

# CenterPoint Energy Gas Franchise Ordinance

ORDINANCE NO. \_\_\_\_\_

CITY OF SPRING LAKE PARK, ANOKA AND RAMSEY COUNTIES, MINNESOTA

AN ORDINANCE GRANTING CENTERPOINT ENERGY RESOURCES CORP. d/b/a CENTERPOINT ENERGY MINNESOTA GAS (“CENTERPOINT ENERGY”), 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 FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF SPRING LAKE PARK, ANOKA AND RAMSEY COUNTIES, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF

THE CITY COUNCIL OF THE CITY OF SPRING LAKE PARK, ANOKA AND RAMSEY COUNTIES, 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 Spring Lake Park, Counties of Anoka and 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.** CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas 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 Energy.** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.

**Gas Facilities.** Gas transmission and distribution pipes, lines, ducts, fixtures and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.

**Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 505 Nicollet Mall, Minneapolis, Minnesota, 55402. Notice to the City shall be mailed to City of Spring Lake Park, Attn: City Administrator, 1301 81<sup>st</sup> Ave. NE, Spring Lake Park, Minnesota, 55432. 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 Way.** Any highway, street, alley or other public right-of-way within the City.

**Public Ground.** Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit. For the purposes of this paragraph, land is deemed to be “controlled by the City” with regard to a particular use or location if the City maintains unqualified authority in that area to permit the proposed use or location.

## **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, distribute and sell Gas Energy 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 and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, 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. 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 all which are compliant with state law.

2.2 **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 in writing by Company. If the Company does not file a written acceptance with the City within sixty (60) days after the City Council adopts this Ordinance, or otherwise informs the City, at any time, that the Company does not accept this Franchise, the City Council by resolution may revoke this Franchise or seek its enforcement in a court of competent jurisdiction.

2.3. **Service and Gas Rates.** The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the jurisdiction of the Commission.

2.4. **Publication Expense.** Company shall pay the expense of publication of this Ordinance.

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 thirty (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 thirty (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.

2.6. **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 ninety (90) days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire.

### **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. Gas Facilities may be located on Public Grounds in a location to be mutually agreed by the City and the Company. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to 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.

3.2. **Street Openings.** 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, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public right-of-way users for similar facilities or work. 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) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two (2) business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3. **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100 and applicable City ordinances consistent with the same. 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. 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 (5) days, the right to make the restoration of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for non-compliance with this Section 3.3. The Company shall be bound by the requirements of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6. However, the Company may request a waiver of the requirement to post a construction performance bond on an individual project basis and the City shall timely review such requests in good faith.

3.4. **Avoid Damage to Gas Facilities.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable notice by the City of such work. Per Minnesota Statute § 216D.05, the City must take protective measures when it performs work near the Gas Facilities.

3.5. **Notice of Improvements to Streets.** The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public 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 Public Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a minimum of eight (8) weeks' time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities Company deems necessary. .

3.6 **Mapping Information.** If requested by City, Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

3.7. **Emergency Response.** As emergency first responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company. However, this Section 3.7 shall not relieve either party from any liability for gas emergencies which are directly attributable to the negligence or willful misconduct of that party.

## **SECTION 4. RELOCATIONS**

4.1. **Relocation in Public Ways.** The Company and City shall comply with the provisions of Minnesota Rules 7819.3100 and applicable City ordinances consistent with law with respect to requests for the Company to relocate Gas Facilities located in Public Ways.

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

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Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Grounds. Nothing in this Section 4.2 shall be construed so as to invalidate or impair any existing easements in Public Grounds which are in favor of the Company and provide for exclusive Company use. Relocation shall comply with applicable city ordinances consistent with law.

4.3. **Projects with Federal Funding.** Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes §§ 161.45 and 161.46.

## **SECTION 5. INDEMNIFICATION**

5.1. **Indemnity of City.** 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 or otherwise wrongful act or omission 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.

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. 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 in 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.

## **SECTION 6. VACATION OF PUBLIC WAYS AND PUBLIC GROUNDS**

The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Way or Public Ground which the City knows is occupied by Company Gas Facilities. The City and the Company shall comply with Minnesota Rules 7819.3100 and 7819.3200 and applicable ordinances consistent with law with respect to any request for vacation.

## **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. **Form.** During the term of the franchise hereby granted, the City may charge the Company a franchise fee. The Company will administer the collection and payment of franchise fees to City in lieu of permit fees or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City. The fee may be (i) a percentage of gross revenue 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 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 will seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City and be consistent with the Minnesota Public Utility Commission’s March 23, 2011, Order establishing franchise fee filing requirements in Docket No. E,G999/CI-09-970. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company will 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 and implementing 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 each review will not delay the implementation of the City-imposed fee. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of this Ordinance.

8.2. **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council. The effective date of the franchise fee ordinance shall be no less than ninety (90) days after written Notice enclosing a copy of the duly adopted and approved ordinance has been mailed to the Company by Certified mail. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same promptly and within the ninety (90) day period.

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 energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed-upon franchise.

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 and be consistent with Minnesota Public Utility Commission’s March 23, 2011, Order establishing franchise fee filing requirements in Docket No. E,G999/CI-09-970. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company shall not

be responsible to pay City fees that Company is unable to collect under Commission rules or order. Company agrees to make available for inspection by City at reasonable times all records necessary to audit 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. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

## **SECTION 9. ABANDONED FACILITIES**

The Company shall comply with all applicable City ordinances consistent with law, Minnesota Statutes, Chapter 216D, Minnesota Rules, Part 7819.3300, as they may be amended from time to time with respect to abandoned facilities in Public Ways and Public Grounds. The Company shall maintain records describing the location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City's request and comply with the location requirements of Minnesota Statutes § 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities, located in Public Ways and Public Grounds.

## **SECTION 10. PROVISIONS OF ORDINANCE**

10.1. **Severability.** Every section, provision or part of this Ordinance is declared separate from every other section, provision or part; and if any section, provision or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other City ordinance is inconsistent with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between City and Company as the only parties. No provisions herein 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 this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

## **SECTION 11. AMENDMENT-PROCEDURE**

Either party may propose at any time that this Franchise Ordinance be amended. Franchise 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 ninety (90) days after the effective date of the amendatory ordinance.

Passed and approved: \_\_\_\_\_, 20\_\_

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Councilmember Wendling	_____	_____	_____	_____
Councilmember Goodboe-Bisschoff	_____	_____	_____	_____
Councilmember Dircks	_____	_____	_____	_____
Councilmember Moran	_____	_____	_____	_____
Mayor Nelson	_____	_____	_____	_____

APPROVED BY:

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Robert Nelson  
Mayor

Attest:

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Daniel R. Buchholtz  
Administrator, Clerk/Treasurer