

ORDINANCE NO. 24-__
CITY OF GRAND RAPIDS, MINNESOTA

AN ORDINANCE OF THE CITY OF GRAND RAPIDS GRANTING TO MINNESOTA POWER, A MINNESOTA UTILITY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF GRAND RAPIDS, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO A PORTION OF THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES; AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF GRAND RAPIDS, MINNESOTA, DOES FIND AND ORDAIN, AND THE CITY CODE OF ORDINANCES IS HEREBY REVISED TO INCLUDE, THE FOLLOWING:

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 Grand Rapids, County of Itasca, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted from time to time hereafter.

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

Company. Minnesota Power, a Minnesota Utility Corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this Franchise.

Company Service Area. Those areas within the City to which the Company has been assigned the right to provide electric service, as in effect on the Effective Date or as may be hereafter revised.

Council. The City Council of the City of Grand Rapids as from time to time constituted.

Effective Date. The effective date of this Ordinance.

Electric Facilities. Electric transmission and distribution substations, towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by the Company for the purpose of providing electric energy for public or private use.

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

Notice. A writing served by any party or parties on any other party or parties at the following addresses:

If to the City: City Administrator
 City of Grand Rapids
 420 North Pokegama Avenue
 Grand Rapids, MN 55744

If to the Company: Vice President – Customer Experience
 Minnesota Power
 30 West Superior Street
 Duluth, MN 55802

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

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.

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.

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

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.

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.

SECTION 2. THE FRANCHISE.

2.1. **Grant of Franchise.** The City hereby grants the Company, for a term of twenty (20) years from the effective date of this Ordinance, 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. The streets, alleys, highways and public grounds included herein specifically include but are not limited to those:

Beginning at the intersection of the south boundary of Burlington Northern Santa Fe right-of-way and the westerly limits of the City; thence easterly along the southern boundary of said Burlington Northern Santa Fe rail way right-of-way until the same intersects with the UPM Blandin Paper Mill railroad spur; thence southeasterly along or near the said UPM Blandin Paper Mill spur to the UPM Blandin Paper Mill substation which is located in the vacated portion of Second Street West between 3rd and 4th Avenues West, all as graphically indicated by the red line on the attached print marked Exhibit A.

In consideration for the rights granted hereunder, the Company is hereby authorized to sell and distribute electric energy to the City of Grand Rapids and UPM Blandin Paper Mill within the City limits during the period covered by this Agreement, but nothing herein shall be construed as permitting the Company to dispose of or sell electric energy to any other person, firm, or public or private corporation within the City that is not within the Company Service Area, except by permission of the governing body of said City.

2.2 **Not Exclusive.** This Franchise is not exclusive.

2.3. **Effective Date.** This Franchise shall be in force and effect from and after the adoption of this Ordinance and publication as required by law and upon the Company's duly authorized acceptance as provided in Section 12 below.

2.4 **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.

SECTION 3. LOCATIONS; CONSTRUCTION; 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 or interfere with the normal operation of any City Utility System. Electric Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric 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.

3.2 **Regulations.** The services to be provided and the rates to be charged by the Company are subject to the laws of the State of Minnesota; and the rates, rules and regulations

established from time to time by the Company, federal laws and regulations, and/or the Minnesota Public Utilities Commission (the “Commission”)

3.3. **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 Electric Facilities and (ii) the Company gives telephone 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.

3.4. **Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. The Company shall restore Public Ground to as good a condition as formerly existed. 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. The 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. The Company shall also post a construction performance bond consistent with provisions of the Minnesota Rules, parts 7819.3000 and 7819.0100, subpart 6.

3.5. **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.

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

3.7. **Shared Use of Poles.** The Company shall, to the extent feasible, make space available on its poles or towers for City fire, police or other City facilities whenever such use will not interfere with the use of such poles or towers by the Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by the Company because of such use by City, and shall enter into a License Agreement for Pole Attachment Rental with the Company containing terms and conditions substantially similar to those contained in other such Agreements that the Company has with other governmental entities.

3.8. **Tree Trimming.** Subject to such procedures, regulation and supervision as the Council may reasonably establish, the Company may, at its cost, trim all trees and shrubs 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.

3.9. **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.

3.10 **Other Property Rights of Company.** The provisions of the Ordinance apply only to Company facilities constructed in reliance on this franchise and the Company does not waive or modify its rights under any easement, prescriptive right, state or county permit, or other real property interests that Company may have in any public way or in any public ground.

SECTION 4. ELECTRIC FACILITIES RELOCATION.

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

4.2. **Relocation in Public Grounds.** The City may require the Company at the Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by the City that the Electric 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.

4.3. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Electric 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.

4.4. **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, regarding or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Section 4.4 shall not limit the City's rights to indemnification under Section 5.1 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

SECTION 5. INDEMNIFICATION.

5.1. **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 Section 5.1 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, as to third parties, a waiver of any defense or immunity otherwise available to the City; and 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.

5.2. **Insurance.** The Company is required to maintain Commercial General Liability Insurance on an occurrence basis protecting it from claims for damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$4,000,000 – annual aggregate

The following coverages shall be included: Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury Blanket Contractual Liability and Products and Completed Operations Liability.

The City must be endorsed as an Additional Insured.

With the City's consent, which shall not be unreasonably withheld, the Company shall have the option of providing a program of self-insurance to meet its obligation under this Ordinance. In such event, the Company shall submit to the city a Certificate of Self-Insurance or other documents showing proof of its financial responsibility.

5.3. **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 Section 5.1 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 Section 5.3 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.

SECTION 6. VACATION OF PUBLIC WAYS. The City shall give the Company at least four (4) 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.

SECTION 7. 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. 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 Facilities, including abandoned and retired Facilities.

SECTION 8. FRANCHISE FEE.

8.1. **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. The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The formula for a franchise fee based on units of energy delivered may incorporate both commodity and demand units. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) - (iii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City-required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and such review will not delay the implementation of the City-imposed fee.

8.2. **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall become effective in the Company's first full billing cycle that is at least sixty (60) days following the Company's filing notifying the Commission of such fee and including a copy of Company's tariff sheet for the franchise fee.

8.3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount

on the sale of electric energy within the City by any other electric energy supplier, provided that, as to such supplier, the City has the authority to require a franchise fee.

8.4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time; however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.5. **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 2.4 above.

SECTION 9. DEFAULTS. If the Company shall be in default in the performance of any of the material terms and conditions of this Ordinance, 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 thereof.

SECTION 10. 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 and upon ninety (90) days notice. 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.

SECTION 11. GENERAL PROVISIONS OF ORDINANCE.

11.1. **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 Ordinance, or its enforcement shall be venued in the Ninth Judicial District in Itasca County.

11.2. **Limitation on Applicability.** This Ordinance 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.

11.3. **Assignment.** The Company may assign this Franchise without the prior approval of, but upon not less than thirty (30) days' prior Notice to, the City. Such Notice shall include the identity of and contact information for, the assignee and the statement of the assignee's plans and intentions for the operation of the Electric Facilities under this Franchise.

SECTION 12. ACCEPTANCE BY THE COMPANY.

12.1. **Acceptance by the Company.** The Company shall, within thirty (30) days after adoption of this Ordinance or any amendment thereto, file with the City Clerk in writing its acceptance or rejection as provided in Section 12.2. 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 Section 12.2.

12.2. **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 completion of the mediation of the dispute pursuant to Section 14 below, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

SECTION 13. PREVIOUS FRANCHISES SUPERSEDED. This Agreement supersedes and cancels the franchise Agreement between the City of Grand Rapids and the Company dated February 24, 2006. In the event that a provision of any other City ordinance conflicts with the provision of this Agreement, the provisions of this Agreement shall prevail.

SECTION 14. MEDIATION. The parties agree to promptly submit to mediation (within ten (10) working days of reaching an impasse) any dispute or controversy arising under this agreement that cannot be resolved by the parties through direct communication without mediation. The parties further agree to mediate in good faith. The mediator to be selected shall be listed on the Minnesota Roster of Neutrals and shall either be selected by the mutual agreement of the parties or by each party submitting a list of up to three (3) qualified mediators and then alternately striking names. The parties shall flip a coin to determine which party shall strike the first name. The parties shall equally share the costs of mediation. This procedure shall be followed before either party may file an action/complaint with a court of competent jurisdiction or any regulatory agency.

Adopted by the City Council of the City of Grand Rapids this ____ day of _____ 2024.

Tasha Connelly, Mayor

ATTEST:

Kim Gibeau, City Clerk

Published on the ____ day of _____, 2024, in the Grand Rapids Herald, a paper of general circulation within the City of Grand Rapids, Minnesota.

The provisions of the foregoing Ordinance are hereby accepted:

DATED _____, 2024.

By: _____
Its _____

By: _____
Its _____

