

If to the Company: Minnesota Power
30 West Superior Street
Duluth, MN 55802

Attn: Vice President of Marketing

Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

12. Person. A natural person or any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.

13. Public Ground. All real property owned by or dedicated to the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.

14. Public Way. Any street, alley and other public rights-of-way within the City.

15. Utility. Transmitting, furnishing, transporting, distributing, delivering, selling, receiving, importing, manufacturing, or causing to be produced, transmitted, furnished, transported, delivered, sold, received, imported, or manufactured, electric energy, natural gas, mixed gas, heat, light, power, and services provided through a cable communication system.

16. Utility Service Provider. Any Person who performs any one or more of the activities of a Utility to or for the public or to or for any one or more persons within the corporate limits of the City and may, as contemplated herein, be the ultimate user or consumer of the Utility service provided.

1300.02 FRANCHISE INTENT. This Ordinance is intended to cover the right of the Company to construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area for the purposes set forth in Section 1300 hereof. In all other respects this Ordinance is not intended in any way to affect or modify or surrender any powers now held by the City, or which may hereafter be granted to the City by the State Legislature, or to affect the powers of the State Legislature in dealing with the Company in authorizing taxation of the Company or its properties, in the regulation of its rates and charges, or in otherwise regulating or controlling the Company and its properties in all ways consistent with the Constitution of the United States and the Constitution of the State of Minnesota.

1300.03 THE FRANCHISE.

Subd. 1. Grant of Franchise. The City hereby grants the Company, for a period of ten (10) years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for any public or private use within and through the Company Service Area. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to all applicable design and safety codes, the provisions of this Ordinance, zoning ordinances, other applicable ordinances, permit procedures and the customary and necessary practices of the City.

Subd. 2. Not Exclusive. This Franchise is not exclusive.

Subd. 3. 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 below as executed within thirty (30) days after passage and publication of this Ordinance or any amendment thereto.

1300.04 LOCATIONS; CONSTRUCTION; OTHER REGULATIONS.

Subd. 1 General. Electric Facilities shall be located, constructed and maintained by the Company: (i) in as safe and secure a condition or manner as reasonably possible, (ii) so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways, and (iii) so as not to disrupt or interfere with the normal use or operation of any Public Ways, Public Ground or the City Utility System. Electric Facilities may only be located on Public Ground as determined by the City in its sole discretion. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to the terms of this Ordinance and such other 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 Ordinance.

Subd 2 Construction; Maintenance; Repairs. Whenever the Company desires to open or disturb any Public Way or Public Ground for the purpose of constructing, maintaining, or repairing Electric Facilities, it shall give the City reasonable advance Notice, but not less than ten (10) business days, by filing a written Notice with the City Administrator. In any case, the Company shall not commence such work before obtaining any applicable permit for which the City may impose a reasonable fee, or other appropriate written consent from the City. The Company shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the Public Ways and Public Ground. During the progress of such work, the Company shall keep the affected Public Ways or Public Ground guarded in order to avoid accidents to persons or property. All work performed by the Company shall comply with all applicable federal, state, and local laws, rules, and regulations.

Subd. 3 Emergencies. The requirements for obtaining permits from the City pursuant to Subd. 2 above, shall not apply if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) the Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

Subd. 4 Restoration. Following the completion of any work, the Company shall promptly and diligently restore the affected Public Ways and/or Public Ground to as good a condition as before the work commenced, and shall warrant the work for one (1) year thereafter. If the Company fails to promptly restore such Public Ways and/or Public Ground within ten (10) days of Notice by the City, the City may engage an independent contractor at the expense of the Company to perform the restoration of the Public Ways and/or Public Ground as required under this Section. The Company shall pay to the City upon demand the cost to the City of affecting such restoration including the City's administrative expenses and overhead.

Subd. 5 Avoidance of Damage. The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take 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 must take protective measures when the City performs work near the Electric Facilities, if given reasonable Notice by the City of such work prior to its commencement.

Subd. 6 Field Locations. The Company shall provide field locations for all its underground Electric Facilities when requested by the City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the "Gopher State One Call" system).

Subd. 7 Shared Use of Poles. If the City desires to place facilities for a public purpose on Company's poles, the Company shall make space available for City attachments whenever such attachments do not conflict with applicable codes and regulations and will not unreasonably interfere with the safe operation of Company equipment, impede Company access to poles or equipment, or interfere with other parties' legal rights to access and use Company poles; and provided that the City enters into an appropriate License Agreement with the Company with respect to such attachments.

Subd. 8 Vegetation Management. Subject to such procedures, regulation and supervision as the Council may establish, the Company may, at its cost, engage in vegetation management in the Public Ways located within the Company Service Area to the extent the Company finds it necessary to avoid interference with the proper construction, operation, repair and maintenance of any of the Company's Electric Facilities installed or maintained hereunder. Prior to undertaking any vegetation management, the Company will contact the City Administrator.

Subd. 9 Notice of City Improvements. The City will give the Company reasonable advance Notice of plans for improvements to Public Ways and Public Ground in the Company Service Area where the City has reason to believe that the Company's Electric Facilities may affect or be affected by such improvements. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City

will start the work, and (v) if more than one Public Way or parcel of Public Ground is involved, the order in which the work is to proceed.

Subd. 10 Acquisition. The City shall have the right to purchase or otherwise acquire the Company's Electric Facilities or the Company Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by the City shall be noticed to the Company for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to the Company as a result of such proceeding shall be determined as of the commencement of such proceeding. The Company shall continue to operate the Electric Facilities at the City's sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by the Company against the City.

1300.05 ELECTRIC FACILITIES RELOCATION.

Subd. 1 Relocation. In the event the City reasonably determines that it is necessary for the Company to move any part of its Electric Facilities because the City has determined to change, move or improve its Public Ways or that the Electric Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground, upon reasonable Notice by the City to the Company, then the Company will move its Electric Facilities at its sole cost. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Subdivision. This Subdivision shall not constitute a taking by the City nor 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.

Subd. 2 No Release of Liability. Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring the Company's Electric Facilities while performing any work connected with grading, regrading or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Subdivision shall not limit the City's rights to indemnification under Sub-Section 1300.06 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

Subd. 3 Projects with State or Federal Funding. Relocation, removal, or rearrangement of any electric distribution facilities owned by Minnesota Power made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of §161.46 of Minnesota Statutes. It is understood that the right herein granted to Minnesota Power is a valuable right and the City shall not order Minnesota Power to remove or relocate its facilities when a public way is vacated, improved, or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the United States or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Minnesota Power, but the City need not pay those portions of such items for which reimbursement to it is not available.

1300.06 INDEMNIFICATION.

Subd. 1 Indemnification. If at any time any claim of any kind is made against the City for injury to persons or property arising from the acts or failure to act by the Company, its agents, servants, or employees in connection with the operations of the Company under and pursuant to this Franchise, the Company shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not limited to, reimbursement of any reasonable attorneys fees and costs and expenses the City may incur in handling, denying, or defending such claims. The Company's obligation to indemnify the City shall not extend to any injury to persons or property caused by the negligent act or failure to act by the City or any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company. The City shall determine who will defend any such claims arising under this Subdivision and the Company will thereafter have complete control of such litigation; provided, however, the Company may not settle any such claims without the prior approval of the City, which approval will not be unreasonably withheld. This Section is not a waiver of any defense or immunity otherwise available to the City pursuant to the Minnesota Municipal Tort Claims Act, or otherwise. The Company in defending any action shall be entitled to assert every defense or immunity that the City could itself assert in its own behalf.

The Company's obligations under this Section shall survive the expiration, amendment, or termination of this Ordinance.

Subd. 2 Insurance. Before the Effective Date, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. The Company shall maintain such insurance coverage at all times during this Franchise.

Subd. 3 Compliance with Laws; Hazardous Substances. In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Sub-section 1300.06, Subd. 1, shall apply to all claims made against the City by any Person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Subdivision or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

1300.07 VACATION OF PUBLIC WAYS. The City will consult with the Company at least four (4) weeks prior to its action on any proposed vacation of a Public Way. Except where ordered pursuant to Sub-section 1300.05, the vacation of any Public Way after the installation of Electric Facilities shall not operate to deprive the Company of its rights to operate and maintain such Electric Facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company. However, in no case shall the City be liable to the Company for failure to specifically preserve a Public Way in the exercise of its authority under Minnesota Statutes, Section 160.29.

1300.08 ABANDONED FACILITIES. The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request, and comply with the location requirements of Section 216D.04 with respect to all Electric Facilities, including abandoned and retired Electric Facilities.

1300.09 RATES AND SERVICE. The electric service provided and the rates charged by the Company for electric service, as of the Effective Date, are subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B. In the event the Company shall determine after the Effective Date to change its rates or terms and conditions of electric service, the Company shall provide reasonable advance Notice of such proposed action to the City.

1300.10 FRANCHISE FEE.

Subd. 1 Authority. The City reserves all rights under Minnesota Statutes, Sections 216B.36 and 301B.01 or other law to require a franchise fee at any time during the term of, and in consideration for, this Franchise. The franchise fee may be expressed (i) as a specified charge per measurable unit of electricity being provided, transported, transmitted, sold, furnished, delivered, or received within the City, or (ii) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (iii) a flat fee per customer based on service to retail customers within the City or on some other similar basis, or (iv) in such other manner or fashion as the City may determine. The method of imposing the franchise fee may differ by customer class, by type of Utility, by particular circumstances of a Utility Service Provider, or by other relevant factor, and may combine the methods described in (i) through (iv) above. Any franchise fee must be imposed by a separate ordinance adopted by the City, which ordinance may not become effective until at least thirty (30) days after the issuance of a written order from the Minnesota Public Utilities Commission authorizing the Company to incorporate such fee within its rate schedule and thereby pass along the costs of such fee to the Company's customers located within the City. The Company agrees to use its commercially reasonable efforts to obtain such Minnesota Public Utilities Commission authorization.

Subd. 2 Payment of Fee. Subject to Commission approval, or no later than 90 days the franchise fee shall be payable monthly and shall be based on the complete billing month for which payment is due. The payment shall be due forty-five (45) days after the end of the month for which the payment is due. Each payment shall be accompanied by a brief report showing the basis for the computation of the payment and such other relevant facts to support the computation as may be requested by the City from time to time. The Company is authorized to impose a surcharge equivalent to the franchise fee established pursuant to Subd. 4 of this Section. The Company shall pay the City the franchise fee based upon the prevailing rate and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by the Company or (ii) if the Company shall, after any said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from the Company of an amount previously paid or incurred by the retail electric customers. For purposes of calculating the franchise fee, no other adjustment may be made to Gross Revenues, regardless of how calculated or described and whether or not characterized as a rebate, dividend, patronage, refund, return of capital, or ownership interest.

Subd. 3 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. The Company agrees to make all records necessary to audit the Company's calculation of any payment available for inspection by the City or its designated representative at reasonable times.

Subd. 4 Franchise Fee. There shall be added to each customer's monthly electric service bill a City of Silver Bay Franchise Fee assessment in the amount of \$3 per month for each residential, commercial, industrial, or other electric service meter. However, customers with both standard electric service meters and dual fuel meters shall only be assessed one application of the franchise fee. The amount paid by Company shall be in lieu of, and Company shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the City may impose for the rights and privileges herein granted or for the privilege of doing business within the City, and in the event any such fee, charge, license, tax or assessment shall be imposed by the City, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Company. Ad valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect the obligation of the Company under this section.

Subd. 5 Separate Ordinance. Notwithstanding anything to the contrary, the franchise fee may be changed by the City from time to time by separate ordinance; provided, however, such changes shall not occur more often than once in any calendar year and shall be effective not sooner than the first day of the first calendar month which follows the effective date of the ordinance adopting the change by not less than sixty (60) days subject to Company obtaining Minnesota Public Utilities Commission approval of the new franchise fee rate but no later than 90 days. Notice of the proposed change shall be given to the Company not later than the effective date of the ordinance adopting the change.

Subd. 6 Restricted Use of Franchise Fee. The City has chosen to restrict the use of the franchise fees to the maintenance, repair, and/or replacement of city streets, curbs, gutters, sidewalks, and public parking areas.

1300.11 DEFAULT AND ELECTION OF REMEDIES. If the Company shall be in default in the performance of any of the material terms and conditions of this franchise, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs and expenses incurred by the City for the cure thereof. No remedy provided hereunder shall be deemed an exclusive remedy and the election of any such remedy shall not bar pursuit of any other remedy or any combination thereof, or subsequent seeking of the same remedy for other damages or otherwise, whether available hereunder or existing at law or in equity. No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of any subsequent breach thereof.

1300.12 AMENDMENT PROCEDURE. The City reserves the right to amend this Franchise by ordinance. The Company's rights hereunder are subject to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by the City as deemed necessary or appropriate in the exercise of such power.

1300.13 GENERAL PROVISIONS OF FRANCHISE.

Subd. 1 Governing Law. This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this franchise or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

Subd. 2 Right to Repeal. If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this franchise. If any portion of this franchise or the franchise granted hereunder is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.

Subd. 3 Limitation on Applicability. This franchise constitutes a 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 agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

Subd. 4 Assignment. The Company shall not assign this Franchise without the prior approval by the City.

1300.14 ACCEPTANCE BY THE COMPANY.

Subd. 1 Acceptance by the Company. The Company shall, within thirty (30) days after passage and publication of this franchise or any amendment thereto, file with the City Administrator in writing its acceptance or rejection as provided in Subd. 2. If such acceptance is not filed or if a rejection is filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise or any amendment hereto, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. 2.

Subd. 2 Rejection Procedures. A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within thirty (30) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within thirty (30) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

1300.15 Previous Electric Franchise Repealed. The prior Electric Franchise granted to Minnesota Power, the predecessor to the Company herein, pursuant to Silver Bay City Code Section 1300, is hereby repealed and superseded by this Section 1300 Electric Franchise (2013).

The City Council first read the amended ordinance on July 1, 2013 and a second reading on October 7th, 2013. This amendment shall be effective following its passage and publication according to law and is considered the third reading.

Adopted by the City Council of the City of Silver Bay this 7th day of October, 2013

ATTEST:

Joanne Johnson, Mayor

Lana Fralich, City Administrator