

# ELECTRIC FRANCHISE ORDINANCE

## ORDINANCE NO. 647

### CITY OF CHANHASSEN, CARVER AND HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF CHANHASSEN, 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.

THE CITY COUNCIL OF THE CITY OF CHANHASSEN, CARVER AND HENNEPIN COUNTY, MINNESOTA, ORDAINS:

#### SECTION 1. DEFINITIONS.

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

- 1.1 **City.** The City of Chanhassen, County of Carver and Hennepin, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- 1.3 **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.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.
- 1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public or private use.
- 1.6 **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, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the

City shall be mailed to the City Administrator, City Hall, 7700 Market Boulevard, P.O. Box 147, Chanhassen, MN 55317. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 **Public Way.** Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3.

1.8 **Public Ground.** Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public and not a Public Way.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1. **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 transmit and furnish electric energy for light, heat and power 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 or permit requirements and to the further provisions of this franchise agreement.

2.2. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 days after the date the City Council adopts this Ordinance, the City Council by resolution may revoke this franchise or seek its enforcement in a competent jurisdiction.

2.3. **Service, Rates and Area.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B. 37 - .40.

2.4. **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5. **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days of the date of written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.6. **Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

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

3.2. **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 subject to the provisions of Section 9. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3. **Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have the right, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, 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 3.3.

The City conditionally 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 or the Public Ground. Notwithstanding the foregoing, the City reserves the right to require a performance bond acceptable to the City and Company for new installation, replacement or repairs when the Company's completion of its work is required in order for the City to proceed with its work for constructing a public improvement to the Public Way, or if Company has failed to properly or timely restore its work under a permit issued within two years of the Company's project permit application.

3.4. **Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities or other persons or property while performing any activity.

3.5. **Notice of Improvements to Streets.** The City must give Company reasonable written 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 or 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, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Electric Facilities the Company deems necessary.

3.6. **Mapping Information.** The Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules parts 7819.4000 and 7819.4100.

3.7. **Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions reasonably 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.

#### **SECTION 4. FACILITIES RELOCATION.**

4.1. **Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

4.2. **Relocation in Public Grounds.** City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the

existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law.

4.3. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46. 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 Company. The City shall reimburse Company pursuant to this Section and the Government Prompt Payment Act, Minn. Stat. § 471.425, after relocation costs are determined.

## **SECTION 5. TREE TRIMMING.**

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

## **SECTION 6. INDEMNIFICATION.**

6.1. **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 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.

6.2. **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

## **SECTION 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 are first paid to Company. The City and Company shall comply with Minnesota Rules, subpart 7819.3200 and applicable ordinances consistent with law.

**SECTION 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.

**SECTION 9. FRANCHISE FEE.**

9.1 **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 initial franchise fee collected by the Company and paid to the City in accordance with this Section 9 shall be a fixed monthly fee in accordance with the following customer classes and in amounts as set forth pursuant to section 9.2 below. The City reserves its right to modify these fees from time to time, upward or downward, subject to the amendatory procedure stated in Section 12 below.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$ 5.00
Sm C & I - Non-Dem	\$ 14.00
Sm C & I - Demand	\$ 40.00
Large C & I	\$ 290.00
Public Street Ltg	\$ 0
Muni Pumping - N/D	\$ 0
Muni Pumping - Dem	\$ 0

9.2 **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 of the City’s intent to impose a fee has been served upon Company. 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.

9.3 **Terms Defined.** For the purpose of this Section 9, the following definitions apply:

9.3.1 “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.

9.3.2 “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.

9.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 9. The parties acknowledge that certain elements of collecting the franchise fee are 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 and audit by the City at reasonable times provided that the City and its designated representative agree in writing, subject to requirements of law otherwise, not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. If any error in collection of franchise fees is discovered by either party, the City and Company shall meet as soon as reasonably practical to negotiate the means, methods and timing in which the fee payment shall be made to the City. In no event shall fees the Company cannot collect from customers be included in the amount payable to the City.

9.5 **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City quarterly 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 class, or by comparing, as to similar customer classes 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. The Company may waive the foregoing of this Section 9.5, to the extent of such written consent.

## **SECTION 10. SERVICE RELIABILITY, INFRASTRUCTURE REPORTING.**

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to this Franchise, including, but not limited to, collaborative infrastructure planning, vegetation management and reliability performance. Upon request, the Company shall provide to City reporting information on service reliability, including System Average Interruption Duration Index (SAIDI) and other measures as may be beneficial and mutually agreeable, such as Customers Experiencing Multiple interruptions (CEMI) or other outage data, the exact form and content of which shall all be mutually agreed to by City and Company.

## **SECTION 11. PROVISIONS OF ORDINANCE.**

11.1. **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

11.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

## **SECTION 12. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk after City council adoption of the amendatory ordinance. This amendatory procedure, however, is not a waiver of Company's or the City's rights or arguments, whether under Minnesota Statutes, Sections 216B.36 and 301B.01 or other applicable law or otherwise.

Passed and approved: October 28, 2019.



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Mayor of the City of Chanhassen, Minnesota

Attest:

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City Manager, Chanhassen, Minnesota