

Proposed Appendix D-1

Northern States Power, d/b/a Xcel Energy, Electric Franchise

ORDINANCE
By Cashman and Chughtai

Amending Appendix D-1 of the Minneapolis Code of Ordinances relating to Northern States Power, D/B/A Xcel Energy, Electric Franchise.

The City Council of the City of Minneapolis ordains as follows:

Section 1. That the Minneapolis Code of Ordinances, Appendix D-1 be amended in the form of a complete revision to read as follows:

APPENDIX D-1 - NORTHERN STATES POWER, D/B/A XCEL ENERGY, ELECTRIC FRANCHISE

An ordinance granting to Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, its successors and assigns, permission to construct, operate, repair and maintain in the city of Minneapolis 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.

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

1.1. City Utility System. Facilities used for providing public utility service owned or operated by the City or agency thereof, including, but not limited to, sewer, water, and storm water service.

1.2. 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.

1.3. Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors, and assigns, including all successors or assigns that own or operate any part or parts of the Electric Facilities subject to this Franchise.

1.4. Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by the Company within the City for the purpose of transmitting, distributing, providing, and managing electric energy for public use and benefit.

1.5. Franchise. The grant of rights made by the City to the Company in this Ordinance, subject to the terms and conditions of this Ordinance.

1.6. Gross Revenues. All sums received by the Company from the sale of electricity to its retail customers within the cooperate limits of the City. Gross Revenues for the purposes of calculating the franchise fee imposed by Section 9 shall be subject to adjustment only as specifically provided in Section 9.3.

1.7. Minneapolis Green Zones. Geographically-defined communities which the City has defined as impacted by high levels of pollution and racial, political, and economic marginalization. For the purposes of this Franchise, the Minneapolis Green Zones include:

(1) The Northside Green Zone, bounded by Girard Ave (west boundary) to Dowling Ave (north boundary) to Grand Ave NE (east boundary) to Plymouth/I-94/Hwy 55 (south boundary); and

(2) The Southside Green Zone, bounded by 15th Ave S/I-35 (north boundary) to 4th St S/Riverside Ave/Franklin Ave/Hiawatha Ave (east boundary) to Lake St (south boundary) to I-35W (west boundary). .

1.8. Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to the Company shall be mailed or personally delivered to the General Counsel, 414 Nicollet Mall, 5 Floor, Minneapolis, MN 55401. Notice to the City shall be mailed or personally delivered to the City Operations Officer, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.9. Public Ground. All real property for common use by the public that is owned by, controlled by, or dedicated to the City for open space or similar purposes.

1.10. Public Way. The area on, below, or above a public roadway, highway, street, alley, cartway, bicycle lane, walkway, public sidewalk, or other public right-of-way, or other dedicated right-of-way for travel purposes and utility easements of the City.

Section 2. Adoption of Franchise.

2.1. Grant of Franchise. The City hereby grants the Company, from the date this Ordinance becomes effective through 11:59:59 p.m. on December 31, 2034, 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, the Company may construct, operate, repair, and maintain Electric Facilities in, on, over, under, and across the Public Way and Public Ground within the City, subject to the provisions of this Ordinance. The use of the Public Way and Public Ground by the Company and the regulation of the same by the City shall be consistent with state law and shall be:

(1) Subject to reasonable regulations by the City Council, including, but not limited to, the applicable provisions contained in Minneapolis Code of Ordinances, Chapters 52, 427-430, and all other applicable ordinances and permit procedures; and

(2) Consistent with the use of the Public Way for proper purposes by the public, by the City, by the public utilities, and others; and

(3) Consistent with the use of the Public Ground by City and the public for the public purposes for which they are used and intended.

2.2. Option to Extend. Provided both parties agree, and the Company is in compliance with the provisions of this Ordinance, the term described in 2.1 may be extended for an agreed upon extension period.

2.3. Other Authority. Other than giving the Company the right to use the Public Way and Public Ground, this Ordinance is not intended in any way to affect or modify or surrender any powers held by the City.

2.4. Not Exclusive. This Franchise is not exclusive.

2.5. Effective Date. This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law, and upon the Company's duly authorized acceptance as executed within sixty (60) days after passage and publication of the Ordinance. The City, by Council resolution, may revoke this Franchise if Company does not file a written acceptance with the City within sixty (60) days after publication.

2.6. Annual Franchise Performance and Planning Meeting; Annual Reporting. The Company and the City shall meet annually to discuss items of concern or interest related to this Franchise, including, but not limited to, collaborative infrastructure planning, vegetation management, and reliability performance. To facilitate the discussion, the Company shall make available to the City the following:

(1) The Company's reports to the Commission of information on service reliability and service quality data (which includes reliability metrics such as Customers Experiencing Multiple Interruptions (CEMI-6), Customers Experiencing Long Outages (CELL-12)) as well as low-income program participation data (which includes Home Energy Squad, Home Energy Savings, Multi-family Energy Savings Program, and Low Income Energy Assistance participation). This data is combined with demographic information from the U.S. Census Bureau so the reported data may be accessed by Census Block Group. The data is available for review and download by means of the Company's Electric Service Quality Interactive Map (the "SQ Map"), or if the SQ Map is no longer available during the term of this Franchise the Company will provide such data to the City directly in a format which shall be mutually agreed to by the City and the Company. The SQ Map shall include, at a minimum, the information described above and may in the future contain additional data points as either directed by the Commission or at the discretion of the Company. The City may download and use the reported data to analyze service reliability and quality and program participation for the City as a whole, for the Minneapolis Green Zones, or any other area of interest within the City boundaries.

(2) Information on infrastructure investment and capital improvements by the Company in the Electric Facilities within the City as reported by the Company to the Commission for the immediately preceding calendar year.

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

2.8. 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 in writing of the default and the desired remedy. 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 the Hennepin County District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

Section 3. Location, Other Regulations.

3.1. Location of Facilities. Electric Facilities shall be located, constructed, and maintained in accordance with the operating requirements set forth by the Commission and best industry practices so as to not unreasonably:

(1) Interfere with the safety and convenience of ordinary travel along and over Public Way or;

(2) Interfere with the public or governmental use of the Public Way;

(3) Interfere with the public or governmental use of Public Grounds; or

(4) Disrupt normal operation of any City Utility System. Subject to the terms of any particular right-of-way permit, Company shall ensure that Electric Facilities are located or relocated, when initially constructed, in compliance with Titles II and III of the Americans with Disabilities Act of 1990 ("ADA") and associated regulations, 28 CFR Part 35, as required by the terms of any particular right of way permit and in a manner that presents no temporary or permanent interference with any established Pedestrian Access Route (as defined by the ADA) in the Public Way.

Electric Facilities shall be located on Public Grounds as determined by the City. The Company's construction,

reconstruction, operation, repair, maintenance, and location of Electric Facilities shall be subject to permits as required by the Minneapolis Code of Ordinances, including but not limited to Chapters 429 and 430, as may be amended from time to time, and to such other reasonable regulations of the City consistent with authority granted the City to manage its Public Way and Public Ground under state law.

3.2. Field Locations and Mapping. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D. In addition, upon written request by City, Company must promptly provide complete and accurate mapping information for Electric Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100. The City shall specify the locations for which such mapping information is requested, and, to the extent possible, treat all infrastructure information shared by the Company as proprietary, confidential, and non-public data pursuant to the Minnesota Data Practices Act and applicable federal law.

3.3. Street Openings. Subject to Sections 3.1 and 3.4, the Company, or its authorized subcontractor, shall not open or disturb any Public Ground or Public Way for any purpose (the “Work”) without first having obtained the required permits from the City, for which the City may impose a fee. In performing the Work, the Company shall obtain any required lane use, obstruction, and/or sidewalk inspection permit or lane use permit required under Minneapolis Code of Ordinances Chapter 430, for which the City may impose a fee. Failure of the Company or its authorized subcontractor to comply with the terms of the obstruction, lane use, and/or sidewalk inspection permit, which are directly attributable to the Company or its authorized subcontractor, and over which the Company or its authorized subcontractor has control, shall result in the imposition of a proportional charge of the permit fee as appropriate for the circumstance. This Section 3.3 does not apply to work for routine maintenance, storm restoration or tree trimming purposes. During the progress of the Work, the Company shall post signage identifying the Work as performed on behalf of the Company.

3.4. Emergencies. The requirements for obtaining permits from the City pursuant to Section 3.3 shall not apply when an emergency exists requiring the immediate repair of Electric Facilities. In an emergency, the Company shall notify the City by telephone and email to the office designated by the City before, if reasonably possible, commencing the emergency repair, but in any event as soon as practicable. Within two (2) business days after commencing the repair, the Company shall obtain any required permits and pay any required fees.

3.5. Restoration. After performing the Work, the Company shall, as promptly as weather permits, restore the Public Way in accordance with Minnesota Rules, Part 7819.1100, and applicable City ordinances to the extent consistent with law. The Company shall restore the Public Ground to as good a condition as formerly existed, remove all direct, rubbish, equipment and shall maintain any paved surface in good condition for two (2) years thereafter (the “Restoration Work”). If the Company fails to promptly, as weather permits, complete the Restoration Work, then the City shall, after demand to the Company to cure and the passage of a reasonable period of time following the demand, not to exceed five days, have the right to perform or arrange the Restoration Work at the expense of the Company, including the City’s administrative expenses and overhead.

3.6. Avoidance of Damage. The Company shall determine and implement reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company shall determine and implement reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Electric Facilities by persons, property, or the elements. The Company and the City must take protective measures consistent with State Statutes 216D.05 to avoid damage to and minimize interference with underground facilities when excavating or performing work. The Company shall be responsible for removal of graffiti from Electric Facilities. The Company shall provide notice to the City in the event that any City Utility System is damaged in performing the Work or Restoration Work.

3.7. Coordination of Company Projects and Public Improvements. (a) For purposes of coordination of City projects and Company projects within the City, the City and Company shall meet at least once annually, on or before April 1 of each calendar year of this Franchise, to review the City's CIP and the Company's Major Projects.

(b) *Definitions.* For the purposes of this section only, the following terms shall have the meanings given.

CIP means the City's five-year capital improvement plan.

Major Projects means the Company-initiated projects forecasted to take place in the City in the next twenty-four (24) months occurring within the City right-of-way impacting more than seven hundred fifty (750) lineal feet of Electric Facilities.

(c) The parties recognize that the City's CIP and Company's Major Projects are subject to change depending on weather, funding, labor, and other issues. Each party agrees to promptly inform the other of any changes to the CIP or Major Projects that may impact the other party. To the greatest extent permitted at law, the City shall treat any data the Company deems sensitive, confidential, proprietary, or critical energy infrastructure as "security information" not subject to public disclosure under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

(d) Either party may, from time to time, request a meeting among appropriate representatives for purposes of discussing coordination of improvement projects or work, and both parties hereby agree to reasonably accommodate such meeting requests.

(e) The City must give the Company reasonable notice of plans for improvements to Public Grounds or Public Way when the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain, if known:

(1) The nature and character of the improvements,

(2) The Public Ground and Public Way upon which the improvements are to be made,

(3) The extent of the improvements,

(4) The time when the City anticipates the start of work, and

(5) If more than one Public Ground or Public Way is involved, the order in which the work is expected to proceed.

In an emergency situation, the City shall notify the Company by telephone and email to the representative designated by the Company before, if reasonably possible, commencing the emergency work, but in any event as soon as practicable.

3.8. Use of Poles. The Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions mutually acceptable to the parties 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 the Company because of such use by the City.

3.9. Compliance with Laws. In its operations under this Ordinance, the Company shall observe all applicable federal, state, and local laws, rules, regulations, and orders with respect to the transmission, distribution, transformation, or furnishing of electric energy. The Company shall not release, spill, or dispose in the Public Way or Public Ground or permit to be released, spilled or disposed in the Public Way or Public Ground, any

materials, substances, and wastes regulated as toxic or hazardous to health, natural resources, or the environment by the State of Minnesota, the United States, or any other applicable government authority with jurisdiction ("Hazardous Materials"). In the event the Company releases, spills, or disposes Hazardous Materials in the Public Way or Public Ground, the Company shall comply with all applicable laws, regulations, and lawful governmental orders of federal, state, and local governmental agencies related to such Hazardous Materials. The Company shall remove or remediate any Hazardous Materials caused or permitted by the Company to be released, spilled, or disposed on, in, or immediately adjacent to the Public Way and Public Ground within the City in compliance with all applicable laws, regulations, and lawful governmental orders, and pay or cause to be paid all costs associated therewith, but the Company shall not be responsible for removing or remediating any pre-existing Hazardous Materials encountered in the Public Way or Public Ground within the City. The indemnification terms and conditions of Section 6 shall apply to all claims made against City by any person, including any governmental agency, who or which asserts any right to costs, damages, or other relief which arise solely or directly from the Company's negligent acts or failure to act in compliance with any law, rule, regulation, or lawful order governing Hazardous Materials.

Section 4. Relocations.

4.1. Relocation. The Company shall promptly and at its expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the Public Way when it is necessary to prevent interference, and not merely for the convenience of the City, in connection with:

- (1) A present or future government use of the Public Way or Public Ground for a public project;
- (2) The public health or safety; or
- (3) The safety and convenience of travel over the right-of-way.

In addition, the City may require Company, at the Company's expense, to relocate or remove its Electric Facilities from Public Ground if City finds that such Electric Facilities impair or will impair an existing or proposed public use of the Public Ground.

This Franchise shall not be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise or the Company's rights under state or county permit.

4.2. Relocation Within Five Years. If the City orders a relocation of Electric Facilities within five years of ordering relocation of the same Electric Facilities at the Company's expense, the City shall reimburse the Company for non-betterment, actual costs on a time and material basis, without any markup provided, however, that if a subsequent relocation is required because of a natural disaster, or the extension of a City Utility System to a previously unserved area, the Company will be required to relocate the Electric Facilities at its expense.

4.3. Projects with Federal Funding. The City acknowledges that the Company may request reimbursement for utility relocation costs from federal and/or state sources. The City will not object to the Company's requests for reimbursement from federal or state sources provided such costs do not directly or indirectly reduce funds available to the City from these sources or reduce funds for projects that will benefit the City. The City reserves its right to oppose the Company's requests if the City has a reasonable basis to believe such a request will negatively impact the feasibility of a project, or reduce funds as described above.

4.4. State Highway Projects. Relocation of Electric Facilities due to a federally-aided state trunk highway project shall be governed by the applicable provisions of Minnesota Statutes, Section 161.46, as may be amended.

Section 5. Tree Trimming. The Company may trim all trees and shrubs in the Public Ground and Public Way of the City as the Company finds may be necessary to avoid interference with the proper construction, operation, repair, and maintenance of any Electric Facilities installed hereunder; provided that the Company shall be subject to permit or other reasonable regulation by the City and the Minneapolis Park and Recreation Board (the “Park Board”) and provided that the Company shall hold harmless the City and Park Board from any liability arising therefrom. The Company agrees to work cooperatively with the City and the Park Board regarding the trimming and removal of trees and shrubs.

Section 6. Indemnification.

6.1. Indemnification. The Company will defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim alleges a negligent, wrongful act or omission of the Company, or its employees, agents, or independent contractors, in constructing, installing, maintaining, operating, inspecting or issuing permits, or repairing the Company’s Electric Facilities under or pursuant to this Franchise located in the Public Grounds of Public Ways. Further, the Company will defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim is based on the City’s negligent, wrongful act, or omission in issuing the permit, or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the Company pursuant to this Franchise. Notwithstanding the foregoing, the Company is not required to indemnify the City for losses or claims occasioned any other negligent or otherwise wrongful act or omission of the City. The City shall not be indemnified if the injury or damage results from the performance of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company’s determination.

6.2. Defense of City. In the event that the Company must indemnify the City against a claim, the Company at its sole cost and expense shall defend the City against such claim if the City provides written notice to the Company within a reasonable period wherein the Company is not prejudiced by the lack of such notice. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, including selection of defense counsel. Company agrees, however, to consult in good faith with the City as to who will defend such claim. The Company may not settle such claim 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 claim on behalf of the City, shall be entitled to assert every defense or immunity that the City could assert in its own behalf.

Section 7. Vacation of Public Way and Public Ground. The City shall give the Company at least two weeks prior Notice of a proposed vacation of Public Way or Public Ground. The City and the Company shall comply with Minneapolis Code of Ordinances 429.140 and Minnesota Rules 7819.3100 and 7819.3200 with respect to any request for vacation. In no case, however, shall the City be liable to the Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

Section 8. Assignment. Neither party may assign this Franchise without the prior approval of the other party. Notwithstanding the foregoing, if the Company merges with, is acquired by, or acquires another company, it reserves the right to assign this franchise.

Section 9. Franchise Fee.

9.1. Franchise Fee. The City has elected to exercise its rights under applicable law, including specifically Minnesota Statute, Sections 216B.36 and 300.03, to impose a franchise fee.

9.2. Fee Continuation. The franchise fee imposed pursuant to Appendix D-2 to the Minneapolis Code of Ordinances (the “Fee Ordinance”) remains in effect so long as this Franchise remains in place and for up to one (1) year from the date of termination of this Franchise while the parties are negotiating a new

agreement.

9.3. Permit or Other Fees. Notwithstanding anything to the contrary herein, the Company shall pay, in lieu of any permit or other fees or expenses charged by the City, an annual right-of-way permitting flat fee of one hundred thousand dollars (\$100,000.00). The Company shall be subject to penalties or administrative fines in the same manner as other right-of-way users. The only other fees chargeable under this agreement shall be franchise fees in accordance with the Fee Ordinance. The flat fee is payable to the City's utility connections division, or its successor, by December 30 of each calendar year of the agreement and any extensions, unless otherwise mutually agreed by the parties.

9.4. Fee Payment. The franchise fee shall be payable monthly and shall be calculated as provided in the Fee Ordinance. The payment shall be due twenty-five (25) days after the end of the month for which the payment is due. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by the Company if the 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 the Company's applicable rates for electric service. The Company shall pay the City the fee as provided in the Fee Ordinance subject to reductions to account for uncollectibles, refunds, and correction of erroneous billings. The 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.

9.5. Separate Ordinance. The franchise fee shall continue to be imposed by the separate Fee Ordinance duly adopted by the City Council and Mayor. No amendment to the Fee Ordinance shall be adopted until at least sixty (60) days after Notice enclosing such proposed ordinance or ordinance amendment has been provided to the Company. Section 2.8 shall constitute the sole remedy for resolving disputes between the Company and the City in regard to the interpretation of, or enforcement of, the separate Fee Ordinance. The Fee Ordinance may be changed by the City from time to time by ordinance; provided, however, such changes shall not occur more often than once within any twelve consecutive calendar months and shall be effective upon the same notice requirements.

9.6. Equivalent Fee Requirement. (a) *Other energy franchises.* The annual dollar amount of the franchise fee collected from a Company customer, or a reasonable estimate of the franchise fee that would be collected from a prospective Company customer, for electric service provided under this franchise shall not be materially greater than the annual dollar amount of the franchise fee that would be collected for similar service to such customer by a new energy supplier under the terms of a new franchise assuming comparable energy usage by said customer.

(b) *Definitions.* For the purposes of this section only, the following terms shall have the meanings given:

Similar service shall mean the supply of energy to a customer for the same end-use purpose or function as the electricity which is or could be furnished by the Company.

New franchise shall mean a franchise granted to a new energy supplier after January 1, 2025, or an amendment to an existing franchise held by another energy supplier January 1, 2025.

New energy supplier shall mean a supplier of energy other than the company which begins supplying energy in the City Public Way after January 1, 2025.

(c) *Waiver.* The City may waive the requirement under paragraph (a) if, after one (1) month's notice to and subsequent consultation with the Company, the City finds, by resolution, in its sole discretion, that waiver is necessary to encourage economic development within the City related to small, clean, or renewable energy projects or for other public purposes. If a waiver is given for clean or renewable energy projects, the

Company shall receive a reciprocal waiver if Company begins performing the same clean or renewable energy project. Once the requirement is waived, the City, in its sole discretion, may reinstate it at any time. If the Company consents in writing to a new franchise or separate ordinance collecting or failing to collect a fee from a new energy supplier in contravention of this section, the conditions of this section will be waived to the extent of such written consent.

9.7. No Waiver or Release. No acceptance of any payment shall be construed as an accord that the payment made is in fact the correct amount, nor shall such acceptance of the payment be construed as a release of any claim that the City may have for further sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and re-computation by the City at the City's sole cost and expense.

9.8. Franchise Fee Modification. (a) *Change in Law.* If a change in applicable law renders the Company unable to collect an amount equal to the franchise fee from its customers by imposing a surcharge in the Company's applicable rates for electric services, the Company shall give Notice of such change to the City.

(b) *Challenge to Fee.* If any person challenges the collection or any aspect of the franchise fee or payment made to the City pursuant to this Franchise, the Company shall promptly provide notice of such challenge to the City and, to the extent the same is not otherwise prohibited, continue to remit franchise fee payments to the City.

(c) *Automatic Reduction.* If for any reason the amount or rate of the franchise fee due hereunder or under the Fee Ordinance shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall be reduced to the maximum amount or rate permitted by law.

(d) *Reasonable Modification.* For any other change in applicable law adversely impacting the franchise fee not covered by subparagraphs (a) and (c) above, the parties will promptly meet and confer about such changes and, to the extent permitted by, will make reasonable modifications to the Fee Ordinance or this Franchise in an effort to provide that the City receives an amount of franchise fee that is equivalent to the franchise fees paid to the City as of the date that such change in applicable law adversely impacted the franchise fee revenue. Any dispute concerning the appropriate changes shall be addressed as provided in Section 2.8 herein. Notwithstanding the foregoing, no modification will be acceptable if the Company is legally unable to first collect the amount to be imposed from its customers by imposing a surcharge in the Company's applicable rates for electric service.

Section 10. Abandoned Facilities. The Company shall notify the City of the Company's intent to abandon or no longer use any Electric Facilities in the Public Way or Public Ground, including, but not limited to, any vaults or similar facilities. Absent a written waiver from the City Engineer or their designee permitting the Electric Facilities to remain in place, the Company shall remove, at the Company's sole expense, such abandoned or unused Electric Facilities when work is performed, if required in conjunction with other right-of-way, repair, excavation, or reconstruction work, unless this requirement is waived by the City.

Section 11. Reports and Records.

11.1. Inspecting Company Records. The City shall be accorded the right, during normal business hours, to inspect, examine or audit, and copy the books and records of the Company, which relate to the Company's operations in the City, or upon the City's request in writing to provide such information relating to the Company's operations in the City, and which is collected and maintained by the Company in the ordinary course of its business, as the City may reasonably designate, to verify the accuracy of the Company's franchise fee payments, provided that customer-specific information must remain confidential. Any such information shall be provided in a manner consistent with all applicable laws, regulations, and Commission orders.

11.2. Report. The Company shall provide City the location of the Company-owned street lights within the City, to be updated at least annually. The City shall, to the extent possible, treat all reported information shared by the Company as proprietary, confidential, and non-public data pursuant to the Minnesota Data Practices Act and applicable federal law.

Section 12. Provisions of Ordinance.

12.1. 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. This Franchise and other ordinances of the City shall be construed to give effect to all provisions to the maximum extent possible. In the event of a direct conflict between the provisions of any other City ordinance and this Franchise, the terms of this Franchise shall govern.

12.2. Limitation on Applicability. This Ordinance constitutes Franchise between the City and the 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 Franchise or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

12.3. Early Termination. The City may terminate this Franchise by providing written notice to the Company at least twelve (12) months before the effective termination date (“termination notice”). The City may terminate the Franchise only upon a vote of two-thirds of all the members of the City Council.

12.4. Point of Contact. Company shall provide the City with the contact information of the person designated as the single point of contact for the City on issues related to this Franchise, reliability and service issues, and other such matters. The Company shall provide the City with updated point of contact information as necessary during the term hereof.

12.5. Communications. The parties agree that open communication will facilitate the partnership between the parties established by this Franchise. Each party will identify a point of contact to expedite communication and responses by separate communication, which contact person may be updated from time to time. Each party agrees that, at a minimum and absent extenuating circumstances, they shall acknowledge receipt of an inquiry from the other party within five (5) business days.

Section 13. Amendment Procedure. Either party to this Franchise may at any time propose that the Franchise be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If the 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 be effective upon the filing of the Company’s written consent thereto with the City Clerk within sixty (60) days after the date of final passage by the City of the amendatory ordinance.

Section 14. Previous Franchises Superseded. This Ordinance supersedes any previous electric franchise granted to the Company or its predecessor.