

# **CHAPTER 11**

## **PRIVATE UTILITIES AND FRANCHISE AGREEMENTS**

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## SECTION 11.010 HICKORY TECH CORPORATION

The Hickory Tech Corporation its successors, or assigns, is hereby authorized to occupy the streets, alleys and public grounds within the City of Eagle Lake, Minnesota, for purposes of placing and maintaining therein poles, wires, fixtures, etc., and other electrical appliances constituting its telephone or telegraph lines and exchanges.

### **Subd. 1. Short Title and Definitions.**

- A. Short Title. This Franchise shall be known and cited as the HickoryTech Cable Franchise.
- B. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
1. Basic Cable Service means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
  2. Cable System or System means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities located in the Franchise Area and designed and constructed primarily for the purpose of producing, receiving, transmitting, amplifying, or distributing video programming. System as defined herein shall be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(7).
  3. Cable Programming Service means any video programming regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
    - a. Basic Cable Service:
    - b. Video programming offered on a pay-per-channel or pay-per-program basis;  
or
    - c. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly identified video programming and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the

- definition as set forth in 47 U.S.C. § 543(1)(2) and 47 C.F.R. § 76.901(b).
4. Cable Service means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and; subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
  5. Channel means a single full motion video channel.
  6. City means the City of Eagle Lake, Minnesota.
  7. Converter means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
  8. Drop means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable. This term only applies to Grantee's delivery of Cable Service.
  9. Effective Competition means the provision of Cable Service by two (2) or more franchised providers operating pursuant to franchise in the City.
  10. FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
  11. Franchise or Cable Franchise means this ordinance and the contractual relationship established hereby.
  12. Franchise Fee means the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by this Franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages, or other regulatory costs specifically required herein in addition to the Franchise Fee; (iv) any fee imposed under Title 17 of the United States Code.
  13. Grantee is Crystal Communications d/b/a HickoryTech, its agents and employees, lawful successors, transferees or assignees.
  14. Gross Revenues means all revenues received by the Grantee or its affiliates arising from the operation of the Cable System for the provision of Cable Service, including installations, digital service tiers, basic cable service, expanded basic cable service, guide revenues, equipment rentals, premium services, pay-per-view (including video-on-demand), wire maintenance, FM service, late fees,

- miscellaneous revenue, advertising revenues, upgrade and downgrade fees, revenues generated by sales or home shopping channel(s), leased channel fees, converter and equipment rental fees, and revenues from fiber and tower leasing. The term Gross Revenues shall not include bad debt (unless collected), or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
15. Installation means the connection from feeder cable to the point of connection with the Subscriber Converter. This term only applies to Grantee's delivery of Cable Service.
  16. Normal Business Hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.
  17. Normal Operating Conditions means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
  18. PEG Access means public, educational, governmental and other public interest programming channels, equipment, facilities, funding, or operations as the context may require.
  19. Pay Television means the delivery of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
  20. Person is any person, firm, partnership, association, corporation, company, or other legal entity.
  21. Right-of-Way or Rights-of-Way means the area on, below, or above any real property in the Franchise Area in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.
  22. Right-of-Way Ordinance means the ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.

23. Standard Installation means any residential installation which can be completed using a drop of 150 feet or less. This term only applies to Grantee's delivery of Cable Service.

24. Subscriber means any Person who lawfully receives Cable Service from Grantee or over Grantee's network.

## **Subd. 2. Grant of Authority and General Provisions.**

### **A. Grant of Franchise.**

1. This Franchise is granted pursuant to the terms and conditions contained herein.
2. The Grantee shall have the right and privilege pursuant to this Franchise to provide Cable Service in the City.
3. Use of the Rights-of-Way to provide Cable Service shall not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of the Right-of-Way Ordinance.
4. This Franchise shall be nonexclusive. Additional Cable Franchises may be granted by the City on terms and conditions which, taken as a whole, are no more favorable or less burdensome than those imposed in previously granted Franchises.

**B. Lease or Assignment Prohibited.** Other than for the provision of commercial leased access and/or provision of access over an open video system, no Person may lease Grantee's network for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9(E).

**C. Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 7(F) herein.

**D. Compliance with Applicable Laws, Resolutions and Ordinances.** The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of any System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City.

- E. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted. In addition, the City and Grantee acknowledge that as of the effective date of this Franchise, the Grantee intends to provide service to the entire Franchise Area.
- F. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Grantor: City of Eagle Lake  
705 Parkway Avenue  
PO Box 159  
Eagle Lake, Minnesota 56024

With copies to: Michael R. Bradley  
Bradley & Guzzetta, LLC  
950 Piper Jaffray Plaza  
444 Cedar Street  
Saint Paul, MN 55101

If to Grantee: Crystal Communications, Inc., d/b/a/ HickoryTech  
William VanderSluis  
Director of Regulatory Affairs  
HickoryTech  
221 E. Hickory Street  
Mankato, Minnesota 56001

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

### **Subd. 3. Construction Standards.**

- A. Registration, Permits and Construction Codes.
1. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Cable Service in the City Franchise Area.
  2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and pursuant to Section

4(F) below, to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

3. Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing a rights-of-way Ordinance.
- B. Grantee shall bury all drops in a reasonable time period, which shall not exceed fifteen (15) business days, subject to weather conditions. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial which in no event shall be later than June 30th.
- C. **Erection, Removal and Joint Use of Poles.** No poles, conduits, amplifier boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee on public property without prior approval of the City with regard to location, height, type and other pertinent aspects. Facilities located on public and private property shall be subject to applicable zoning and other land use regulations.
- D. **Safety Requirements.**
1. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
  2. The Grantee shall install and maintain its equipment and facilities in accordance with all federal, state and local laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of City or of any public utility serving City.
  3. All facilities structures, and lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any person.

#### **Subd. 4. System Design and Extension Provisions.**

A. **Channel Capacity.**

1. Grantee shall develop, construct and engineer, and activate and provide for the term of this franchise a network which is capable of delivering a minimum of 100 video channels.
2. All programming decisions remain the discretion of Grantee; provided, however, that any change in the broad categories of video programming or other

information services shall require the approval of the City consistent with 47 U.S.C. § 544(b), and further provided that Grantee notifies the City and subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, in a manner consistent with federal law. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from subscribers.

B. Service Availability/Density Requirement.

1. Grantee shall be required to extend Service to all dwelling units in the City where there are twenty-five (25) dwelling units or more per cable mile. Grantee shall not impose a special or individualized charge for the cost of such extension of cable service.
2. Grantee shall also extend service to persons requesting service where the density is insufficient to require extension without any special or individualized charge. In such case, Grantee shall extend service at a cost not to exceed the construction costs per mile multiplied by a fraction whose numerator equals the actual number of dwelling units per mile, and whose denominator equals twenty-five (25). Those persons requesting service will bear the remainder of the construction costs on a pro rata basis. The Grantee may require that the payment of these costs by such potential subscribers be made in advance. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given twenty-four (24) months, weather permitting, to construct and activate cable service to annexed or newly developed areas.

C. Non-Standard Installations. Grantee shall install and provide cable service to any person requesting other than a standard installation provided that said cable service can meet FCC technical specifications. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

D. Provision of Services. The Grantee shall render effective service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice to the City and subscribers and shall occur during periods of minimum use of the services, as determined by records of the Grantee.

E. Technical Standards. The technical standards used in the provision of cable service shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Any failure to comply with the FCC technical standards shall be a violation of this franchise.



- F. Performance Review and System Testing. In the event City finds that there are signal or system performance difficulties which may constitute violations of applicable FCC technical standards and this franchise, Grantee shall be notified and afforded ten (10) days to correct problems or complaints. If the performance difficulty is not resolved after the cure period has elapsed in City's sole determination, City may require Grantee to demonstrate compliance via testing or other means selected by the Grantee.

FCC Reports. Grantee shall file with City all required FCC technical reports which demonstrate the level of system performance and signal quality. Further, Grantee shall summarize and explain the results of any such testing provided to the City.

#### **Subd. 5. Services Provisions.**

- A. Enforcement of Customer Service Standards. The City intends to stay enforcement of this Section 5 to the extent effective competition exists. Notwithstanding, the City may initiate enforcement of this Section despite the existence of effective competition based on the City's receipt of at least five (5) complaints with respect to each competitor, concerning similar customer service matters. The City may initiate enforcement of this Section by resolution of the City Council. The City may begin enforcement three (3) days after mailing a copy of such resolution to Grantee. The resolution shall indicate the basis for initiating enforcement.

B. Regulation of Service Rates.

1. The City may regulate rates for the provision of cable service to the extent allowed under federal or state law(s).
2. A list of Grantee's current residential subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and subscribers written notice of any change in a rate or charge in accordance with any applicable FCC requirements unless such change arises from changes in regulatory fees, franchise fees, access costs, or franchise imposed costs.

- C. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.

D. Telephone Inquiries and Complaints.

1. Availability Grantee will maintain local, toll-free or collect call telephone access lines which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week. During normal business hours, trained representatives of Grantee shall be available to respond to subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available

- to respond to customer telephone inquiries during normal business hours, and; (2) after normal business hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
2. Telephone Answer Time and Busy Signals. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
- E. Installation, Outage and Service Calls. Under normal operating conditions which will exclude the initial deployment period, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantee must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible; (2) The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer; (3) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (4) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during normal business hours which is convenient for the customer.
- F. Complaint and Other Service Records. Subject to Grantee’s obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
- G. Subscriber Contracts. Grantee shall provide to City upon request any standard form subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall provide a document completely and concisely stating the length and terms of the

Subscriber contract offered to customers.

- H. **Billing and Subscriber Communications.** Grantee must give subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.
- I. **Refunds and Credits.** If service is interrupted or discontinued for twenty-four (24) or more consecutive hours and Grantee has notice of such interruption, subscribers shall be credited pro rata for such interruption beginning with the date of notice of interruption. Credits for will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted. In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if service is terminated. Grantee shall not be held responsible for interruptions in programming caused by content providers.
- J. **Late Fees.** Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service approximately one (1) month after the unpaid bill in question was sent to the subscriber. Payments at the cable operator's drop-box location shall be deemed received on the date such payments are picked up by the cable operator which shall occur within twenty-four (24) hours after every due date. The cable operators shall continue to provide a "grace period" of at least five (5) days after each due date.
- K. **Local Office/Drop Box.** Grantee shall maintain a local office or a local drop box for receiving subscriber payments after hours in the City.
- L. **Additional Customer Service Requirements.** The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law.
- M. **Violations.** Any violation of these requirements after enforcement of this section is initiated by Council resolution shall be deemed a violation of this franchise.

**Subd. 6. Operation and Administration Provisions.**

- A. **Administration of Franchise.** The City or its designee shall have continuing regulatory jurisdiction and supervision over the services described herein and the Grantee's operation under the franchise.

B. Delegated Authority. The City shall have authority to administer the franchise and to monitor the performance of the Grantee pursuant to the franchise. The City may withdraw or re-delegate such authority by giving Grantee written notice. Grantee shall cooperate with any such delegatee of the City.

C. Franchise Fee.

1. From the effective date of the extension the company will pay a franchise fee in accordance with the Charter and City of Mankato cable franchise. The City currently receives payment from incumbent cable franchisee, Charter, in the amount of three percent (3%) of gross revenues. This payment is not explicitly required by the extension permit granted to Charter in 1996, which is an extension of Charter's franchise in the City of Mankato. "If, at the expiration of the current Charter franchise, or termination of the Charter franchise extension permit, the City takes action to increase the franchise fee charged to Charter above three percent (3%), the Company's franchise fee will be increased to the same percentage.
2. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
3. All amounts paid shall be subject to audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

D. Access to Records. The City shall have the right to inspect, upon reasonable notice and during normal business hours, any records maintained by Grantee which relate to this franchise or system operations including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall be required to provide such requested documents to the City unless such documents are available for inspection at a location in City.

E. Reports to be Filed with the City. Grantee shall file with the City, at the time of payment of the franchise fee, a report of all gross revenues certified by an officer of the Grantee. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this franchise or cable services as City may request. The form of such reports shall be mutually agreed upon by City and Grantee.

F. Periodic Evaluation.

1. The City may require evaluation sessions during the term of this franchise not more than annually, upon thirty (30) days written notice to Grantee. Grantee and

City shall hold evaluation sessions after the fifth and tenth years of this franchise.

2. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of all evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1) basic service channel of the system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.
3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this franchise, judicial rulings, FCC rulings, line extension policies, channel capacity for PEG access programming and any other topics the City and Grantee deem relevant.
4. As a result of a periodic review or evaluation session, the City may request Grantee to amend the franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

#### **Subd. 7. General Financial and Insurance Provisions.**

##### **A. Performance Bond.**

1. At the time the franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City, naming the other municipalities comprising the franchise area as additional obligees, in the amount of ten thousand dollars (\$10,000.00) in a form and with such sureties as are reasonably acceptable. The bond may be in a form which is renewable annually.
2. The bond must be conditioned upon the faithful performance of the Grantee according to the terms of the franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System.
3. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

4. The Grantee shall be given thirty (30) days notice of any franchise violation, or other claim, liability or obligation giving rise to City's right to make a claim under the bond. In the event the violation, claim, liability, or obligation is not cured, corrected or satisfied within this thirty (30) day cure period, in City's determination, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.
5. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect from the performance bond any resultant damages, costs or liabilities incurred by the City.
6. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.

B. Letter of Credit.

1. The City intends to stay enforcement of this Section 8(B) to the extent effective competition exists. Notwithstanding, in the event the City initiates enforcement of Section 3 above through adoption of a resolution of the City Council and determines that additional security is necessary or desirable to secure compliance with this franchise, or the City shall determine that effective competition has ceased, Grantee shall, upon written notice from the City, deliver to the City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to the City, from a national or state bank approved by the City, in the amount of five thousand dollars (\$5,000).
2. The Letter of Credit shall provide that funds will be paid to the City, upon written demand of the City, and in an amount solely determined by the City in payment for liquidated damages charged pursuant to this subdivision or in payment for any monies owed by Grantee pursuant to its obligations under this franchise.
3. In addition to recovery of any monies owed by Grantee to the City, the City, in its sole discretion, may charge to and collect from the letter of credit liquidated damages in an amount of up to fifty dollars (\$50.00) per violation of any provision of this franchise or applicable federal, state, or local law or regulations, pursuant to this section.
4. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this franchise, a written notice shall be given to Grantee informing it of such violation. Grantee shall have thirty (30) days from receipt of

- such notice in which to cure such violation in which event no liquidated damages may be assessed. At any time after the cure period, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in City's sole determination, the City may draw from the Letter of Credit all assessments or monies due the City from the date of the notice. The City may grant additional time beyond the initial cure period in the event the City determines such additional time is necessary to cure the alleged violation.
5. Grantee may notify the City in writing during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. Grantee shall specify with particularity the matters disputed and the basis for dispute. All liquidated damages assessments shall continue to accrue.
  6. The City shall hear Grantee's dispute at the next regularly scheduled meeting or within sixty (60) days of receipt of said notice of dispute, whichever is shorter.
  7. In the event City determines that a violation has taken place, such determination shall be deemed final, subject to Grantee's right to appeal such final determination to a court or forum of competent jurisdiction.
  8. In the event City determines that no violation has taken place, the City shall rescind the notice of violation.
  9. If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires prior to the expiration of the term of this franchise, it shall be renewed or replaced during the term of this franchise to provide that it will not expire prior to the expiration of this franchise. The renewed or replaced letter of credit shall be of the same form and amount and with a bank authorized herein.
  10. If the City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace the same within ten (10) days and shall deliver to the City a like replacement letter of credit for the full amount stated in Paragraph a of this section as a substitution of the previous letter of credit.
  11. If any letter of credit is not so replaced, the City may draw on said letter of credit for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace any letter of credit may also, at the option of the City, be deemed a default by Grantee under this franchise. The drawing on the letter of credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
  12. The collection by the City of any monies or penalties from the letter of credit shall not be deemed an exclusive remedy and shall not affect any other right or remedy available to the City, nor shall any act, or failure to act, by the City pursuant to the

letter of credit, be deemed a waiver of any right of the City pursuant to this franchise or otherwise.

C. Indemnification of the City.

1. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the system or as to any other action or event with respect to this franchise.
2. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise, administration, or enforcement of the franchise. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.
3. Nothing in this Franchise relieves a person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a right-of-way or public place or with the construction or reconstruction of a sewer or water system.
4. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
  - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
  - b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
  - c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

D. Insurance.

1. Grantee shall file with its acceptance of this franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which



may arise as a result of this franchise.

2. The policies of insurance shall be in the sum of not less than one million dollars (\$1,000,000.00) for personal injury or death of any one person, and two million dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, five hundred thousand dollars (\$500,000.00) for property damage to any one person and two million dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
3. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

**Subd. 8. Sale, Abandonment, Transfer and Revocation of Franchise.**

- A. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, if after the hearing required therein, it is determined that:
  1. Grantee has violated any material provision of this franchise and failed to timely cure; or
  2. Grantee has attempted to evade any of the material provisions of the franchise; or
  3. Grantee has practiced fraud or deceit upon the City or subscriber.
  4. The City may revoke this Franchise without the hearing required herein if Grantee files for bankruptcy.
- B. Procedures for Revocation.
- C. Abandonment of Service. Grantee may not discontinue providing video programming services without having first given three (3) months written notice to the City.
- D. Removal After Abandonment, Termination or Forfeiture.
  1. In the event of termination or forfeiture of the franchise or abandonment of the system, the City shall have the right to require Grantee to remove all or any portion of the system from all rights-of-way and public property within the City, subject to the authority of the Member Municipalities; provided, however, that the Grantee shall not be required to remove the System if it is authorized to provide

telecommunications service pursuant to state or federal law.

2. If Grantee has failed to commence removal of system, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the system to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the system to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or corporate change of or in Grantee or the system, including, but not limited to, the sale of a majority of the entity's assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
2. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section 9(E). The term "controlling interest" as used herein means actual working control in whatever manner exercised.
3. The City shall have such time as is permitted by applicable federal law in which to review a transfer request.
4. The Grantee shall reimburse City for all the legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee.
5. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (1) or (2) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
6. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (1) or (2) of this Section, the City shall have the right to purchase the system. In the event Grantee has received a bona fide offer for purchase of the system, the City shall have the right to purchase in accordance

with the terms thereof. The Grantee must promptly convey such offer to the City along with any written acceptance. As used in this Section, “bona fide offer” means an offer to purchase the system received by the Grantee which it intends to accept. In any other event, the City shall have the right to purchase the system for an equitable price and upon commercially reasonable terms.

7. The City shall be deemed to have waived its right to purchase under in the following circumstances:
  - a. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise or reserve its right of purchase; or
  - b. It approves the assignment or sale of the franchise as provided within this Section.

### **Subd. 9. Protection of Individual Rights.**

A. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.

#### **B. Subscriber Privacy.**

1. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. No signals including signals of a Class IV 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. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed 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 Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
2. No lists of the names and addresses of subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed 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.

3. Written permission from the subscriber shall not be required for the conducting of system wide or individually addressed electronic 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 subparagraph (2) of this subdivision.

**Subd. 10. Miscellaneous Provisions.**

- A. Franchise Renewal. Any renewal of this franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed franchise shall be limited to a period not to exceed fifteen (15) years.
- B. Work Performed by Others. All obligations of this franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this franchise, however, in no event shall any such subcontractor or other person performing work obtain any rights to maintain and operate a system or provide cable service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this franchise involving the right-of-way, public property or new System construction or system upgrade.
- C. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7(F) or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
- D. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
- E. Compliance with Federal, State and Local Laws.
  1. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
  2. If any term, condition or provision of this franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective provided the

loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding.

- F. Non-enforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- G. Rights Cumulative. All rights and remedies given to the City by this franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.
- H. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this franchise.

**Subd. 11. Publication Effective Date; Acceptance and Exhibits.**

- A. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The effective date of this franchise shall be the date of acceptance by Grantee in accordance with the provisions of this Section 12(B).
- B. Acceptance.
  - 1. Grantee shall accept this franchise within thirty (30) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this franchise for all purposes provided. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this franchise and any and all rights previously granted to Grantee shall be null and void.
  - 2. Upon acceptance of this franchise, Grantee shall be bound by all the terms and conditions contained herein.
  - 3. Grantee shall accept this franchise in the following manner:
    - a. This franchise will be properly executed and acknowledged by Grantee and

delivered to the City.

With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

### **SECTION 11.020 CENTERPOINT ENERGY “MINNEGASCO” FRANCHISE**

An ordinance granting CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”) its successors and assigns, a nonexclusive franchise to construct, operate, repair and maintain facilities and equipment for the transportation, distribution, manufacture and sale of gas energy for public and private use and to use the public ways and grounds of the City of Eagle Lake, Blue Earth County, Minnesota, for such purpose; and, prescribing certain terms and conditions thereof.

**Subd. 1. Definitions.** For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- A. City. The City of Eagle Lake, County of Blue Earth, 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, water service, street lighting and traffic signals, 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 gas retail rates now vested in the Minnesota Public Utilities Commission.
- D. 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.
- E. 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 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 CenterPoint Energy, V.P. Regulatory and Supply Service, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to Eagle Lake City Administrator, P.O. Box 159, Eagle Lake, Minnesota 56024-0159 Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.
- G. Public Way. Any street, alley or other public right-of-way within the City.

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.

**Subd. 2. Adoption of Franchise.**

- A. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell gas 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 Gas 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 permit requirements 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 its 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 90 days after the date the City Council adopts this Ordinance, or otherwise informs the City, at any time, that the Company does not accept this franchise, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.
- C. Service and Gas Rates. The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Commission.
- 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 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. 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 ninety (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 twenty (20) year term set forth in Section 2.1.

**Subd. 3. Location, Other Regulations.**

- A. 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. Gas Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas 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.
- 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 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.
- 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 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 (5) 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 11.020. The Company shall also post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.
- D. 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 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.

- E. Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways 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 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 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.
- G. Mapping Information. The Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100.

**Subd. 4. 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 Grounds. 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. Relocation shall comply with applicable city ordinances consistent with law.
- C. 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 Minnesota Statutes Section 161.46.

**Subd. 5. Indemnification.**

- A. Indemnity of City. Company shall indemnify 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 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 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. 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 Minnesota Statutes, Chapter 466.

**Subd. 6. 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 consistent with law.

**Subd. 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.

**Subd. 8. Franchise Fee.**

- A. Form. During the term of the franchise hereby granted, and in lieu of permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) – (ii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing and implementing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee.
- B. 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 sixty (60) days after written notice enclosing such proposed ordinance has been served upon the Company by certified mail.

- C. Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of gas energy within the City by any other gas 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 a previously agreed upon franchise.
- D. 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 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 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.
- E. 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 (1) year after the franchise expires as stated in Section ~~2.6~~ 11.020, subd.2 F of this agreement.

**Subd. 9. Abandoned Facilities.** The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules Part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all facilities, including abandoned and retired facilities.

**Subd. 10 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. 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.

**Subd. 11. 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 within 60 days after the effective date of the amendatory ordinance.

## **SECTION 11.030 NORTHERN STATES POWER COMPANY**

**Subd. 1. Definitions.** For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- A. **City.** The City of Eagle Lake, County of Blue Earth, State of Minnesota.
- B. **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.
- 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. **Cooperative.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.
- 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 use.
- F. **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 705 Parkway Avenue, P.O. Box 159, Eagle Lake, MN 56024. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- G. **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- H. **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

### **Subd. 2. Adoption of Franchise.**

- A. **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, 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 Grounds and Public Ways 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 such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

- B. Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, 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.
- C. Service and Rates. 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.40.
- D. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
- 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 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 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.

### **Subd. 3. 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 normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on 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 separate ordinance 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.

- B. Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- C. 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 obtain any required permits and pay any required fees.
- D. Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, 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. The 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 or Public Way 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 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 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.
- E. 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.
- F. 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.

- G. 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.

#### **Subd. 4. Relocations.**

- A. 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, regrade, or change the line of any Public Way, or 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, 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 Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs 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 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 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. 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.
- C. 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 Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

- D. 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.

**Subd. 5. Tree Trimming.** Company may trim 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 save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

**Subd. 6. Indemnification.**

A. Indemnity of City. 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 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.

B. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**Subd. 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 are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

**Subd. 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.

**Subd. 9. Franchise Fee.**

A. 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 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.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$0.50
Small Commercial & Industrial – Non-Demand	\$0.50
Small Commercial & Industrial – Demand	\$0.50
Large Commercial & Industrial	\$0.50
Public Street Lighting	\$0.00
Muni Pumping – Non-Demand	\$0.00
Muni Pumping – Demand	\$0.00

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 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. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. 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.

C. Terms Defined. For the purpose of this Section 9, 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 9.1 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 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. The time 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. 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.
- E. 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 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 9.5, the foregoing conditions will be waived to the extent of such written consent.

**Subd. 10. 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. 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.

**Subd. 11. Amendment Procedure.** Either party to this franchise agreement 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 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 within 90 days after the date of final passage by the City of the amendatory ordinance.

**Subd. 12. Previous Franchises Superseded.** This franchise supersedes any previous electric franchise granted to Company or its predecessor.

**SECTION 11.040 GAS FRANCHISE—GREATER MINNESOTA GAS, INC.**

**Subd. 1. Definitions.** The following terms shall mean:

- A. City. The City of Eagle Lake, County of Blue Earth, 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, water service, street lighting and traffic signals, 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 gas retail rates now vested in the Minnesota Public

Utilities Commission.

- D. Company. Greater Minnesota Gas, Inc., a Minnesota corporation, 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.
- E. 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 public or private use.
- F. Gas. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.
- G. Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities.
- H. Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to 315 ½ Minnesota Ave. Suite 201, St. Peter, MN 56082. Notice to the City shall be mailed to the City Manager at P.O. Box 159, Eagle Lake, MN 56024-0159. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.
- I. Public Way. Public right-of-way within the City as defined in Minn. Stat. § 237.162, subd. 3.
- J. 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.

**Subd. 2. Franchise Generally.**

- A. Grant of Franchise. There is hereby granted to the Company, for a period of twenty (20) years from the effective date hereof, the right to import, manufacture, transport, distribute and sell gas for public and private use in those areas of LeRay Township and Eagle Lake Township that have been or may be annexed into the City, and for these purposes to construct, operate, repair and maintain, in, on, over, under and across the Public Ground of the City all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to zoning ordinance, other applicable ordinances, permit procedures, customary practices, and the provisions of this franchise.
- B. Effective Date; Written Acceptance. This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within ninety (90) days after the date the City Council adopts this Ordinance, or

otherwise places the City on written notice, at any time, that the Company does not accept all terms of this franchise, the City Council by resolution may either repeal this ordinance or seek its enforcement in a court of competent jurisdiction.

- C. Service and Gas Rates. The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Commission.
- D. Publication Expense. The expense of publication of this Ordinance shall be paid by Company.
- 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 written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief permitted by law.
- F. 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 ninety (90) days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire.
- G. Nonexclusive Franchise. This is not an exclusive franchise.

**Subd. 3. Location, Other Regulations.**

- A. Location of Facilities. All gas facilities and equipment of the Company shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel and use of the Public Ground. All gas facilities and equipment of the Company shall be located and installed in conformance with the City's standard location format and shall be subject to permit conditions of the City. The permit conditions may provide for the right of inspection by the City and the Company agrees to make its facilities and equipment available for inspection at all reasonable times and places.
- B. Permit Required. The Company shall not open or disturb the surface of any public ground for any purpose without first having obtained a permit from the City, for which the City may impose a reasonable fee to be paid by the Company. The permit conditions imposed on the company shall not be more burdensome than those imposed on the other utilities for similar facilities or work. The mains, services and

other property placed pursuant to such permit shall be located as shall be designated by the City.

The Company may, however, open and disturb the surface of any public ground without a permit where an emergency exists requiring the immediate repair of its facilities. The Company in such event shall request a permit not later than the second working day thereafter.

- C. Restoration of Public Ways and Public Ground. After completing work requiring the opening of public ground, the Company shall restore the public ground, including paving and its foundations to as good a condition as formerly existed, and shall exercise reasonable care to maintain the surface in good condition for two (2) years thereafter. All work shall be completed as promptly as weather permits. 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 and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five (5) days, have the right to make the restoration of the public ground at the expense of the Company. Company shall pay to the City the cost of such work done for or performed by the City including its administrative expense and overhead, together with ten percent additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City for noncompliance with this section.
- D. Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging gas facilities while performing any activity.

#### **Subd. 4. Relocations.**

- A. Relocation of Gas Facilities. The Company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the City orders such relocation. If the relocation is a result of the proper exercise of the police power in grading, regrading, changing the location or shape of or otherwise improving any public ground or constructing or reconstructing any sewer or water system therein, the relocation shall be at the expense of the City. The City may require Company at Company's expense to relocate or remove its gas facilities from public grounds 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 grounds. Relocation gas facilities in public ground shall comply with applicable City ordinances consistent with law.
- B. 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 Minnesota Statutes Section 161.46, as supplemented or amended. City shall not order Company to remove or relocate its gas 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 agreement is made that the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting there from will be paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

- C. Street Improvements, Paving or Resurfacing. The City shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall be given to the Company in a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its facilities the Company deems necessary.

In cases where the street are at final width and grade, and the City has installed underground sewer and water mains and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets and the Company's main is located under such street, the Company may be required to install gas service connections prior to such paving or resurfacing, whenever it is apparent that gas service will be required during the five (5) years following the paving or resurfacing.

- D. No Waiver. The provisions of Section 4 apply only to gas facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State or County permit.
- E. Plats. The company shall within ninety (90) days after acceptance of this Ordinance, file with the City Engineer a plat showing its distribution system including all pipes and mains. Before making any extension, relocation or change in character of the said distribution system, including all pipes and mains, but excluding service pipes, the Company shall file plans with the City engineer showing such proposed extensions, relocations or changes. The Company shall on an annual basis file with the City Engineer a fully updated base map as of December 31 of the previous year showing its distribution system including all pipes and mains.

**Subd. 5. Indemnification.** Company shall indemnify, keep and hold the City, its elected officials, officers, employees and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, or operation of the Company's property located in, on, over, under or across the public ground of the City, unless such injury or damage is the result of the negligence of the City, its elected officials, employees, officers or agents. The City shall not be entitled to reimbursement

for its costs incurred prior to notification to the Company of claims or actions and a reasonable opportunity for the Company to accept and undertake the defense. If a claim or action shall be brought against the City under circumstances where indemnification applies, the Company, at its sole cost and expense shall defend the City if written notice of the claim or action is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. The Company shall have complete control of such claim or action, but it may not settle without the consent of the City, which 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 every defense or immunity that the City could assert on its own behalf.

**Subd. 6. Change in Form of Government.** Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**Subd. 7. Franchise Fee. Reservation of Rights.** The City reserves all rights under Minn. Stat. § 216B.36, to require a franchise fee at any time during the term of this franchise. If the City elects to require a franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee agreement. The fee terms shall be set forth in a separate ordinance and not be adopted until at least sixty (60) days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or on any terms related thereto, each hereby consents to the jurisdiction of State District Court, Blue Earth County, to construe their respective rights under the law, subject to all rights of appeal.

**Subd. 8. Limitation on Applicability, No Waiver.** This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. 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. 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.

**Subd. 9. Amendment Procedure.** Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within sixty (60) days after the effective date of the amendatory ordinance.



**SECTION 11.050 BLUE EARTH-NICOLLET-FARIBAULT COOPERATIVE  
ELECTRIC ASSOCIATION (BENCO ELECTRIC)**

An ordinance granting to Blue Earth, Nicollet, Faribault Cooperative Electric Association, d/b/a Benco Electric Cooperative, a Minnesota Corporation, its successors and assigns, permission to construct, operate, repair and maintain in the City of Eagle Lake, 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 grounds and public ways of the city for such purposes.

**Subd. 1. Definitions.** For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- A. **City.** The City of Eagle Lake, County of Blue Earth, State of Minnesota.
- B. **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.
- 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. **Cooperative.** Blue Earth-Nicollet-Faribault Cooperative Electric Association, d/b/a Benco Electric Cooperative, a Minnesota Electric Cooperative Association, its successors and assigns.
- 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 use.
- F. **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Cooperative shall be mailed to General Manger, P.O. Box 8, Mankato, MN 56002-0008. Notice to the City shall be mailed to the City Administrator, City Hall, 705 Parkway Avenue, P.O. Box 159, Eagle Lake, MN 56024. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- G. **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- H. **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

## **Subd. 2. Adoption of Franchise.**

- A. Grant of Franchise. City hereby grants Cooperative, for a period of 20 years from the date passed and approved by the City, 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, Cooperative may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Cooperative may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.
- B. Effective Date. Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Cooperative, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Cooperative does not file a written acceptance with the City within 90 days after publication.
- C. Service and Rates. The service to be provided and the rates to be charged by Cooperative for electric service in City may be 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.40.
- D. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Cooperative.
- 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 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 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.

## **Subd. 3. 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 normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Cooperative's construction, reconstruction, operation, repair,

maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Cooperative may abandon underground Electric Facilities in place, provided at the City's request, Cooperative 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.

- B. Field Locations. Cooperative shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- C. Street Openings. Cooperative 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 Cooperative shall not be more burdensome than those imposed on other utilities for similar facilities or work. Cooperative 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 Cooperative 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, Cooperative shall obtain any required permits and pay any required fees.
- D. Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Cooperative shall restore the same, 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. The work shall be completed as promptly as weather permits, and if Cooperative shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Cooperative 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 Cooperative. Cooperative 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 Cooperative 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.
- E. 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.
- F. Notice of Improvements. The City must give Cooperative 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 Cooperative a sufficient length of time in advance of the actual commencement of the work to permit Cooperative to make any necessary additions, alterations or repairs to its Electric Facilities.

- G. Shared Use of Poles. Cooperative 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 Cooperative whenever such use will not interfere with the use of such poles or towers by Cooperative, by another electric utility, by a telephone utility, or by any cable television company or other form of communication cooperative. In addition, the City shall pay for any added cost incurred by Cooperative because of such use by City.

#### **Subd. 4. Relocations.**

- A. 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, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Cooperative 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, Cooperative shall relocate its Electric Facilities at its own expense. The City shall give Cooperative 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 Electric Facilities, which was made at Company expense, the City shall reimburse Cooperative for non-betterment costs 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, Cooperative 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 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. City may require Cooperative, at Cooperative'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.
- C. Projects with Federal Funding. City shall not order Cooperative 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 Cooperative. The City is obligated to pay Cooperative 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 Cooperative, 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 Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Cooperative are valuable rights.

- D. 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 Cooperative 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 Cooperative's rights under state or county permit.

**Subd. 5. Tree Trimming.** Cooperative may trim 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 Cooperative shall save the City harmless from any liability arising there from, and subject to permit or other reasonable regulation by the City.

**Subd. 6. Indemnification.**

- A. Indemnity of City. Cooperative 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 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, Cooperative'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 Cooperative's determination.
- B. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Cooperative 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 Cooperative is not prejudiced by lack of such notice. If Cooperative is required to indemnify and defend, it will thereafter have control of such litigation, but Cooperative 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 Cooperative, 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.

**Subd. 7. Vacation of Public Ways.** The City shall give Cooperative 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 Cooperative 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 Cooperative. In no case, however, shall City be liable to Cooperative for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

**Subd. 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.

**Subd. 9. Franchise Fee.**

A. Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Cooperative, 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 Cooperative Customer Class. The parties have agreed that the franchise fee collected by the C Cooperative and paid to the City in accordance with this Section 9 shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$0.50
Small Commercial & Industrial – Non-Demand	\$0.50
Small Commercial & Industrial – Demand	\$0.50
Large Commercial & Industrial	\$0.50
Public Street Lighting	\$0.00
Muni Pumping – Non-Demand	\$0.00
Muni Pumping – Demand	\$0.00

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 Cooperative billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Cooperative by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Cooperative 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. 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 Cooperative 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 9, the following definitions apply:

1. “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Cooperative’s electric tariffs on file with the Commission.
2. “Fee Schedule” refers to the schedule in Section 9.1 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 Cooperative to its electric tariffs after the effective date of this franchise agreement.

D. Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Cooperative 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. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Cooperative if Cooperative 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 Cooperative’s applicable rates for electric service. Cooperative 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. Cooperative 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. In addition, the Cooperative 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.

E. Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Cooperative unless it lawfully imposes and the City monthly or more often collects a 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 Cooperative 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.

**Subd. 10. 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. 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 Cooperative 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.

**Subd. 11. Amendment Procedures.** Either party to this franchise agreement 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 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 Cooperative's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**Subd. 12. Previous Franchises Superseded.** This franchise supersedes any previous electric franchise granted to Cooperative or its predecessor.

**SECTION 11.060 METRONET**

**Subd. 1. Short Title and Definitions.**

- A. Short Title. This Franchise shall be known and cited as the "Metronet Cable Franchise".
- B. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivative shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is



always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

1. Basic Cable Service means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
2. Cable System or System means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities located in the Franchise Area and designed and constructed primarily for the purpose of producing, receiving, transmitting, amplifying, or distributing video programming. System as defined herein shall be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(7). Notwithstanding the foregoing, the terms Cable System and System do not refer to the following:
  - a. a facility that serves only to retransmit the television signals of one (1) or more broadcast stations;
  - b. a facility that serves Subscribers without using any public Rights-of-Way;
  - c. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
  - d. an open video system that complies with 47 U.S.C. § 573.
3. Cable Programming Service means any video programming regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
  - a. Basic Cable Service;
  - b. Video programming offered on a pay-per-channel or pay-per-program basis; or
  - c. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) and 47 C.F.R. § 76.901(b).

4. Cable Service and Service means the one-way transmission to subscribers of (a) video programming, or (b) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or

other programming service.

5. Channel means a single full motion video channel.
6. City means the City of Eagle Lake, Minnesota.
7. Converter means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
8. Drop means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable. This term only applies to Grantee's delivery of Cable Service.
9. Dwelling Units means any residential home or business that has the ability to receive Grantee's Cable Service (a) without the need for Grantee to obtain any private property rights from a third party, or (b) that doesn't already have access to Cable Service through a fiber-to-the-premises network.

Effective Competition means the provision of Cable Service by two (2) or more franchised providers operating pursuant to franchise in the City.

10. FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
11. Franchise or Cable Franchise means this ordinance and the contractual relationship established hereby.
12. Franchise Fee means the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. The term "Franchise Fee" does not include: (a) any tax, fee or assessment of general applicability; (b) capital costs which are required by this Franchise related to the provision of public, educational, or governmental access facilities; (c) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages, or other regulatory costs specifically required herein in addition to the Franchise Fee; (d) any fee imposed under Title 17 of the United States Code.
13. Grantee is CMN-RUS, Inc. d/b/a Metronet, its agents and employees, lawful successors, transferees or assignees.
14. Gross Revenues means all revenues, as determined in accordance with generally accepted accounting principles ("GAAP"), actually received by the Grantee or its affiliates arising from the operation of the Cable System for the provision of Cable Service, including installations, digital service tiers, basic cable service, expanded basic cable service, guide revenues, equipment rentals, premium services, pay-per-view (including video-on-demand), wire maintenance, late fees, miscellaneous revenue, advertising revenues, upgrade and downgrade fees, revenues generated by sales or home shopping channel(s), leased channel fees,

converter and equipment rental fees. The term Gross Revenues shall not include bad debt (unless collected), or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

15. Initial Service Area means a geographic area that represents at least \_\_\_\_ ( %) of the Dwelling Units in the Franchise Area.
16. Installation means the connection from feeder cable to the point of connection with the Subscriber Converter. This term only applies to Grantee's delivery of Cable Service.
16. Normal Business Hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.
17. Normal Operating Conditions means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, epidemics, pandemics, acts of god, incidents of terrorism, natural disasters, civil disturbances, power outages, telephone network outages, work delays associated with waiting for other utilities to provide access to utility poles or conduit, unavailability of materials or qualified labor to perform the work, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
18. PEG Access means public, educational, governmental and other public interest programming channels, equipment, facilities, funding, or operations as the context may require.
19. Pay Television means the delivery of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
20. Person is any person, firm, partnership, association, corporation, company, or other legal entity.
21. Right-of-Way or Rights-of-Way means the area on, below, or above any real property in the Franchise Area in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.
22. Right-of-Way Ordinance means the ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.

23. Standard Installation means any residential installation which can be completed using a Drop of 150 feet or less. This term only applies to Grantee's delivery of Cable Service.

24. Subscriber means any Person who lawfully receives Cable Service from Grantee or over Grantee's network.

**Subd. 2. Grant of Authority and General Provisions.**

**A. Grant of Franchise.**

1. This Franchise is granted pursuant to the terms and conditions contained herein.
2. The Grantee shall have the right and privilege pursuant to this Franchise to own, install, construct, operate, maintain, dismantle, test, upgrade, repair, use, and remove a Cable System along, under, over, above, through or across or in any manner connected with the public Rights-of-Way of City, for purposes of providing Cable Service in the City.
3. Use of the Rights-of-Way to provide Cable Service shall not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of the Right-of-Way Ordinance.
4. This Franchise shall be nonexclusive. Additional Cable Franchises may be granted by the City on terms and conditions which, taken as a whole, are no more favorable nor less burdensome than those imposed in previously granted Franchises.
5. Nothing in this Franchise shall be construed to prohibit Grantee from: (a) providing services other than Cable Services to the extent not prohibited by state or federal law; or (b) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all its rights to regulate such other non-cable services to the extent not prohibited by state or federal law and no provision herein shall be construed to limit or give up any right to regulate.

**B. Lease or Assignment Prohibited.** Other than for the provision of commercial leased access and/or provision of access over an open video system, no Person may lease Grantee's network for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9(E).

**C. Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 6(F) herein.

**D. Compliance with Applicable Laws, Resolutions and Ordinances.** The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of any System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City.

E. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time (“Franchise Area”). In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted.

F. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Grantor:                   City of Eagle Lake  
  101 Plainview Street  
  Eagle Lake, Minnesota 56024

With copies to:               Michael R. Bradley  
  Bradley & Guzzetta, LLC  
  950 Piper Jaffray Plaza  
  444 Cedar Street  
  Saint Paul, MN 55101

If to Grantee:                   CMN-RUS. Inc.  
  Attn: Legal Department  
  8837 Bond Street  
  Overland Park, KS 66214

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

**Subd. 3. Construction Standards.**

A. Registration, Permits and Construction Codes.

1. Grantee shall, to the extent applicable, strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Cable Service in the City Franchise Area.
2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and pursuant to Section 4(F) below, to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.
3. Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing a Rights-of-Way Ordinance.

B. Grantee shall bury all Drops in a reasonable time period, which shall not exceed fifteen (15) business days, subject to weather or other conditions beyond its reasonable control. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial which in no event shall be later than June 30th.

C. **Erection, Removal and Joint Use of Poles.** No poles, conduits, amplifier boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee on public property without prior approval of the City with regard to location, height, type and other pertinent aspects. Facilities located on public and private property shall be subject to applicable zoning and other land use regulations.

D. **Safety Requirements.**

1. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. The Grantee shall install and maintain its equipment and facilities in accordance with all applicable federal, state and local laws and regulations, and the applicable requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of City or of any public utility serving City.
3. All facilities structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any Person.

**Subd. 4. System Design and Extension Provisions**

A. **Channel Capacity.**

1. Grantee shall develop, construct and engineer, and activate and provide for the term of this Franchise a network which is capable of delivering a minimum of 100 video channels.
2. All programming decisions remain the discretion of Grantee; provided, however, that any change in the broad categories of video programming or other information services shall require the approval of the City consistent with 47 U.S.C. § 544(b), and further provided that Grantee notifies Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, in a manner consistent with federal law.

B. **Service Availability/Density Requirement.**

1. Subject to Section 4(B)(3), Grantee shall construct and operate its Cable System so as to provide Service to all parts of the Initial Service Area having a density equivalent of seven (7) residential units per one-quarter (1/4) cable mile, as measured in strand footage from the nearest technically feasible point on the active Cable System trunk or feeder line.
2. Upon request Grantee may, in its sole discretion, also extend Service to Persons requesting Service outside of its then current service territory. In such case, Grantee will provide such Persons with a written estimate of the anticipated costs. The

Grantee may require that the payment of these costs by such potential Subscribers be made in advance. Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

3. Notwithstanding anything to the contrary, Grantee may refuse to provide Cable Service: (a) in areas where developments or buildings are subject to exclusive arrangements with other providers; (b) when it is unable pursuant to normal industry practice to obtain necessary programming, real property or other access rights; (c) in developments or buildings to which Grantee is unable to provide Cable Service for technical reasons or which require non-standard facilities that are not available on a commercially reasonable basis; (d) in areas already served by a fiber-to-the-home Cable Service provider; (e) when its prior service, payment, or theft of service history with a Person has been unfavorable; and (f) in areas where the occupied residential household density does not meet the density requirement set forth in this Section 4(B)(1).
- C. Non-Standard Installations. Subject to Section 4(B)(3), Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet applicable FCC technical specifications. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.
  - D. Provision of Services. The Grantee shall render effective Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice to Subscribers and, to the extent commercially practicable, shall occur during periods of minimum use of the Services, as determined by records of the Grantee.
  - E. Technical Standards. The technical standards used in the provision of Cable Service shall comply, at minimum, with the technical standards promulgated by the FCC relating to a fiber-to-the-premises networks, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Any failure to comply with the FCC technical standards shall be a violation of this Franchise.
  - F. INTENTIONALLY DELETED.
  - G. FCC Reports. Upon request, Grantee shall file with City all required FCC technical reports which demonstrate the level of System performance and signal quality. Further, upon request, Grantee shall summarize and explain the results of any such testing provided to the City.

**Subd. 5. Services Provisions.**

- A. Enforcement of Customer Service Standards. The City intends to stay enforcement of this Section 5 to the extent Effective Competition exists. Notwithstanding, the City may initiate enforcement of this Section despite the existence of Effective Competition based on the City's receipt of at least five (5) complaints with respect to each competitor, concerning similar customer service matters. The City may initiate enforcement of this

Section by Resolution of the City Council. The City may begin enforcement ten (10) days after Grantee's receipt of a copy of such Resolution. The Resolution shall indicate the basis for initiating enforcement.

B. Regulation of Service Rates.

1. The City may regulate rates for the provision of Cable Service to the extent allowed under federal or state law(s).
2. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file and provided to City upon request and shall be available for public inspection. Grantee shall give Subscribers written notice of any change in a rate or charge in accordance with any applicable FCC requirements unless such change arises from changes in regulatory fees, franchise fees, access costs, taxes, or franchise imposed costs.

C. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.

D. Telephone Inquiries and Complaints.

1. Availability Grantee will maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (a) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and (b) after Normal Business Hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
2. Telephone Answer Time and Busy Signals. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

E. Installation, Outage and Service Calls. Under Normal Operating Conditions which will exclude the initial deployment period, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (a) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantee must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible; (b) The "appointment window"



alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer; (c) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (d) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during Normal Business Hours which is convenient for the customer.

- F. **Complaint and Other Service Records.** Subject to Grantee's obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Upon City request, Grantee shall provide the City with a written summary of such complaints and their resolution in a form mutually agreeable to City and Grantee. Grantee may, to the extent available, be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
- G. **Subscriber Contracts.** Grantee shall provide to City upon request any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.
- H. **Billing and Subscriber Communications.** Grantee must give Subscribers thirty (30) days advance written notice before any changes in rates, programming services, or channel positions. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- I. **Refunds and Credits.** If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers that request a credit shall be credited pro rata for such interruption beginning with the date of notice of interruption. Credits for will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Services are not considered terminated until all equipment has been returned. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated. Grantee shall not be held responsible for interruptions in programming caused by content providers.
- J. **Late Fees.** Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service approximately one (1) month after the unpaid bill in question was sent to the Subscriber. Payments at the cable operator's drop-box location

shall be deemed received on the date such payments are picked up by the cable operator which shall occur within 24 hours after every due date.

- K. Local Office/Drop Box. Grantee shall maintain a local office or a local drop box for receiving Subscriber payments after hours in the City.
- L. Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law.
- M. Violations. Any violation of these requirements after enforcement of this Section is initiated by Council Resolution shall be deemed a violation of this Franchise.

**Subd. 6. Operation and Administration Provisions.**

- A. Administration of Franchise. The City or its designee shall have continuing regulatory jurisdiction and supervision over the Services described herein and the Grantee's compliance with the terms of this Franchise.
- B. Delegated Authority. The City shall have authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The City may withdraw or re-delegate such authority by giving Grantee written notice. Grantee shall cooperate with any such delegatee of the City.
- C. Franchise Fee.
  - 1. The City currently receives payment from incumbent cable franchisee, Charter, in the amount of three percent 3% of gross revenues. Consequently, Grantee will pay City a Franchise Fee equal to three percent (3%) of its Gross Revenues under this Franchise.
  - 2. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
  - 3. All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
- D. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to this Franchise or System operations including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall be required to provide such requested documents to the City unless such documents are available for inspection at a location in City.
- E. Reports to be Filed with the City. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues certified by an officer of the Grantee. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or Cable

Services as City may request. The form of such reports shall be mutually agreed upon by City and Grantee.

F. Periodic Evaluation.

1. The City may require evaluation sessions during the term of this Franchise not more frequently than annually, upon thirty (30) days written notice to Grantee. Grantee and City shall hold evaluation sessions after the fifth and tenth years of this franchise.
2. INTENTIONALLY DELETED.
3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies, channel capacity for PEG access programming and any other topics the City and Grantee deem relevant.
4. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

**Subd. 7. General Financial and Insurance Provisions.**

A. Performance Bond.

1. At the time the Franchise becomes effective, until the Grantee has completed construction of the Initial Service Area, the Grantee shall furnish a bond to the City, naming the City as an additional obligee, in the amount of Ten Thousand Dollars (\$10,000.00) in a form and with such sureties as are reasonably acceptable. The bond may be in a form which is renewable annually.
2. The bond must be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System.
3. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond. Upon Grantee's completion of its construction of the Initial Service Area, the bond shall be promptly release by City.

4. The Grantee shall be given thirty (30) days notice of any franchise violation, or other claim, liability or obligation giving rise to City's right to make a claim under the bond. In the event the violation, claim, liability, or obligation is not cured, corrected or satisfied within this thirty (30) day cure period, in City's determination, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.
5. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect from the performance bond any resultant damages, costs or liabilities incurred by the City.
6. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.

B. Indemnification of the City.

1. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this Franchise.
2. To the extent caused by Grantee, Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise, administration, or enforcement of the Franchise. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.
3. Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
4. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
  - a. Promptly notify Grantee in writing of any claim or legal proceeding which

gives rise to such right.

- b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

D. Insurance.

1. Grantee shall file within 30-days of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of this Franchise.
2. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
3. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. In the event of cancellation of, or material change in, any of the policies, the Grantee will notify the City within at least fourteen (14) days after receiving notice of such cancellation or policy change and provide evidence that replacement insurance coverage is in place to meet the requirements of this Franchise. If the certificate indicates coverage applicable insurance policies will expire prior to completion of all terms of this Franchise, the Grantee will furnish a certificate of insurance evidencing renewal of such coverage to the City within ten (10) days of the effective date such renewal.

**Subd. 8. Sale, Abandonment, Transfer and Revocation of Franchise.**

- A. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:
1. Grantee has violated any material provision of this Franchise and failed to timely cure; or
  2. Grantee has attempted to evade any of the material provisions of the Franchise; or
  3. Grantee has practiced fraud or deceit upon the City or Subscriber.
  4. The City may revoke this Franchise without the hearing required herein if Grantee

files for bankruptcy.

B. Procedures for Revocation.

1. The City shall provide Grantee with written notice of intent to revoke the Franchise which shall identify the basis of the revocation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to cure the violation or to provide adequate assurance of performance in compliance with the Franchise.
2. City shall schedule a public hearing affording Grantee due process prior to revocation. The public hearing shall be scheduled after the end of the cure period and within ninety (90) days of the date of the notice of revocation. Notice of the hearing shall be provided to Grantee.
3. The City shall provide Grantee with written notice of its final decision together with written findings of fact supplementing said decision. Only after Grantee receives written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision.
4. During the appeal period, the Franchise shall remain in full force and effect unless the terms thereof sooner expires.

C. Abandonment of Service. Grantee may not discontinue providing video programming services without having first given three (3) months written notice to the City.

D. Removal After Abandonment, Termination or Forfeiture.

1. In the event of termination or forfeiture of the Franchise or abandonment of the System:
  - a. the City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City,; provided, however, that the Grantee shall not be required to remove the System if it is authorized to provide telecommunications service pursuant to state or federal law.
  - b. if Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the Performance Bond toward removal and/or declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or corporate change of or in Grantee or the System, including, but not limited to, the sale of a majority of the entity's assets, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for

its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness or where the Franchise is transferred to an affiliate entity under the same common control.

2. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section 8(E). The term "controlling interest" as used herein means actual working control in whatever manner exercised.
3. The City shall have such time as is permitted by applicable federal law in which to review a transfer request.
4. INTENTIONALLY DELETED.
5. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (1) or (2) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.

#### **Subd. 9. Protection of Individual Rights.**

- A. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.
- B. Subscriber Privacy.
  1. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. No signals including signals of a Class IV 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. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed 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 Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
  2. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written

- authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed 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.
3. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic 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 Subparagraph (2) of this Subdivision.

**Subd. 10. Miscellaneous Provisions.**

- A. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- B. Work Performed by Others. All obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other Person performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Right-of-Way, public property or new System construction or System upgrade.
- C. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 6(F) or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
- D. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
- E. Compliance with Federal, State and Local Laws.
  1. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
  2. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the



parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding.

- D. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- G. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.

**Subd. 11. Publication Effective Date; Acceptance and Exhibits.**

- A. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of this Section 11(B).
- B. Acceptance.
  - 1. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided. In the event acceptance does not take place or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights previously granted to Grantee shall be null and void.
  - 2. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
  - 3. Grantee shall accept this Franchise in the following manner:
    - a. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
    - b. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.