governmental access channel (PEG) programming. The franchisee shall provide all subscribers with the PEG channel within sixty days of programming being made available to [the] franchisee.

Subd. 2. The city shall have authority to designate what programming will appear on the channel and may delegate that authority to another entity. The city, or its designee, shall be responsible for producing the programming.

Subd. 3. The franchisee shall provide origination capability (e.g., a return line) from the ROCORI School site and Richmond City Hall.

Sec. 29. Franchise fees.

During the term of this franchise, franchisee shall quarterly pay to the city an amount equal to five percent of all basic service revenue derived from within the city no later than 30 days after the last month of the quarter. Service revenue shall include service charges, fees arising from the communications and transmittal of information of any nature including fees for fire or other protection, but shall not include moneys received as installation charges and charges and fees for reconnections, inspections, repairs or modification of any installation, nor state and federal taxes relating thereto. The franchisee agrees to pay attorney's fees charged to the city in the establishment of obtaining a franchise.

(Ord. No. 2010-103, § 1, 7-22-2010)

Sec. 30. Non-interference.

Installations shall be maintained so as not to interfere with television reception already in existence within the city and [the] franchisee shall carry all commercial and educational signals of stations serving the city as established by the Federal Communications Commission via off-the-air pickup.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 31. Obscenity.

Subd. 1. For purposes of this section, obscenity shall mean a program when, to the average person applying contemporary community standards, the program taken as a whole, appeals to the prurient interest; the program depicts or describes, in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibition of genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

Subd. 2. It shall be a misdemeanor to originate or produce any obscene program which is transmitted over the cable communications system. However, neither the cable communications system whose facilities are used to transmit a program produced by a person other than the cable communications system, nor the officers, directors, or employees of the cable communications system, shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce a program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program.

Sec. 32. Free drops.

Franchisee agrees to provide free services to city hall and public and educational institutions within the city.

Sec. 33. Notice.

All notices required by this ordinance shall be submitted in writing to:

City of Richmond P.O. Box 400 Richmond, MN 56368	Melrose Telephone 224 East Main Street Melrose, MN 56352
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Sec. 34. Effective date.

This ordinance shall take effect and be in force from and after its passage and publication.

Adopted this 17th day of September, 2009

FOOTNOTE(S):

Appendix A FRANCHISES

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Editor's note— Printed herein is Ord. No. 2009-104, as adopted by the city on September 17, 2009, and published in the 1984 city Code. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets. ([Back](#))

ARTICLE II. STEARNS COOPERATIVE ELECTRIC ASSOCIATION ELECTRIC FRANCHISE

[Sec. 1. Definitions.](#)

[Sec. 2. Adoption of franchise.](#)

[Sec. 3. Location, other regulations.](#)

[Sec. 4. Relocations.](#)

[Sec. 5. Tree trimming.](#)

[Sec. 6. Indemnification.](#)

[Sec. 7. Vacation of public ways.](#)

[Sec. 8. Change in form of government.](#)

[Sec. 9. Franchise fee.](#)

[Sec. 10. Provisions of franchise.](#)

[Sec. 11. Amendment procedure.](#)

[Sec. 12. Previous franchises superseded.](#)

Sec. 1. Definitions.

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

- 1.1. *City*. The City of Richmond, County of Stearns, State of Minnesota.
- 1.2. *City utility system*. Facilities used for providing non-energy related public utility service owned or operated by city or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3. *Company*. Stearns Cooperative Electric Association, a Cooperative Corporation duly organized and existing under the laws of the State of Minnesota.
- 1.4. *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 use.
- 1.5. *Notice*. A written notice served by one party on the other party referencing one or more provisions of this franchise. Notice to Company shall be mailed to General Manager, 900 East Kraft Drive, Melrose, Minnesota 56352. Notice to the city shall be mailed to the city Administrator,

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

P.O. Box 400, Richmond, MN 56368-0400. Either party may change its respective address for the purpose of this franchise by written notice to the other party.

- 1.6. *Public ground.* Land owned by the city for park, open space or similar purpose, which is held for use in common by the public.
- 1.7. *Public way.* Any street, alley, walkway or other public right-of-way within the city.
- 1.8. *Service area.* The area within the city that is served by the company.

(Ord. No. 2011-101, § 1, 7-6-2011)

Sec. 2. Adoption of franchise.

- 2.1. *Grant of franchise.* City hereby grants company, for a period of 20 years from the date passed and approved by the city, the non-exclusive right within the city and exclusive right within the service area, to transmit and furnish electric energy for light, heat, power and other purposes for public and private use. For these purposes, company may construct, operate, repair and maintain electric facilities in, on, over, under and across the public grounds and public way of city, subject to the provisions of this franchise. Company may do all reasonable things necessary or customary to accomplish these purposes, subject to regulations imposed by the city pursuant to ordinance and to the further provisions of this franchise agreement.
- 2.2. *Effective date; written acceptance.* This franchise agreement shall be in force and effect from and after passage of this franchise, its acceptance by company, and its publication as required by law. The city, by council resolution, may revoke this franchise agreement if company does not file a written acceptance with the city within 90 days after publication.
- 2.3. *Service and rates.* The service to be provided and the rates to be charged by company for electric service in city are determined by the Board of Directors of Stearns Cooperative Electric Association. The company will provide adequate, efficient, and reasonable electric service at rates which fairly reflect the costs of doing business. The area within the city in which company may provide electric service is subject to the provisions of Minn. Stat. § 216B.40.
- 2.4. *Franchise expense.* The expense of publication of this franchise will be paid by city and reimbursed to city by company.
- 2.5. *Dispute resolution.* If either party asserts that the other party is in default in the performance of any obligation under this franchise, 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 30 days of the 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 Stearns County 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.

(Ord. No. 2011-101, § 2, 7-6-2011)

Sec. 3. Location, other regulations.

- 3.1. *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 normal operation of any city utility system or road projects previously installed therein.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Electric facilities shall be located on the public grounds as determined by the city. Company's construction, reconstruction, operation, repair, maintenance and location of electric facilities shall be subject to permits if required by city code and to other reasonable regulations of the city to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground electric facilities in place, provided at the city's request, company will remove abandoned metal or concrete encased conduit interfering with a city improvement project, but only to the extent such conduit is uncovered by excavation as part of the city improvement project.

- 3.2 *Field locations.* Company shall provide field locations for its underground electric facilities within city consistent with the requirements of Minn. Stat. ch. 216D.
- 3.3. *Street openings.* Company shall not open or disturb any public ground or public way 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 any public ground or public way without permission from the city where an emergency exists requiring the immediate repair of electric facilities. In such event, company shall notify the city by telephone to the office designated by the city as soon as practicable. Not later than the second working day thereafter, company shall apply for any required permits and pay any required fees.
- 3.4. *Restoration.* After undertaking any work requiring the opening of any public ground or public way, company shall restore the public ways or public grounds in accordance with Minnesota Rules, 7819.1100, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. 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, but the 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.
- 3.5. *Avoid damage to electric facilities.* Nothing in this ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging electric facilities while performing any activity.
- 3.6. *Notice of improvements.* The city must give company reasonable notice of plans for improvements to public grounds or 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 grounds and 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 ground or 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 in advance of the actual commencement of the work to permit company to make any necessary additions, alterations or repairs to its electric facilities.
- 3.7. *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 terms and conditions acceptable to company whenever such use will not interfere with the use of such poles or towers by 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 company because of such use by city.

(Ord. No. 2011-101, § 3, 7-6-2011)

Sec. 4. Relocations.

- 4.1. *Relocation of electric facilities in public ways.* If the city determines to vacate a public way for a city improvement project, or at city's cost to grade, regard, or change the line of any public way, or

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

construct or reconstruct any city utility system in any public way, it may order company to relocate its electric facilities located therein if relocation is reasonably necessary to accomplish the city's proposed public improvement. Except as provided in section 4.3, company shall relocate its electric facilities at its own expense. The city shall give company reasonable notice of plans to vacate for a city improvement project, or to grade, regard, 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 electric facilities, which was made at company expense, the city shall reimburse company for non-betterment costs on a time and material basis, except 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 reconstruct, at its own expense, its electric facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the city and is not reasonable necessary for the construction or reconstruction of a public way or city utility system or other city improvement.

- 4.2. *Relocation of electric facilities 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.
- 4.3. *Projects with federal funding.* City shall not order company to remove or relocate its electric facilities when a public way is vacated, improved or realigned for a right-of-way project or any other project 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 are first paid to company. The city is obligated to pay company only for those portions of its relocation costs for which city has received federal funding specifically allocated for relocation costs in the amount requested by the company, which allocated funding the city shall specifically request. Relocation, removal or rearrangement of any company electric facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minn. Stat. § 161.46, as supplemented or amended. It is understood that the rights herein granted to company are valuable rights.
- 4.4 *No waiver.* The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the city and shall not be construed to waive or modify any rights obtained by company for installations within a company right-of-way acquired by easement or prescriptive right before the applicable public ground or public way was established, or company's rights under state or county permit.

(Ord. No. 2011-101, § 4, 7-6-2011)

Sec. 5. Tree trimming.

Company may cut, trim and spray all trees and shrubs in the public grounds and public ways 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, and shall be subject to permit or other reasonable regulation by the city.

(Ord. No. 2011-101, § 5, 7-6-2011)

Sec. 6. Indemnification.

- 6.1. *Indemnity of city.* Company shall indemnify, defend and hold the city harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction,

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

maintenance, repair, inspection, the issuance of permits, or the operation of the electric facilities located in the public grounds and public ways. 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. 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.

- 6.2. *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, municipal tort limits, or immunity otherwise available to the city and company. In defending any action on behalf of the city, company shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.

(Ord. No. 2011-101, § 6, 7-6-2011)

Sec. 7. Vacation of public ways.

The city shall give company at least two weeks prior written notice of a proposed vacation of a public way. Except where required for a city 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 electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation is first paid to company. In no case, however, shall city be liable to company for failure to specifically preserve a right-of-way under Minn. Stat. § 160.29.

(Ord. No. 2011-101, § 7, 7-6-2011)

Sec. 8. 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.

(Ord. No. 2011-101, § 8, 7-6-2011)

Sec. 9. Franchise fee.

- 9.1. *Franchise fee schedule.* During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on company, the city may impose on company a franchise fee by collecting the amounts indicated in a franchise fee schedule set forth in a separate ordinance from each customer in the designated company customer class. The parties have agreed that the franchise fee collected by the company and paid to the city in accordance with this section 9 shall not exceed the following amounts[:]

Class	Fee Per Premise Per Month
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PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

General Service Single Phase	\$3.00
General Service Three Phase	\$3.00
Small Three Phase Service	\$3.00
Industrial Rate	\$3.00
Public Street Lighting	\$3.00
Irrigation	\$3.00

- 9.2. *Separate ordinance.* The franchise fee shall be imposed by a separate franchise fee ordinance duly adopted by the city council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed franchise fee 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 60 days after written notice enclosing such adopted franchise fee ordinance has been served upon company by certified mail. Section 2.5 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. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in section 9.1 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.
- 9.3. *Terms defined.* For the purpose of this section 9, the following definitions apply:
- 9.3.1. "Customer class" shall refer to the classes listed on the franchise fee schedule.
- 9.3.2. "Franchise Fee Schedule" refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee shall be collected when a separate franchise fee ordinance is implemented immediately after the effective date of this franchise agreement. The Franchise Fee Schedule in the separate franchise fee ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.
- 9.4. *Collection of the fee.* The franchise fee shall be payable 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 9. 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

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. In addition, the company agrees to 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 uncollectibles, refunds or error corrections.

- 9.5. *Equivalent fee requirement.* The separate ordinance imposing the fee shall not be effective against company unless it lawfully imposes and the city monthly or more often collects a fee or tax of the same or 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 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 9.5, the foregoing conditions will be waived to the extent of such written consent.

(Ord. No. 2011-101, § 9, 7-6-2011)

Sec. 10. Provisions of franchise.

- 10.1 *Severability.* Every section, provision, or part of this franchise 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. Where a provision of any other city ordinance conflicts with the provisions of this franchise, the provisions of this franchise shall prevail.
- 10.2 *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.

(Ord. No. 2011-101, § 10, 7-6-2011)

Sec. 11. Amendment procedure.

Either party to this franchise may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this franchise 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 90 days after the date of final passage by the city of the amendatory ordinance.

(Ord. No. 2011-101, § 11, 7-6-2011)

Sec. 12. Previous franchises superseded.

This franchise supersedes any previous electric franchise granted to company or its predecessors.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

(Ord. No. 2011-101, § 12, 7-6-2011)

ARTICLE III. CENTERPOINT ENERGY GAS FRANCHISE

[Sec. 1. Definitions.](#)

[Sec. 2. Adoption of franchise.](#)

[Sec. 3. Location, other regulations.](#)

[Sec. 4. Relocations.](#)

[Sec. 5. Indemnification.](#)

[Sec. 6. Vacation of public ways and public grounds.](#)

[Sec. 7. Change in form of government.](#)

[Sec. 8. Franchise fee.](#)

[Sec. 9. Abandoned facilities.](#)

[Sec. 10. Provisions of ordinance.](#)

[Sec. 11. Amendment—Procedure.](#)

[Sec. 12. Previous franchises superseded.](#)

Sec. 1. Definitions.

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

City. The City of Richmond, County of Stearns, 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.

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. CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas ("CenterPoint Energy") 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 energy. Gas energy includes both retail and wholesale natural, manufactured or mixed gas.

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 retail or wholesale use.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the city shall be mailed to City Clerk, PO Box 400, Richmond, MN. 56368. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Ordinance. This gas franchise ordinance, also referred to as the Franchise.

Public way. Any highway, street, alley, walkway, or other public right-of-way within the city.

Public ground. Land owned or otherwise controlled by the city for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

(Ord. No. 2011-102, § 1, 7-6-2011)

Sec. 2. Adoption of franchise.

- 2.1. *Grant of franchise.* City hereby grants company, for a period of 20 years from the date this franchise is passed and approved by the city, the right to import, manufacture, distribute and sell gas energy 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 and also the right to transport gas energy through the limits of the city for use outside of the city limits. 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 franchise. 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 an ordinance or permit requirements adopted consistent with state law.
- 2.2. *Effective date; written acceptance.* This franchise shall be in force and effect from and after the passage of this franchise 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, or otherwise inform the city, at any time, that the company does not accept this franchise, the city council by resolution shall revoke this franchise.
- 2.3. *Service and gas rates.* The terms and conditions of service and the rates to be charged by company for gas energy in city are subject to the exclusive jurisdiction of the commission.
- 2.4. *Publication expense.* Company shall pay the expense of publication of this ordinance.
- 2.5. *Dispute resolution.* If either party asserts that the other party is in default in the performance of any obligation under this franchise, 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 30 days of the 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 Stearns County 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 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 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 2.1.

(Ord. No. 2011-102, § 2, 7-6-2011)

Sec. 3. Location, other regulations.

- 3.1. *Location of facilities.* Gas 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 normal operation of any city utility system or road projects previously installed therein. Gas facilities

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

shall be located on public grounds in a location selected by the city. The location and relocation of gas facilities shall be subject to 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.

- 3.2. *Field locations.* Company shall provide field locations for its underground gas facilities within city consistent with the requirements of Minn. Stat. ch. 216D.
- 3.3. *Street openings.* Company shall not open or disturb 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, unless the city is receiving a franchise fee pursuant to this ordinance, in which case all permit fees will be waived. Permit conditions imposed on company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb any public way or public ground without a permit if (i) an emergency exists requiring the immediate repair of gas facilities and (ii) company gives telephone, email or similar notice to the city before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, company shall apply for any required permits and pay any required fees.
- 3.4. *Restoration.* After undertaking any work requiring the opening of any public way or public ground, the company shall restore the public ways or public grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the public ground to as good a condition as formerly existed, and shall maintain the surface in good condition for two years 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 ways or public grounds 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 3.4, but the 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 ordinance of the city.
- 3.5. *Avoid damage to gas facilities.* The company must take reasonable measures to prevent the gas facilities from causing damage to persons or property. The company must take reasonable measures to protect the gas facilities from damage that could be inflicted on the gas facilities by persons, property, or the elements. The company must 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.
- 3.6. *Notice of improvements to streets.* The city will give company reasonable written notice of plans for improvements to public ways and public grounds where the city has reason to believe that gas facilities may affect or be affected by the improvement. The notice will contain: (i) the nature and character of the improvements, (ii) the public ways or public grounds 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 or public grounds is involved, the order in which the work is to proceed. The notice will 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 gas facilities the company deems necessary.
- 3.7. *Mapping information.* If requested by city, the company must promptly provide complete and accurate mapping information for any of its gas facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.
- 3.8. *Emergency response.* As emergency first-responders, when a public safety concern exists both the city and company shall respond to gas emergencies within the city without additional direct fee or expense to either city or company.

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

(Ord. No. 2011-102, § 3, 7-6-2011)

Sec. 4. Relocations.

- 4.1. *Relocation in public ways and public grounds.* The company and city shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the company to relocate gas facilities located in either public ways or public grounds.
- 4.2. *Relocation of gas facilities in public ground.* City may require company, at company's expense, to relocate or remove its gas facilities from public ground 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 public ground.
- 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. §§ 161.45 and 161.46.

(Ord. No. 2011-102, § 4, 7-6-2011)

Sec. 5. Indemnification.

- 5.1. *Indemnity of city.* Company shall indemnify, defend, and hold the city 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 gas facilities located in the public ways and public grounds. The city shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission 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.
- 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, municipal tort limits, or immunity otherwise available to the city. 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 Minn. Stat. ch. 466.

(Ord. No. 2011-102, § 5, 7-6-2011)

Sec. 6. Vacation of public ways and public grounds.

The city shall give company at least two weeks prior written notice of a proposed vacation of a public ways or public grounds. The city and the company shall comply with Minnesota Rules 7819.3100 and Minnesota Rules 7819.3200 with respect to any request for vacation.

(Ord. No. 2011-102, § 6, 7-6-2011)

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 7. 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.

(Ord. No. 2011-102, § 7, 7-6-2011)

Sec. 8. Franchise fee.

- 8.1. *Form.* During the term of the franchise hereby granted, the city may charge the company a franchise fee. The company will administer the collection and payment of franchise fees to city in lieu of permit fees, or other fees that may otherwise be imposed on the company in relation to its operations as a public utility in the city. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both city and company for each retail customer within the corporate limits of the city. The amount of the fee collected may differ for each customer class. The city will use a formula that provides a stable and predictable amount of fees, without placing the company at a competitive disadvantage. Such fee shall not exceed any amount that the company may legally charge to its customers prior to payment to the city. If the company claims that the city required fee formula is discriminatory or otherwise places the company at a competitive disadvantage, the company will provide a formula that will produce a substantially similar fee amount to the city. If the city and company are unable to agree, the disagreement shall be subject to the dispute resolution provisions of this ordinance.
- 8.2. *Separate ordinance.* The franchise fee shall be imposed by 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 certified mail. The company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the company notifies the city council of the same within the 60-day period.
- 8.3. *Condition of fee.* The separate ordinance imposing the fee shall not be effective against the company unless the city 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.
- 8.4. *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.
- 8.5. *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.

(Ord. No. 2011-102, § 8, 7-6-2011)

PART II - LAND DEVELOPMENT ORDINANCES

Appendix A FRANCHISES

Sec. 9. Abandoned facilities.

The company shall comply with Minn. Stat. § 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 Minn. Stat. § 216D.04 with respect to all gas facilities, including abandoned and retired gas facilities not located in public ways and public grounds.

(Ord. No. 2011-102, § 9, 7-6-2011)

Sec. 10. Provisions of ordinance.

10.1. *Severability*. Every section, provision, or part of this franchise 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. Where a provision of any other city ordinance conflicts with the provisions of this franchise, the provisions of this franchise shall prevail.

10.2. *Limitation on applicability*. This franchise constitutes a franchise agreement between the city and company as the only parties. No provisions herein 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 this franchise 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.

(Ord. No. 2011-102, § 10, 7-6-2011)

Sec. 11. Amendment—Procedure.

Either party may propose at any time that this franchise be amended. This franchise 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. If the company does not consent to the amendment, the ordinance containing the amendment shall be revoked by city.

(Ord. No. 2011-102, § 11, 7-6-2011)

Sec. 12. Previous franchises superseded.

This franchise supersedes any previous gas franchise granted to company or its predecessors.

(Ord. No. 2011-102, § 12, 7-6-2011)