

TO: Honorable Mayor and City Council Members

FROM: City Administrator Ron Johnson

SUBJECT: Recommend Approval of Dakota Electric Franchise Renewal

DATE: May 11, 2016

BACKGROUND

The current 10-yr franchise agreement with Dakota Electric expires on July 1, 2016. I have been working with Dakota Electric and our legal representative, Joel Jamnik, Campbell Knutson PA, to bring forward a new renewal agreement.

Campbell Knutson, PA has worked with the cities of Burnsville, Farmington and Lakeville on their renewals with Dakota Electric. This proposed agreement (in ordinance form) reflects the language in those agreements, and is being recommended for approval by Campbell, Knutson.

The Public Works Commission recommends approval of the attached ordinance renewing the Dakota Electric franchise agreement.

REQUESTED COUNCIL ACTION

Conduct first reading of the attached ordinance approving the renewal of the Dakota Electric franchise agreement.

Attachment(s): Existing franchise ordinance; Proposed franchise ordinance

ORDINANCE NO. 256

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

**AN ORDINANCE GRANTING TO DAKOTA ELECTRIC ASSOCIATION,
A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS,
PERMISSION TO CONSTRUCT, OPERATE, REPAIR, AND MAINTAIN IN THE
CITY OF CANNON FALLS, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM
AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES,
FIXTURES, AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC
ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE
PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.**

THE CITY COUNCIL OF THE CITY OF CANNON FALLS ORDAINS:

SECTION 1. DEFINITIONS.

1.1 "City. In this ordinance, "City" means the City of Cannon Falls, County of Goodhue, State of Minnesota.

1.2 "City Utility System" means the facilities used for providing sewer, water, or any other public utility service owned or operated by City or agency thereof.

1.3 "Company" means Dakota Electric Association, a Minnesota corporation, its successors and assigns.

1.4 "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to Dakota Electric Association, Farmington, Minnesota, 55024. Notice to City shall be mailed to the City Clerk.

1.5 "Public Way" means any street, alley, or other public right-of-way within the City.

1.6 "Public Ground" means land owned by the City for park, open space, or public purpose.

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

1.8 "Total Owning Cost" means the cost to the Company for owning and maintaining an overhead ("OH") or underground ("UG") line. The cost is based on statistical data and includes design, labor, material, maintenance, locating, taxes and the life expectancy of the line.

SECTION 2. GENERAL PROVISIONS.

2.1 Franchise Term. This franchise agreement shall remain in effect until July 1, 2016. If the franchise is not renewed or extended prior to that date, the Company may continue to operate within the City under the terms of this Franchise until and unless either the City or Company gives 120 days prior written notice of the parties intent to terminate the Franchise.

2.2 Grant of Franchise. The City hereby grants the Company a nonexclusive right to transmit and furnish electric energy for light, heat, power, and other purposes for public and private use in the City as its boundaries now exist or as they may be modified in the future. These boundaries shall be subject to regulation and jurisdiction of the Minnesota Public Utilities Commission. For these purposes, the Company may construct, operate, repair, and maintain Electric Facilities subject to the provisions of this ordinance and City Code. The Company may do all reasonable things necessary or customary to accomplish these purposes subject, however, to zoning ordinances, other applicable ordinances, permit procedures, and to the further provisions of this franchise.

2.3 Service Rates. The service to be provided and the rates to be charged by the Company for electric service in the City currently are subject to the rules and regulations of the Minnesota Public Utilities Commission.

2.4 Default. 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. If the dispute is not resolved within thirty (30) days of the written notice, 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.

2.5 Effective Date. This ordinance shall take effect immediately upon written acceptance by the Company after its passage and the publication of its title and the official summary.

2.6 Filing. The City Clerk shall file a copy of this ordinance in the Clerk's office, which copy shall be available for inspection by any persons during regular office hours.

SECTION 3. CONSTRUCTION STANDARDS

3.1 Installations. All wire, conduits, cables, and other property and facilities of the Company shall be constructed and installed in an orderly and workmanlike manner. Where possible, underground wires, conduits, and cables shall be installed parallel with the telephone lines. Multiple cable configurations shall be arranged in parallel with due respect for engineering considerations and applicable laws and regulations.

3.2 Compliance. The Company shall at all times comply with all applicable laws, ordinances, rules, regulations and codes, federal, state, and local. At no time shall the installation, operation, or maintenance of the system endanger or interfere with the safety of persons or property in the City. The City will not regulate rates charged to customers under this franchise as long as rates are regulated by an agency of the State of Minnesota.

3.3 Location of Facilities. Electric Facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along, over, and under Public Ways and they shall be located on Public Grounds and Public ways as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, and location of Electric Facilities shall be coordinated with the City and other utilities to minimize interference with these facilities and shall be subject to other regulations of the City.

3.4 Field Location. The Company shall provide field locations for any of its underground Electric Facilities within the time requirements specified in State law.

3.5 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 permission from the City, for which the City may impose a fee as determined by City resolution. The Company may, however, open and disturb the surface of any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of the Electric Facilities. In such event, the Company shall attempt to, notify the City by telephone to the office designated by the City when opening or disturbing a surface of a Public Way or Public Ground. Not later than the second working day thereafter, the Company shall obtain any required permits and pay any required fees.

3.6 Restoration. After undertaking any work required the opening of any Public Way or Public Ground, the company shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two (2) years thereafter. The work shall be completed as promptly as weather permits, and if the Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public way or Public Ground in the said condition, the City shall have, after demand to the 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 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, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City.

3.7 Shared Use of Poles and Underground Trenches. The Company shall make space available on its poles and towers or in its underground trenches for City communications circuits whenever such use will not interfere with the use of such poles, towers, or underground trenches 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 the City. Any City facilities shall be installed and maintained in accordance with the National Electrical Safety Code (NESC).

3.8 Building Relocations. The Company, at the request of any person holding a building moving permit and with not less than five (5) days advance notice, shall temporarily remove, raise or lower its wires, conduits, and cables. The expense of such temporary removal, raising or lowering of wires, conduits, and cables shall be paid by person(s) requesting the same, and the Company shall have the authority to require such payment in advance.

SECTION 4. RELOCATIONS AND FACILITY CONVERSIONS.

4.1 Relocation of Electric Facilities in Public Ways. Except as provided in Section 4.4, if the City determines to make a City improvement, or to grade, regrade, or change the alignment of any Public Way, or construct or reconstruct any City Utility system in any Public Way, it may order the Company to relocate its Electric Facilities located therein. The Company shall relocate its Electric Facilities at its own expense provided the facilities are not subject to undergrounding in accordance with Section 4.3. The City shall give the Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the alignment of any Public Way or to construct or reconstruct any City Utility System.

If a relocation is ordered within five (5) years of a prior City ordered relocation of the same Electric Facilities which was made at Company expense, the City shall reimburse the Company for non-betterment expenses based on the Company's total owning cost of the facilities, provided that if the subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, the Company shall be required to make the subsequent relocation at its expense.

4.2 Relocation of Electric Facilities in Public Ground. Except as may be provided in Section 4.4, the City may require the Company 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 of the public use to which the Public Ground is or will be put. The relocation or removal shall be at the Company's expense. The provisions of this Section 4.2 apply only to Electric Facilities constructed on Public Ground in reliance on a franchise and the Company does not waive its rights under an easement granted to the Company.

4.3 Change to Underground. If required by the City, the Company shall change from aerial to underground, at City expense based on the Company's total owning cost in any area where: (1) the City requests underground lines and all other lines hereafter are changed from aerial to underground, or (2) any aerial line is changed to underground by the open trench method and the City requests the Company to share the trench with telephone and/or cable television, and the Company can share trench at a cost not to exceed the Company's pro rata share of the cost of the trenching.

4.4 Projects with State or Federal Funding. Relocation, removal, or rearrangement of any Company 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, as supplemented or amended. It is understood that the right herein granted to the Company is a valuable right. The City shall not order the Company to remove or relocate its facilities 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 expenses based on Total Owning Cost of the facilities subject to such relocation and the loss and expense resulting therefrom are first paid to the Company, but the City need not pay those portions of such for which reimbursement to it is not available.

SECTION 5. TREE TRIMMING.

The Company may upon notification to the City, trim all trees and shrubs in the Public Ways and Public Grounds of the City interfering with the proper construction, operation, repair and maintenance of

any Electric Facilities installed hereunder, provided that the Company shall save the City harmless from any liability arising from, and subject to permit or other regulation by the City. The Company may, however, trim all trees and shrubs in the Public Ways and Public Grounds of the City without permission from the City where an emergency exists requiring the immediate trimming of trees or shrubs. In such event, the Company shall notify the City by telephone to the office designated by the City as soon as possible. In all instances, the Company shall trim trees and shrubs in such a way so as to leave the trees and shrubs with a symmetrical appearance or as the customer desires.

Thirty (30) days before tree trimming is to be done, the Company shall provide the City with a list of all areas where trees will be trimmed. The Company shall notify residents in the areas of tree trimming that trimming will occur, informing the resident that specified trees will be trimmed, and a name of a contact person within the Company, and that person's direct phone number.

SECTION 6. VACATION OF PUBLIC WAYS.

The City shall give the Company at least two (2) weeks prior written notice of a proposed vacation of a Public Way upon which Electric Facilities owned by the Company are located. Except where required for a City street or other improvement project, the vacation of any Public Way after the installation of Electric Facilities shall not deprive the Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company. In no case, however, shall the City be liable to the Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 7. INDEMNIFICATION.

7.1 **Hold Harmless Clause.** The Company shall indemnify, keep, and hold the 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 Electric Facilities located in the City. 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, the 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 the Company, and such performance is nevertheless ordered or directed by the City after notice of the Company's determination.

7.2 **Law Suits.** In the event a suit or claim is brought against the City under circumstances where this agreement to indemnify applies, the Company, at its sole cost and expense, shall pay the reasonable and necessary cost of the City's defense against said claims, including reasonable attorney's fees, if written notice thereof is promptly given to the Company. The 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 or the Company.

7.3 **Damage to Facilities.** Nothing contained in this franchise shall relieve the City, or any person from liability arising out of the failure to exercise that care which the law requires to avoid damaging the Company's facilities while performing any activity.

SECTION 8. CHANGE IN ENTITY.

8.1 City. 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 the Company, succeed to all the rights and obligations of the City provided in this ordinance.

8.2 Company. Any change in the form of the Company shall not affect the validity of this ordinance. Any organization succeeding the Company shall, without the consent of the City, succeed to all the rights and obligations of the Company provided in this ordinance.

SECTION 9. FRANCHISE FEE.

9.1 Separate Ordinance and Notice Requirements. During the term of the franchise hereby granted, the City may impose on the Company a franchise fee not greater than five percent (5%) of the Company's gross receipts as hereinafter defined. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which separate ordinance shall not be adopted until at least sixty (60) days after written notice enclosing such proposed ordinance has been served upon the Company by certified mail.

Any change in the franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company by certified mail. The franchise fee rate may not be changed more often than once in any twelve (12) month period.

9.2 Conditions of the Fee. The separate ordinance imposing or changing the fee shall not be effective against the Company unless the City lawfully imposes and quarterly or more often collects a fee or tax of the same percentage on the gross receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City.

9.3 Gross Receipts Definition. The term "gross receipts" means all sums received by the Company from the sale of electricity to its retail customers within the corporate limits of the City, excluding electricity sales for the purpose of providing fuel for vehicles and also excluding any surcharge, sales tax, miscellaneous tariff charges, and any similar addition to the Company's charges to customers for the purpose of reimbursing the Company for the franchise fee.

9.4 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the gross receipts of the Company as defined in Section 9.3 for complete billing months during the period for which payment is to be made. Such fee shall not exceed any amount which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. If the time and manner of collecting the franchise fee is subject to the approval of the Public Utilities Commission, the Company agrees to use best efforts to obtain such approval.

9.5 Administrative Costs. All costs directly related to collection of the franchise fee incurred by both the City and the Company may be reimbursed from the franchise fee collected under this ordinance. The Company's costs on an annual basis, shall not exceed two (2) percent of the franchise fee collected.

9.6 Financial Records. The City, its agents and representatives, shall have authority to arrange for and conduct an audit of the books and records of the Company. The extent of the audit shall be limited to that information which is necessary to verify the accuracy of the gross receipts as defined in Section 9.3, and reported to the City. The City and the Company shall establish reasonable procedures to protect the confidentiality of this information. The Company shall first be given thirty (30) days notice of the audit request, the description of the audit, and description, to the best of the City's ability, of the books, records, and documents it wants to review which the Company shall provide at its expense.

9.7 Document Provisions. The company shall file and maintain with the City a financial statement certified by the Chief Executive or Chief Financial Officer of the Company showing, in reasonable detail, the Company's gross receipts generated within the City during the preceding fiscal year.

SECTION 10. CITY CODE CONTROLS.

All authority and rights contained in this ordinance shall at all times be subject to all rights, power and authority now or hereafter possessed by the City of Cannon Falls, Minnesota, to regulate the manner in which the Company shall use the streets, alleys, bridges and public places of said City and concerning the manner in which Company shall use and enjoy the franchise herein granted, specifically Section 2.61 of the Cannon Falls City Code, to the extent such section governs matters not subject to state regulation.

SECTION 11. SEVERABILITY.

If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.

SECTION 12. AMENDMENT.

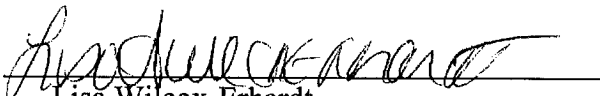
This ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of the Company's written consent to the City Clerk within ninety (90) days after the effective date of the amendatory ordinance.

SECTION 13. PREVIOUS FRANCHISE SUPERSEDED.

This franchise supersedes Ordinance No. 137 and any other previous electric franchise granted to the Company or its predecessor.

PASSED AND DULY ADOPTED by the Cannon Falls City Council this 4th day of May, 2006.

CITY OF CANNON FALLS

BY: 
Lisa Wilcox-Erhardt
Its Mayor Pro Tem

ATTEST:


Kathleen F. Miller, City Administrator

Motion by:	Bodette
Second by:	Hochmuth
Hochmuth:	Aye
Wilcox-Erhardt	Aye
Otto:	Aye
Bateson:	Absent
Thomas:	Aye
Bodette:	Aye

Published in *Cannon Falls Beacon* May 25, 2006.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

ORDINANCE NUMBER 345

ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE GRANTING A FRANCHISE TO DAKOTA ELECTRIC ASSOCIATION, A MINNESOTA COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN AN ELECTRONIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES IN THE CITY OF CANNON FALLS, GOODHUE COUNTY, MINNESOTA, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF CANNON FALLS ORDAINS:

SECTION 1. DEFINITIONS.

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

- 1.1 **City.** The City of Cannon Falls, County of Goodhue, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sanitary sewer, storm sewer, street lighting and traffic signals, and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **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 electric retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Dakota Electric Association, a Minnesota Cooperative, its successors and assigns.
- 1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
- 1.6 **Notice.** 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 Chief Executive Officer, 4300 220th Street West, Farmington, MN 55024. Notice to the City shall be mailed to the City Administrator, City Hall, 918 River Road, Cannon Falls, MN 55009. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 10 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this franchise. 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 and to the further provisions of this franchise.

2.2 **Franchise Fee.** The City reserves all rights under Minn. Stat. §§ 216B.36 and 301B.01 to require a franchise fee or amend an existing franchise fee at any time during the term of this ordinance. If the City elects to require a franchise fee or amend an existing franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee schedule. The fee shall be set forth in a separate ordinance and not adopted until at least ninety (90) days after notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or on any terms related thereto, including but not limited to the requirement of concurrent permit fees to defray costs of utility operations, each hereby consents to the jurisdiction of State District Court, Goodhue County, to construe their respective rights under the law, subject to all rights of appeal. City and Company expressly reserve all rights and arguments concerning franchise fees and related issues and this paragraph is not intended, and shall not be construed, as a waiver of any such rights or arguments.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

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

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator.

If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in Goodhue County 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.

SECTION 3. LOCATION, 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 normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric 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 Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations and Mapping Information. Company shall provide field locations for its underground Electric Facilities within the City consistent with the requirements of Minnesota Statutes, Chapter 216D. Company shall provide accurate and current mapping information for any of its Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100 and other applicable state and federal laws.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, in accordance with Minnesota Rules Part 7819.1100, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways 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 Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by 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 Company because of such use by City.

SECTION 4. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. Company shall comply with the requirements of Minnesota Rules, Part 7819.3100 and applicable law relating to relocation of Electric Facilities in Public Ways. If a relocation is ordered within five (5) years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment expenses on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. Relocation, removal or rearrangement of any Company Electric 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, Section 161.46, as supplemented or amended. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. But the City need not pay those portions of such for which reimbursement to it is not available.

4.4 **No Waiver.** The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

6.1 **Indemnity of City.** Company shall indemnify, keep and hold the 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 Electric Facilities located in the Public Grounds and Public Ways. 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.

6.2 **Defense of City.** In the event a suit is brought against the City under circumstances where this franchise 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 the City could assert in its own behalf. This franchise shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations under Minnesota Statutes Chapter 466.

SECTION 7. 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 for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the

loss and expense resulting from such relocation is first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. 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 9. PROVISIONS OF ORDINANCE.

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

9.2 **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 10. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 11. PREVIOUS FRANCHISES SUPERSEDED.

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

SECTION 12. EFFECTIVE DATE; WRITTEN ACCEPTANCE.

This franchise shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City Council may revoke this franchise if Company does not file a written acceptance with the City within 90 days after publication.

ADOPTED by the City Council of the City of Cannon Falls, Minnesota this ____ day of _____, 2016.

CITY OF CANNON FALLS

By: _____
Lyman M. Robinson, Mayor

ATTEST:

Ronald S. Johnson, City Administrator