

**DRAFT**

**CITY OF WOODBURY  
WASHINGTON COUNTY, MINNESOTA**

**ORDINANCE NO. TO BE DETERMINED**

**An Ordinance of the City of Woodbury, Washington County, Minnesota  
Repealing Chapter 9 – Franchises, Section 9-2 –  
Northern States Power Company, Gas Franchise**

**And**

**Recreating Chapter 9 – Franchises, Section 9-2 Granting to Northern States Power  
Company, A Minnesota Corporation, Its Successors and Assigns, a  
Franchise to Erect a Gas Distribution System for the Purposes of Constructing,  
Operating, Repairing and Maintaining in the City of Woodbury, Minnesota, the Necessary  
Gas Pipes, Mains and Appurtenances for the Transmission or Distribution of Gas to the  
City and Its Inhabitants and others and Transmitting Gas into and through the City and to  
Use the Public Grounds and Public Ways of the City for Such Purposes**

THE CITY COUNCIL OF THE CITY OF WOODBURY, WASHINGTON COUNTY,  
MINNESOTA DOES ORDTAIN:

**Repeal and Recreate Chapter 9 - Franchises, Section 9-2 – Same-Gas Franchise in its  
entirety and substitute the following therefore:**

**Section 9-2 – Northern States Power Company, Gas Franchise**

**(a) Definitions**

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

- (1) City.** The City of Woodbury, Washington County, State of Minnesota.
- (2) City Utility System.** Facilities used for providing public utility service owned or operated by the City or an agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- (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 gas retail rates now vested in the Minnesota Public Utilities Commission.
- (4) Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this franchise.

**(5) Gas.** “Gas” as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

**(6) Gas Facilities.** Pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

**(7) Notice.** A writing served by any party or parties on any other party or parties. Notice to the Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 8301 Valley Creek Road, Woodbury, Minnesota 55125. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

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

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

**(b) Adoption of Franchise**

**(1) Grant of Franchise.** The City hereby grants the Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish gas energy for light, heat and 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 Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

**(2) Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by the Company. If the Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, the City Council by resolution may revoke this franchise, seek its enforcement in a competent jurisdiction or pursue other remedies in law or in equity.

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

**(4) Publication Expense.** The City shall pay the expense of publication of this Ordinance and be reimbursed by Company within 30 days.

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

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

### **(c) Location, Other Regulations**

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

(2) **Street Openings.** The Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance for which the City may impose a reasonable fee. Permit conditions imposed on the Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives telephone, e-mail or similar notice to the City before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

(3) **Restoration.** After undertaking any work requiring the opening of any Public Way, Company shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable City ordinances to the extent consistent with law. Company shall restore the Public

Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter, but shall have no obligation to water any grass or other vegetation thereon. All work shall be completed as promptly as weather permits and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of the Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section.

(4) **Performance Security.** City hereby waives any requirement, in the normal course of Company operations, for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way or the Public Ground. Notwithstanding the foregoing, the City reserves the right to require a performance bond for new installation, replacement, or repairs when the Company's completion of its work is required for the City to proceed with its work for constructing a public improvement to the Public Way.

(5) **Field Locations.** Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

(6) **Notice of Improvements.** The City must give the Company reasonable written Notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways or Grounds 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 Ground is involved, the order in which the work is to proceed. The notice must be given to the Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

(7) **Mapping Information.** The Company must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules, parts 7819.4000 and 7819.4100.

#### **(d) Facilities Relocation**

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

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

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

(3) **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Gas Facilities made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46 and 23CFR 645A. The City is obligated to pay Company, however, only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs to the Company.

**(e) Tree Trimming**

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

**(f) Indemnification**

(1) **Indemnity of City.** The Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of the Company's plans or work.

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

**(g) Vacation of Public Ways**

The City shall give the Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law.

### **(h) Abandoned Facilities**

The Company shall comply with City ordinances, Minnesota Statutes, Sections 216D.01 et seq. and Minnesota Rules, part 7819.3300, as they may be amended from time to time.

### **(i) 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.

### **(j) Franchise Fee**

(1) **Form.** During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee by collecting the amounts set forth in a separate ordinance from each customer in the designated Company Customer Class. However, the Company shall not be obligated to pay permit fees under this franchise in excess of thirty thousand dollars (\$30,000.00) in any calendar year during the term thereof, unless otherwise agreed to by the parties.

(2) **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until sixty (60) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall become effective ninety (90) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by City to implement a separate ordinance will commence until this Ordinance is effective. During the term of this franchise at intervals of no more frequently than one year, City may impose a lesser fee than that set forth in the separate fee ordinance or City may follow the amendment procedure in Section 13 to request an amendment to the separate ordinance to allow City to impose a greater fee on one or more classes of customer and/or a different fee design. If City proposes such an amendment, it shall notify Company in writing no less than four (4) months prior to the anniversary date of the then current franchise fee. Promptly thereafter, City and Company shall attempt to negotiate a mutually acceptable modification the fee amount and design. If City and Company are unable to agree on a modification, all disputes shall be resolved pursuant to Section 2.5 of this franchise ordinance. Nothing in this section is intended to be a limitation on City's right to raise revenue under Minnesota Statutes, Section 216B.36.

(3) **Terms Defined.** For the purpose of this Section, the following definitions apply:

a. "Customer Class" shall refer to the classes listed on separate ordinance and as defined or determined in Company's gas rate book on file with the Commission.

b. "Fee Schedule" refers to the schedule in a separate ordinance setting forth the various customer classes from which a franchise fee would be collected. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its gas tariffs after the effective date of this franchise agreement.

(4) **Collection of 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 gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas 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.

(5) **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances.

(6) **Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon notwithstanding the franchise expiration as provided in section 2.6 above.

**(k) Service Reliability, Infrastructure Reporting**

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to the Company's service reliability in the previous year, compared to other service areas, infrastructure plans for the coming year and other matters raised by the City or the Company. Upon request, the Company shall provide data that identifies aging infrastructure within the City that may need replacement and the Company's plans for replacement.

**(j) Provision of Ordinance**

(1) **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part; provided, however, that if the City is unable to enforce its franchise fee provisions for any reason the City will be allowed to amend the franchise agreement to impose a franchise fee pursuant to statute. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

(2) **Limitation on Applicability.** This Ordinance constitutes a franchise agreement 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.

**(k) Amendment Procedure**

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of the Company’s written consent thereto with the City Clerk after City Council adoption of the amendatory ordinance. This amendatory procedure is subject, however, to the City’s police power and franchise rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby.

This Ordinance was declared duly passed and adopted and was signed by the Mayor and attested to by the City Administrator this 11<sup>th</sup> day of August, 2021.

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Anne W. Burt, Mayor

Attest:

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Clinton P. Gridley, City Administrator

(SEAL)