ELECTRIC FRANCHISE ORDINANCE

ORDINANCE NO. 2018-04

CITY OF MINNETONKA, HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF MINNETONKA, 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 MINNETONKA, 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 Minnetonka, County of 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, traffic signals, street lighting and water service, but excluding facilities for providing heating, other 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.

1.5 Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company within the City for the purpose of providing electric energy for public 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, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Manager, City Hall, 14600 Minnetonka Boulevard, Minnetonka, MN 55345. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, until May 14, 2038, 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. Two years prior to the expiration of this franchise agreement, the parties shall meet and discuss renewal of this franchise.

2.2 **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 60 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for electric service in City are 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.

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 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 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 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.

2.6 **Annual Franchise Performance and Planning Meeting; Annual Reporting.** Company and 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.

2.6.1 At the annual meeting, City and Company each will identify possible, known infrastructure projects scheduled for construction or installation in the upcoming construction season. At City's request for records of abandoned facilities in a specific location, Company will provide reasonably available records to City in the format in which, at the time of the request, Company keeps the records.
2.6.2 Upon request, but not more than annually, 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, infrastructure investments and capital improvements, and customer usage and program participation, the exact format and content of which shall all be mutually agreed to by City and Company.

2.7 Continuation of Franchise. If the City and 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 Company serves written Notice to the other party of its intention to allow the franchise to expire, but 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 normal operation of any City Utility System. 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 the Minnetonka City Code as it may be amended from time to time, and to other reasonable regulations of the City to the extent not in direct conflict with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided: Company must promptly notify City when Company decides to abandon underground Electric Facilities in place and, at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by the Minnetonka City Code as it may be amended from time to time, 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 and email to the office designated by the City before commencing the emergency repair, if reasonably possible, but in any event as soon as practicable. Not later than the second business day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the 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.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person
from liability arising out of the failure to exercise reasonable care to avoid damaging Electric
Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans
for improvements to Public Grounds or Public Ways where the City has reason to believe that
Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the
nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which
the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City
will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in
which the work is to proceed. The notice must be given to Company a sufficient length of time in
advance of the actual commencement of the work to permit Company to make any necessary
additions, alterations or repairs to its Electric Facilities. In an emergency situation, the City shall
notify Company by telephone and email to the representative designated by the Company before
commencing the emergency work, if reasonably possible, but in any event as soon as practicable.

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 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. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a
Public Way for a City improvement project, or at City's cost to grade, 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. Except in the event of a
natural disaster, 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, without any markup. Provided, however, 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.
4.2 Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided state trunk 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 property rights. City shall not order Company to remove or relocate its Electric Facilities without compensation when a Public Way is vacated, improved or realigned for a renewal or redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation 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.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 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.

SECTION 6. INDEMNIFICATION.

6.1 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 that portion of any losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event the Company must indemnify the City against a claim, Company at its sole cost and expense shall defend the City against such claim if the City provides written notice to Company within a reasonable 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 claim or litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties,
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a waiver of any defense or immunity otherwise available to the City. 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.

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. The City and Company shall comply with Minnesota Rule 7819.3200 with respect to any request for vacation. 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.

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 franchise fee collected by the Company and paid to City in accordance with this Section 9 shall initially be equal to the amounts indicated in the Fee Schedule adopted by ordinance No. 2007-29 and set forth again below:

<table>
<thead>
<tr>
<th>Class</th>
<th>Fee Per Premise Per Month</th>
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<tbody>
<tr>
<td>Residential</td>
<td>$ 2.50</td>
</tr>
<tr>
<td>Sm C &amp; I – Non-Dem</td>
<td>$ 4.50</td>
</tr>
<tr>
<td>Sm C &amp; I – Demand</td>
<td>$ 4.50</td>
</tr>
<tr>
<td>Large C &amp; I</td>
<td>$ 4.50</td>
</tr>
<tr>
<td>Public Street Ltg</td>
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</tr>
<tr>
<td>Muni Pumping – N/D</td>
<td>$ 4.50</td>
</tr>
<tr>
<td>Muni Pumping – Dem</td>
<td>$ 4.50</td>
</tr>
</tbody>
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9.2 Separate Ordinance. Any change to the franchise fee established by the Fee Schedule set out in Section 9.1 above 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 change in 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. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the 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. 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 once within any twelve (12) consecutive calendar months.

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 agreement.

9.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the end of each quarter (payments being due January 31, April 30, July 31 and October 31 during each calendar year). The time and manner of collecting the franchise fee is subject to the approval of the Commission, and Company agrees not to take any action to delay or interfere with Commission approval. 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, upon City request, but not more than annually, 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 write-offs, recoveries or refunds.

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, 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.
9.6 **Exception to Equivalent Fee Requirement.** The requirement in Section 9.5 to impose an equivalent fee on any other energy supplier does not apply if the separate ordinance imposing the fee on Company requires the City to use the franchise fee collected for no purpose other than betterment of the Electric Facilities, including such things as placing the Electric Facilities underground or installing decorative lighting above ground, and incorporates the provisions of this Section 9.6 by reference or restatement. If the City wishes to take advantage of this exception, the City must separately account for all franchise fees received from Company. The City must provide a report to Company no later than 30 days after the due date for each franchise fee payment indicating the current balance of the franchise fee account since the last report, the budgeted expenditures from the account for the current calendar year, and the amount committed by contract for expenditures in the current budget year. The City will promptly give Notice to Company if and when the unallocated balance reaches $10,000,000.00. The unallocated balance means the balance minus any amounts committed by contract for expenditures. Upon receiving this Notice, Company will cease collection at the end of the first full monthly billing cycle that occurs after receipt of the Notice, and thereafter Company will have no further obligation to pay the franchise fee to the City until the first billing month commencing 90 days after Notice that the unallocated balance has fallen below $3,000,000.00. The City will have no obligation to return any amount which exceeds the $10,000,000.00 unallocated balance or any balance remaining upon any repeal of the separate ordinance by the City, provided such balance will be reinstated by the City to the separate account if said separate ordinance is subsequently reenacted. Any franchise fee imposed on Company as authorized by this Section 9.6 shall be the exclusive fee payable by Company under this franchise until the City, by ordinance, repeals the separate ordinance imposing the fee under this Section 9.6. If the Company provides the services for the betterment of the Electric Facilities, Company agrees to make its records regarding its costs available for inspection by the City at reasonable times and at the City's own expense.

**SECTION 10. PROVISIONS OF ORDINANCE.**

10.1 **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 Ordinance and other ordinances of the City shall be construed to give effect to all provisions to the maximum extent possible. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

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

**SECTION 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.
SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes any previous electric franchise granted to Company or its predecessor. Upon Company acceptance of this franchise under Section 2.2, the previous franchise shall terminate; provided, however, that the franchise fee ordinance duly adopted on August 20, 2007 as Ordinance No. 2007-29 and implemented by the Company, shall continue in full force and effect.

Passed and approved: May 14, 2018.

Brad Wiersum, Mayor

Attest: _____________________________

David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction: April 30, 2018
Date of adoption: May 14, 2018
Motion for adoption: Wagner
Seconded by: Calvert
Voted in favor of: Bergstedt-Wagner-Ellingson-Acomb-Happe-Calvert-Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.

Date of publication: May 14, 2018

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on May 14, 2018

David E. Maeda, City Clerk