

CITY OF ORONO, HENNEPIN COUNTY, MINNESOTA

ORDINANCE NO. _____

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, AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY FOR SUCH PURPOSES; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF

THE CITY COUNCIL OF THE CITY OF ORONO 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 Orono County of Hennepin 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 (“CenterPoint 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 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, but not including any gas manufacturing, processing or storage facilities.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Vice President Regional Operations - Minnesota, 505 Nicollet Mall, Minneapolis, Minnesota, 55402. Notice to the City shall be mailed to 2750 Kelley Parkway, Orono, MN 55323. 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 and which is not a Public Way.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of fifteen (15) years from the date this Ordinance is passed and approved by the City, the nonexclusive right to import, 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 a public right-of-way ordinance or permit requirements adopted consistent 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 by Company. Written acceptance or rejection of the franchise by the Company must be filed with the City Clerk within sixty (60) days after written submission of a City adopted and approved ordinance to the Company.

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 exclusive 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 give Notice to the other party of the default and the desired remedy. 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 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. However, in no event shall this Franchise continue for more than one (1) year after expiration of the fifteen (15) 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. Gas Facilities may 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 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, irrespective of any franchise fee imposed pursuant to this Ordinance. Company will comply with all permit conditions established by the City. 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. Except in the case of emergency work, work undertaken without a permit by the Company or its agents shall be subject at the discretion of the City to a penalty in the amount of twice the established permit fees in addition to any other remedy or penalty specified or allowed in City Code or State Rules.

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, including paving and its foundation, in accordance with Minnesota Rules, 7819.1100 and applicable City ordinances. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for two (2) years 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, including administrative expense and overhead. This remedy is in addition to any other remedies available to the City for noncompliance with this

section. In all other aspects, Company shall comply with the terms of Minnesota Rules 7819.1100 for restoration of Public Ways and Grounds, and Minnesota Rules 7819.3000 and 7819.0100.

3.4. **Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity. 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 and the City will comply with all applicable laws and codes including Minnesota Statute 216D when performing work near the Gas Facilities.

3.5. **Notice of Improvements to Streets.** The City will give Company reasonable 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 sufficient length of 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 the Company deems necessary.

3.6 **Mapping Information.** If requested by City, the 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. Upon request by the City, the Company must provide field locations for any of its Gas Facilities within the period of time required by Minnesota State Statute 216D.

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 when notified.

SECTION 4. RELOCATIONS.

4.1. **Relocation in Public Ways and Public Grounds.** The Company and City shall comply with the provisions of Minnesota Rules 7819.3100 and any applicable City right-of-way ordinance consistent with state law, with respect to requests for the Company to relocate Gas Facilities located in either Public Ways or Public Grounds. The City may require the Company at Company's expense to relocate or remove its Gas Facilities from Public Grounds upon a finding that the Gas Facilities have become or will become a substantial impairment to the existing or imminent public use of the Public Grounds, unless those facilities are located within a private easement held by the Company. The City will provide an alternate location in public ground or a public right-of-way for the Company to relocate its gas facilities.

4.2. **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 Sections 161.45 and 161.46 if funds for these purposes are available.

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 or death 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 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 (2) weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with City Code, Minnesota Statutes Section 160.29, Minnesota Rules 7819.3100 and Minnesota Rules 7819.3200 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 franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each retail customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will 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. 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 Notice enclosing a copy of the duly adopted and approved ordinance has been served upon the Company by Certified mail. The Company is not required to collect a franchise fee if the terms of the franchise fee ordinance are inconsistent with this franchise or state law, provided the Company notifies the City of the same within the ninety (90) day period. Any franchise fee ordinance applicable to the Company which is in place on the effective date of this Franchise shall be immediately effective without further notice to the Company.

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 an 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 and acceptance 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. 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. However, the franchise fee will not remain in effect for more than one (1) year after the franchise expires as stated in Section 2.6 of this Franchise. 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 Minnesota Statutes, Section 216D.01, *et seq.*, as it may be amended from time to time and applicable city code provisions with respect to abandoned facilities located in Public Ways and Public Grounds and with Minnesota Rules, Part 7819.3300, as it may be amended from time to time with respect to abandoned facilities in Public Ways.

The Company shall maintain records describing the exact 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, Section 216D.04 with respect to all 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 the 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.

10.3. **Successors in Interest.** This ordinance and the rights and obligations conferred hereby, is binding on and inures to the benefit of the City and its successors and on the Company and its successors.

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 sixty (60) days after the effective date of the amendatory ordinance. This amendatory procedure is subject, however, to the City's police power and franchise rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This Franchise supersedes and replaces previous franchises granted to the Company or its predecessors, including but not limited to Ordinance Numbers 311 and 113, and Section 7.011 of City Code.

ADOPTED this ____ day of _____, 2019, by the City Council of the City of Orono.

CITY OF ORONO

BY: _____
Dennis Walsh, Mayor

ATTEST:

Anna Carlson, City Clerk

SUMMARY ORDINANCE NO. _____

**AN ORDINANCE GRANTING A NONEXCLUSIVE
GAS FRANCHISE TO CENTERPOINT ENERGY**

NOTICE IS HEREBY GIVEN that, on _____, 2019, Ordinance No. _____ was adopted by the City Council of the City of Orono, Minnesota.

NOTICE IF FURTHER GIVEN that, because of the lengthy nature of Ordinance No. _____, the following summary of the ordinance has been prepared for publication:

Ordinance No. _____ grants a nonexclusive gas franchise and sets for the terms thereof.

A printed copy of the entire Ordinance is available for inspection by any person during the City Clerk's regular office hours.

APPROVED for publication by the City Council of the City of Orono, Minnesota, this _____ day of _____, 2019.

CITY OF ORONO

BY: _____
Dennis Walsh, Mayor

ATTEST:

Anna Carlson, City Clerk