

**ORDINANCE NO. 903,  
STATE OF MINNESOTA  
COUNTY OF RAMSEY  
CITY OF NEW BRIGHTON**

**AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY AND TO USE THE PUBLIC GROUND AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF NEW BRIGHTON, MINNESOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

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

**City.** The City of New Brighton, County of Ramsey, State of Minnesota.

**City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

**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.

**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 Gas Facilities subject to this Franchise.

**Gas Facilities.** Gas transmission and distribution pipes, lines, mains, ducts, regulators, fixtures, and necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.

**Notice.** A writing served or sent by one party on the other party. Notice to Company shall be mailed to: General Counsel - Xcel Energy, 414 Nicollet Mall, 401-8, Minneapolis, MN 55401. Notice to the City shall be mailed to: City Manager, City of New Brighton, 803 Old Highway 8 NW, New Brighton, MN 55112-2797. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

**Ordinance.** This gas franchise ordinance, also referred to as the Franchise.

**Public Ground.** Land owned or otherwise controlled by the City for park, trail, open space or similar public purpose, which is held for use in common by the public.

**Public Way.** Public right-of-way within the City is defined in Minnesota Statutes, Section 237.163, subd. 3.

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

2.1. **Grant of Franchise.** City hereby grants Company, for a period of twenty (20) years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, transmit, distribute and sell gas 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 Gas Facilities in, on, over, under and across the Public Ways and, as may be provided by separate instrument, Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this Ordinance.

2.2. **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after passage of this Ordinance and publication as required by law and its acceptance by Company. Company shall file a written acceptance with the City within 60 days after passage.

2.3. **Service Rates and Area.** The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Commission.

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

2.5. **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 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 District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity or either party may take any other action permitted by law.

2.6. **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 the 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.** 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 normal operation of any City Utility System including specifically any street lighting or traffic signal system of the City. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City, to the extent not inconsistent with the terms of this Ordinance. Company may abandon underground Gas Facilities in place, provided, at the City's request, Company at its own expense will remove abandoned Gas Facilities or other Facilities that interfere with a City improvement project.

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

3.3. **Street Openings.** Company shall not open or disturb 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 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 Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.4. **Restoration.** After undertaking any work requiring the opening of any Public Way, Company shall restore the same, including paving and its foundation in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances. Company shall restore any Public Ground to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year 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 security or remedy available to the City provided that the City agrees not to require that the Company will maintain a construction performance bond, letter of credit or other security or assurance in favor of the City as a condition of the City's permission to install, replace or maintain facilities in a Public Way.

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

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 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 Grounds or Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City intends to 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 Gas Facilities.

3.7. **Mapping Information.** Company shall provide mapping information for any of its Gas Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

#### **SECTION 4. RELOCATIONS.**

4.1. **Relocation of Gas 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 Gas 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 Gas 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. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided 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 Gas 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 Gas Facilities in Public Ground.** City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment the existing or proposed public use of the Public Ground.

4.3. **Projects with Federal Funding.** City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project 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, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally-aided 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 rights.

4.4. **No Waiver.** The provisions of this Franchise apply only to facilities constructed in reliance on this Franchise 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. INDEMNIFICATION.**

5.1. **Indemnity of City.** Company shall indemnify, keep and hold the City free and harmless from any and all liability claimed as a result of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, issuance of permits or 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, Company's plans or work, nor for losses or claims resulting from the Company's performance in a proper manner of acts reasonably deemed hazardous by Company if prior notice of Company's determination is provided to the City.

5.2. **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. 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. Nothing herein shall be deemed to constitute a waiver by the City of any of its defenses, immunities, or limitations on liability under Minnesota Statutes, Chapter 466.

## **SECTION 6. 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 the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities. 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 7. 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 8. FRANCHISE FEE.**

8.1. **Fee Schedule.** During the term of this Franchise, the City shall continue to require Company to pay a franchise fee as provided in Ordinance No. 2023- , enacted in accordance with Minnesota Statutes, Sections 216B.36 and 301B.01.

8.2. **Separate Ordinance.** Any modification to the franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance.

8.3. **Terms Defined.** For the purpose of this Section 8, the following definitions apply:

8.3.1. "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.

8.3.2. "Fee Schedule" refers to the schedule in Ordinance No. 2023- , or any separate ordinance amending the same, setting forth the franchise fee to be collected.

8.4. **Collection of the Fee.** The franchise fee shall be payable quarterly, or as otherwise provided in Ordinance No. 2023- , or any separate ordinance amending the same, and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. 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 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.

8.5. **Equivalent Fee Requirement.** The City shall impose an equivalent fee or tax on 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.

## **SECTION 9. PROVISIONS OF ORDINANCE.**

9.1. **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. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

9.2. **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.

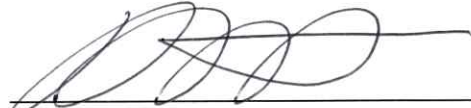
## **SECTION 10. AMENDMENT PROCEDURE.**

Either party to this Franchise may at any time propose that it be amended. 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.

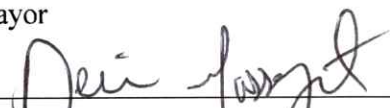
## **SECTION 11. PREVIOUS FRANCHISES SUPERSEDED.**

This Franchise supersedes any previous gas franchise granted to Company or its predecessor.

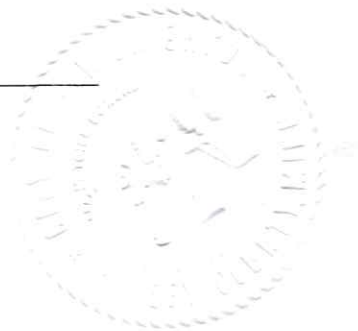
Adopted this 22nd day of August, 2023 by the New Brighton City Council with a vote of 5 ayes and 0 nays.

  
\_\_\_\_\_  
Kari Niedfeldt-Thomas  
Mayor

Attest:

  
\_\_\_\_\_  
Devin Massopust, City Manager

  
\_\_\_\_\_  
Terri Spangrud, City Clerk



ACCEPTED: This Franchise Ordinance, as amended, is accepted and the undersigned agrees to be bound by its terms and conditions.

Dated: \_\_\_\_\_, 2023.

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

By: \_\_\_\_\_

Its: \_\_\_\_\_