

CHAPTER 9. UTILITIES

SECTIONS:

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SECTION 900 – CITY SEWER SYSTEM

Sec. 900.01 Rates and Charges. The Council shall by resolution establish rates and charges for residential, commercial, and other connections now existing or hereafter made to the public sewer system of the City.

Sec. 900.02 Council to Control System. The Council shall have control of the drainage and sewer system, and all drains and sewers now or hereafter built or authorized by the City, and the building, repair and maintenance thereof, and connections therewith.

Sec. 900.03 Permit Required to Construct Sewer. No person shall build, repair or extend any sewer or drain, or connect any sewer or drain to any public sewer or drain without obtaining a permit.

Sec. 900.04 Application and Issuance. Application for a permit shall be filed with the Clerk by the person who shall perform the work. The form of the application shall be determined by the Council. A plan shall be submitted with the application showing the proposed drain, from its connection to the public sewer to its terminus within the building involved. The location of all branches, traps, and fixtures connected therewith shall be shown. The drawings shall be kept by the City as a permanent record. If the proposed sewer complies with the provisions of this Code and is satisfactory to the Council, the Council shall order the Clerk to issue a permit.

Sec. 900.05 Permit Fee. Fees for all permits issued under this Chapter shall be as established by Council resolutions.

Sec. 900.06 Construction Requirements. All connections with the public sewer shall be made with such materials as shall be satisfactory to the State Code. No sewer pipe connecting with any public sewer shall have a fall of less than 1/8 inch to the foot.

Where sewer and water connections to the City systems are laid in the same trench, the sewer connection shall be of cast iron pipe or a type approved by the Council.

Sec. 900.07 Construction Inspection. All pipe shall be inspected by the Public works supervisor, or designee before it shall be laid and shall be subject to approval. After any connection has been laid from a public sewer to the building line, the pipe shall in no instance be covered until the same has been duly inspected and approved.

Sec. 900.08 Separate Connections. Every building shall be separately and independently connected with the public sewer, and drained through one connection. Sewer service from a river or building to the connection at the main are the responsibility of the property owners.

Sec. 900.09 Obstruction Prohibited. No obstruction to the flow of waste water shall be placed, thrown or allowed to enter any public sewer, or allowed to remain on or in any trap or catch basin so as to obstruct the sewer. No person shall injure or break or remove any portion of any catch basin, covering flag, gully grating, flush tank or manhole, or any part of any sewer, nor do any act obstructing or any way interfering with the use of any sewer or the flow of waste water through any sewer.

Sec. 900.10 Certain Uses Prohibited. The following substances shall not be discharged into any public sanitary sewer:

- A. Steam exhaust or blow off.
- B. Rain or surface water by means of having a rain spout or other drainage device connected with the sanitary sewer.
- C. Waste containing any product not allowed by Metropolitan Waste Control Commission.
- D. Refuse, solid or liquid, of any character, quality, or nature that shall unreasonably interfere with the ordinary treatment

processes of any sewage treatment plant used by the City.

Sec. 900.11 Inspection and Repair of Connecting Drains. The designated person or designee shall have the right to enter upon any commercial premises at any reasonable hour to inspect the sewers and drains and traps and fixtures connected therewith.

If it shall be found from the inspection or otherwise that the provisions of this Code are not being complied with or that any part of the drainage system is in need of clearing out or repairs, a written notice shall be served as soon as possible upon the owner, the occupant, and the person in charge of the premises specifying the work necessary to be done to make the sewer system comply with this Code, or to put it in good workable condition. The notice shall specify such time as shall be reasonable, considering the amount of work to be done and the nature of the emergency, within which the defects shall be remedied. It shall be the duty of every person served with the notice to comply therewith. The City may cause the work to be done at the expense of the person so served, if the defects are not remedied within the time stated in the notice.

SECTION 910 – CITY WATER SYSTEM

Sec. 910.01 Supervision of System. The Council or Designee shall have general supervision and control of all public water mains and connections thereto and no connections shall be to the system without a written permit from the Council.

Sec. 910.02 Application for Service. Application for water service shall state fully and truly the purpose for which the water shall be used, together with the proper legal description of the property and the street and official house number of the premises to be supplied. The application shall be signed by the owner or his or her duly authorized agent. Applicants, shall answer, without concealment, all questions put to them relating to the use of water. Applications and all information furnished shall be in affidavit form when required by the water department.

The applicant shall distinctly state, and mark on the sketch made a part of the application, the point on the property line where the service shall enter the premises. No service cock shall be installed under concrete walks, steps or other permanent structures, either constructed or contemplated, between the property line and the buildings to be supplied. The point where the service is to enter the property shall be distinctly marked by stake by the owner or agent before the service shall be installed, and shall be in the location designated in the application.

Sec. 910.03 Water Services. The Council shall be hereby authorized to render special service in connection with the furnishing of water, repairing water meters damaged by frost, and other similar services pursuant to rules and regulations, prices and terms determined from time-to-time by the Commission. Charges for the services shall be a continuing lien, until paid, upon the property served.

Sec. 910.04 Service Connection Specifications and Repairs. The stopcock or corporation cock at the main, and the curb cock at the sidewalk or curb, shall be standard bronze. The curb cock shall have a cast iron box or cover. The pipe between the stopcocks at the main and the sidewalk shall be of approved copper pipe. Where the sewer and water connections are laid in the same trench, the water connection shall be of copper pipe of a quality approved by the Council, and the sewer connection shall be of cast iron pipe or tubing approved by the Council.

Water service from a riser or meter to the connection at the main are owned by the property owner and they shall be responsible for all repairs including the operation of the curb-stop.

Sec. 910.05 Tampering with Water System. No person shall tamper or interfere with the water system.

Sec. 910.06 Determination and Payment of Costs. Where rates are fixed or cost of water services of any kind are estimated, payment shall be made at the time the application is submitted and before the service shall be installed. No water shall be turned on until all charges against the premises shall be paid, including water used for building purposes, except by special arrangement with the Council.

Sec. 910.07 Installation of Large Service Connections. Service connections 2 inches or larger shall be installed only after the application has been approved by the Council and the estimated cost of the installation shall have been paid.

Sec. 910.08 Meters. A sealed meter shall be installed on all commercial services laid and put in service. All meters installed on commercial services shall be furnished, sealed by, and remain the property of the City. The City shall require a deposit, in an amount set from time to time by the council, to be made to the city sewer department. The deposit shall be returned at the time

the meter is removed by the City.

Meters shall at all times be easily accessible so that they may be examined, serviced and read by the employees of the City or Designees. They shall not be exposed to danger from frost or contamination and shall be placed adjacent to a floor drain and

not in a crawl space or under a stair well. No person shall cover or obstruct any water meter, either permanently or temporarily. The owner shall be held responsible for the intactness of the meter seals. If meters are damaged by freezing, hot water, or other causes, either by carelessness or neglect of the owner or occupants of the premises or their agents, the owners or occupants of the premises or their agents, the owners of the premises shall pay for the repairs of the damage. The cost of ordinary maintenance and repairs shall be born by the water department. In case of breakage, stoppage or other irregularity in the meter, the owner or consumer shall notify the water department immediately, and any necessary repairs shall be made by the department.

In case of the failure of the meter to register, the bill for the current period shall be determined by averaging the bills of the customer for like periods, if possible.

The repair and disconnection of all meters shall be performed only by employees of the City or Designee.

Sec. 910.09 Meter Testing and Adjustment. At the written request of the owner or consumer the City shall test the meter supplying the premises. A deposit as shall be set by Council resolution shall be required before the meter shall be disconnected, which sum shall not be refunded if the meter is found to be registering correctly with 4 %; otherwise the deposit shall be returned to the party making the request. The owner or consumer may, if desired, be present at the time the test is made. The result of the test shall be reported to the owner or consumer in every case.

If the testing of the meter shows that it fails to register correctly within the 4 %, the charge to the consumer shall be adjusted accordingly as the registration varies from 100% and the adjustment shall apply to the current period only, unless it shall be apparent to the Commission that a previous period's consumption has also been affected by the same incorrect registration. When it is impracticable to make an adjustment as indicated above, the charge shall be equitably adjusted by the Commission. All adjustments for charges for water shall be made by resolution of the Commission.

Sec. 910.10 Authorization Required for Certain Acts. Only persons authorized by a permit shall turn on or shut off the water supply at any stop cock at the main or at the curb or allow any person in his or her employ so to do, nor shall he or she have in his or her possession any tool or instrument for that purpose. Only persons authorized by a permit shall be allowed to tap any main or do any excavation or any street work in connection with the laying, installation, extending or repairing of any water service, water pipe, or water appurtenances without the permission of the water department.

Sec. 910.11 Resale. No consumer, without obtaining the written consent in advance of the water department, shall furnish water to any other person or property or permit any other person to take it himself or herself.

Sec. 910.12 Separate Services. Every separate building supplied with water shall have its own separate service connection directly with the main, except private garages and barns, If more than one tenant is supplied by a street service the property owner shall apportion the charge to each tenant, if that person so desires. The City shall not apportion the charges.

Sec. 910.13 Waste of Water. No person shall waste water by permitting it to run through a faucet or fixture to prevent freezing, or by permitting water to run longer than is necessary in its proper use. The Council shall be hereby authorized and required to restrain and prevent all wastage of water.

Sec. 910.14 Payment Due Without Bill. Failure of a customer or owner to receive a bill for current water charges shall not entitle the owner or customer to a remission of any penalty for failure to pay the bill promptly.

Sec. 910.15 Access to Premises. Inspectors of the City or any person duly authorized by the Council, shall have free access at all reasonable times to all parts of every building for the purpose of inspecting, removing and replacing meters, examining water fixtures, and observing the manner in which water is used.

Sec. 910.16 Shut Off of Water. The City shall comply with the written request of the owner of a premises receiving water service, or the request of a duly authorized agent, to shut off the water service. Provided, however, that the City shall not shut off water service for the sole purpose of evicting an occupant of the premises.

The City may at any time shut off the water service for the purpose of extending, replacing, repairing or cleaning of mains and appurtenances and the City shall not be held liable for any damage arising there from.

Sec. 910.17 Claims. No claim shall be made against the City by reason of the breaking of any service pipe or connection or any interruption to the water service.

Sec. 910.18 Hydrants and Gate Valve. No person shall without authority use, tamper or interfere with any fire or street hydrant or water main gate valve. The Council may permit water to be used temporarily from any fire hydrant for no domestic purposes in localities where no other supply can be obtained. In such cases, a reducer shall be attached to one of the hydrant openings and the supply controlled by means of a small metered valve.

Sec. 910.19 Damage to Water System. No person shall willfully use and appropriate the water or any portion thereof from the works operated by the Commission without authority to do so, or shall corrupt or tender the water impure, or shall destroy or injure any canal, aqueduct, pipe, conduit, machinery, or other property used or required for procuring or distributing the water.

SECTION 920 – ILLICIT DISCHARGE AND CONNECTION TO STORM SEWER SYSTEM

Sec. 920.01 Purpose/Intent. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Landfall Village, Washington County, Minnesota through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user
- To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.
- To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

Sec. 920.02 Definitions. For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency. Employees or designees of the director of the municipal agency designated to enforce this ordinance.

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 5 acres or more. Beginning in March 2003, NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 920. 10 of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or

connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. Means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated Storm water, discharged from a facility.

Sec. 920.03 Applicability. This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Landfall Village.

Sec. 920.04 Responsibility for Administration. The City Council of Landfall Village shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the City Council to persons or entities acting in the beneficial interest of or in the employ of the agency.

Sec. 920.05 Severability. The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Sec. 920.06 Ultimate Responsibility. The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Sec. 920.07 Discharge Prohibitions. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

The following discharges are exempt from discharge prohibitions established by this ordinance:

Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-

commercial washu1g of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated -typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of Illicit Connections.

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Sec. 920.08 Suspension of MS4 Access.

Suspension due to Illicit Discharges in Emergency Situations.

The City Council of Landfall Village or its authorized enforcement representatives may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

Sec. 920.09 Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES storm discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City Council of Landfall Village prior to the allowing of discharges to the MS4.

The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the City of Landfall Village at the same time the operator submits the original Notice of Intent to the EPA as applicable.

The copy of the Notice of Intent may be delivered to the City of Landfall Village either in person or by mailing it to:
City of Landfall Village

50 Aspen Way
Landfall, MN 55128

A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the City of Landfall Village.

Sec. 920.10 Monitoring of Discharges.

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

The authorized enforcement agency for the City of Landfall Village shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

Facility operators shall allow the City of Landfall Village ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The City of Landfall Village shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

The City of Landfall Village has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Landfall Village and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing the City of Landfall Village access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

If the City of Landfall Village has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 920.11 Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

The City of Landfall Village will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Sec. 920.12 Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec. 920.13 Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Landfall Village within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Sec. 920.14 Enforcement.

A. Notice of Violation.

When the City of Landfall Village finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City of Landfall Village may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the City of Landfall Village to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

Whenever the City of Landfall Village finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

The performance of monitoring, analyses, and reporting;

The elimination of illicit connections or discharges;

That violating discharges, practices, or operations shall cease and desist;

The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and

Payment of a fine to cover administrative and remediation costs; and

The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to

remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

In the event the violation constitutes an immediate danger to public health or public safety, the City of Landfall Village is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City of Landfall Village is authorized to seek costs of the abatement as outlined in Sec. 920.17.

In lieu of enforcement proceedings, penalties and remedies authorized by this ordinance, the City of Landfall Village may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec. 920.15 Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority their designee shall be final.

Sec. 920.16 Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within five (5) days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 920.17 Cost of Abatement of the Violation. Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of six (6) percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

Sec. 920.18 Injunctive Relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 920.19 Appeal of Notice of Violation. In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec. 920.20 Violations Deemed A Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec. 920.21 Civil Penalties. In the event the alleged violator fails to take remedial measures set forth in the notice of violation or otherwise fails to cure the violation described therein within five (5) days, or such greater period as the authorized enforcement agency shall deem appropriate, after the City of Landfall Village has taken one or more of the actions described above, the City of Landfall Village may impose a penalty not to exceed \$5,000 (depending on the severity of the violation) for each day the violation remains unremedied after the receipt of the notice of violation.

Sec. 920.22 Criminal Prosecution. Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$1,000. Dollars per violation per day and/or imprisonment for a period of time not to exceed ninety (90) days.

The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Sec. 920.23 Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Sec. 920.24 Adoption of Ordinance.

This ordinance shall be in full force and effect after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 930 – GAS FRANCHISE (ORDINANCE NO. 2013-011)

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF LANDFALL VILLAGE, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

SECTION 930.1 DEFINITIONS.

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

City. The City of Landfall Village, County of Washington, State of Minnesota.

City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.

Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.

Gas. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

Gas Facilities. Pipes, mains, regulators, and other facilities owner or operated by Company for the purpose of providing gas service for public use.

Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, One Fourth Avenue North, Landfall Village, MN 55128.. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

SECTION 930.2 ADOPTION OF FRANCHISE.

Sec. 930.2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

Sec. 930.2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

Sec. 930.2.3 Service and Rates. The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.

Sec. 930.2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

Sec. 930.2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 930.3 LOCATION, OTHER REGULATIONS.

Sec. 930.3.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's

construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

Sec. 930.3.2 Field Locations. Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

Sec. 930.3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

Sec. 930.3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

Sec. 930.3.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

Sec. 930.3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

SECTION 930.4 RELOCATIONS.

Sec. 930.4.1 Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Sec. 930.4.2 Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

Sec. 930.4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas

Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

Sec. 930.4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 930.5 TREE TRIMMING.

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

SECTION 930.6 INDEMNIFICATION.

Sec. 930.6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

Sec. 930.6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 930.7 VACATION OF PUBLIC WAYS

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

SECTION 930.8 CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 930.9 PROVISIONS OF ORDINANCE.

Sec. 930.9.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Sec. 930.9.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 930.10 AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the

amendment, which amendatory ordinance shall become effective upon the filing of Company’s written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 930.11 PREVIOUS FRANCHISE SUPERSEDED.

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

SECTION 940 – ELECTRIC FRANCHISE (ORDINANCE NO. 2013-010)

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF LANDFALL VILLAGE, 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 GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

SECTION 940.1 DEFINITIONS.

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

City. The City of Landfall Village, County of Washington, State of Minnesota.

City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

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. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.

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

Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 1 Fourth Avenue North, St. Paul, MN 55128. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

SECTION 940.2 ADOPTION OF FRANCHISE.

Sec. 940.2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

Sec. 940.2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

Sec. 940.2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

Sec. 940.2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

Sec, 940.2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 940.3 LOCATION, OTHER REGULATIONS.

Sec. 940.3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

Sec. 940.3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

Sec. 940.3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

Sec. 940.3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

Sec. 940.3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

Sec. 940.3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

Sec. 940.3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

SECTION 940.4 RELOCATIONS.

Sec. 940.4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, re-grade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, re-grade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience

of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Sec. 940.4.2 Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

Sec. 940.4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

Sec. 940.4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 940.5 TREE TRIMMING.

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

SECTION 940.6 INDEMNIFICATION.

Sec. 940.6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

Sec. 940.6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 940.7 VACATION OF PUBLIC WAYS.

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

SECTION 940.8 CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 940.9 FRANCHISE FEE.

Sec. 940.9.1 Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 9 shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$ 2.25
Sm C & I – Non-Dem	\$ 4.75
Sm C & I – Demand	\$14.00
Large C & I	\$65.00
Public Street Ltg	\$15.50
Muni Pumping –N/D	\$ 0.00
Muni Pumping – Dem	\$ 0.00

Sec. 940.9.2 Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 9.1 above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

Sec. 940.9.3 Terms Defined. For the purpose of this Section 9, the following definitions apply:

Sec. 940.9.3.1 “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.

Sec. 940.9.3.2 “Fee Schedule” refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.

Sec. 940.9.4 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 9. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company’s applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

Sec. 940.9.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The “same or greater equivalent amount” shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall

not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 9.5, the foregoing conditions will be waived to the extent of such written consent.

SECTION 940.10 PROVISIONS OF ORDINANCE.

Sec. 940.10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Sec. 940.10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 940.11 MODIFICATION PROCEDURE.

From time to time the City may, in its sole discretion, modify the terms of the Franchise Agreement and hereby acknowledges that it will do so by repeal of the then existing Ordinance and Agreement and adopt a new Ordinance and Franchise Agreement, with new terms clearly identified and with proper notice with respect to Xcel's business practices taken into account; a period that shall not be less than 90 days from approval to institution, the approval of which shall be contingent upon Xcel's advise and consent authority as provided by State Statute.

SECTION 940.12 PREVIOUS FRANCHISES SUPERSEDED.

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

SECTION 950 – ELECTRIC FRANCHISE FEES (ORDINANCE NO. 2013-012)

AN ORDINANCE IMPLEMENTING AN ELECTRIC SERVICE FRANCHISE FEE ON NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, FOR PROVIDING ELECTRIC SERVICE WITHIN THE CITY OF LANDFALL VILLAGE.

SECTION 950.1

The City of Landfall Village Municipal Code is hereby amended to include reference to the following Special Ordinance.

Sec. 950.1 Subdivision 1. Purpose. The Landfall Village City Council has determined that it is in the best interest of the City to impose a franchise fee on those public utility companies that provide electric services within the City of Landfall Village.

- (a) Pursuant to City Ordinance 2013-010, a Franchise Agreement between the City of Landfall Village and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, the City has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, in an amount and fee design as set forth in Section 9 of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

Sec. 950.1 Subdivision 2. Franchise Fee Statement. A franchise fee is hereby imposed on Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, its successors and assigns, under its electric franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the Xcel Energy April 2014 billing month.

THIS FEE IS AN ACCOUNT-BASED FEE ON EACH PREMISE AND NOT A METER-BASED FEE. IN THE EVENT THAT AN ENTITY COVERED BY THIS ORDINANCE HAS MORE THAN ONE METER AT A SINGLE PREMISE, BUT ONLY ONE ACCOUNT, ONLY ONE FEE SHALL BE ASSESSED TO THAT ACCOUNT. IF A PREMISE HAS TWO OR MORE METERS BEING BILLED AT DIFFERENT RATES, THE COMPANY MAY HAVE AN ACCOUNT FOR EACH RATE CLASSIFICATION, WHICH WILL RESULT IN MORE THAN ONE FRANCHISE FEE ASSESSMENT FOR ELECTRIC SERVICE TO THAT PREMISE. IF THE COMPANY COMBINES THE RATE CLASSIFICATIONS INTO A SINGLE ACCOUNT, THE FRANCHISE FEE ASSESSED TO THE ACCOUNT WILL BE THE LARGEST FRANCHISE FEE APPLICABLE TO A SINGLE RATE CLASSIFICATION FOR ENERGY DELIVERED TO THAT PREMISE. IN THE EVENT ANY ENTITIES COVERED BY THIS ORDINANCE HAVE MORE THAN ONE PREMISE, EACH PREMISE (ADDRESS) SHALL BE SUBJECT TO THE APPROPRIATE FEE. IN THE EVENT A QUESTION ARISES AS TO THE PROPER FEE AMOUNT FOR ANY PREMISE, THE COMPANY’S MANNER OF BILLING FOR ENERGY USED AT ALL SIMILAR PREMISES IN THE CITY WILL CONTROL.

Sec. 950.1 Subdivision 3. Payment. The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 9 of the Franchise.

Sec. 950.1 Subdivision 4. Surcharge. The City recognizes that the Minnesota Public Utilities Commission may allow Company to add a surcharge to customer rates of city residents to reimburse Company for the cost of the fee.

Sec. 950.1 Subdivision 5. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 2.5 of the Franchise Agreement.

Sec. 950.1 Subdivision 6. Effective Date of Franchise Fee. The effective date of this Ordinance shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance to Xcel Energy by certified mail. Collection of the fee shall commence as provided above.

SCHEDULE A

Franchise Fee Rates:

Electric Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Amount per month</u>
Residential	\$ 2.25
Sm C & I – Non-Dem	\$ 4.75
Sm C & I – Demand	\$14.00
Large C & I	\$65.00
Public Street Ltg	\$15.50
Muni Pumping –N/D	\$ 0.00
Muni Pumping – Dem	\$ 0.00

Franchise fees are to be collected by the Utility at the rate listed below, and submitted to the City on a quarterly basis as follows:

- January – March collections due by April 30.
- April – June collections due by July 31.
- July – September collections due by October 31.
- October – December collections due by January 31.

CHAPTER 9 CHANGE RECORD:

5-8-13 Section 920 - Adopting an Illicit Discharge and Connection to Storm Sewer System (Ordinance 2007-004) added to Chapter 9 rather than previously held as a stand-alone document.

12-11-13 Section 930 – Adopted Gas Franchise / Publication Date: 12-25-13

12-11-13 Section 940 – Adopted Electric Franchise / Publication Date: 12-25-13

12-11-13 Section 950 – Adopted Electric Franchise Fees / Publication Date: 12-25-13