

CHAPTER XI
FRANCHISES

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CHAPTER XI
FRANCHISES

Article 1
Grants of Franchises

11.0101 Grant of Franchise To

1. Definitions. For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
 - a. "City" is the city of Emerado, North Dakota.
 - b. "Company" is the grantee of rights under this franchise.
 - c. "Governing body" is the city council of the City of Emerado, North Dakota.
 - d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
2. Grant. There is hereby granted by the City to the company the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes and fixtures necessary for the maintenance and operation in the City of Emerado. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets, alleys, public ways, and places, to any person at any time during the period of this franchise.
3. Compliance with Applicable Laws and Ordinances. The company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.
4. Company Liability - Indemnification. The company shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of said system. For this purpose the company shall carry and at all times maintain on file with the City and at all times keep in

force, a public liability policy of insurance, insuring the company and the City against any and all liability of not less than \$50,000.00 property damage, \$100,000.00 for any one person, personal injury or death and \$200,000.00 for any one accident resulting in personal injury or death. Such policies of insurance or certificate thereof by a company licensed to do business in the State of North Dakota shall be filed with the City prior to the commencement of such use. The company, upon receipt of due notice in writing from the City, shall defend at its own expense any action or proceeding against the City in which it is claimed that injury or damage arose from the company's activities in the operation of its _____.

5. Service Standards. The company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be set forth by the governing body as provided for in subsection 11 of this Article, or by the Public Service Commission of the State of North Dakota.
6. Company Rules. The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of North Dakota.
7. Conditions of Street Occupancy.
 - a. Use. All transmission and distribution structures, lines and equipment erected by the company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
 - b. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of three (3) years.
 - c. Relocation. In event that at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of, any street, alley or other public way, the company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

- d. Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any utility fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways; provided the company will place its poles or fixtures underground when other utility services are so located unless permitted to do otherwise by the City Engineer where extreme hardship would result or an underground installation is not workable.
 - e. Temporary Removal of Wire for Building Moving. The company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings.

The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.
 - f. Tree Trimming. The company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the company, all trimming to be done under the supervision and direction of the City and at the expense of the company.
8. Prohibited - Discriminatory Practices. The company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.
 9. Extension Policy. The company shall file with the City Auditor its extension policy and amendments thereto, which shall be available to inspection by the public.
 10. Transfer - Approval Required. The company shall not sell or transfer its plant or system to another, nor transfer any rights under this franchise to another without governing board approval. Provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

11. City Rights in Franchise. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of North Dakota.

The City shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the company within the city limits wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures to be constructed and maintained to the satisfaction of the company and in accordance with its specifications.

- a. Compliance with company rules. The City in its use and maintenance of such wires and fixtures, shall at all time comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the City.
- b. Liability. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures the City shall save the company harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures.

The City shall have the right to supervise all construction or installation work performed subject to the provisions of this article and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

Upon the revocation of this franchise by the governing body, or at the end of the term of this franchise, the City shall have the right to determine whether the company shall continue to operate and maintain its distributing system pending the decision of the City as to the future maintenance and operation of such system.

11. Payment to the City. The company shall pay to the City for the privilege of operating its system under this franchise a sum equivalent to _____ percent (____%) of the annual gross operating revenues taken in and received by it on all _____ within the City.
12. Rates. Rates charged by the company for service hereunder shall be fair and

reasonable and filed with the governing body inspection.

13. Records and Reports. The City shall have access at all reasonable hours to all of the company's plans, engineering and service records.
 - a. Company Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the company for the conduct of its business.
 - b. Gross Revenue. An annual summary report showing gross revenues received by the company from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the company's service within the City.
14. Terms of Franchise. The franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the company with the City Auditor, and shall continue in force and effect for a term of _____ years after the effective date of this franchise. Provided, acceptance is filed within thirty (30) days.

05/05/80

11.0102

Any and all franchises granted and in operation prior to the date of the adoption of these ordinances shall remain in full force and effect and are not amended in any way by this ordinance.

05/05/80

Article 2 Cable Television Franchises

11.0201 Definitions. For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When no inconsistent with the context, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. "City" is Emerado, North Dakota.
- b. "City Council" is the Emerado, North Dakota City Council.
- c. "Cable Television System" hereinafter referred to as "CATV System" or "System" means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.
- d. "Person" is any person, firm, partnership, association, corporation, company,

or organization of any kind.

- e. "Grantee" is VUECOM, Inc. or person who succeed such Company in accordance with the provisions o this Franchise.

07/11/83

11.0202 Grant of Nonexclusive Authority

- a. The Grantee shall have the right and privilege to construct, erect, operate, and maintain, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Emerado, North Dakota, poles, wires, cables underground conduit, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV system as herein before defined.
- b. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

07/11/83

11.0203 Rules of Grantee

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this permit and to assure uninterrupted service to each and all of its customers provided that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereto, the rules of the Federal Communications Commission, the laws of the State of North Dakota, the City, or any other body having lawful jurisdiction thereof.

07/11/83

11.0204 Compliance With Applicable Laws, Resolutions and Ordinances

The Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall, hereafter, provide.

07/11/83

11.0205 Territorial Area Involved

This Franchise shall relate to the present territorial limits of Emerado, North Dakota, and to any area henceforth added thereto during the term of this Franchise.

07/11/83

11.0206 Liability and Indemnification.

The Grantee shall hold the City harmless against any and all damages that may be caused by reason of the construction and/or operation of Grantee's Cable Television System in the territorial area involved to any and every person or persons, and Grantee shall cause to be defended at its own expense all actions that may be commenced against the City for damages by reason of the construction and/or operation of such system in the territorial area involved. The Grantee shall carry public liability and property damage insurance in the sum of not less than One Hundred Thousand Dollars (\$100,000.00) for each individual, Three Hundred Thousand Dollars (\$300,000.00) for each accident, Fifty Thousand Dollars (\$50,000.00) for property damage, said insurance to be carried with an insurance company acceptable to the City.

07/11/83

11.0207 Operation and Maintenance of System

The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, as far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

07/11/83

11.0208 Safety Requirements

- a. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- b. The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, the State of North Dakota, and in such manner that they will not interfere with any installations of the City or of any public utility service the City.
- c. All structures and all lines, equipment and connections, in, over, under and upon streets, sidewalks, alleys, and public ways and places of the City, wherever situated or located, shall at all times be kept maintained.

07/11/83

11.0209 Conditions on Street Use

- a. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of said streets, alleys and other public ways and places, and not to interfere with existing public utility installations. In all areas of the City where any cables, wires or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires and other like facilities underground to the maximum extent existing technology reasonably permits. The Grantee shall furnish to and file with the City Council maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, such maps, plats and permanent

records furnished and filed with the City, shall be updated at least once every year by the Grantee.

- b. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own expense, replace and restore all paving, sidewalk, driveway or other surface of any street or alley disturbed in accordance with the standards and specifications of the City.
- c. If at any time during the period of this permit the City shall elect to alter, or change the grade or location of any street, alley or other public way, the Grantee shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures at its own expense, and in each instance comply with the standards and specifications of the City.
- d. The Grantee shall not place poles, conduits, or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures placed, water hydrant or other utility, and all such poles, conduits, or other fixtures placed in any street shall be so placed as to comply with all requirements of the City.
- e. The Grantee shall, on request of any person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of building with the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than twelve (12) hours advance notice to arrange for such temporary changes.
- f. The Grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of the City, such trimming may be done by it, or under its supervision and direction, at the expense and liability of the Grantee.

07/11/83

11.0210 Erection, Removal and Joint Use of Poles

- a. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the City Council with regard to location, height, type and other pertinent aspects. The location of any pole, conduit, or wire-holding structure of the Grantee shall not be a vested right and such pole, conduits, or structures shall be removed or modified by the Grantee at its own expense upon order of the City.
- b. Where poles, conduits, or other wire-holding structures of any public utility company are available for use by the Grantee, the City may require the Grantee to use such poles, conduits, and structures if the permission and consent of such public utility

* If additional outlets are connected at same time as first outlet, \$10.00 installation charge does not apply.

company may be obtained by the Grantee and if the terms of the use available to the Grantee are just and reasonable.

- c. Where City owned utility poles are available for use of the Grantee, the Grantee shall pay the City the same pole rental per annum as paid by the Grantee for the use of poles owned by public utilities.

07/11/83

11.0211 Preferential or Discriminatory Practices Prohibited

The Grantee shall not, as to rates, charges, service, services facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

07/11/83

11.0212 Removal of Facilities Upon Request

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

07/11/83

11.0213 Duration of Franchise

This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after June 6, 1983, and shall continue in full force and effect for a term of ten (10) years.

07/11/83

11.0214 Operational Standards

The cable television system shall be installed and maintained in accordance with the highest and best standards of the industry to the end that subscribers shall receive the best possible service.

07/11/83

11.0215 Subscriber Rates

- a. Initial subscriber rates shall be as follows:

Installation charge for first outlet per subscriber per building	\$12.00
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Installation charge for each additional outlet per subscriber per building	10.00*
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Relocation charge per outlet	10.00
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Monthly service charge per subscriber	
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per building for:

One (1) outlet	8.00
Each additional outlet	1.00

b. Pay channel rates shall be as follows:

Installation charge for first outlet per subscriber per building	10.00
Installation charge for each additional outlet per subscriber per building	10.00
Relocation charge per outlet	10.00
Monthly service charge per subscriber per building for:	

One (1) outlet	HBO = \$9.00	MAX = \$9.95
Each additional outlet	HBO = \$1.00	MAX = \$5.00

c. New customer cable initial service and pay channel service installed at same time 15.00

d. No increase in rates charged to subscribers shall be made by Grantee except as authorized by the City after a full, open and public proceeding upon prior notice and opportunity of all interested parties to be heard

07/11/83

11.0216 Miscellaneous Provision

- a. In the event of a customer failing to pay his monthly service charge by the 10th of the month in which said charge is due, the Grantee is authorized to disconnect the installation.
- b. The customer shall not in any way disturb, alter, or move the signal wire of the Grantee and shall not attach additional radios, television sets, or receiving equipment of any type to the wire or equipment of the Grantee without the Grantee's permission. In the event of a breach of this clause, the Grantee is authorized to remove its equipment from the premises of the customer and the customer shall forfeit all fees and charges paid by him to the date of such removal.
- c. The Grantee shall have the right to insist that the customers agree that the Grantee's personnel shall be allowed, at reasonable hours, to enter and have access to the property belonging to the Grantee and to remove said property from the customer's premises when and if service is terminated.

- d. This Franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission.

07/11/83

11.0217 Construction Schedule

Grantee shall file application for all necessary permits and authorizations within thirty (30) days of the grant of this Franchise. Grantee shall accomplish a significant amount of construction of its system within one (1) year after obtaining all necessary approvals.

07/11/83

11.0218 Transfer of Franchise

The Grantee of this Franchise may assign or transfer the same, but nothing herein shall be construed so as to give the Grantee, its successors or assigns, any exclusive rights to the privileges herein granted.

07/11/83

11.0219

The provisions of section 11.0101 and section 11.0102 are incorporated herein insofar as they do not conflict with the provisions of this Article.

07/11/83

11.0220 Separability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction or any federal, state or local regulatory body or agency having jurisdiction over Grantee, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

07/11/83

Article 3
Natural Gas Franchise

11.0301 Definitions

- a. "City" means the City of Emerado, County of Grand Forks, State of North Dakota.
- b. "City Utility System" means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- c. "Commission" means the North Dakota Public Service Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate electric retail rates now vested in the North Dakota Public Service Commission.

- d. "Company" means Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.
- e. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
- f. "Notice" means a written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the City shall be mailed to the City Auditor, 102 Oldham, Emerado, ND 58228. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- g. "Public Ground" means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- h. "Public Way" means any street, alley, walkway and other public right-of-way within the City.

07/21/86; 05/10/06; 05/03/10

11.0302 Grant of Franchise

City hereby grants Company, for a period of twenty (20) years from the date passed and approved by the City, the non-exclusive right and privilege of erecting a gas distribution system and using the Public Ways and Public Grounds of City for the purpose of constructing, operating, repairing and maintaining, in, on, over, under and across the same, all gas pipes, mains, and appurtenances usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes subject, however, to the further provisions of this franchise agreement.

07/21/86; 05/01/06

11.0303 Restrictions

- a. All gas pipes, mains, regulators and other property and facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways and so as to not disrupt normal operation of City Utility System previously installed therein. Company's construction, operation, repair, maintenance and location of such 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 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 improvement project.

- b. Company shall not construct any new or modified installations within or upon any Public Grounds without receiving the prior written consent of an authorized representative of City for each such new installation.
- c. In constructing, removing, replacing, repairing, or maintaining said gas pipes, mains and appurtenances, Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter. City hereby waives any requirement 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.

07/21/86; 05/01/06

11.0304 Tree Trimming

Company is also granted the permission and authority to trim all trees, including roots and shrubs in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of gas facilities, provided that Company shall save City harmless from any liability in the premises.

05/01/06

11.0305 Service, Rates

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 of this state or its successor agency.

07/21/86; 05/01/06

11.0306 Relocating

- a. Whenever City at its cost shall grade, regrade or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its mains, services, and other property located in said Public Way materially interfering with the City's planned construction, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations, shall be ordered within

five (5) years from and after first relocation, City shall reimburse company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are requested because company facilities materially and necessarily interfere with the extension of a City Utility System to previously unserved areas, Company may be required to relocate at its own expense.

- b. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its 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.
- c. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of *N.D.C.C.* § 24-01-41, as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such a relocation and the loss and expense resulting therefrom are first paid to Company.
- d. The provisions of this franchise 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 Way or Public Ground was established, or Company's rights under state or county permit.

07/21/86; 05/01/06

11.0307 Indemnification

- a. Company shall indemnify, keep, and hold City free and 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, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

- b. In the event a suit is brought against the City under circumstances where the above 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; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

07/21/86; 05/01/06

11.0308 Vacation of Public Ways

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required solely 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, under the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no cases, however, shall the City be liable to pay damages to Company for failure to specifically preserve a right-of-way under *N.D.C.C.* Chapter 40-39.

07/21/86; 05/01/06

11.0309 Written Acceptance

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this ordinance.

07/21/86; 05/01/06

11.0310 General Provisions

- a. 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.
- b. 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 for breach of contract, or either party may take any other action permitted by law.

- c. 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.
- d. 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
- e. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

07/21/86; 05/01/06

11.0311 Publication Expense

The expense of publication of this Ordinance shall be paid by City and reimbursed to City by Company within thirty (30) days.

07/21/86; 05/01/06

11.0312 Effective Date

This ordinance is effective as provided by statute or charter, and upon acceptance by Company as provided in Section 8.

07/21/86