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Section 11.1: General

11.1.01. Water and Sewer Department. The City Engineer shall supervise the maintenance, care, management and operation of the streets, lights, water and sewer. The City Engineer shall be responsible for the management, maintenance, care and operation of the water works and sanitary sewer system of the City.

11.1.02. Use of Water and Sewer System Restricted. No person shall make or use any water or sewer service installation connected to the City water or sewer system except pursuant to application and permit as shall be provided in this Chapter. No person shall make or use any installation contrary to the regulatory provisions of this Chapter.

11.1.03. Applications for Service.

Subd. 1. Procedure. Application for a water or sewer service installation and for water and or sewer service shall be made to the City Engineer on forms prescribed and furnished by the City. By his or her signature, the applicant shall agree to conform to this Chapter and to the rules and regulations that may be established by the City as conditions for the use of these services.

Subd. 2. Fees or Deposit. Application for a service installation shall be made by the owner of the property to be served or by his or her agent. The applicant shall, at the time of making application, for water or sewer services, pursuant to this Section elect either to pay the established connection fees in full immediately; or to pay the connection fees over a period of five (5) years, if so approved by resolution of the City Council. Payment of the fees and rate of interest shall be according to the authorizing resolution. In those cases, where a person elects to pay connection fees over a period of five years, he or she shall be required to execute an agreement, acceptable in form to the City Attorney, which shall be recorded against the property to which the water or sewer connection shall be made, and which shall be binding upon the applicant and future owners of the property to pay the unpaid balance.

Subd. 3. Non-Resident Connections. No individual connections or hookups to the City water and/or sewer system shall be allowed to non-residents adjacent to or outside the city limits of Cloquet without a resolution by the City Council authorizing such connections. As part of this approval process, the City Engineer must provide information stating that the proposed connections shall not adversely affect the systems of the City and that there shall be sufficient capacity to provide the services to the non-residents without diminishing the services to the residents of the City. Upon receipt of this statement from the City Engineer, the City Council may, by resolution, permit non-residents to hook-up or connect to the City water and sewer systems. If so approved, the connection fees for non-resident connections shall be two times the cost for a resident of the City, unless there is a written agreement between the City of Cloquet and the adjoining governmental authority which specifically addresses non-resident connections in a different manner.

11.1.04. Permits and Charges for Service Connections.

Subd. 1. Permit. No connection shall be made to the City water or sanitary sewer system without a permit from the City Engineer. The City Engineer may deny a permit for sewer or water connection if:

- A. The Engineer finds the property can reasonably be served by an extension of the existing public system to the property of the applicant and intervening lands. It is the stated intention of the City to eliminate, where possible, construction of private lines serving private parcels of land in lieu of public lines.
- B. The Engineer finds that granting of a permit would encourage development of property which cannot economically be served by other utilities or improved accesses. A decision on the part of the City Engineer may be appealed by the applicant to the City Council upon written notice.

Subd. 2. Related Installation Costs. When a connection requires installation of a service line from the main to the property line, in addition to any connection fees, the applicant shall bear the costs of making the necessary connections, taps, and installation of pipe appurtenances, and necessary street repairs to provide service to the property.

Subd. 3. Certification. No permit as described above shall be issued to connect with any water or sanitary sewer main unless the City Engineer certifies to the truth of one of the following or the payments required under Section 11.1.04, Subd. 4, 5 and 6 shall be made:

- A. That the lot or tract to be served has been assessed for the cost of construction of the main with which the connection shall be made or that proceedings for levying the assessment have been or shall be commenced in due course; or
- B. That the cost of construction of the main has been paid by the developer or builder developing the lot or tract.

Subd. 4. Sanitary Sewer and Water Connection Fees for Lots Adjacent to the City Mains Not Previously Assessed. Each January, the City Engineer shall recommend to the City Council connection fees which shall be charges for water and sewer connections for properties adjacent to City mains not previously assessed for the extension of the mains. In developing a recommendation the City Engineer shall consider the current average or typical front foot costs for the construction of an eight (8) inch water main and an eight (8) inch sewer main. The Council shall adopt by resolution connection fees for sewer and water services which shall remain in effect until or unless modified by subsequent Council resolution. The connection fees shall not include charges for materials and labor as set forth in Subdivision 2 of this Section. In no instance shall the fees be based upon less than a seventy-five (75) foot frontage.

- A. Single Family Dwelling. The connection fee shall be charged in accordance with the Resolution of the City Council of the City of Cloquet as set forth in this section and the total water and sewer connection fee shall be based on a 75 foot frontage.
- B. Multiple Family Dwelling, Including Duplexes, Motels and Trailer Courts. The connection charge shall be established by the City Council upon request for connection but shall in no case be less than one and one-half times (1-1/2 x) the charge for a single family connection.
- C. Commercial and Industrial Structures. The connection charges shall be established by the City Council upon request for connection but shall in no case be less than one and one-half (1-1/2 x) the charge for a single family connection. In addition, a charge shall be added for all over and above average costs, if any, that the City may face to make the necessary connection.

Subd. 5. Western Lake Superior Sanitary District (WLSSD) Capacity Availability Fee (CAF). In addition to any sewer connection fees as established by the City of Cloquet, all applicants for new sanitary sewer connections shall also be required to pay a Capacity Availability Fee (CAF) in accordance with the rules and procedures as adopted by the WLSSD Board. Whenever there is a change in use or a physical change in a building that requires a building permit and/or plumbing permit, an additional Capacity Allocation Fee may be charged in accordance with the WLSSD's CAF rules.

Subd. 6. Water Connections and Connection Fees for the Cloquet - Lake Superior Waterline. Connections to the Cloquet – Lake Superior Waterline are expressly prohibited unless authorized by City Council resolution. In the event that such a connection is approved, the applicant shall be required to enter into a written agreement with the City, which details the conditions of the approval and use. Because water from the Lake Superior Waterline is non-potable, no connections or uses for domestic consumption shall be authorized or approved. In the event a connection is approved, a connection fee shall be established by the City Council.

Subd. 7. Utility Rate, Fee and Usage Schedule. Specifically incorporated herein by reference is a utility rate, fee and usage schedule which will be regularly reviewed and approved by the City Council by resolution from time to time for purposes of establishing the presently existing rates, fees and usage charges applicable to Chapter 11 of the City Code.

Section 11.2: User Charge System

11.2.01. Accounting, Billing and Collecting. Each user of water and sewer services to property served by the City water and/or sewer system shall pay monthly a water and sewer user charge as set forth in this Section.

Subd. 1. Accounts in Name of Owner and/or Occupant. All accounts shall be carried in the name of the owner of the premises connected to the water and sewer services, and/or the occupant of the premises, if the owner is not directly paying for the services. Where the term “user” appears in this Code in reference to the payment for water or sewer charges, the term shall include the owner and the occupant of the premises.

Subd. 2. Required Information. The owner, occupant or person in charge of any premises shall furnish the City with such information as may reasonably be required relating to use of water or sewer services provided by the City systems. Willful failure to provide the information, willful falsification of the information, or willful failure to comply with any requirement or order issued pursuant to this Section shall constitute a violation of this Section.

Subd. 3. Bills for Service. Water and sewer service charges shall be billed together. Bills shall be mailed to the owner, and/or occupant monthly and shall specify the water consumed in even thousand gallons and the sewer and water charges in accordance with the rates as established by City Council resolution. The procedure shall include a late payment penalty provision and shall provide for an interest charge on the unpaid balance of the charges as provided in this Section.

Subd. 4. Meters Required. Except as otherwise provided in this Section, for the purpose of determining the charges to be rendered against premises using the City's water and/or sewer systems, the volume of water used from the water system, and the volume of wastewater discharged into the sewer system by the owner, lessee, or occupant of any premises shall be based and computed upon the amount of water used on the premises as measured by an approved meter.

Subd. 5. Metering of Private Water Sources. In all cases in which the water shall be derived in whole or in part from sources independent from the city water system, the water supplied from private sources but placed into City sewers shall be measured by a water meter of a type approved by the City Engineer to be installed by the owner, lessee or occupant of the premises at his or her own cost and will be subject to the supervision and inspection by the City. User charges against the premises shall be based upon the volume of water used as measured from both public and private sources. Whenever the owner, lessee or occupant fails to install the meter, or where it shall not be practicable to measure the water consumed on any premises by a meter, the City Engineer shall determine the manner and the method used to estimate the volume of water from private sources which discharges into the system. The estimate shall be used in lieu of the meter volume of water from private sources to determine the wastewater charge thereon.

Subd. 6. Wastewater Meters. Where an accurate wastewater flow cannot be measured or determined with the use of a water meter, the City may require the installation of an acceptable wastewater flow meter as recommended by the City Engineer. The owner, occupant or user of the sewer service shall be required to install approved wastewater meters or other measuring devices that serve to demonstrate the volume of wastewater being discharged to the city sewer system. The volume of wastewater as so measured shall be the basis upon which the wastewater charges shall be made under this Section. Said meters shall be installed and maintained by the owner, lessee or occupant of the premises at his or her own expense and shall be subject to the supervision and inspection by the City.

Subd. 7. Minimum Usage Billings. The minimum usage that shall be billed by the City for any billing and collection period shall be one thousand gallons for both water and sewer.

Subd. 8. Miscellaneous Service Billings. All water and sewer charges for labor, materials, shut-off fees and etc. for a customer shall be invoiced or billed directly to the customer of record or may be billed as a miscellaneous charge on their respective utility accounts.

Subd. 9. Penalty for Late Payment. All charges for water, sewer and miscellaneous service shall be due on the monthly due date specified by the City for the respective account. Penalty for past due bills shall be 5% of the total bill, except, no penalty shall be charged on past due sales tax.

Subd. 10. Delinquent Accounts. All charges for water and sewer service shall be due on the monthly due date specified by the City for the respective amount and shall be delinquent twenty (20) days thereafter. The City shall endeavor to collect delinquent accounts promptly. When the delinquent customer shall be the tenant in possession or the property owner, and satisfactory arrangements for payment have not been made, after the procedural requirements of Section 11.2.01, Subd. 12 have been complied with, the City may discontinue service to the delinquent customer by shutting off the water at the curb box. When water service to any premises has been discontinued, service shall not be restored except upon the payment of all delinquent bills and an off/on fee as established and adopted by resolution of the City Council from time to time.

Delinquent accounts shall be certified to the City Administrator who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. The assessment roll shall be delivered to the Council for adoption on or before November 30th of each year for certification to the County Auditor for collection along with taxes. Such action shall be optional and may be subsequent to taking legal action to collect delinquent accounts.

If the delinquent customer shall be a tenant who has vacated the property or an owner who no longer has an ownership interest because of mortgage foreclosure, cancellation of contract for deed or for any other reason, collection of the delinquent account shall, at the option of the City Administrator, be either through a collection agency or legal proceedings in accordance with the City's Collection Policy.

Subd. 11. Liability For Payment of Services. The owner of premises which are connected to the City's water and sewer facilities, and the occupant thereof, shall be jointly and severally liable to pay for the service to the premises and the service shall be furnished to the premises by the City only upon the condition that the owner and occupant of the premises shall be jointly and severally liable to the City for the charges. The owner of rental property agrees, as a condition of receiving service, to be personally liable for water and sewer service furnished the tenants, lessees, or other occupants. A claim for unpaid charges which have been billed to the occupant of the premises or the user of the service may be recovered against the owner or occupant in a civil action in any court of competent jurisdiction or in the discretion of the City Administrator may be certified to the County Auditor to be collected with taxes against the premises so served or reported to a collection agency. Money paid to the County Auditor on the account shall belong to the City and shall be remitted to the City Administrator by the County Auditor in the manner provided by law for the payment of other money belonging to the City. In addition to, and not in lieu of, the foregoing method of enforcing payment of the charges, the City Engineer may, according to the rules and regulations as he or she may have established and the Council shall have by resolution approved, cause the City water supply for and to any premises to be shut off until all arrears, with interest and penalties on the delinquent charges, shall be paid, together with the cost of shutting off and turning on the water.

Subd. 12. Procedure for Shutoff of Services. If the amount claimed to be owed shall be actually due and unpaid and that there shall be no legal reason why the water supply of the delinquent customer may not be shut off in accordance with this Chapter, the City may shut off the supply. Water shall not be shut off under this Chapter or for a violation of rules and regulations affecting utility service until notice has first been given to the occupant of the premises involved and the customer is given a right to protest the shut-off notice in writing before the shut-off date. The shutoff notice shall state that if arrangements for payment are not made before a day stated in the notice not less than ten (10) days after the date on which the notice shall be given and the customer does not file a written protest, the water supply to the premises shall be shut off. Every possible attempt shall be made to notify the occupant personally before his or her water shall be actually shut off.

Subd. 13. Minnesota Cold Weather Rule. Water service will not be shut off between October 15 through April 15 if the shut-off would affect the primary heat source of the unit of residence affected and the customer otherwise complies with the requirements of Minnesota Statute § 216B.097 (Cold Weather Rule).

Subd. 14. Disposition of Revenues. All revenues derived from charges imposed under this Section shall be respectively credited to the City Water or Sewer Enterprise Funds, unless otherwise designated by City Council resolution.

11.2.02. Water User Charges. Each water user, as defined in Section 11.2.01, Subd. 1, shall pay charges and/or fees, which shall be established by resolution as adopted from time to time by the City Council. Each user shall pay a fixed monthly charge and a commodity charge for each one-thousand gallons of water used. Furthermore, the City may also charge additional fees such as a Minnesota Department of Health Service Connection Fee, applicable sales taxes or any other utility fees as established by State or Federal rules or regulations. Delinquent or late payment accounts shall furthermore be subject to a penalty for late payment and an off/on fee as established by Section 11.2.01, Subdivisions 9 and 10.

Subd. 1. Inside Rates/Outside Rates. The City shall establish both an “Inside Rate” and an “Outside Rate” for service usage. Unless otherwise specified by City Council resolution, “Inside Rates” shall apply to those premises which lie within the city limits of Cloquet and “Outside Rates” shall apply to those premises outside the city limits, unless otherwise determined or established by a special written agreement between the City and the user.

Subd. 2. Monthly Fixed Water Charge. Each water user shall pay a monthly fixed charge which shall be based upon the size of the water meter servicing the premises.

Subd. 3. Water Commodity Charge. In addition to the month fixed charge for water, the user shall also pay a water commodity charge for each 1,000 US gallons provided to the customer.

Subd. 4. Minnesota Department of Health Drinking Water Service Connection Fee. Each water user shall pay a monthly Drinking Water Service Connection Fee, as established from time to time by the State of Minnesota.

Subd. 5. Special Water Agreements. From time to time, the City may, by council resolution, enter into special utility service agreements with political jurisdictions, businesses or other entities, which establishes the conditions of water service and the user charges that apply.

Subd. 6. Automatic Meter Reading Devices Required. Water meters required in accordance with Section 11.2.01, Subd. 4 shall be provided with an Automatic Meter Reading (AMR) feature of the type and design as approved by the City. For those customer accounts where the water meter does not include an AMR feature, an additional fixed monthly Manual Read Charge shall be billed to the customer’s account.

11.2.03. Wastewater Classes and User Charges. For the purpose of recovering from users the cost of operation and maintenance of the City’s sanitary sewer wastewater facilities, sewer users, as defined in Section 11.2.01, Subd. 1, shall pay sewer charges and/or fees, which shall be established by resolution as adopted from time to time by the City Council. Each user shall pay a monthly fixed sewer charge and a commodity charge for each one-thousand gallons of wastewater discharged. Furthermore, the City may also charge applicable sales taxes or any other sewer utility fees as established by the Western Lake Superior Sanitary District (WLSSD), the State of Minnesota or any other Federal rules or regulations. Delinquent or late payment accounts shall furthermore be subject to a penalty for late payment and an off/on fee as established by Section 11.2.01, Subdivisions 9 and 10 of this Chapter.

Subd. 1. Wastewater Classes. All wastewater or sanitary sewer customers shall be assigned a wastewater classification of Class 1, Class 2, or Class 3 by the City Engineer. The Engineer in making the classification assignment shall take into account all available information with regard to the user's discharge and have the right to periodic sampling and inspection of the user's wastewater. Upon determining a particular user's wastewater classification, the Engineer shall file notice of the assignment with the City Administrator, and send a copy of the notice by regular mail to the user. The Engineer's determination shall be final unless within ten days of mailing of notice by the city, the user appeals the determination to the City Council. A user who believes that his or her discharge shall be significantly different than that contemplated by the classification system or a user who believes that the character of his or her discharge has changed since the classification assignment by the Engineer, may make application for reassignment.

- A. **Class 1.** "Class 1" shall mean wastewater having an average daily suspended solids concentration of not more than 200 mg/L and an average daily BOD of not more than 200 mg/L. (Example: Residential without commercial kitchens, Office, Business and Commercial Uses with only limited sanitary sewer needs.)
- B. **Class 2.** "Class 2" shall mean wastewater having concentrations greater than Class 1 but not exceeding 400 mg/L of suspended solids and 400 mg/L of BOD. (Example: Residential with commercial kitchens, full service restaurants, fast food establishments, delicatessens, and car washes.)
- C. **Class 3.** "Class 3" shall mean wastewater having concentrations greater than Class 2.

Subd. 2. Monthly Fixed Sewer Charge. All persons, customers or sewer users discharging wastewater to the City's sanitary sewer system shall pay a monthly fixed sewer charge as set by the City Council from time to time.

Subd. 3. Sewer Commodity Charge. In addition to the monthly fixed charge as called for in Section 11.2.03, Subd. 2, all sewer users shall pay a sewer commodity charge for each 1,000 US gallons used.

Subd. 4. Special Sewer Agreements. From time to time the City may, by council resolution, enter into special utility service agreements with political jurisdictions, businesses or other entities, which establishes the conditions of sewer service and the user charges that would apply.

11.2.04. Cost Distribution Policy. Charges made to the City by the WLSSD for the cost of the City's proportionate share of the operation, maintenance, including replacement, and debt service of the WLSSD wastewater facilities shall be distributed among the users within the City in accordance with the WLSSD domestic equivalent classification system.

Charges made to the City by the WLSSD in accordance with the Industrial Cost Recovery Requirements of Title II of the Federal Water Pollution Control Act Amendments of 1972 (Public Laws 92-500, 33 U.S.C. 1251 et seq) shall be apportioned among industrial users within the City in accordance with the WLSSD Industrial Cost Recovery Classification System.

Section 11.3: Water System

11.3.01. General Water Regulations.

Subd. 1. Discontinuance of Service. The City may discontinue service to any water customer without notice for necessary repairs or, upon notice as provided in Section 11.2.01, Subd. 10, for non-payment of charges or for violation of rules and regulations affecting utility service.

Subd. 2. Supply from One Service. Whenever two or more parties are supplied from one pipe connecting with a service main, each building or part of building separately supplied shall have a separate curb box or service shutoff valve and a separate water meter.

Subd. 3. Turning on Water, Tapping Mains. No unauthorized person shall turn on any water supply at the curb box or tap any distribution main or pipe of the water supply system or insert a stop cock or other appurtenance therein.

Subd. 4. Repair of Leaks. The customer or owner shall be responsible for maintaining the water service pipe from the curb box into the building served. If he or she fails to repair any leak in the service pipe within 10 days after notice by the City, or a longer period as prescribed by the City Engineer, the City may turn the water off. The water shall not then be turned on again until the leak has been repaired. When the waste of water shall be great or damage shall be likely to result from the leak, the City shall turn the water off immediately.

Subd. 5. Use of Fire Hydrants. No person other than an authorized City employee shall operate a fire hydrant without first obtaining a Hydrant Use Permit to do so from the City Engineer. Charges for water used under such permits shall be calculated based on actual or estimated usage and further shall include such special administrative costs as are deemed appropriate. All persons obtaining a Hydrant Use Permit agree to comply with the current hydrant use program requirements, standard charges and rules as established by the City and kept on file with the City Engineer.

Subd. 6. Private Water Supply. No water pipe connected to the City water supply system shall be connected with any pump, well or tank that shall be connected with any source of water supply not directly owned and operated by the City. When any connection shall be found, the City Engineer shall notify the owner to sever the connection and if this shall not be done immediately, the City shall turn off the water supply forthwith. Before any new connection to the City system shall be permitted, the Department shall ascertain that no cross connection shall exist when the new connection shall be made.

Subd. 7. Restricted Hours Due to Shortage of Water Supply. Whenever the Council determines that a shortage of water supply threatens the City, it may, by resolution, limit the times and hours during which City water may be used for sprinkling, irrigation, car washing, air conditioning, or other specified uses. After publication of the resolution or two days after the mailing of the resolution to each customer, no person shall use or permit water to be used in violation of the resolution and any customer who does so shall be charged a fee, which shall be established by resolution as adopted from time to time by the City Council, for each day of violation and the charge shall be added to his or her next water bill. If the emergency requires immediate compliance with the terms of the resolution, any customer who has received notice and thereafter uses or permits water to be used in violation of the resolution shall be subject to the charge provided above. Continued violation shall be cause for discontinuance of water service and a petty misdemeanor charge for each day of violation.

Subd. 8. Permitting Use by Others. No person shall permit City water to be used for any purpose except upon his or her own premises except in an emergency and then only if written permission shall be first obtained from the City Engineer. Any unauthorized person wishing to obtain water from a fire hydrant for any purpose shall make application to the City Engineer for the service, as required by Section 11.3.01, Subd. 5 of this Chapter.

11.3.02. Meters.

Subd. 1. Meters Required. Except for the extinguishment of fires, no person other than an authorized City employee shall use water from the City water supply system or permit water to be drawn there from unless the water passes through a water meter sold by the City to the user. No person not authorized by the City Engineer shall connect, disconnect, take apart, tamper, or in any manner change or interfere with any water meter or its use.

Subd. 2. Installation. Water service lines, including all piping, valves, standpipes and meters shall be installed by the owner at his or her expense and all installations shall be in accordance with the Minnesota State Plumbing Code and any and all requirements as established by the City Engineer.

Subd. 3. Maintenance. Following the initial purchase of a water meter by the customer, the City shall maintain and repair, at its expense, all water meters. Any meter that has become unserviceable through ordinary wear and tear shall be reconditioned or replaced by the City with a meter approved by the City Engineer. Meters which become broken or unserviceable because of freezing due to inadequate frost protection, negligence or vandalism shall be repaired or replaced by the City at the customer's expense. If the replacement of an existing meter requires additional or revised plumbing within the building itself to accommodate the new meter installation, the building owner shall be responsible to make arrangements for this plumbing work at his or her own expense. If a water meter becomes inoperable for any reason and the City is not afforded an opportunity to repair or replace the meter within a reasonable amount of time, water service may be discontinued immediately until the cause shall be corrected and the meter is repaired or replaced.

Subd. 4. Complaints; Meter Testing. When a consumer complains that the bill for any past service period is excessive, the City shall have the meter re-read on request. All meters two inches or less shall be tested once by the City without charge. All meters larger than two inches shall be tested at the owner's expense. If the test shows an error in the City's favor exceeding five percent (5%) of the water consumed, the City shall have the meter repaired or replaced with an accurate meter and the bill shall be adjusted accordingly. The adjustment shall not extend back more than one service period from the date of the written request.

Subd. 5. Meters Property of City. Water meters, after installation, shall be the property of the City and shall be removed or replaced as to size and type when deemed necessary by the City, as provided in Section 11.3.02, Subd. 3 of this Chapter.

Subd. 6. Meter Reading and Inspection. Authorized meter readers shall have access at reasonable hours of the day to all parts of every building and premises connected with the City water supply system in order to read meters and make inspections.

Subd. 7. Tampering or Bypassing of Water Meters. No person shall willfully damage, remove, relocate, tamper with or otherwise interfere with the proper operation or registration of any water meter. Furthermore, no person shall intentionally bypass any water meter to lessen or alter the amount water being measured for billing purposes.

11.3.03. Plumbing Regulations.

Subd. 1. Building Water Service Pipes. Water service piping shall be installed in accordance with the Minnesota State Plumbing Code and any and all requirements as established by the City Engineer. Every water service pipe shall be laid with sufficient bend to allow not less than one foot of extra length and in such manner as to prevent rupture by settlement. The service pipe shall be placed not less than eight feet below the surface and be so arranged as to prevent freezing.

Every building served by City water shall have a separate curb stop box (shutoff valve) installed on the building's water service line. Curb stop boxes shall be installed generally where desired by the owners of occupied properties, but they shall be placed as near as possible to the curb if on a street or within one foot of the alley line if the main shall be located in the alley. In no case shall they be installed more than 60 feet from the service line's connection with the City main. They shall be installed at an approximate depth of eight feet below the established grade and shall be left in an accurate vertical position when backfilling shall be completed. Copper tubing shall be used for all building water services of two inches or less, between the corporation tap on the City main and the curb stop shutoff valve. Joints on copper tubing shall be as few as possible and not more than one joint shall be used for a service up to 70 feet in length. Each joint shall be left uncovered until inspected by the City. Connections with the mains for domestic supply shall be at least 3/4 of an inch in diameter.

A shutoff valve of the size and type required shall be placed close to the inside wall of the building and before the water meter and be well protected from freezing.

All non-metallic water and sewer pipes shall be installed with a locating (tracer) wire and shall meet requirements set forth in City of Cloquet Engineering Standards and as directed by the City Engineer, to facilitate the locating of these underground utilities.

Subd. 2. Maintenance of Building Water Service Pipes. After initial installation by the building owner and acceptance by the City, all building water service pipes shall be maintained by the City from the corporation tap on the City main up to and including the curb stop shutoff valve. The maintenance of the remainder of the building water service pipe from the curb stop to the building shall be the responsibility of the building owner. In no case shall the City's maintenance responsibility extend beyond a public street or utility easement right-of-way.

Subd. 3. Abandonment of Building Water and Sewer Service Lines. Whenever a building water or sewer service line is abandoned, or otherwise no longer used, as a result of a building demolition, building relocation or the installation of new water and sewer building service lines, the old building service lines shall be properly disconnected from the City mains, at the building owner or property owner's expense, in accordance with the procedures and standards as established by the City Engineer.

Subd. 4. Water Meter Settings. Every water meter shall be installed in accordance with the following provisions:

- A. The service pipe from the water main to the meter shall be brought through the floor in a vertical position where the pipe enters the building. A suitable shutoff valve shall be installed within 12 inches of the pipes entry into the building and before the water meter.
- B. The bottom of the meter shall be between 6 and 12 inches above the finished floor line. The meter shall be set not more than 12 inches horizontally from the inside line of the building wall unless a different position shall be approved by the City Engineer. A suitable bracket shall be provided to support the meter in a proper horizontal position.
- C. Each water meter setting shall have a shutoff valve of adequate type and size installed on the street side and directly adjacent to the meter. In no case shall more than 12 inches of pipe be exposed between the point of entrance through the building floor and the shutoff valve. A second shutoff valve shall also be installed on the building side of the meter.
- D. All meters shall be installed and shall remain in such a location that is easily accessible to accommodate required reading, maintenance and replacement.
- E. If the water piping on either side of the meter is metallic piping, a permanent electrical ground strap must be properly installed across the meter.

- F. Meters larger than 2 inch in size shall be installed or otherwise provided with suitable bypass piping to allow for removal and testing of the meter without disturbing water service to the building.

Section 11.4. Sanitary Sewer System

11.4.01. Wastewater Facilities System.

Subd. 1. Established. There shall be hereby continued a City wastewater facilities system. The system shall include all lateral, main, and intercepting sewers, wastewater pumping stations, equipment and other works and facilities, whether presently existing or hereafter acquired, as shall be found necessary for completion of the system in first-class operating condition adequate to collect and transmit all wastewater of the City which shall be discharged into the City's wastewater facilities system to the wastewater facilities of the Western Lake Superior Sanitary District (WLSSD).

Subd. 2. Intent. It shall be hereby declared and ordained that the establishment and operation of the City wastewater facilities system is necessary and conducive to the public health, safety, welfare and convenience of the City and its inhabitants; that the system shall constitute and be a public utility plant and convenience from which revenues may and shall be derived and that service to be rendered to the inhabitants, industries and properties, by the collection of wastewater confers direct and indirect benefits to the inhabitants, industries, and properties of the City for which reasonable rates and charges may be imposed.

11.4.02. Definitions. The following words and phrases when used in this Section and when otherwise used in this Chapter shall have the meanings ascribed to them in this Section, unless the context otherwise clearly indicates.

Subd. 1. Authorized Inspector. An inspector authorized by the City of Cloquet.

Subd. 2. Biochemical Oxygen Demand or BOD: The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20 degrees Centigrade and as expressed in terms of milligrams per liter (mg/l) and as described in Standard Methods.

Subd. 3. Board: The Cloquet City Council.

Subd. 4. Building Drain: That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of a building and conveys Wastewater to the Building Sewer, beginning 3 feet outside the inner face of the building wall.

Subd. 5. Building Sewer: The extension from the Building Drain to the Public Sewer, Private Sewer, On-site Wastewater Disposal System or other place of disposal; also referred to as a Service Connection.

Subd. 6. Clean Water Act: The Federal Water Pollution Control Act also referred to as the Clean Water Act, as amended.

Subd. 7. Combined Sewer: A Sewer receiving both surface runoff and Sewage.

Subd. 8. Commercial Wastewater: Wastewater emanating from a place of business of a Commercial User.

Subd. 9. City: The City of Cloquet, a political subdivision of the State of Minnesota.

Subd. 10. County Health Department: The health department of the County.

Subd. 11. Debt Service Charge: A charge to Users of Wastewater Treatment Facilities for the purpose of repaying the cost of capital improvements to the Wastewater Treatment Facilities.

Subd. 12. Engineer: The Person designated as the LUG's Engineer(s) or the authorized deputy, agent, or representative of the designated Engineer(s).

Subd. 13. Extra Strength Waste: Wastewater having a BOD and/or T.S.S. greater than NDS and not otherwise classified as an Incompatible Waste.

Subd. 14. Flow: The quantity of Wastewater.

Subd. 15. Garbage: Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce and animal products, including the packaging of such products.

Subd. 16. Industrial User: A user which discharges Industrial Wastewater.

Subd. 17. Incompatible Waste: Waste that either singly or by interaction with other wastes interferes with any Sewage treatment process, constitutes a hazard to humans or animals in spite of the treatment method used by the WLSSD, creates a public nuisance or creates any hazards in the receiving waters of the Wastewater Treatment Facilities.

Subd. 18. Infiltration/Inflow or I/I: Water other than Wastewater that enters a Public Sewer or Service Connection from the ground or from surface runoff through such means as defective pipes, pipe joints, connections or manholes or from sources such as but not limited to, roof leaders, cellar drains, area drains, foundation drains, cross connections between Storm Sewers and Sanitary Sewers, catch basins, cooling towers, storm waters or drainage.

Subd. 19. Industrial Wastewater: The liquid, gaseous, and solid processing wastes from an industrial manufacturing process, trade, or business.

Subd. 20. Load: Quantities of Wastewater characteristics such as BOD, T.S.S., phosphorus or other constituents.

Subd. 21. Local Unit of Government or LUG: The City of Cloquet, Minnesota.

Subd. 22. MPCA: The Minnesota Pollution Control Agency.

Subd. 23. National Categorical Pretreatment Standards: Federal regulations establishing Pretreatment standards for introduction of pollutants in publicly owned Wastewater Treatment Facilities, found at Section 307(b) of the Clean Water Act.

Subd. 24. National Pollutant Discharge Elimination System Permit or NPDES Permit: A Permit issued by the United States Environmental Protection Agency/MPCA setting limits on pollutant strength that a permittee may legally discharge into the waters of the United States pursuant to Sections 402 and 405 of the Clean Water Act.

Subd. 25. Natural Outlet: Any outlet, including Storm Sewers and Combined Sewers, which flows into a water course, pond, ditch, lake or other body of surface water or ground water.

Subd. 26. Normal Domestic Strength Waste or NDSW: Wastewater that has those characteristics ordinarily introduced by domestic Users.

Subd. 27. On-Site Wastewater Disposal System; Individual Sewage Treatment System or ISTS: An arrangement of devices or structures for treating domestic or non-domestic Wastewater approved for use by applicable regulations of the State or County and located on or adjacent to the property of the generator of the Wastewater.

Subd. 28. Operation, Maintenance and Replacement Costs or O.M.&R: Expenditures necessary to provide for the dependable, economical and efficient functioning of the Wastewater Treatment Facilities throughout their design life, including operator training and Permit fees and the establishment of reasonable funds to offset depreciation of the Wastewater Treatment Facilities. Replacement refers to obtaining and installing of equipment, accessories, or appurtenances which are necessary during the design life or useful life, whichever is longer, of the Treatment Facilities to maintain the capacity and performance for which such system was designed and constructed, not the cost of future replacement of the entire facility.

Subd. 29. Permit: Written authorization from the City of Cloquet to perform acts allowed or required by this Ordinance.

Subd. 30. Person: Any individual, firm, company, association, society, corporation (municipal or otherwise) or other group discharging Wastewater to the Wastewater Treatment Facilities.

Subd. 31. pH: The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Subd. 32. Pretreatment: The treatment of Wastewater prior to introduction thereof in to the LUG or the WLSSD Wastewater Treatment Facilities.

Subd. 33. Private Sewer or Private Wastewater Disposal System: A privately owned Sewer or privately owned Wastewater disposal system, including but not limited to a privately owned On-site Wastewater Disposal System.

Subd. 34. Properly Shredded Garbage: Garbage and/or the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the Flow conditions normally prevailing in the Sanitary Sewer.

Subd. 35. Public Sewer(s): Any Sewer or pumping facility owned or operated by the City of Cloquet or the WLSSD.

Subd. 36. Residential User: A User of the Wastewater Treatment Facilities whose building is used primarily as a private residence and discharges NDSW.

Subd. 37. Sanitary Sewer: A Sewer that carries Wastewater and to which storm, surface and ground water are not intentionally admitted.

Subd. 38. Service Connection: The point at which the Building Sewer meets and is connected to the Public Sewer.

Subd. 39. Septage: High strength Wastewater derived from pumping the septic tank of an On-site Wastewater Disposal System. The term "Septage" also includes the Wastewater derived from recreational vehicles; campers; portable toilets; boats, ships and other marine vehicles, and the like.

Subd. 40. Sewer: A pipe or conduit that carries Wastewater or drainage water.

Subd. 41. Sewer Access Charge or SAC: The fees and charges, if any, established from time to time for access or connection to the Public Sewer.

Subd. 42. Slug: A discharge of water or Wastewater which in Load or Flow exceeds for any period of duration longer than 15 minutes, more than 5 times the average 24-hour concentration of Flow or Load during normal operation and which may adversely affect the collection system and/or performance of the Treatment Facilities.

Subd. 43. State: The State of Minnesota.

Subd. 44. State Disposal System Permit or SDS Permit: A Permit issued by the MPCA pursuant to Minnesota Statutes Section 115.07 for a disposal system as defined by Minnesota Statutes Section 115.01, subdivision 5.

Subd. 45. Standard Methods: The latest edition of Standard Methods for the Examination of Water and Wastewater published jointly by the American Public Health Association, the American Waterworks Association and the Water Environment Federation or EPA approved method listed in 40 CFR 136.

Subd. 46. Storm Sewer: A Sewer intended to carry unpolluted surface and subsurface water from any source.

Subd. 47. City Engineer: The official of the City of Cloquet who is authorized to enforce this Ordinance, or their authorized deputy, agent or representative.

Subd. 48. Suspended Solids (SS) or Total Suspended Solids or (T.S.S): Means Total Suspended Solids in Wastewater as determined under standard laboratory procedures as set forth in Standard Methods.

Subd. 49. Toxic Pollutant(s): The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Clean Water Act or Section 115.01, Subdivision 20 of Minnesota Statutes.

Subd. 50. Unpolluted Water: Water which meets the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the Sanitary Sewers and Wastewater Treatment Facilities provided.

Subd. 51. User Charge: A charge levied on the users of the Wastewater facilities for the cost of operation, maintenance, including replacement and debt service.

Subd. 52. Wastewater: A combination of the liquid and water-carried wastes from residences, business buildings, institutions, and industrial establishments. The term "Wastewater" also includes Septage.

Subd. 53. Wastewater Treatment Facilities or Treatment Facilities: The land, devices, facilities, structures, equipment and processes owned or used by the LUG and the WLSSD for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal Wastewater, or structures necessary to recycle or reuse water including interceptor Sewers and the disposal of residues resulting from such treatment. Outfall Sewers, collection Sewers, pumping, power, and other equipment and their appurtenances; extension, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities, and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

Subd. 54. Watercourse: A channel in which a Flow of water occurs, either continuously or intermittently.

Subd. 55. WLSSD: Means Western Lake Superior Sanitary District, a public corporation and political subdivision of the State of Minnesota established by Chapter 478, Laws of Minnesota, 1971, now codified as Minn. Stat. Chapter 458D.

11.4.03. Use of Acceptable Wastewater Treatment System Required

Subd. 1. Suitable Treatment. It shall be unlawful to discharge to any natural outlet within the City of Cloquet any Wastewater or other polluted waters except where suitable treatment has been provided in accordance with the provisions of this ordinance.

Subd. 2. Construction or Maintenance of Privies and Like Devices Prohibited. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, private wastewater disposal system, or other facility intended or used for the disposal of Wastewater.

Subd. 3. Unavailability of Public Sewer. Where a public sanitary sewer is not available as described in Section 11.4.04, Subd. 1, of this Chapter, the Building Drain must be connected to an acceptable On-Site Wastewater Disposal System or Individual Sewage Treatment System (ISTS). All such systems must be designed, permitted, installed and maintained in accordance with the applicable rules and regulations of Chapter 17, Cloquet Zoning Ordinance - Section 17.5.17, Subd. 16.

Subd. 4. Proper Abandonment of On-Site Disposal Systems. Whenever an existing On-Side Wastewater Disposal Systems is abandoned, or otherwise no longer used, as a result of a building sewer being connected to a public sewer, a building demolition or removal, or the installation of a new On-Site System, all old septic tanks, drywells and/or holding tanks shall be properly abandoned and filled to prevent collapse or settlement, as required by the City Engineer.

11.4.04. Service Connection Required.

Subd. 1. The owner of all houses, buildings or properties, of any character, wherein or whereon wastewater develops or occurs, shall be hereby required, at the owner's expense, to install suitable wastewater collection facilities in or on the houses, buildings, or properties and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter at the time of construction of such facilities in the case of new construction or new use, or within ninety (90) days after date of official notice to do so in the case of existing housing, buildings or properties, provided that such public sewer is located within an easement or right-of-way adjoining the property and is within four hundred (400) feet of such property.

Subd. 2. Connection by City. Whenever any owner or occupant fails to comply with written notice to hook up, the City Council shall by resolution direct that connection be made with the water and sewer system and that the cost of the installation shall be paid in the first instance out of the utility fund and then assessed against the property benefited.

Subd. 3. Assessment For Connections By City. After the installation has been completed pursuant to Council resolution and Section 11.4.04, Subd. 2 of this Chapter, the Administrator shall serve a written notice of the assessment upon the owner or his or her representative directing him or her to pay the assessment to the City Administrator within thirty (30) days after the service of the notice. If the assessment shall not be paid within thirty (30) days, the Administrator shall certify the amount to the County Auditor for collection in the same manner as other special assessments. The Council may, by resolution, spread the assessment over a number of years as determined by the City Council.

Subd. 4. Variance Request. If the property owner, upon receipt of written notice, feels the order to connect such facilities directly with the public sewer constitutes an undue hardship, is unreasonable or not feasible, the property owner shall respond back to the City, in writing, within 30 days after receipt of the City's written notice and request a variance from the requirements of Subdivision 1 of this Section.

Upon receipt of the property owner's written request, the City Engineer, together with the City's Zoning Administrator, shall review the individual case and hold a hearing to make a recommendation to the City Council as to any revisions to the City's original connection notice.

At least ten (10) days prior to holding this hearing the City shall notify abutting property owners, in writing, of the request and the time and date of the hearing.

In considering the variance, evidence shall be provided to show that:

- A. The hardship is based upon factors other than, or in addition to, cost (i.e. cost alone cannot be the principal factor);
- B. An extension of the City public sewer main is not feasible at this time;
- C. The lot or parcel in question has a minimum size which complies with the Cloquet Zoning Code or Ordinance provisions for On-Site Sewer Systems;
- D. The property owner agrees to connect to a private wastewater disposal system complying with the provisions of the Cloquet Zoning Code or Ordinance;

- E. The variance, if granted, shall not be contrary to the public interest or detrimental to neighboring properties and shall not prevent or inhibit the future extension of public sewers to serve the area in question.

11.4.05. Excavations. No excavation, for the installation of water and sewer service lines between a building and the City mains, shall take place on City streets, alleys, sidewalks, right-of-ways or other public grounds unless all regulations as prescribed in this Chapter and Chapter 9 (Streets) or any amendment thereto are complied with and an excavation permit is obtained.

11.4.06. Building Sewers and Connections

Subd. 1. Sewer Connection Permit Required. Except for City employees acting in the course of employment, no Person shall uncover, make any connections with or opening into, use, alter, or disturb any Public Sewer or appurtenance thereof without first obtaining a written Permit from the City Engineer. In all cases, the owner or his agent shall make application on a special form furnished by the City. The Permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the City Engineer. A Permit and inspection fee sufficient to defray the cost incidental to the processing of such connection Permit including the cost of inspection of connection for each such class shall be established by resolution of the City Council and shall be paid to the City at the time the application is filed. There shall be submitted to the City Engineer a report, in form and substance satisfactory to the City Engineer, which indicates that no I/I or Unpolluted Water will be discharged into the Public Sewer as a result of the Service Connection for which the permit is sought.

Subd. 2. Maintenance of Building Sewer Lines. The maintenance of the Building Sewer pipeline from and including the tap, tapping saddle, or wye branch connection on the city sewer main to the building is the responsibility of the building owner.

Subd 3. Owner's Responsibility. All costs and expenses incidental to the installation, connection, and maintenance of the Building Sewer shall be borne by the owner. The owner shall indemnify, defend and hold harmless the City from any loss or damage that may directly or indirectly be occasioned by the installation or maintenance of the Building Sewer.

Subd. 4. Separate Sewer. A separate and independent Building Sewer shall be provided for every building; except where an existing building stands at the rear of another and no separate Sewer has been constructed therefore, such building may continue to be connected to the Building Sewer of the front building and the whole considered as one Building Sewer, but the LUG shall, have no obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

Subd. 5. Old Sewers. Upon approval by the City Engineer, old Building Sewers may be used in connection with new buildings but only after passing an acceptable pressure test as required by the Minnesota State Plumbing Code.

Subd. 6. Abandonment of Building Water and Sewer Service Lines. Whenever a building water or sewer service line is abandoned, or otherwise no longer used, as a result of a building demolition, building relocation or the installation of new water and sewer building service lines, the old building service lines shall be properly disconnected from the City mains, at the building owner or property owner's expense, in accordance with the procedures and standards as established by the City Engineer.

Subd. 7. Size, Slope and Installation. The size, slope, alignment, materials of construction of a Building Sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the Minnesota State Building and Plumbing Codes and other applicable rules and regulations of the City.

Subd. 8. Elevation. Whenever possible, the Building Sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any Building Drain is too low to permit gravity flow to the Public Sewer, sanitary sewage carried by such Building Drain shall be lifted by an approved means and discharged to the Building Sewer.

Subd. 9. Tracer Wires for Non-Metallic Pipe. All non-metallic water and sewer pipes shall be installed with a locating (tracer) wire and shall be a #6 hand drawn copper (ASTM B-1) or annealed 49-strand 203 alloy stainless steel wire, as directed by the City Engineer, to facilitate the locating of these underground utilities.

Subd. 10. Unpolluted Water Connections.

- A. No Person shall make connection of roof downspouts, areaway drains, or other sources of Unpolluted Waters such as storm water, ground water, roof runoff, subsurface drainage, unpolluted industrial water or cooling water to a Building Sewer or Building Drain which is connected directly or indirectly to a public Sanitary Sewer.
- B. Every person who owns a building which has roof drains, downspouts, areaway drains, sump pumps which are sources of unpolluted water such as storm water, ground water, roof runoff, subsurface drainage, unpolluted industrial water or cooling water connected to a building sewer or building drain which is connected directly or indirectly to a public sanitary sewer shall disconnect and remove the roof drains, downspouts, areaway drains, sump pumps in an effective, workmanlike manner, as approved by the City Engineer unless the disconnection and removal shall be estimated to cost more than ten (10) percent of the assessed value of the building.
- C. If, upon inspection, any of the above described connections are identified by the City, the City Engineer shall issue a written order to the building owner requiring disconnection within a reasonable amount of time. If the property owner, upon receipt of the notice, feels the order to disconnect constitutes an undue hardship, shall be unreasonable or not feasible, the property owner shall respond back to the City, in writing, within 30 days after receipt of the City Engineer's notice. Upon receipt of the property owner's written objection, the City Engineer shall review the individual case and make a recommendation to the City Council as to any revisions to the City Engineer's original disconnection notice.
- D. In those cases where it shall be determined by the City that the disconnection and removal of unpolluted sources of waters shall be either unreasonable or not in the best interest of the public, the building owner shall be required to make special application to the City Engineer for a special permit to allow the connections to exist. The City Engineer shall review the application and make a recommendation to the city council as to whether the request is warranted. If approved, a monthly permit fee, as recommended by the City Engineer, for the following connections shall be charged to the owner/occupant and shall be billed together with the monthly sewer user charges as established in Section 11.2.03 of this Chapter. The City shall reserve the right to discontinue the issuance of any such permit at anytime in the future.

Subd. 11. State Codes and Rules. The connection of the Building Drain to the Building Sewer and of the Building Sewer to the Public Sewer shall conform to the requirements of the Minnesota State Building and Plumbing Codes and other applicable rules and regulations of the City. All such connections shall be made gastight and watertight and verified by proper testing. The City Engineer shall have authority to promulgate rules, regulations, and tests as to the manner in which connections shall be made and the rules, regulations and tests when so promulgated and filed with the City Administrator shall be met.

Subd. 12. Inspection and Testing. The applicant for the Building Sewer Permit shall notify the City Engineer when the Building Sewer is ready for inspection and connection to the Public Sewer. The area to be inspected must be open for inspection and backfilling must not have commenced. All connections to the Public Sewer must be made under the supervision of the City Engineer.

Subd. 13. Excavations. No excavation, for the installation of Building Sewer service lines between a building and the City mains, shall take place on City streets, alleys, sidewalks, right-of-ways or other public grounds unless all regulations as prescribed in Chapter 9 (Streets) or any amendment thereto are complied with and an excavation permit is obtained.

Subd. 14. Conformance with Rules. All Building Sewers, Service Connections, pumps and other equipment must conform to specifications established by the City from time to time. Installation of a Building Sewer, Service Connection, pump or other equipment, which does not comply, with the requirements of the City will be a violation of this Ordinance. The City reserves the right to discontinue service to a property served by a Building Sewer, Service Connection, pump or other equipment, which does not comply, with the requirements of the City.

Subd. 15 Rules. The City may, by resolution, adopt reasonable rules and regulations relating to Sewer construction, use, maintenance, discharges, and deposit or disposal of all Wastewater, either directly or indirectly, within the City. Such resolution may adopt rules and regulations by reference.

11.4.07. Use of the Public Sewers

Subd. 1. Unpolluted Water Prohibited.

- (a) No leak, break, or failure to function of a building sewer, or connection of area way drains, perimeter foundation drains, rain leaders, down spouts or rain connector, or any condition of the building sewer that allows other sources of unpolluted waters, such as storm water, ground water, roof run-off, sub surface drainage, unpolluted industrial water or cooling water, to enter a building sewer or building drain which is connected directly to indirectly to a public sanitary sewer shall be made or allowed to exist. From time to time, the City may offer programs, grants or incentives in an effort to improve the sanitary collection system. Regardless of these measures, it is the policy of the City to inspect, enforce and attain compliance with the provisions of the City Code for all buildings and sewers. Enforcement actions separate from any program or incentive are proper.
- (b) Upon completion of any construction, reconstruction or repair which includes excavation of any kind or replacement of any building sewer, said building sewer shall be capable of passing an air test in accordance with the plumbing code. Any such building sewer not capable of passing such air test shall either be further repaired or replaced in its entirety until it passes such air test.
- (c) No person owning or controlling, in whole or in part, any building shall allow any condition or connection prohibited in subsection (a) above to be made or to exist, or shall fail to cause discovery of the defect or of being ordered to make such disconnection or repair by the director. Any homeowners with a redirected sump pump that deliberately discharges into the sanitary sewer system will be fined up to \$500 upon conviction of each offense.
- (d) No person shall tamper with, modify or make any change to any plumbing materials or equipment necessary to prevent non-compliance with the requirements of Section (a) above; nor, shall any owner or person owning or controlling any building allow any person to so tamper with, modify or make any changes to such materials or equipment in such building or fail to maintain in fully functional condition such materials and equipment.

Subd. 2. Septage. Septage may only be discharged or deposited into the Sanitary Sewer at locations specifically designated by WLSSD.

Subd. 3. Prohibited Substances. No Person(s) may discharge or cause to be discharged any of the following substances in or to the Public Sewer:

- A. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the Treatment Facilities or to the operation of the Treatment Facilities. Prohibited materials include, but are not limited to, gasoline, kerosene, benzene, naphtha, fuel oil, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides waste oils or other petroleum based products.
- B. Any substance which either singly or by interaction with other waste will injure or interfere with any waste treatment process or Wastewater Treatment Facilities, constitute a hazard to humans or animals in spite of treatment, create a public nuisance or create a hazard in the receiving waters of the Wastewater Treatment Facilities, including but not limited to cyanides in excess of Federal and State requirements.
- C. Solid or viscous substances which may, either singly or by interaction with other wastes, cause obstruction to the Flow in a Sewer, or other interference with the proper operation of the Treatment Facilities such as, but not limited to, bone, fish heads, fish scales, fish entrails, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, sanitary napkins, feathers, tar, plastics, wood, Garbage which is not Properly Shredded Garbage, whole blood, paunch manure, hair and fletching, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by Garbage grinders.

Subd. 4. Other Prohibited Discharges. No Person may discharge or cause to be discharged the following described substance, materials, waters or wastes if it appears likely in the opinion of the City Engineer that such wastes can harm either the Sewers, Sewage treatment process, or Wastewater Treatment Facilities, have an adverse effect on the receiving waters, streams, soils, vegetation and ground water, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his/her opinion as to the acceptability of these wastes, the City Engineer will give consideration to such factors as the District's NPDES Permit, the quantities of subject wastes in relation to the Flow and velocities in the Sewers, materials and construction of the Sewers, nature of the treatment process, capacity of the Treatment Facilities, degree of treatability of the Wastewater, and other factors deemed pertinent. The substances prohibited are:

- A. Any Wastewater that would directly or indirectly result in a violation of the WLSSD's NPDES Permit.
- B. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees F (65.6 degrees C), or causing, individually or in combination with other Wastewater, the influent at the Treatment Facilities to have a temperature exceeding 104°F (40°C), or having heat in amounts which will be detrimental to biological activity in the Treatment Facilities.
- C. Any water or waste containing fats, wax, grease, oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees F (65.6 degrees C).
- D. Any Garbage that is not Properly Shredded Garbage.
- E. Any waters or wastes containing iron, chromium, copper, zinc, nickel, lead, cadmium, mercury, cyanide, PCBs, and similar toxic or objectionable substances to such degree that any such material received in the composite Sewage at the Treatment Facilities exceeds the limits established by the MPCA for such unusual materials.
- F. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the City Engineer as necessary, after treatment of the composite Sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City Engineer, in compliance with applicable State and Federal regulations.
- H. Materials which contain or cause, whether alone or by interaction with other substances, release of noxious gasses or form Suspended Solids (such as, but not limited to, Fullers earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) that would interfere with the Treatment Facilities or create a condition deleterious to or cause disruption to the Wastewater Treatment Facilities and processes.
- I. Materials which contain or cause excessive discoloration which cannot be removed in the treatment process (such as, but not limited to, dye wastes and vegetable tanning solution), excessive BOD, chemical oxygen demand, or disinfection requirements in such quantities as to constitute a significant Load on the Treatment Facilities, except by Permit or agreement.
- J. Unusual volume of Flow or concentration of wastes, which constitutes a Slug.
- K. Waters or wastes containing substances which are not amenable to treatment or reduction by the treatment process employed, or are amenable to treatment only to such degree that the Treatment Facilities effluent cannot meet the requirements or cause a violation of the regulations of the agencies having jurisdiction over discharge to the receiving waters or are amenable to treatment only by the application of extraordinary processes.
- L. Wastewater with BOD or Suspended Solids levels greater than that defined as Normal Domestic Strength Waste, except as may be Permitted by specific written agreement with the City and WLSSD.
- M. Wastewater contaminated by petroleum oil, fuel, organic solvents, or other toxic organic compound which contains more than 1 milligram per liter (mg/L) of anyone of the following compounds; benzene, ethylbenzene, toluene, and xylene (BETX). The sum of these four compounds must not be over 3 mg/L. Diesel range organics (DRO) and gasoline range organics (GRO) must each be less than 100 mg/l each. Lead must be under 1 mg/L and mercury less than 0.3 ug/L. For hauled Wastewater the concentrations must be less than 3 mg/l each for BETX with the combined total less than 10 mg/l. DRO and GRO must be less than 100 mg/L, lead less than 1 mg/L, and mercury less than 0.3 ug/L.
- N. Wastewater containing substances which cannot be treated to produce effluent quality required by agreement for Wastewater treatment with WLSSD or causing a violation of any applicable local, County, State, or federal regulation.
- O. Noxious or malodorous liquids, gases, or solids.
- P. Water or waste containing substances which are not amenable to treatment or reduction by the Wastewater treatment processes employed or are amenable to treatment only to such degree that the Wastewater Treatment Facilities effluent cannot meet the requirements of the NPDES Permit issued to the WLSSD or are amenable to treatment only by the application of extraordinary processes.

Subd. 5. Grease Interceptors and/or Grease Traps Required. Grease interceptors (sometimes called traps) shall be required at all facilities which provide food service and/or preparation activities, including, but not limited to, full service restaurants, fast food establishments, delicatessens, cafeterias, school cafeterias, church kitchens, hospitals, boardinghouses, clubhouses, adult daycare facilities, assisted living facilities, convalescent homes, meat distributors, food processing facilities, grocery stores with food preparation/service areas, bakeries, caterers, and/or other similar types of operations where commercial kitchen equipment is installed and the frequency of use indicates more than occasional use. The requirements for grease interceptors shall include the following:

- A. **Installation and Sizing.** A grease interceptor of sufficient size and efficiency shall be installed in the waste line leading from sinks, drains, or other fixtures from which greasy wastes can be introduced into the drainage system. All grease interceptors shall be sized and installed in accordance with the Uniform Plumbing Code and the Minnesota State Plumbing Code, however, all grease interceptors shall have an approved rate of flow which is not less than 20 gallons per minute and a grease retention capacity of not less than 40 pounds.
- B. **Maintenance of Grease Interceptors.** The owner will be responsible for the maintenance of grease interceptors, including proper removal and disposal of the captured materials by appropriate means, and must maintain a record of dates and means of disposal that are subject to review by the City.
- C. **Facility Grease Management Plans.** All facilities with grease interceptors or grease traps shall develop and implement a grease management plan that incorporates generally accepted fat, oil and grease best management practices into their operations. Such grease management plans shall be available for review by the City and any authorized health inspector.
- D. **Emulsifiers or Degreasers Prohibited.** No emulsifiers, surface active agents, enzymes, degreasers, or any type of product that will liquefy grease, shall be allowed as an alternative to providing an adequate grease interceptor and none of these products shall be placed directly into a grease interceptor, or into any drain that leads to a grease interceptor.
- E. **Variance, Conditional Waiver or Exceptions.** A variance or a conditional waiver from minimum sizing requirements or installation and maintenance requirements for grease interceptors may be granted by the City Engineer, where the food service establishment demonstrates to the Engineer's satisfaction that any grease discharge is negligible and will have an insignificant impact on the sewer system. In doing so, the facility must demonstrate that the discharge from its activities contains less than 100 mg/l of grease. The sampling and testing to demonstrate the concentration of grease in the discharge must be conducted, at the facilities expense, by an independent testing organization in accordance with acceptable industry standards. Grease interceptors shall not be required for single-family residences, duplexes, triplexes, quadplexes, or apartment complexes, unless the City determines that discharges from the property are creating problems with the public sewer system.
- F. **Existing Facilities:** Unless a variance or conditional waiver is granted as described in Subdivision 5E above, on or after the effective date of this ordinance, an existing facility shall be required to install an approved, adequately sized, and property operated and maintained grease interceptor when any of the following conditions exist:
- 1) If the City Engineer determines that the use of the property becomes such that the discharge of grease from the facility to the public sewer has or is creating blockages of the public sewer or is creating abnormally high sewer maintenance costs for the City, the Engineer may order that an exterior grease interceptor be installed on the property. In this case, the Engineer shall give a reasonable timeframe for compliance, however, in no case shall a compliance deadline be more than twelve (12) months.
 - 2) The facility is remodeling the food preparation or kitchen waste plumbing in such a manner as to be subject to the issuance of a permit by the City Building Department.
- G) **Exterior Grease Interceptors for Restaurants and Other Food Processing Facilities.** In all new construction and remodeling, restaurants with a dining seating capacity exceeding one hundred (100) or more persons and certain food processing facilities, as determined by the City Engineer, shall have an exterior grease interceptor installed outside of the building. Said grease interceptors shall be designed and installed in accordance with the Minnesota State Plumbing Code and shall be sized to allow for a detention time of at least 30 minutes. The minimum size of an exterior grease interceptor shall be 1,000 gallons.

Subd. 6. Food Grinders or Disposals Prohibited. No food grinders, disposals or shredders shall be installed in any newly constructed food service establishment or food processing facilities. All food grinders shall be removed from an existing food service establishment upon either a major operational change to the facility or when the facility is remodeling the kitchen, food preparation or food processing waste plumbing in such a manner as to be subject to the issuance of a permit by the City Building Department.

Subd. 7. Oil and Sand Interceptors and Separators Required. Interceptors and separators for oil, sand and other substances harmful or hazardous to the building drainage system shall be provided, sized and installed in accordance with the Minnesota State Plumbing Code. The owner will be responsible for the maintenance of interceptors, including proper removal and disposal of the captured materials by appropriate means, and must maintain a record of dates and means of disposal that are subject to review by the City. Any material removal and hauling must be performed by the property owner's personnel or a currently licensed waste disposal firm and in compliance with all applicable laws and regulations.

Subd. 8. Pretreatment. Where Pretreatment or Flow equalizing facilities are provided or required for any water or wastes, plans, specifications, and any other pertinent information relating thereto shall be submitted for approval of the City and the WLSSD and no construction of such facilities shall be commenced until approval in writing is granted. Where such facilities are provided, they shall be maintained continuously in satisfactory and effective operating order by the owner at the expense of the owner and may be subject to periodic inspection by the City and the WLSSD to determine that such facilities are being operated in conformance with the applicable federal, State and local laws, regulations and Permits. The owner shall maintain operating records.

Subd. 9. Metering and Testing Access Structures – Industrial and Commercial Users. Where required by the City, Industrial and Commercial Users must install and maintain, at their own expense, a suitable structure or control manhole with such necessary meters and other testing equipment needed to facilitate observation, sampling and measurement of Wastewater. The manhole must be safe and accessible at all times and must be constructed in accordance with the plans and specifications approved by the City Engineer and the WLSSD.

Subd. 10. Metering and Testing of Non-residential and Commercial Users. The City, in its sole discretion may require Non-Residential Users and Commercial Users to install and maintain, at their own expense, a suitable structure or control manhole with such necessary meters and other testing equipment needed to facilitate observation, sampling and measurement of Wastewater as required in Section 11.4.07, Subd. 8, of this Chapter, for Industrial Users. The manhole must be safe and accessible at all times and must be constructed in accordance with the plans and specifications approved by the City Engineer and the WLSSD.

Subd. 11. Laboratory Analysis – Industrial Users. The City may require submission of laboratory analyses to illustrate compliance with this Ordinance and any special conditions for discharge established by the City or responsible regulatory agency. All measurements, tests and analyses to which reference is made in this Ordinance must be determined in accordance with the latest edition of Standard Methods. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis by the City and WLSSD. The Industrial User must supply a complete analysis of the constituents of the Wastewater discharge to assure that compliance with Federal, State and local standards are being met. The Industrial User must report the results of measurements and laboratory analyses to the City and WLSSD at such times and in such manner as prescribed by the City and WLSSD. The Industrial User must bear the expense of all measurements, analyses, and reporting required by the City and WLSSD. At such times as deemed necessary, the City and WLSSD reserves the right to take its own measurements and samples for analysis by an independent laboratory.

Subd. 12. Water Meters. Where required by the City, water meters must be installed on a User's water supply lines to facilitate measurement of Wastewater generated. Water meters shall be supplied, installed and maintained in accordance with Section 11.03.02 of this Chapter. The meters shall be accessible at all times to the City for inspection, reading, maintenance and repair.

Subd. 13. Dilution of Discharges. No User may increase the use of process water or in any manner attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this Article, the National Categorical Pretreatment Standards and any State or local requirement.

Subd. 14. Accidental Discharges.

- A. Where required by the City, Users must provide protection from an accidental discharge of substances regulated by this Ordinance. Where necessary, facilities to prevent accidental discharges of prohibited materials must be provided and maintained at the owner's expense. Detailed plans and operating procedures of said facilities must be submitted to the City Engineer for review and approval prior to construction of the facility. Approval of such plans and operating procedures will not relieve User from the responsibility of modifying the facility as necessary to meet the requirements of this Ordinance.
- B. Users must notify the City and WLSSD immediately if a Slug or accidental discharge of Wastewater occurs in violation of this Ordinance. Notification will allow measures to be taken to minimize damage to the Treatment Facilities. Notification will not relieve Users of liability for any expense, loss or damage to the Treatment Facilities, or for fines imposed on the community by any State or federal agency as a result of their actions.

Subd. 15. Emergency Repairs. Notwithstanding anything in this Ordinance to the contrary, in the event of damage to Sewers or the Treatment Facilities, which disrupts other Users, the City may without notice repair such damage.

Subd. 16. Special Agreements or Arrangements. No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the City and the WLSSD, and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City and the WLSSD for treatment. Provided that any such agreement shall establish that charges to user shall be in accordance with the City established User Charges.

11.4.08. Damage to Wastewater Facilities Prohibited

Subd. 1. Prohibited Activities. No Person shall maliciously or willfully break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the Wastewater facilities. Any Person violating this provision shall be guilty of a misdemeanor, shall be subject to immediate arrest, and shall be liable to the City and the WLSSD for the cost of making necessary repairs occasioned by such violation.

Subd. 2. Deposits or Obstructions.

- A. No Person may permit any substance or matter that may form a deposit or obstruction of Flow to be discharged into the Public Sewer. Whenever any Service Connection becomes clogged, obstructed, detrimental to the use of the Public Sewer, or unfit for the purpose of drainage, the owner must make repairs as directed by the City or the WLSSD.
- B. If 48 hours after receiving written notice from the City the property owner has not commenced repairs, the City may have said work done and may collect such amounts from the property owner.

Subd. 3. Unauthorized Discharges. In the event of discharges or proposed discharges to the Public Sewers that contain substances or possess characteristics prohibited in this Ordinance or which in the judgment of the City Engineer may have a deleterious effect on the Treatment Facilities, processes, equipment, receiving waters, soils, vegetation, or which create a hazard or nuisance, the City Engineer may:

1. Refuse to accept the wastes.

2. Require Pretreatment to an acceptable condition for discharge to the Public Sewers, pursuant to Section 307(b) of the Clean Water Act and all addenda thereof.
 3. Require control over the quantities and rates of discharge.
 4. Require payment to cover all the added costs of handling, treating and disposing of wastes not covered by existing taxes or Sewer Access Charges or Sewer Service Charges.
- B. If the City Engineer permits the Pretreatment or equalization of Flow, the design and installation of the plant and equipment are subject to review and approval by the District and subject to the requirements of all applicable Federal and State codes, ordinances, and the National Categorical Pretreatment Standards.

11.4.09. Designation of Sewer Basin for Inspection; Inflow and Infiltration Reduction (I&I) Program Notice of Disconnect Requirement.

Subd. 1. Sewer Basin Designation for I&I Program; Notice; Extensions. Upon the recommendation of the Public Works Director, the Council shall designate by written resolution the basin or basins in the City wherein the City can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the City's wastewater collection system, which shall constitute the authorization of the I&I program in the sewer basin for the inspection of all buildings located herein for compliance with the requirements of Section 11.4.07(a). The Council resolution shall require the televised inspection of a specified minimum number of building services located within the designated basin or basins annually. Such resolution shall direct the director to notify, in writing, the owners and persons in control of premises connected with the sanitary sewer within such basin to disconnect any prohibited drain or device and to remedy any circumstance of the building sewer that allows unpolluted water into the wastewater collection system, all within one (1) year after the date of such notice. The property owner may apply to the Public Works Director for an extension to the correction period. Application for extension to the Director shall include documentation of attempts to resolve the conditions that make the connection non-compliant as well as provide a schedule to implement corrections to the non-compliant installation. Such notice shall be directed by the director to the owner or person in control of the affected property at the post office address of the person applying for or paying for sewer service for such premises. When so deposited in the post office of the United States, or an adjunct thereof, such deposit shall constitute due service of the notice upon the owner or controlling person therein named.

Subd. 2. Entry for Inspections; Building Sewer Improvement, I&I Program and Private Sewer.

- A. Upon designation of any sewer basin pursuant to Subd. 1 above, the Public Works Director shall cause all buildings within said sewer basin to be inspected for compliance with Section 11-4-07 above. Upon determination that any building does not comply with Section 11-4-07 above and does not qualify for a certificate of non-contribution, the Director shall issue an order to disconnect any portion of the plumbing of such building in violation of said Section 11-4-07, or do any act required to attain compliance;

- B. No person shall fail or refuse to allow the Public Works Director to inspect any building to determine whether the plumbing of such building complies with the requirements of Section 11-4-07 above after having been given reasonable advance notice of the Public Works Director's intent to do so; such notice may be given by mail as provided for in subd. 1 above or in person or by posting notice thereof on the premises to be inspected. In the event that the owner or person in control of any building deny or refuse to allow the director to inspect any such building after notice has been given, the Public Works Director may allow the inspection to be made by a qualified person who is not a city employee, in a manner acceptable to the director, having results reported and supported by evidence acceptable to the Director, all at the owner's expense. If the owner or person in control refuses to allow any sufficient inspection, the director shall use such other means as are authorized by law, including but not limited to securing a search warrant for such building or a court order requiring that access be granted in order to gain access to conduct such inspection.
- C. (1) The Public Works Director, using uniform criteria, shall determine which properties and/or building sewers in the district shall be included in the I&I program. For each building sewer included in the I&I program, sewer inspections required by the Director for purposes of the program will be performed by city employees or agents without charge. (2) Pursuant to the authority of Minnesota Statutes Section 471.342 and any successor thereto, the City hereby establishes the Cloquet private sewer service grant/loan program hereinafter referred to as the "private sewer service program," as part of the City's inflow and infiltration program. Said program shall be available for use on properties located within basins designated pursuant to paragraph (a) above which have been specifically designated or those properties that voluntarily choose to participate and prove to the Public Works Director's satisfaction that their existing sanitary service is experiencing inflow or infiltration shall be designated as eligible therefor in writing by the director. The City Council is hereby authorized to approve, by resolution, program guidelines establishing criteria for program eligibility and standards for compliance with the program. Pursuant to said guidelines the City may provide grants or loans or both to private property owners for the repair, reconstruction or lining of private sanitary sewer laterals which are eligible therefore pursuant to the private sewer service program guidelines;

Subd. 3. Certificate of Non-Contribution

- A. Upon inspection of any building by the Public Works Director for compliance with the requirements of Section 11-4-07 above, and based on that inspection, the Director is authorized to issue a certificate of non-contribution if he or she determines either that:
- (1) The sump pump and footing drain disconnect, are in compliance with Section 11-4-07 above; or
 - (2) The plumbing materials and equipment as installed and operating in that building are in compliance with the requirements of Section 11-4-07 above; or
 - (3) The plumbing and equipment in said building is not in compliance with the requirements of Section 11-4-07 above but the Public Works Director determines that the building is not contributing any material or observable amounts of unpolluted water to the public wastewater collection system and is not likely to do so in the future.

- B. Certificates of non-contribution shall only be issued by the Public Works Director and persons designated by him or her to issue such certificates. The Public Works Director shall establish standards and procedures for certifying persons authorized to issue certificates of non-contribution on his or her behalf.
- C. In the event that the Director determines after reasonable investigation that any building for which a certificate of non-contribution has been issued is now contributing a material or observable amount of unpolluted water to the public wastewater collection system, the Public Works Director may give notice in the matter provided for in Subd. 2 above of his or her intention to revoke such certificate of non-contribution and that such revocation shall become final 15 days from the date of giving such notice unless the affected owner or person in control of the affected building files a written appeal of that decision with the City Clerk prior to the revocation of the certificate. Any such appeal shall be heard by the Cloquet City Council in accordance with the procedures established by the Council. When the revocation of any certificate of non-contribution has become final, the Public Works Director shall cause notice to be provided to the property owner stating the revocation has been finalized.

Subd. 4. Repairs Required at Time of Sale.

- A. This Subd. 4 applies to transfers of ownership of or possessory rights in property which is required to be served by the city's public sanitary sewer.
- B. Unless there is then in effect a valid Point of Sale (POS) certificate pertaining to such property, upon the signing and acceptance of a legally binding offer to purchase or at least 15 days before a transfer of title to, or the entering into of a contract for deed for, real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession, whichever occurs first, the seller or transferor shall notify the director of the date of the proposed sale or transfer closing and arrange for a building sewer inspection to determine whether the property requires a sump pump and footing drain disconnect in order to be in compliance with this Chapter. The seller or transferor shall pay an inspection fee as set in the City's Fee Schedule, to the City in advance of the inspection to defray the City's costs of such inspection in an amount established from time to time by resolution of the City Council. No person shall sell, transfer or enter in a contract for deed for or contract for sale of real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession in any property, nor shall any person purchase, accept transfer of or enter into any contract for deed or contract for sale of real property as transferee which sale, transfer or contract results in such person acquiring a right of possession in any property unless the Public Works Director has been notified and the property so inspected, except as provided in subsection (e) below.

A POS certificate valid only for the proposed sale shall be issued where such property inspection finds there is a footing drain contribution only and determines there is no sump pump or the sump pump is not in use or is malfunctioning, and the buyer agrees to make required repairs within 120 days following the sale, but such POS certificate shall not evidence total compliance with all of the requirements of Section 11-4-07 above.

If the required repairs are not satisfactorily completed within said 120-day period, the owner or customer shall be charged a monthly surcharge each month until the repairs are satisfactorily completed, which surcharge shall be set in the City's fee schedule.

- C. If, upon the inspection provided for in subparagraph (b) above, the Public Works Director determines that the property qualifies, the Public Works Director shall issue or cause to be issued a POS certificate which shall be valid for the proposed sale or transfer related to that inspection and for any other such sale or transfer occurring within ten (10) years of said proposed sale or transfer unless the Public Works Director determines in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question. Provided, however, if the Public Works Director has issued a POS certificate because the building served by sanitary sewer on the subject property does not have a basement or cellar, said certificate shall continue to be valid unless and until revoked by the Director or at the Director's determination in the exercise of his or her discretion that there is sufficient reason to believe that the POS certificate does not accurately represent the existing condition of the property in question.
- D. In the event that the Director receives notice of a proposed sale or transfer and request for city inspection which complies with the requirements of subsection (b) above, but the department fails to complete the inspection required by this Section prior to the date of the proposed closing contained in the notice or date of the actual closing, whichever is later, the Director shall provide a temporary waiver of the inspection requirement contained in subsection (b) above which shall be effective until the department shall offer to perform the required inspection on the property during ordinary business hours. The department shall attempt to make reasonable accommodation to the schedule of the acquiring party. Such waiver shall be subject to the acquiring party agreeing in writing to allow representatives of the department to enter upon the property for the purposes of making the inspection and shall be effective only until the date the department proposes to make such inspection. Upon the inspection being made under this subsection, the property inspected and the acquiring party shall be subject to the requirements of this Article as if the inspection had been made prior to closing.
- E. The requirements for a POS certificate do not apply in the following cases:
- (1) Conveyance by court order for wills, probates, divorce, estate settlements;
 - (2) Transfers that do not require the filing of a Certificate of Real Estate Value;
 - (3) Transfers of vacant land or land with buildings without plumbing fixtures;
 - (4) The Conveyance is a deed in fulfillment of a contract for deed.
- F. In the event that neither the seller or transferor nor the acquiring party shall have paid for the inspection provided in paragraph (b) above within 30 days of the date of closing on the sale or transfer of the subject property, and such inspection was made and POS certificate issued, the City shall have the right to assess the amount owed against the property.

Subd. 5. Indemnification. While performing the necessary work on private properties referred to in Section 11.4.09, Subd. 1, above, the City Engineer or duly authorized employees of the City and the WLSSD shall observe all safety rules applicable to the premises established by the owner, and the owner shall be held harmless for injury or death to such employees, and the City and the WLSSD respectively shall indemnify the owner against loss or damage to its property by City and WLSSD employees and against liability claims and demands for personal injury or property damage asserted against the owner and growing out of the gauging and sampling operation, except as such may be caused by the negligence of the owner or the failure of the owner to maintain safe conditions as required under this ordinance.

Subd. 6. Easements. The City Engineer and other duly authorized employees of the City and WLSSD bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the Wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.

Section 11.5: Dump Stations

11.5.01. Definitions

Subd. 1. Liquid Waste Disposal Site is defined as a public dumping station owned and operated by the City of Cloquet, or its designated agent, where commercial liquid waste haulers and/or companies that transport liquid waste, discharge or dump such wastes into the sanitary sewer collection system owned by the City of Cloquet.

Subd. 2. Recreational Vehicle Sewage Dump Station is defined as a facility designed and intended only for the emptying of recreational vehicle sewage holding tanks into the City sanitary sewer system.

Subd. 3. Owner is defined as any individual, firm, company, corporation, or other group who has received a permit from the City of Cloquet to perform acts allowed or required by this Ordinance.

Subd. 4. City is defined as the City of Cloquet, which is a municipal corporation in the State of Minnesota.

Subd. 5. WLSSD is an abbreviation for the Western Lake Superior Sanitary District, which is a public corporation and political subdivision of the State of Minnesota established by Chapter 478, Laws of Minnesota, 1971 for purposes of providing waste disposal services to the public.

Subd. 6. System is defined as the sanitary sewer collection system owned and operated by the City of Cloquet.

Subd. 7. Domestic Septage is defined as domestic sewage, water and sludge, pumped from a septic tank with a drain field.

Subd. 8. Domestic Holding Tank Waste is defined as domestic sewage pumped from a sealed tank with no drain field. Portable toilets are also included in this waste type category.

Subd. 9. Commercial Waste is defined as a non-industrial waste hauled from a business or service establishment and for the purpose of this ordinance is limited to the water portion pumped from flammable waste traps and/or car wash and parking ramp sand traps.

Subd. 10. Industrial Wastes are defined as one of the following:

- A. Liquid waste resulting from an industrial or manufacturing process, or from the development, recovery, or processing of a natural resource. Examples of Industrial Waste include but are not limited to the following
 1. Machine Coolants,
 2. Metal Finishing Wastewater,
 3. Antifreeze from heating and cooling systems (Ethylene or Propylene Glycol),
 4. Aqueous Cleaners,
 5. Neutralized Acids & Caustics,
 6. Manufacturing or Production Area Sump Water,
 7. Truck Wash Water (generally from the insides of trucks),
 8. Food Wastes generated from the production of a food Product,
 9. Photographic Chemicals.
- B. Landfill Leachate: Wastewater resulting from the percolation of rain water and/or internal liquids through the deposited material in a solid waste disposal facility.
- C. Contaminated Groundwater: Polluted water pumped from a contaminated aquifer or an underground storage tank as part of a remedial action.

11.5.02. Establishment and Operation of Liquid Waste Disposal Sites.

Subd. 1 Construction and Operation of Liquid Waste Disposal Sites. No person, other than the City of Cloquet or its authorized agent, licensee or representative, shall establish, construct or operate a Liquid Waste Disposal Site within the City of Cloquet or operate such a disposal site which drains to the sanitary sewer system owned by the City of Cloquet.

Subd. 2. Construction and Operation of Recreational Vehicle Sewage Dump Stations. No person, other than the City of Cloquet or its authorized agent, licensee or representative, shall establish, construct or operate a Recreational Vehicle Sewage Dump Station within the City of Cloquet.

Subd. 3. Dumping of Liquid Wastes at Approved Sites Only. No person or owner of a liquid waste hauling business shall dump or dispose of any liquid wastes, which drain to the sanitary sewer collection system owned by the City of Cloquet, except at a Liquid Waste Disposal Site as specifically designated and established by the City of Cloquet and the use of said facilities shall be in accordance with all applicable rules as established by this Ordinance, the WLSSD and the City of Cloquet.

Subd. 4. Days and Hours of Operation. The days and hours of permitted dumping and all access to City facilities shall be scheduled by the City Engineer. Any modification or change in the hours of operation or in the use of the disposal site shall be pursuant to the written directives of the City Engineer.

11.5.03. Required Liquid Waste Hauler Permits and Permit Fees.

Subd. 1. Hauler Permit Required. No person shall discharge or dump domestic septage, domestic holding tank waste, commercial waste, industrial waste, or any other liquid wastes into any part of a sanitary sewer collection system, which drains into the sanitary sewer collection system owned by the City of Cloquet, without first obtaining a Liquid Waste Hauler Permit from the WLSSD and the City of Cloquet.

Subd. 2. Hauler Permit from WLSSD Required. Prior to the issuance of a permit by the City of Cloquet, all haulers must first obtain a Liquid Waste Hauler Permit from the WLSSD in accordance with their Transported Liquid Waste Program.

Subd 3. Compliance with Rules. As a condition of permit issuance by the City of Cloquet, the Owner agrees to accept and comply with all operating rules and general permit conditions as established by the WLSSD Transported Liquid Waste Program Policies and Procedures, and this Ordinance.

Subd. 4 Annual Permit Fee. An annual Liquid Waste Hauler Permit fee, issued to each hauler by the City, shall be established by resolution of the City Council and shall remain in effect until or unless modified by subsequent Council resolution. This annual hauler permit fee shall be assessed by the City and will be in addition to the Liquid Waste Hauler Permit fee required by the WLSSD. Any person or owner utilizing a City of Cloquet Liquid Waste Disposal Site will be required to obtain both permits and pay both permit fees.

Subd. 5. Associated Costs and Liability. All costs and expenses involved in dumping at a City Liquid Waste Disposal Site shall be borne by the permittee. The permittee agrees as a condition of its permit to indemnify the City from any loss or damage that may directly or indirectly result from the permittee's dumping of effluent into the sanitary sewer system of the City of Cloquet. As an additional condition of its permit the Owner agrees to hold the City harmless from any and all claims of property damage or for damage to any of permittee's equipment when upon the premises of the City for dumping and related purposes unless such damage or loss results from intentional acts.

11.5.04. Vehicle Identification.

Subd. 1. Registration of Vehicles with WLSSD. Liquid Waste Haulers will be required to register each dumping vehicle with the WLSSD as part of their permit application and must display the WLSSD permit identification number on the back of each vehicle or on the top rear of the tank on such vehicles as required by the WLSSD.

11.5.05. Dumping Fees.

Subd. 1. Trip or Load Fees. In addition to the annual permit fees, a trip fee or load fee per 1,000 gallons dumped shall be charged by the City of Cloquet for all discharges at the City's Liquid Waste Disposal Site and these rates shall be established and updated from time to time by Council resolution.

Subd. 2. Payment of Dumping Fees. All dumping fees due under this Ordinance shall be paid to and received by the City of Cloquet no later than 30 days following the end of each month within which any loads are dumped. Permittee who fail to submit their required monthly report and fees as established by this Ordinance within 15 days of the due date, will be assessed a late report fee as established by Council resolution.

11.5.06. Required Reports.

Subd. 1. Liquid Waste Report Form. All loads of liquid waste transported for disposal at the City of Cloquet's Liquid Waste Disposal Site must be recorded by the waste hauler on a Liquid Waste Hauler Discharge Report form, as provided by the City. This form shall be used to account for all transported liquid wastes discharged to the City's sanitary sewer system.

Subd. 2. Monthly Submission of Report Forms. The waste hauler is required to submit Liquid Waste Hauler Discharge Reports to the City once per month. This report is due thirty (30) days after the end of the reporting month. The waste hauler must submit a report even if there were no loads dumped during the reporting month.

Subd. 3. Required Report Information. The Liquid Waste Hauler Discharge Report requires the Permittee to list the volume of the various waste types (as defined in the previous sections) for each individual load discharged during the reporting period. The date of each delivery must be noted, as well as the name, phone number and address of each liquid waste source.

Subd. 4. Signature On Report Form Required. All monthly reports must be signed by the Permittee. By signing the report, the waste hauler certifies under penalty of law that the information provided is correct and complete to the best of his or her knowledge.

Subd. 5. Maintenance of Records. Waste haulers are required to keep accurate records of the waste discharged into the System for a period of not less than 3 years. In addition, the City reserves the right to access these records, at any time during normal business hours, to verify information reported to the City on routine discharge reports. Failure to accurately report loads will result in enforcement action.

Subd. 6. Failure to Submit Monthly Reports or Pay Fees. Permittee who fail to submit their monthly reports or pay all fees as required by this Ordinance will be assessed a late fee as established by Council resolution. These late fees may be assessed in addition to any other action taken concerning the Owner's permit and failure to file timely reports and fees shall be immediate grounds for denial, suspension and/or revocation of the permit to dump or operate within the City of Cloquet.

11.5.07. Prohibited Wastes.

Subd. 1. No person shall dump, discharge or cause to be discharged into the sanitary sewer system of the City of Cloquet, any prohibited liquid wastes as defined in this Section.

Subd. 2. Prohibited wastes as specified in the Industrial Pretreatment Ordinance and Sewer Ordinance issued by the WLSSD include, but are not necessarily limited to the following:

- A. Any liquids containing flammables, explosive and corrosive wastes, gasoline, fuel oil, hydraulic oil, motor oil, or grease;

- B. Wastes that are likely to obstruct the flow within public sewers: grease, fat, or oil of animal or vegetable origin, solid wastes, garbage, guts, bones, ash, rags, lime, metal, sand, grit, gravel, rocks, wood, plastic, glass, or yard wastes;
- C. Sand or grit removed from flammable waste traps, car wash sand traps or parking ramp sand traps.
- D. Wastes that are likely to cause interference, pass-through, or operational problems with any waste treatment process, or wastewater facilities: slug discharges, toxic chemicals, poisons, dyes, or inks;
- E. Wastes that are likely to cause a public nuisance: noxious, malodorous, or foam producing substances;
- F. Hazardous wastes, as defined by Minnesota Statutes; and
- G. Radioactive wastes.

11.5.08. Discharge of Commercial Wastes.

Subd. 1. For the purposes of this Ordinance, commercial waste is limited to the following:

- A. The water portion from flammable waste traps; and,
- B. Wastewater from car wash or parking ramp sand traps. However, any sand and grit removed from car wash or parking lot sand traps is expressly prohibited from being dumped or discharged into the public sewer as per Section 11.5.07, Subdivision 2 above.

Subd. 2. The following rules shall govern the collection of wastewater from flammable waste traps, and car wash and parking ramp sand traps:

- A. All floating oil and/or gasoline shall be removed prior to pumping the trap. The service station or business owner shall remove the petroleum layer and send it out for recycling. Absorbent pads shall be used to remove any thin layer of oil still present on the surface of the water and disposed of in a proper manner. Note: Petroleum products and their derivatives are prohibited wastes to the sanitary sewer system as per Section 11.4.07, Subdivision 4 of this Chapter and under no circumstances shall they be discharged to the System.
- B. Sand or grit from the trap bottom must be separated from the liquid wastes and must be disposed of at an approved solid waste disposal site.
- C. Although the City currently accepts wastewater from flammable waste traps, under the conditions specified above, the City reserves the right to prohibit this liquid waste if it is being improperly handled and/or is deemed necessary due to operational or compliance problems.

11.5.09. Discharge of Industrial Wastes.

Subd. 1. Approval of Industrial Wastes by WLSSD. Prior to the discharge of any Industrial Waste loads at any City owned Liquid Waste Disposal Site, the hauler must first obtain a written letter of approval from the WLSSD in accordance with their Transported Liquid Waste Program. A copy of this approval letter shall be furnished to the City of Cloquet prior to discharge.

Subd. 2. Sampling and Analysis of Industrial Wastes. All Industrial Waste loads shall be sampled and analyzed prior to discharge. Sampling may be conducted by the waste hauler or by industry personnel according to instructions specified by the WLSSD. The specific parameters for which the sample is to be analyzed, as well as the acceptability of a specific industrial waste type (for disposal into the System), shall be determined by the WLSSD.

11.5.10. General Liquid Waste Disposal Site Rules.

Subd. 1. All haulers using any City Liquid Waste Disposal Site will be required to adhere to the following rules of operation:

- A. No hauled loads of liquid waste will be discharged into the system without use of a minimum 3" inside diameter coupling and hose.
- B. Under no circumstances shall waste be discharged onto the ground. If a spill occurs, it is the responsibility of the hauler to clean up the spill at the permittee's expense and to notify the City immediately. To the extent that assistance from the City is required or requested, the permittee consents to reimburse the City for all cleanup costs incurred.
- C. All haulers or permittee are also required to immediately notify the City in the event that a load discharged contained waste different from that initially represented to be in the load or wastes that are suspected to contain Prohibited Wastes as described elsewhere in this Ordinance.

Section 11.6: Enforcement And Penalties

11.6.01 Enforcement. The provisions of this Chapter and all standards, limitations, orders, schedules of compliance, and all provisions and conditions of any permit issued by the City under this Chapter shall be enforced by the City, by any one or any combination of the following: criminal prosecution; action to recover civil damages; injunctions; action to compel performance; or termination of service.

11.6.02 Penalties.

Subd. 1. Fine. Any person who continues any violation of this Chapter or any provision of a permit issued by the City under this Chapter beyond the time limit provided for in the City Engineer's written notice of violation or any property owner who refuses to allow entry or otherwise interferes with the City Engineer or other duly authorized employees of the City in carrying out inspections as authorized shall be subject to a penalty which shall be established by resolution as adopted from time to time by the City Council for each violation.

Subd. 2. Separate Offense. Each day in which a violation referred to above continues shall be deemed a separate violation.

Subd. 3. Misdemeanor. Any person who willfully or negligently violates any provision of this Chapter or any provision of a permit issued by the City under this Chapter or any person who knowingly makes any false statement or representation in any record, report, application, plan or other document filed with the City pursuant to this Chapter, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required under this Chapter or any permit issued by the City under this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished for each violation by a fine as provided for by Minnesota Statutes for misdemeanors, or 90 days imprisonment, or both.

INSERT

		Expiration Date
Section 11.7	Granting of Natural Gas Franchise of Aquila Inc.	Sept. 29, 2019
Section 11.8	Granting of Franchise to Media Com - Cable Television	May 31, 2015
Section 11.9	Granting of Electric Distribution Rights to MN Power	Nov. 5, 2033

THESE SECTIONS OF THE CODE MAY NOT BE AMENDED WITHOUT PRIOR APPROVAL FROM ALL PARTIES INCLUDED IN THE AGREEMENTS.

Section 11.7 Granting Minnesota Energy Resources, a Subsidiary of WEC Energy Group, a Wisconsin Corporation, its Successors and Assigns, a Natural Gas Franchise and the Authority to Construct, Operate, Maintain, and Extend a Natural Gas Distribution Plant and System, and Granting the Right to Use the Streets, Alleys, and Other Public Places Within the Present or Future Corporate Limits of the City of Cloquet, Minnesota

11.7.01 FRANCHISE GRANTED

The City of Cloquet, Minnesota, (hereinafter referred to as "Grantor") hereby grants a non- exclusive franchise to Minnesota Energy Resources, a subsidiary of WEC Energy Group, a Wisconsin corporation, (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business. Grantee may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by Grantor pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

11.7.02 TERM

The rights and privileges granted by this Ordinance shall remain in effect for a period of Twenty- five (25) years from the effective date of this Ordinance.

If Grantor and Grantee are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after Grantor or Grantee serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 25 year term.

11.7.03 FRANCHISE FEE

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

The franchise fee shall be imposed by separate ordinance duly adopted by the City Council. The Grantor shall provide Grantee written notice via certified mail, enclosing such adopted ordinance, within ten (10) days after adoption. The Company will notify the Minnesota Public Utilities Commission of any new, renewed, expired, or changed fee, authorized by Minn. Stat. § 216B.36 to raise revenue, at least 60 days prior to its implementation.

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

If this franchise expires and Grantor and Grantee are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by Grantor at the time this franchise expires, will remain in effect until a new franchise is agreed upon notwithstanding the franchise expiration.

11.7.04 GOVERNING RULES AND REGULATIONS

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

11.7.05 CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

After undertaking any work requiring the opening of any public right-of-way, Grantee shall restore the public right-of-way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Grantee shall restore the public land to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All work shall be completed as promptly as weather permits, and if Grantee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the public land in the said condition, Grantor shall have, after demand to Grantee to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the public land at the expense of Grantee. Grantee shall pay to Grantor the cost of such work done for or performed by Grantor.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantee shall not open or disturb the surface of any public right-of-way or public land for any purpose without first having obtained a permit from Grantor, if required by a separate ordinance, for which Grantor may impose a reasonable fee. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other utilities for similar facilities or work. Grantee may, however, open and disturb the surface of any public right-of-way or public land without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Grantee gives telephone, email or similar notice to Grantor before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Grantee shall apply for any required permits and pay any required fees.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities.

Grantee must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules, parts 7819.4000 and 7819.4100.

11.7.06 EXTENSION OF COMPANY FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

11.7.07 RELOCATION OF COMPANY FACILITIES

Grantee shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non- public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section.

Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of- way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and a pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

11.7.08 VACATION OF PUBLIC RIGHT-OF-WAYS

Grantor shall give Grantee at least two weeks prior written notice of a hearing of a proposed vacation of a public right-of-way. Grantor and Grantee shall comply with Minnesota Rules, part 7819.3200 and applicable ordinances consistent with law.

11.7.09 CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

11.7.10 FORCE MAJEURE

It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

11.7.11 INSURANCE

Grantee is required to maintain Commercial General Liability Insurance on an occurrence basis protecting it from claims for damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Grantor must be endorsed as an Additional Insured. Insurance minimum limits are as follows:

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

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

With the Grantor's consent, which shall not be unreasonably withheld, Grantee shall have the option of providing a program of self-insurance to meet its obligation under this Ordinance. In the event Grantee has an obligation to defend and indemnify Grantor, Grantor shall be entitled to tender the defense of such lawsuit directly to Grantee as described below.

11.7.12 HOLD HARMLESS

Grantee shall indemnify and hold Grantor 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 right-of-ways and public lands. Grantor shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging Grantor's negligence as to the issuance of permits for, or inspection of Grantee's plans or work.

In the event a suit is brought against Grantor under circumstances where this agreement to indemnify applies, Grantee at its sole cost and expense shall defend Grantor in such suit if written notice thereof is promptly given to Grantee within a period wherein Grantee is not prejudiced by lack of such notice. If Grantee is required to indemnify and defend, it will thereafter have control of such litigation. Grantee agrees to notify the Grantor of any settlement discussions and to discuss with the Grantor the Grantee's settlement strategy and keep the Grantor informed throughout the settlement process, but the Company has the authority to enter into any final settlement. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to Grantor. Grantee, in defending any action on behalf of Grantor, shall be entitled to assert in any action every defense or immunity that Grantor could assert on its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by Grantor of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

11.7.14 SAFETY AND INFRASTRUCTURE REPORTING

At the Grantee's request, Grantor shall meet with Grantee at a mutually convenient time to discuss items of concern or interest relating to Grantee's safety and service reliability in the previous year and infrastructure plans for the coming year and other matters raised by Grantor or Grantee.

11.7.15 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 District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

11.7.16 SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

11.7.17 NON WAIVER

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

11.7.18 REPEAL CONFLICTING ORDINANCES

This ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 269A of the City of Cloquet Minnesota, is hereby repealed as of the effective date hereof.

11.7.19 EFFECT AND INTERPRETATION OF ORDINANCE

The captions which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

11.7.20 AMENDMENT-PROCEDURE

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of the Company's written consent thereto with the City Clerk within 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. To the extent the ordinance changes the section related to the franchise fee, Grantor would need to provide appropriate notice to the Commission under MN law.

11.7.21 EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and approval by Grantor and publication as required by law in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the City Clerk of the City of Cloquet, Minnesota. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions. Grantee shall pay the expense of publication of this Ordinance.

11.7.22 AMENDMENT-PROCEDURE

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of the Company's written consent thereto with the City Clerk within 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.

Passed and adopted by the City Council of the City of Cloquet, Minnesota, on this 3rd day of September, 2019.

Mayor

ATTEST:

Aaron Reeves, City Administrator

Published this 20th day of September, 2019.

Section 11.8 Cable Television

See Appendix A - Ordinance No. 223A, 228A, 389A, 451A

Section 11.9

ORDINANCE NO. 430A

An Ordinance Granting To Minnesota Power A Nonexclusive Franchise To Construct, Operate, Repair And Maintain In The City Of Cloquet, 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; And Prescribing Certain Terms And Conditions Thereof.

SECTION 1. FINDINGS.

1.1 In Ordinance Number 206A and Section 11.9 of the City Code, the City has required each Utility Service Provider to obtain and maintain a franchise with the City and to provide consideration to the general fund of the City for the rights afforded to it in the franchise.

1.2 In the interest of fairness and comparable treatment, the City finds it necessary and desirable to formalize its rules and regulations and to implement the terms of Ordinance Number 430A with respect to the City of Cloquet, and, to the extent feasible and practicable, to all other Utility Service Providers.

1.3 That Section 11.9 of the City Code be hereby replaced in its entirety with Ordinance No. 430A.

SECTION 2. DEFINITIONS. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Cloquet, County of Carlton, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted from time to time hereafter.

City Utility System. Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals.

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.

Company. Minnesota Power, an operating division of ALLETE, Inc., its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this Franchise.

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

Council. The City Council of the City of Cloquet as from time to time constituted.

Effective Date. The effective date of this Ordinance.

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

Extension Rules. The rules adopted from time to time by the Company governing its extension of Electrical Facilities.

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

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

If to the City: City of Cloquet
1307 Cloquet Avenue
Cloquet, MN 55720
Attn: City Administrator

If to the Company: Minnesota Power
30 West Superior Street
Duluth, MN 55802
Attn: Vice President of Marketing

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

Person. A natural person or any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.

Public Ground. All real property owned by or dedicated to the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.

Public Way. Any street, alley and other public rights-of-way within the City.

Utility. Transmitting, furnishing, transporting, distributing, delivering, selling, receiving, importing, manufacturing, or causing to be produced, transmitted, furnished, transported, delivered, sold, received, imported, or manufactured, electric energy, natural gas, mixed gas, heat, light, power, and services provided through a cable communication system.

Utility Service Provider. Any Person who performs any one or more of the activities of a Utility to or for the public or to or for any one or more persons within the corporate limits of the City and may, as contemplated herein, be the ultimate user or consumer of the Utility service provided.

SECTION 3. THE FRANCHISE.

3.1. **Grant of Franchise.** The City hereby grants the Company, for a period of twenty (20) years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for any public or private use within and through the Company Service Area. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to all applicable design and safety codes, the provisions of this Ordinance, zoning ordinances, other applicable ordinances, permit procedures and the customary and necessary practices of the City.

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

3.3. **Effective Date.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and upon the Company's duly authorized acceptance below as executed within thirty (30) days after passage and publication of this Ordinance or any amendment thereto.

3.4. **Continuation of Franchise.** If the City and 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 the Franchise to expire. However, in no event shall this Franchise continue for more than one (1) year after the expiration of the twenty (20) year term set forth in Section 3.1.

SECTION 4. LOCATIONS; CONSTRUCTION; OTHER REGULATIONS.

4.1. **General.** Electric Facilities shall be located, constructed and maintained by the Company: (i) in as safe and secure a condition or manner as reasonably possible, (ii) so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways, and (iii) so as not to disrupt or interfere with the normal use or operation of any Public Ways, Public Ground or the City Utility System. Electric Facilities may only be located on Public Ground as determined by the City in its sole discretion. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation 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 Ordinance and such other regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Ordinance.

4.2. **Construction; Maintenance; Repairs.** Whenever the Company desires to open or disturb any Public Way or Public Ground for the purpose of constructing, maintaining, or repairing Electric Facilities, it shall give the City reasonable advance Notice, but not less than ten (10) business days, by filing a written Notice with the City Administrator and City Engineer. In any case, the Company shall not commence such work before obtaining any applicable permit for which the City may impose a reasonable fee, or other appropriate written consent from the City. The Company shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the Public Ways and Public Ground. During the progress of such work, the Company shall keep the affected Public Ways or Public Ground guarded in order to avoid accidents to persons or property. All work performed by the Company shall comply with all applicable federal, state, and local laws, rules, and regulations.

4.3. **Emergencies.** The requirements for obtaining permits from the City pursuant to Section 5.2 shall not apply if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) the Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

4.4. **Restoration.** Following the completion of any work, the Company shall promptly and diligently restore the affected Public Ways and/or Public Ground to as good a condition as before the work commenced. If the Company fails to promptly restore such Public Ways and/or Public Ground within ten (10) days of Notice by the City, the City may engage an independent contractor at the expense of the Company to perform the restoration of the Public Ways and/or Public Ground as required under this Section. The Company shall pay to the City upon demand the cost to the City of affecting such restoration including the City's administrative expenses and overhead.

4.5. **Avoidance of Damage.** The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Electric Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Electric Facilities, if given reasonable Notice by the City of such work prior to its commencement.

4.6. **Field Locations.** The Company shall provide field locations for all its underground Electric Facilities when requested by the City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the "Gopher State One Call" system).

4.7. **Shared Use of Poles; Street Lights.** If the City desires to place facilities on the Company's poles, the City shall enter into a License Agreement for Pole Attachment Rental with the Company containing terms and conditions substantially similar to those contained in other such Agreements that the Company has with other governmental entities.

4.8. **Vegetation Control.** Subject to such procedures, regulation and supervision as the Council may establish, the Company may, at its cost, trim all trees and shrubs in the Public Ways located within the Company Service Area to the extent the Company finds it necessary to avoid interference with the proper construction, operation, repair and maintenance of any of the Company's Electric Facilities installed or maintained hereunder provided that Company shall hold the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

4.9. **Notice of City Improvements.** The City will give the Company reasonable advance Notice of plans for improvements to Public Ways and Public Ground in the Company Service Area where the City has reason to believe that the Company's Electric Facilities may affect or be affected by such improvements. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or parcel of Public Ground is involved, the order in which the work is to proceed.

4.10 **Acquisition.** The City shall have the right to purchase or otherwise acquire the Company's Electric Facilities or the Company Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by the City shall be noticed to the Company for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to the Company as a result of such proceeding shall be determined as of the commencement of such proceeding. The Company shall continue to operate the Electric Facilities at the City's sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by the Company against the City.

SECTION 5. ELECTRIC FACILITIES RELOCATION.

5.1. **Relocation.** In the event the City reasonably determines that it is necessary for the Company to move any part of its Electric Facilities because the City has determined to change, move or improve its Public Ways or that the Electric Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground, upon reasonable Notice by the City to the Company, then the Company will move its Electric Facilities at its sole cost. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Section 5.1. This Section 5.1 shall not constitute a taking by the City nor be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise.

5.2. **No Release of Liability.** Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring the Company's Electric Facilities while performing any work connected with grading, regarding or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Section 5.2 shall not limit the City's rights to indemnification under Section 6.1 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

SECTION 6. INDEMNIFICATION.

6.1. **Indemnification.** If at any time any claim of any kind is made against the City for injury to persons or property arising from the acts or failure to act by the Company, its agents, servants, or employees in connection with the operations of the Company under and pursuant to this Franchise, the Company shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not limited to, reimbursement of any reasonable attorneys fees and costs and expenses the City may incur in handling, denying, or defending such claims. The Company's obligation to indemnify the City shall not extend to any injury to persons or property caused by the negligent act or failure to act by the City or any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company. The City shall determine who will defend any such claims arising under this Section 6.1 and the Company will thereafter have complete control of such litigation; provided, however, the Company may not settle any such claims without the prior approval of the City, which approval will not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and the Company, in defending any action shall be entitled to assert every defense or immunity that the City could itself assert in its own behalf. The Company's obligations under this Section shall survive the expiration, amendment, or termination of this Ordinance.

6.2. **Insurance.** Before the Effective Date, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. The Company shall maintain such insurance coverage at all times during this Franchise.

6.3. **Compliance with Laws; Hazardous Substances.** In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Section 6.1 shall apply to all claims made against the City by any Person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Section 6.3 or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

SECTION 7. VACATION OF PUBLIC WAYS. The City will consult with the Company at least four (4) weeks prior to its action on any proposed vacation of a Public Way. Except where ordered pursuant to Section 5.1, the vacation of any Public Way after the installation of Electric Facilities shall not operate to 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. However, in no case shall the City be liable to the Company for failure to specifically preserve a Public Way in the exercise of its authority under Minnesota Statutes, Section 160.29.

SECTION 8. ABANDONED FACILITIES. The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Electric Facilities, including abandoned and retired Electric Facilities.

SECTION 9. RATES AND SERVICE. The electric service provided and the rates charged by the Company for electric service, as of the Effective Date, are subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B. In the event the Company shall determine after the Effective Date to change its rates or terms and conditions of electric service, the Company shall provide reasonable advance Notice of such proposed action to the City.

SECTION 10. FRANCHISE FEE.

10.1. **Authority.** The City reserves all rights under Minnesota Statutes, Sections 216B.36 and 301B.01 or other law to require a franchise fee at any time during the term of, and in consideration for, this Franchise. The franchise fee may be expressed (i) as a specified charge per measurable unit of electricity being provided, transported, transmitted, sold, furnished, delivered, or received within the City, or (ii) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (iii) a flat fee per customer based on service to retail customers within the City or on some other similar basis, or (iv) in such other manner or fashion as the City may determine. The method of imposing the franchise fee may differ by customer class, by type of Utility, by particular circumstances of a Utility Service Provider, or by other relevant factor, and may combine the methods described in (i) through (iv) above.

10.2. **Payment of Fee.** The franchise fee shall be payable not less often than quarterly and shall be based on the complete billing month for which payment is due. The payment shall be due forty-five (45) days after the end of the month for which the payment is due. Each payment shall be accompanied by a brief report showing the basis for the computation of the payment and such other relevant facts to support the computation as may be requested by the City from time to time. The Company may, in its sole discretion, impose a surcharge equivalent to the franchise fee in its rates for electric service. The Company shall pay the City the franchise fee based upon the prevailing rate and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by the Company or (ii) if the Company shall, after any said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from the Company of an amount previously paid or incurred by the retail electric customers.

10.3. **No Waiver or Release.** No acceptance of any payment shall be construed as an accord that the payment made is in fact the correct amount, nor shall such acceptance of the payment be construed as a release of any claim that the City may have for further sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and re-computation by the City. The Company agrees to make all records necessary to audit the Company's calculation of any payment available for inspection by the City or its designated representative at reasonable times.

10.4. **Separate Ordinance.** Notwithstanding anything to the contrary, the franchise fee may be changed by the City from time to time by separate ordinance; provided, however, such changes shall not occur more often than once in any calendar year and shall be effective upon the earlier of (1) approval by the Commission authorizing the Company to incorporate such fee within its rate schedule, or (2) sixty (60) days after the Company has provided timely notice to the Commission of the ordinance adopting the change. Notice of the proposed change shall be given to the Company not later than the effective date of the ordinance adopting the change.

SECTION 11. DEFAULTS. If the Company shall be in default in the performance of any of the material terms and conditions of this Ordinance, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs thereof.

SECTION 12. AMENDMENT PROCEDURE. The City reserves the right to amend this Franchise by ordinance. The Company's rights hereunder are subject to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by the City as deemed necessary or appropriate in the exercise of such power.

SECTION 13. GENERAL PROVISIONS OF ORDINANCE.

13.1. **Governing Law.** This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this Ordinance or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

13.2. **Right to Repeal.** If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this Ordinance. If any material portion of this Ordinance is declared void or illegal, then this Ordinance shall be void in its entirety.

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

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

SECTION 14. ACCEPTANCE BY THE COMPANY.

14.1. **Acceptance by the Company.** The Company shall, within thirty (30) days after passage and publication of this Ordinance or any amendment thereto, file with the City Administrator in writing its acceptance or rejection as provided in Section 15.2. If such acceptance is not filed or if a rejection is filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise or any amendment hereto, except with respect to such particulars as it may successfully challenge under the procedures specified in Section 14.2.

14.2. **Rejection Procedures.** A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within thirty (30) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within thirty (30) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

SECTION 15. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances in conflict herewith are repealed.

SECTION 16. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and publication in accordance with law.

Passed this 5th day of November, 2013.

ATTEST:

[Signature]
City Administrator

[Signature]
Mayor

Published this 14th day of November, 2013.

The provisions of the foregoing Ordinance are hereby accepted:

DATED November 20, 2013.

MINNESOTA POWER

By: [Signature]
Its Vice President

By: [Signature]
Its Secretary

Section 11.10 Stormwater Utility Charges

11.10.01. Stormwater Utility and Authority. There is hereby established a public utility to be known as the Stormwater Utility for the City of Cloquet. The Stormwater Utility shall be operated as a public utility pursuant to City Code and Minnesota Statutes, Section 444.075.

11.10.02. Purpose. The purpose of this ordinance is to provide a funding mechanism for the following services:

- A. The administration, planning, analysis, installation, operation, maintenance and replacement of public drainage systems.
- B. The administration, planning, implementation, construction, and maintenance of stormwater Best Management Practices (BMPs) to reduce the introduction of sediment and other pollutants into local water resources.
- C. Other education, engineering, inspection, monitoring, testing and enforcement activities as necessary to maintain compliance with local, state and federal stormwater requirements.
- D. Activities necessary to maintain compliance with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Permit requirements established by the Minnesota Pollution Control Agency, including preparation, implementation and management of a Stormwater Pollution Prevention Plan (SWPPP) to address the following control measures:
 - (1) Public education and outreach on storm water impacts.
 - (2) Public involvement/participation.
 - (3) Illicit discharge detection and elimination.
 - (4) Construction site stormwater runoff control.
 - (5) Post-construction runoff control in new development and redevelopment.
 - (6) Pollution prevention for municipal operations.

11.10.03. Definitions

Subd. 1. Residential Equivalency Factor, referred to herein as “REF”, is defined as the average impervious area of residential property per dwelling unit located within the city. A typical 0.33 acre single-family residential parcel with 30% impervious shall represent the basic unit of the stormwater utility’s charge structure.

Subd. 2. REF Rate is defined as a utility fee applied to each REF or 4,312 square feet of impervious surface as established by resolution of the Cloquet City Council as provided herein.

Subd. 3. Single-Family Residential is defined as the land use classification of parcels with one (1) living unit.

Subd. 4. Duplex Residential is defined as the land use classification of parcels with two (2) or three (3) living units.

Subd. 5. Nonresidential Property is defined as any developed property that is not classified as single-family or duplex residential by the definitions given above. Property that has a mixture of residential and nonresidential uses shall be considered nonresidential.

Subd. 6. Impervious Area is defined as areas on a property that prevent or impede the infiltration of stormwater into the soil at the same rate as natural or pre-developed conditions. Common impervious areas may include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel or soil surfaces, and any other surface that prevents or impedes the natural infiltration of stormwater runoff.

Subd. 7. Developed Land is defined as property altered from a natural state by construction or installation of more than five hundred square feet of impervious surfaces as defined in this Section.

Subd. 8. Stormwater Drainage System or System is defined as the existing constructed and natural stormwater drainage facilities and channels of the City and all improvements thereto which are the property and responsibility of the Utility, to be operated by the Utility to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

11.10.04. Rates and Charges

Subd. 1. Minimum or Maximum Fees. The City Council may establish minimum or maximum monthly fees per property.

Subd. 2. Estimated Charges. If, for any reason, precise information related to the use, development or impervious area of a premise is not available; then Stormwater Utility Charges for such premise shall be estimated, and billed, based upon information then available to the City.

Subd. 3. Standardized Charges. The following rules shall apply for the purpose of simplifying and equalizing charges:

- A. A typical surface area of 0.33 acres containing 30% impervious (i.e. 4,312 sq. ft. of impervious surface) shall be used as the single-family residential equivalency factor.
- B. Any duplex or triplex which is situated on a single parcel shall be billed at 1.5 REFs.
- C. Parcels subject to these standardized charges shall not be eligible for adjustments (credits) to charges or adjustments to impervious area as set forth elsewhere herein.

Subd. 4. Exceptions. The following land uses are exempt from the Stormwater Utility Fees established herein:

- A. Public Street right-of-way.
- B. Wetlands and public waters as defined by state law.
- C. Undeveloped properties.
- D. Airport runways and taxiways.
- E. Tribal owned land within the Fond du Lac Reservation.

Subd. 5. Establishing Rates. Each developed property shall pay a rate per Residential Equivalency Factor (REF). The REF Rate so established shall be on file with the City Administrator/Clerk and shall be used to compute the stormwater charges for a given property based on the following formulas for each land use designation.

11.10.05. Stormwater Fee Adjustments. Stormwater Utility fees may be adjusted under the conditions stated below. It shall be the responsibility of the property owner to provide justification for the fee adjustment.

Subd. 1. Appeals Process. Any person liable for the payment of stormwater utility fees on a property may, appeal to the City Engineer for a utility fee adjustment if the person believes the utility fee to be incorrect. The request for adjustment shall be made in writing and shall state, in detail, the grounds upon which relief is sought. The Engineer may require the applicant to submit, at applicant's expense, supplemental information including, but not limited to, survey data certified by a registered land surveyor and engineering reports certified by a registered professional engineer. The director may grant an adjustment if it is found that:

- A. A substantial error was made in the calculation of the impervious area on a nonresidential property.
- B. The land use designation used to calculate the stormwater fee is inaccurate

Acceptance and denials of appeals for adjustment shall be made in writing by the Engineer. No adjustment shall be made retroactively, except for initial appeals filed within one year of the effective date of this ordinance.

Any person denied an adjustment by the Engineer may appeal the denial to the City Council by filing written notice of appeal with the city clerk within 30 days of receipt of the Director's decision. The City Council shall hear the appeal and affirm, modify or reverse the decision of the Director, applying the standards for granting adjustments set forth in this Section.

Subd. 2. Credits. In determining charges, the City Council may adopt a Stormwater Utility Credit Policy in order to provide an incentive for property owners to manage stormwater quantity and quality. All applications for credits shall be submitted to the Director of Public Works and are subject to the following provisions:

- A. Residential properties subject to standardized charges shall not be eligible for credits.
- B. Maximum Credits are cumulative and cannot exceed 90 percent.
- C. It is the responsibility of the property owner to provide all documentation, maintenance and inspection records as required by the Public Works Director in order to prove the benefit of any Best Management Practice (BMP).

11.10.06. Collections and Penalties

Subd. 1. Billing Schedule. The City shall render invoices for stormwater fees monthly, quarterly or semi-annually as the City Council shall determine suitable and necessary. Charges shall be payable to the City and may be rendered in conjunction with other utility billings.

Subd. 2. Accounts in Name of Owner and/or Occupant. All accounts shall be carried in the name of the owner of the premises connected to the water and sewer services, and/or the occupant of the premises, if the owner is not directly paying for the services. Where the term "user" appears in this Code in reference to the payment for stormwater fees, the term shall include the owner and the occupant of the premises.

Subd. 3. Required Information. The owner, occupant or person in charge of any premises shall furnish the City with such information as may reasonably be required relating to services provided by the City system. Willful failure to provide the information, willful falsification of the information, or willful failure to comply with any requirement or order issued pursuant to this Section shall constitute a violation of this Section.

Subd. 4. Minimum Fee. The minimum stormwater utility fee that shall be billed by the City for all developed properties within the City of Cloquet shall be one Residential Equivalency Factor.

Subd. 5. Penalty for Late Payment. All charges for stormwater fees and miscellaneous service shall be due on the date specified by the City for the respective account. Penalty for past due bills shall be 5% of the total bill, except, no penalty shall be charged on past due sales tax.

Subd. 6. Delinquent Accounts. All charges for stormwater utility fees shall be due on the date specified by the City for the respective amount and shall be delinquent twenty (20) days thereafter. The City shall endeavor to collect delinquent accounts promptly. When satisfactory arrangements for payment have not been made, delinquent accounts shall be certified to the City Administrator who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. The assessment roll shall be delivered to the Council for adoption on or before November 30th of each year for certification to the County Auditor for collection along with taxes. Such action shall be optional and may be subsequent to taking legal action to collect delinquent accounts.

If the delinquent customer shall be a tenant who has vacated the property or an owner who no longer has an ownership interest because of mortgage foreclosure, cancellation of contract for deed or for any other reason, collection of the delinquent account shall, at the option of the City Administrator, be either through a collection agency or legal proceedings in accordance with the City's Collection Policy.

Subd. 7. Liability for Payment of Services. The owner of developed property, and the occupant thereof, shall be jointly and severally liable to pay for the service to the premises and the service shall be furnished to the premises by the City only upon the condition that the owner and occupant of the premises shall be jointly and severally liable to the City for the charges. The owner of rental property agrees, as a condition of receiving service, to be personally liable for stormwater utility fees charged to the tenants, lessees, or other occupants. A claim for unpaid charges which have been billed to the occupant of the premises or the user of the service may be recovered against the owner or occupant in a civil action in any court of competent jurisdiction or in the discretion of the City Administrator may be certified to the County Auditor to be collected with taxes against the premises so served or reported to a collection agency. Money paid to the County Auditor on the account shall belong to the City and shall be remitted to the City Administrator by the County Auditor in the manner provided by law for the payment of other money belonging to the City.

Subd. 8. Disposition of Revenues. All revenues derived from charges imposed under this Section shall be respectively credited to the City Stormwater Enterprise Fund, unless otherwise designated by City Council resolution.

Section 11.11

ORDINANCE NO. 461A

An Ordinance Granting To Lake Country Power A Nonexclusive Franchise To Construct, Operate, Repair And Maintain In The City Of Cloquet, 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; And Prescribing Certain Terms And Conditions Thereof.

SECTION 1. FINDINGS.

1.1 In Ordinance Number 206A and Section 11.9 of the City Code, the City has required each Utility Service Provider to obtain and maintain a franchise with the City and to provide consideration to the general fund of the City for the rights afforded to it in the franchise.

1.2 In the interest of fairness and comparable treatment, the City finds it necessary and desirable to formalize its rules and regulations and to implement the terms of Ordinance Number 430A with respect to the City of Cloquet, and, to the extent feasible and practicable, to all other Utility Service Providers.

SECTION 2. DEFINITIONS. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Cloquet, County of Carlton, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted from time to time hereafter.

City Utility System. Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals.

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.

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

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

Council. The City Council of the City of Cloquet as from time to time constituted.

Effective Date. The effective date of this Ordinance.

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

Extension Rules. The rules adopted from time to time by the Company governing its extension of Electrical Facilities.

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

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

If to the City:
City of Cloquet
1307 Cloquet Avenue
Cloquet, MN 55720
Attn: City Administrator

If to the Company:
Lake Country Power
2810 Elida Drive
Grand Rapids, MN 55744
Attn: General Manager

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

Person. A natural person or any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.

Public Ground. All real property owned by or dedicated to the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.

Public Way. Any street, alley and other public rights-of-way within the City.

Utility. Transmitting, furnishing, transporting, distributing, delivering, selling, receiving, importing, manufacturing, or causing to be produced, transmitted, furnished, transported, delivered, sold, received, imported, or manufactured, electric energy, natural gas, mixed gas, heat, light, power, and services provided through a cable communication system.

Utility Service Provider. Any Person who performs any one or more of the activities of a Utility to or for the public or to or for any one or more persons within the corporate limits of the City and may, as contemplated herein, be the ultimate user or consumer of the Utility service provided.

SECTION 3. THE FRANCHISE.

3.1. **Grant of Franchise.** The City hereby grants the Company, for a period of twenty (20) years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for any public or private use within and through the Company Service Area. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to all applicable design and safety codes, the provisions of this Ordinance, zoning ordinances, other applicable ordinances, permit procedures and the customary and necessary practices of the City.

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

3.3. **Effective Date.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and upon the Company's duly authorized acceptance below as executed within thirty (30) days after passage and publication of this Ordinance or any amendment thereto.

3.4. **Continuation of Franchise.** If the City and 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 the Franchise to expire subject to the parties agreement on new terms and conditions.

SECTION 4. LOCATIONS; CONSTRUCTION; OTHER REGULATIONS.

4.1. **General.** Electric Facilities shall be located, constructed and maintained by the Company: (i) in as safe and secure a condition or manner as reasonably possible, (ii) so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways, and (iii) so as not to disrupt or interfere with the normal use or operation of any Public Ways, Public Ground or the City Utility System. Electric Facilities to be located on Public Ground must be approved as determined by the City in its sole discretion. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation 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 Ordinance and such other regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Ordinance.

4.2. **Construction; Maintenance; Repairs.** Whenever the Company desires to open or disturb any Public Way or Public Ground for the purpose of constructing, maintaining, or repairing Electric Facilities, it shall give the City reasonable advance Notice, but not less than ten (10) business days, by filing a written Notice with the City Administrator and City Engineer. In any case, the Company shall not commence such work before obtaining any applicable permit for which the City may impose a reasonable fee, or other appropriate written consent from the City. The Company shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the Public Ways and Public Ground. During the progress of such work, the Company shall keep the affected Public Ways or Public Ground guarded in order to avoid accidents to persons or property. All work performed by the Company shall comply with all applicable federal, state, and local laws, rules, and regulations.

4.3. **Emergencies.** The requirements for obtaining permits from the City pursuant to Section 5.2 shall not apply if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) the Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

4.4. **Restoration.** Following the completion of any work, the Company shall promptly and diligently restore the affected Public Ways and/or Public Ground to as good a condition as before the work commenced. If the Company fails to promptly restore such Public Ways and/or Public Ground within ten (10) days of Notice by the City, the City may engage an independent contractor at the expense of the Company to perform the restoration of the Public Ways and/or Public Ground as required under this Section. The Company shall pay to the City upon demand the cost to the City of affecting such restoration including the City's administrative expenses and overhead.

4.5. **Avoidance of Damage.** The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Electric Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Electric Facilities, if given reasonable Notice by the City of such work prior to its commencement.

4.6. **Field Locations.** The Company shall provide field locations for all its underground Electric Facilities when requested by the City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the "Gopher State One Call" system).

4.7. **Shared Use of Poles; Street Lights.** If the City desires to place facilities on the Company's poles, the City shall enter into a License Agreement for Pole Attachment Rental with the Company containing terms and conditions substantially similar to those contained in other such Agreements that the Company has with other governmental entities.

4.8. **Vegetation Control.** Subject to such procedures, regulation and supervision as the Council may establish, the Company may, at its cost, trim all trees and shrubs in the Public Ways located within the

Company Service Area to the extent the Company finds it necessary to avoid interference with the proper construction, operation, repair and maintenance of any of the Company's Electric Facilities installed or maintained hereunder provided that Company shall hold the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

4.9. **Notice of City Improvements.** The City will give the Company reasonable advance Notice of plans for improvements to Public Ways and Public Ground in the Company Service Area where the City has reason to believe that the Company's Electric Facilities may affect or be affected by such improvements. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or parcel of Public Ground is involved, the order in which the work is to proceed.

4.10 **Acquisition.** The City shall have the right to purchase or otherwise acquire the Company's Electric Facilities or the Company Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by the City shall be noticed to the Company for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to the Company as a result of such proceeding shall be determined as of the commencement of such proceeding. The Company shall continue to operate the Electric Facilities at the City's sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by the Company against the City.

SECTION 5. ELECTRIC FACILITIES RELOCATION.

5.1. **Relocation.** In the event the City reasonably determines that it is necessary for the Company to move any part of its Electric Facilities because the City has determined to change, move or improve its Public Ways or that the Electric Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground, upon reasonable Notice by the City to the Company, then the Company will move its Electric Facilities at its sole cost. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Section 5.1. This Section 5.1 shall not constitute a taking by the City nor be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise.

5.2. **No Release of Liability.** Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring the Company's Electric Facilities while performing any work connected with grading, regarding or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Section 5.2 shall not limit the City's rights to indemnification under Section 6.1 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

SECTION 6. INDEMNIFICATION.

6.1. **Indemnification.** If at any time any claim of any kind is made against the City for injury to persons or property arising from the acts or failure to act by the Company, its agents, servants, or employees in connection with the operations of the Company under and pursuant to this Franchise, the Company shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not limited to, reimbursement of any reasonable attorneys fees and costs and expenses the City may incur in handling, denying, or defending such claims. The Company's obligation to indemnify the City shall not extend to any injury to persons or property caused by the negligent act or failure to act by the City or any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company. The City shall determine who will defend any such claims arising under this Section 6.1 and the Company will thereafter have complete control of such litigation; provided, however, the Company may not settle any

such claims without the prior approval of the City, which approval will not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and the Company, in defending any action shall be entitled to assert every defense or immunity that the City could itself assert in its own behalf. The Company's obligations under this Section shall survive the expiration, amendment, or termination of this Ordinance.

6.2. **Insurance.** Before the Effective Date, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. The Company shall maintain such insurance coverage at all times during this Franchise.

6.3. **Compliance with Laws; Hazardous Substances.** In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Section 6.1 shall apply to all claims made against the City by any Person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Section 6.3 or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

SECTION 7. VACATION OF PUBLIC WAYS. The City will consult with the Company at least four (4) weeks prior to its action on any proposed vacation of a Public Way. Except where ordered pursuant to Section 5.1, the vacation of any Public Way after the installation of Electric Facilities shall not operate to 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. However, in no case shall the City be liable to the Company for failure to specifically preserve a Public Way in the exercise of its authority under Minnesota Statutes, Section 160.29.

SECTION 8. ABANDONED FACILITIES. The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Electric Facilities, including abandoned and retired Electric Facilities.

SECTION 9. RATES AND SERVICE. The electric service provided and the rates charged by the Company for electric service, as of the Effective Date, may be subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B. In the event the Company shall determine after the Effective Date to change its rates or terms and conditions of electric service, the Company shall provide reasonable advance Notice of such proposed action to the City.

SECTION 10. FRANCHISE FEE.

10.1. **Authority.** The City reserves all rights under Minnesota Statutes, Sections 216B.36 and 301B.01 or other law to require a franchise fee at any time during the term of, and in consideration for, this Franchise. The franchise fee may be expressed (i) as a specified charge per measurable unit of electricity being provided, transported, transmitted, sold, furnished, delivered, or received within the City, or (ii) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (iii) a flat fee per customer based on service to retail customers within the City or on some other similar basis, or (iv) in such other manner or fashion as the City may determine. The method of imposing the franchise fee may differ by customer class, by type of Utility, by particular circumstances of a Utility Service Provider, or by other relevant factor, and may combine the methods described in (i) through (iv) above.

10.2. **Payment of Fee.** The franchise fee shall be payable not less often than quarterly and shall be based on the complete billing month for which payment is due. The payment shall be due forty-five (45) days after the end of the month for which the payment is due. Each payment shall be accompanied by a brief report showing the basis for the computation of the payment and such other relevant facts to support the computation as may be requested by the City from time to time. The Company may, in its sole discretion, impose a surcharge equivalent to the franchise fee in its rates for electric service. The Company shall pay the City the franchise fee based upon the prevailing rate and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by the Company or (ii) if the Company shall, after any said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from the Company of an amount previously paid or incurred by the retail electric customers.

10.3. **No Waiver or Release.** No acceptance of any payment shall be construed as an accord that the payment made is in fact the correct amount, nor shall such acceptance of the payment be construed as a release of any claim that the City may have for further sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and re-computation by the City. The Company agrees to make all records necessary to audit the Company's calculation of any payment available for inspection by the City or its designated representative at reasonable times.

10.4. **Separate Ordinance.** Notwithstanding anything to the contrary, including the provisions of 10.1 herein, the franchise fee may be changed by the City from time to time by separate ordinance; provided, however, such changes shall not occur more often than once in any calendar year and shall be effective upon the earlier of (1) approval by the Commission authorizing the Company to incorporate such fee within its rate schedule, or (2) sixty (60) days after the Company has provided timely notice to the Commission of the ordinance adopting the change. Notice of any proposed change must be given to all electrical service providers and shall be applied equally and shall be given to the Company(s) not later than the effective date of the ordinance adopting the change.

SECTION 11. DEFAULTS. If the Company shall be in default in the performance of any of the material terms and conditions of this Ordinance, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs thereof.

SECTION 12. AMENDMENT PROCEDURE. The City reserves the right to amend this Franchise by ordinance. The Company's rights hereunder are subject to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by the City as deemed necessary or appropriate in the exercise of such power.

SECTION 13. GENERAL PROVISIONS OF ORDINANCE.

13.1. **Governing Law.** This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this Ordinance or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

13.2. **Right to Repeal.** If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this Ordinance. If any material portion of this Ordinance is declared void or illegal, then this Ordinance shall be void in its entirety.

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

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

SECTION 14. ACCEPTANCE BY THE COMPANY.

14.1. **Acceptance by the Company.** The Company shall, within thirty (30) days after passage and publication of this Ordinance or any amendment thereto, file with the City Administrator in writing its acceptance or rejection as provided in Section 14.2. If such acceptance is not filed or if a rejection is filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise or any amendment hereto, except with respect to such particulars as it may successfully challenge under the procedures specified in Section 14.2.

14.2. **Rejection Procedures.** A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within thirty (30) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within thirty (30) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

SECTION 15. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances in conflict herewith are repealed.

SECTION 16. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and publication in accordance with law.

Passed this 15th day of November, 2016.

ATTEST:

[Signature]
City Administrator

[Signature]
Mayor

Published this 24th day of November, 2016.

The provisions of the foregoing Ordinance are hereby accepted:

DATED December 14, 2016.

LAKE COUNTRY POWER

By: [Signature]
Its General Manager

By: [Signature]
Its General Manager