

**CHAPTER 8
FRANCHISES**

Section 8.01. Cable Services Franchise.

Subd. 1. **Statement of Intent and Purpose.** That after a full public proceeding which afforded reasonable notice and opportunity to be heard, it is hereby determined that:

- A. The City of Alexandria, pursuant to applicable laws, is authorized to grant one or more non-exclusive Franchises to construct, operate, upgrade, maintain and reconstruct Cable Services Systems within the City of Alexandria.

- B. The City Council finds that the development of a Cable Services System has the potential of having great benefits and impact upon the residents of the City, for such a System can contribute significantly to the communication needs and desires of many individuals, organizations, associations and institutions. Because of the complex and rapidly changing technology associated with cable television and other means of communication, the City Council further finds that the public convenience, safety and general welfare can best be served by granting one or more Cable Services franchises and by establishing regulatory powers which shall be vested in the City or such Persons as the City shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public, and any Cable Services franchises issued pursuant to this ordinance shall be deemed to include this finding as an integral part thereof.

Subd. 2. **Definitions.** For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with this context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" and "should" are permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Activated Channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel

- designated for public, educational, or governmental use.
- B. "Affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
 - C. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.
 - D. "Cable Act" collectively means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 and as the same may, from time to time be further amended.
 - E. "Cable Channel" or "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).
 - F. "Cable Operator" means any person or group of persons who: provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
 - G. "Cable Service" means: the one-way transmission to Subscribers of Video Programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
 - H. "Cable System", or "System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves Subscribers without using any Public Way; a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. Section 541(c)) to the extent such facility is used in transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; an open video system that complies with 47 U.S.C. Section 653; or any facilities of any

electric utility used solely for operating its electric utility system.

- I. "City" means the City of Alexandria and all of the geographic area within its municipal boundaries. The City acts through its City Council and is empowered by federal, state and local law to grant this Franchise to Grantee.
- J. "FCC or "Commission" means the Federal Communications Commission or any legally appointed designated or elected agent or successor thereto.
- K. "Franchise" shall mean the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes construction and operation of a Cable System.
- L. "Franchise fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on the Grantee or Subscribers, or both, solely because of their status as such. The term "franchise fee" does not include: any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); payments which are required by this franchise to be made by the Grantee during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities; capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under title 17 of the United States Code.
- M. "Grantee" means CC VIII Operating, LLC, dba Charter Communications, and any lawful successor, transferee, or assignee thereto.
- N. "Gross Revenues" mean any revenue received by the Grantee, whether directly or indirectly, from the operation of the Cable System to provide Cable Services In the Service Area, including, but not limited to, basic cable service fees, pay cable service fees, auxiliary service charges, equipment rental income, installation and reconnecting fees, service call

charges and advertising revenues, provided, however, that such phrase shall not include: unrecovered bad debt, credits, refunds and deposits paid to Subscribers, tower rentals, any tax, fee or assessment of any kind imposed by the City or other governmental entity on a cable operator such as an FCC user fee, or Subscriber, or both, solely because of their status as such; any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee or assessment imposed, both on utilities and cable operators and their services); and any other special tax, assessment or fee such as business, occupation and entertainment tax.

- O. "Multichannel Video Programming Distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- P. "Normal business hours" means those hours during which most similar businesses in the community are open to serve Subscribers.
- Q. "Normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- R. "Other Programming Service" means information that a cable operator makes available to all subscribers generally.
- S. "Person" means an individual, natural person, proprietorship, general or limited partnership, association, joint stock company, trust, corporation, firm, limited liability company, joint venture or other legally recognized entity, private or public, whether for profit or not for profit.
- T. "Public Way" shall mean the surface of, and the space above and below, any public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose

of installing, operating, repairing, maintaining and removing the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, repairing, maintaining and removing the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

- U. "Public, Educational, or Governmental Access" means: channel capacity designated for public, educational, or governmental use.
- V. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means, unless otherwise specified in the Franchise Agreement.
- W. "Service Tier" means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- X. "State" means the State of Minnesota and any political subdivision or agency thereof.
- Y. "Subscriber" means a Person who lawfully receives services of the Cable System with the Grantee's express permission.
- Z. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Subd. 3. **Grant of Franchise.**

A. Grant.

1. The City previously granted to the Grantee's predecessor a cable television franchise which expired on August 31, 2012.
2. The City and Grantee have mutually agreed to continue said franchise under its terms and condition pending the renewal thereof.
3. The City Council has considered the Grantee's technical ability, financial condition, and legal qualifications and has approved the same.
4. The City Council has reviewed Grantee's plans for constructing, operating, upgrading, maintaining and reconstructing its existing Cable Services System and has found them to be adequate and

feasible.

5. There is hereby awarded to CC VIII Operating, LLC, a non-exclusive franchise for the construction, operation, upgrading, maintenance and reconstruction of a Cable Services System which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services, subject to Subd 3.C.1. in along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.
6. Grantee's prior cable television franchise and any extensions thereof are terminated upon the passage by the City of this Cable Services Franchise Ordinance and the acceptance by the Grantee.
7. Grantee hereby certifies that it has completed a system upgrade so that the cable system has a channel capacity available for immediate and future use equal to 750 MHz bandwidth, capable of delivering a minimum of 78 channels.

B. Term. The Franchise granted pursuant to this Ordinance shall be for an initial term of ten (10) years from the effective date of the Franchise, unless otherwise lawfully extended or terminated in accordance with the term of this Ordinance.

C. Non-cable services.

1. Permission Granted. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by applicable law.

D. Acceptance; Effective Date. Grantee shall accept the Franchise granted pursuant hereto by signing this ordinance and filing same with the City Administrator within sixty (60) days after the passage and final adoption of this Ordinance., The effective date of this Ordinance shall be the date when the Grantee has signed the Franchise.

- E. Compliance with Laws and Regulations. The provisions of this franchise shall be subject to applicable federal, state and local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes Annotated (M.S.A.) Chapter 238; provided, however, if any provisions of M.S.A. Chapter 238 conflict with the Cable Act or other applicable federal law or rulings, the provisions of the Cable Act or such other federal law or ruling shall have precedence. Grantee and the City shall conform to all state laws, rules and regulations regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws and regulations regarding Cable Services as they become effective.

Subd. 4. **Standards of Service.**

- A. Construction Standards. Grantee shall not commence construction of a cable services system, open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from the proper municipal authority. If Grantee fails to meet the conditions of the permit the City shall have the right to put the street or public place back into the condition that existed immediately prior to use by the Grantee at the actual or reasonable expense of the Grantee, whichever is less. Such permit shall not be unreasonably withheld. All wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. The Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Franchise area or endanger the life or property of any persons.
- B. Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways by the City or others and with the rights and reasonable convenience of owners who own property that adjoins any of said Public Ways.
- C. Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any

Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to the condition of the Public Way existing immediately prior to such disturbance.

- D. Relocation at Request of City. Upon its receipt of reasonable advance notice, not to be less than sixty (60) days, the Grantee shall at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.
- E. Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.
- F. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Public Ways of the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the City or property owner pursuant to the terms of this section.
- G. Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall

be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

H. Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, either aerial or underground. Nothing contained in this section shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as, but not limited to, subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

1. New Developments. The City shall use its best efforts to provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Grantee shall then be responsible for coordinating such undergrounding with the developers, at Grantee's sole discretion

and in compliance with the line extension requirements contained herein. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or Developer unless otherwise provided.

2. Local Improvement District. If an ordinance is passed creating a local improvement district which involves placing underground all utilities including that of the Grantee which are then located overhead, the Grantee shall participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirements of the City. The Grantee may include its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law.
- I. Required Extensions of Service. The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided under Section 3.13 of this Ordinance.
 - J. Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on

the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1,320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

- K. Service to Public Buildings.
Grantee shall provide Basic Cable Service and one free outlet to each of the following public facilities: Lincoln Elementary School, Voyager Elementary School, Woodland Elementary School, Carlos Elementary School, Miltona Elementary School, Garfield Elementary School, Discovery Middle School, Jefferson High School (so long as it is used as a high school by Alexandria School District 206), the new high school being constructed by Alexandria School District 206 during the term of this Franchise, City Hall, Alexandria Police Department, Alexandria Fire Department, Douglas County Public Library and Douglas County Sheriff's Office at their current locations. Additional equipment services and programming tiers will be billed according to Grantee's current pricing. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Cable Service to new construction hereafter for similar public facilities, provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee. Provided, further, that tThe 125-foot limitation shall not apply to the new high school being constructed by Alexandria School District No. 206.

- L. Emergency Use.
1. In accordance with and at the time required by the provisions of FCC Regulations Part I 1, subpart D, Section 11.5 1, and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN)

and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.18.

2. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys fees and costs.

M. Public, Educational, and Governmental (PEG) Access Channel. Grantee shall provide to each of its Subscribers who receives some or all of the services on the Cable System, reception on at least one specially designated non-commercial public, educational and governmental access channel. The specially designated public, educational and governmental access channel may be used by the general public on a first-come, first-served, nondiscriminatory basis. The specially designated access channel may be used by local education authorities and local government on a first-come, first-served, nondiscriminatory basis during those hours when the channel is not in use by the general public.

N. Other Access Requirements.

1. Grantee shall have no responsibility to produce programming for or to operate the access channel; Grantee's responsibility shall be to provide the access channel and to allow it to be used to distribute programming produced by the City and/or other third parties. Access channel programming and operation shall be the City's responsibility, subject to any access channel policies and procedures which the City may adopt consistent with applicable law. The PEG channel may be placed on any tier of service available to subscribers.
2. Additional Access Channels. Whenever the specially designated access channel set forth above is in

use during eighty percent (80%) of the weekdays (Monday through Friday), for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall have six (6) months in which to provide a second specially designated access channel for the same purpose.

3. Access Channel Operating Rules. The Grantee shall establish rules pertaining to the administration of the specially designated access channel(s). The rules shall be consistent with any state or federal rules or regulations relating to access channels.
 4. Origination Capability. Grantee shall continue to provide, or complete construction and provide equipment to enable the ability to transmit PEG programming from the following locations:
 - i. Alexandria City Hall;
 - ii. Discovery Middle School;
 - iii. Douglas County Courthouse.
 - iv. New High School being constructed by Alexandria School District No. 206.
0. Upon ninety (90) days written notice, the City may require the Grantee to pay up to \$1.50 per Subscriber, per month, in support of access channel-related capital needs and Franchise PEG capital requirements. Such charge may be itemized as a "PEG Fee" and passed-through on Subscriber's bills. The City Council shall establish the amount of PEG capital support required, if any, by Resolution. The City Council shall not modify the PEG capital support amount more than one time in any twelve month period. All amounts received by the City shall be used in accordance with applicable federal law. Upon request, the City shall provide a report to Grantee verifying the expenditure of PEG Fees in accordance with applicable law.

Subd. 5. **Regulation by City.**

A. Franchise Fee.

1. Grantee shall pay to the City a Franchise fee of 5% of Gross Revenues on a quarterly basis. The Franchise fee payment shall be due and payable ninety (90) days after the close of the preceding quarter.
2. Grantee shall document its computation of the Franchise fee by providing at least the information contained in Exhibit A.

3. The City shall have the right to audit Grantee's books and other financial records in order to verify the accuracy of the franchise fee payment.

B. Rates and Charges.

1. The City may not regulate the rates for the provision of Cable Service, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto as amended from time to time. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.
2. A schedule of the current Subscriber charges, as well as the form of residential Subscriber contract, specifying the current length and term of subscriber contracts, shall be kept on file, and available for public inspection during normal office hours, at the office of Grantor.

C. Renewal of Franchise.

1. The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
2. In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. The City further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 of the Cable Act is considered to begin.

Notwithstanding anything to the contrary set forth in this section, the Grantee and City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. The Grantee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

D. Abandonment or Removal of Franchise Property.

1. Grantee shall not abandon any portion of its Cable System without giving at least three (3) months prior written notice to City. A Grantee shall not abandon any portion of the Cable System without compensating the City for any damages resulting to the City from the abandonment.
2. Subject to 47 U.S.C. § 546, at the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days, except to the extent grantee is authorized or utilizing the System pursuant to other Applicable Laws.
3. Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

E. Sale or Transfer of Franchise.

1. This Franchise or Cable System shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any

right, interest or property therein, pass to or vest in any person, including an affiliate, without full compliance with the procedure set forth in this Section and Minn. Stat. § 238.083.

2. The provisions of this Section shall apply to the sale or transfer of all or a portion of Grantee's assets, merger (including any parent and its subsidiary entity), consolidation, creation of a subsidiary entity or sale or transfer of stock or other interest in Grantee so as to create a new controlling interest in the Cable System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
 - i. The parties to the sale or transfer shall make a written request to City for its approval of a sale or transfer. City shall then make a determination pursuant to this Franchise as to the exercise of its first right of refusal to purchase System.
 - ii. City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary.
 - iii. If a public hearing is deemed necessary pursuant to (ii) above, such hearing shall be conducted within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.
 - iv. Within thirty (30) days after the public hearing, City shall approve or deny in writing the sale or transfer request, or it shall exercise its right of first refusal. Approval shall not be unreasonably withheld.
 - v. Grantee, upon transfer, shall within sixty (60) days thereafter file with City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.
3. In reviewing a request for sale or transfer, the City may inquire into the qualifications of the prospective controlling party, and Grantee shall

assist City in so inquiring. City may condition said transfer upon the new controlling party's compliance with the terms and conditions of this Franchise. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise, and reimbursing City for all costs and expenses, including its attorneys' fees resulting from such sale or transfer.

- F. City's Right to Purchase System. The City shall be entitled to a right of first refusal of any bona fide offer to purchase the Grantee as set forth in section E above. Bona fide offer as used in this Section means a written offer which has been accepted by Grantee subject to City's rights under this Franchise. The price to be paid by City shall be the bona fide offer for the Cable System including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within ninety (90) days of City's receipt from Grantee of a copy of written bona fide offer. If the City decides to exercise this right of first refusal, the City must complete its acquisition of the Cable System within 60 days after notifying Grantee of its decision to do so.
- G. Purchase by City Upon Non-Renewal or Revocation. City may, upon the payment of a fair valuation, purchase, take over and hold the property and plant of Grantee in whole or in part in the following circumstances.
1. If such purchase or taking over be at the non-renewal of the Franchise, such valuation shall be at fair market value determined on the basis of the cable system valued as a going concern, but with no value attributed to the Franchise itself.
 2. If such purchase or taking over be at the revocation of the Franchise for cause, such valuation shall be at an equitable price.
- G. Removal of Property. Upon revocation, termination, non-renewal or forfeiture of this Franchise, Grantee shall, if the City so requests, remove all of its cables, wires and appliances from the streets, alleys, and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. If the same are not so removed, the City may cause the same to be removed and recover the reasonable costs thereof from Grantee.

- H. Continuing Administration Responsibility. The office of the City Administrator shall be responsible for the continuing administration of this Franchise.
- I. Alexandria Cable Commission. There is hereby continued in existence a commission to be appointed by the governing body of the City to monitor the performance of the Grantee in executing the provisions of the Franchise. Nominees for appointment to the commission shall be representative of social concerns or geographic areas of the City or have a stated interest in the development or use of cable services within the City, and they shall be residents of the City, or, if a non-resident of the City, shall reside within the Alexandria service area of the grantee. Except as herein provided for, persons involved commercially in cable services, broadcasting, or the news media, as well as City-elected officials, shall not serve as members, but may consult with and advise the commission. If the City should ever have a significant racial minority population, every effort shall be made by the City to place representatives of one or more of the racial minorities on the commission. Every effort shall be made to place a proportionate number of women on the commission. The commission shall consist of seven members appointed for two (2) year terms selected as follows: Five at-large representatives (three of whom must be City residents), one representative of School District 206, and one representative of the Grantee. The City or Grantee service area residency requirement does not apply to the representatives of School District 206 and Grantee. The commission's responsibilities shall include the following tasks:
1. Forwarding recommendations to the City regarding the immediate or ongoing use of cable commissions in the City;
 2. Guaranteeing non-discriminatory access to the public channels to all persons in the City;
 3. Conciliating disagreements among the Grantee, subscribers, and public and private users of the Grantee's system's facilities;
 4. Adopting rules governing its procedures;
 5. Submitting an annual report to the governing body of the City regarding the use of cable communications services in the City including a review of any plans submitted during the year by the Grantee for the development for new cable communications services;
 6. Keeping abreast of the developments in cable

- communications for the purpose of forwarding recommendations to the City regarding the Grantee's needs for upgrading the system to meet the current state of the art;
7. One year prior to the expiration of the Franchise and prior to the expiration of the Certificate of Confirmation and Advisory Board shall submit a report to the City which report shall include a written appraisal of the performance of the Franchisee over the entire length of the Franchise with regarding to the provisions of the Franchise. The report shall include recommendations for revised or additional provisions for the Franchise considering the following items:
 - i. Channel capacity.
 - ii. Channels for access cable casting.
 - iii. Facilities and staff assistance available for access cable casting.
 - iv. Two-way capability.
 - v. The need for further service to be extended within the franchised area based upon the re-assessment of the commission's needs of the City in relation to the service generally offered by the cable industry. (vi) Within ten (10) days after said report is submitted to the City by the Commission, a copy of the report shall be filed to the Franchisee.
 8. Reviewing annually the Grantee's franchise fee payment;
 9. Reviewing any reports submitted by Grantee to the City.
 10. Keeping abreast of local needs for Cable Channels to be included in the Cable Service to be provided by the Grantee to its Subscribers (such as a Fargo, North Dakota television station similar to WDAY-TV) and encouraging the Grantee to include such stations in its cable service.

Subd. 6. **Technical Compliance**

A. Technical Standards.

1. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement. In addition, the Grantee shall provide to City, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted

pursuant to Federal Communications Commission standards and guidelines.

2. Grantee shall at all times fully comply with the provisions of the Federal Communications Commission technical standards at Section 76, Subpart K of the Code of Federal regulations and found in 47 CFR §§ 76.601 to 76.617, as may be amended from time to time. Upon the City's request, Grantee shall provide the City with a copy of any tests required to be performed pursuant to FCC standards.
3. All installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended. All construction practices shall be in accordance with all applicable section of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.
4. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.
5. Grantee shall provide a Cable System with a channel capacity available for immediate and

future use equal to at least 750 MHz bandwidth, capable of delivering a minimum of 78 channels of programming.

- B. Technical Violations. The parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called technical breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

1. In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or
2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the

Franchise or local cable ordinance.

C. Records required and City's right to inspect.

1. Reports Required. The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the City upon request.
2. The Grantee shall at all times maintain:
 - i. A record of all written complaints received regarding customer service, interruptions or degradation of Cable Service shall be maintained for three (3) years, including the resolution of such complaints.
 - ii. A full and complete set of plans, records and strand maps showing the location of the Cable System.
 - iii. All records of revenues and other financial information relative to the computation of the Franchise Fee set forth herein.
 - iv. An accurate count of the number of subscribers in the Service Area.
3. Inspection of Records. Grantee shall permit any duly authorized representative of the City, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the City. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any

other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

D. Annual Reports.

1. Upon request, Grantee shall, within ninety (90) days of each calendar year end, submit a written end of the year report to City with respect to the preceding calendar year containing the following information as it pertains to the Cable System authorized pursuant to this Ordinance:
 - i. A Summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to Cable Services commenced or discontinued during the reporting year;
 - ii. A report of gross subscriber revenues.
2. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during Normal Business Hours.
3. All reports and records required under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this Ordinance or the Franchise agreement.

E. Audit. The City and its agents and representatives shall have authority to arrange for and conduct at City's expense an audit of Grantee's accounting and financial records for the sole purpose of verifying the Grantee's franchise fee payment. Grantee shall first be given ten (10) days written notice of the inspection and description, to the best of City's ability, of the books, records, documents and equipment it wants to audit. The Grantee shall also have the right to audit and review any and all PEG fee financial records throughout the term of this Franchise.

F. Monitoring and Compliance Reports. Upon request, Grantee shall provide a written report of the FCC performance tests for the System required in Part 76, Section 76.601 of FCC rules and regulations.

G. Additional Reports. Grantee shall prepare and furnish to City, at the times and in the form reasonably prescribed, such mutually agreed to additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of the Franchise, provided, however, Grantee shall not be required to disclose any information which it reasonably deems confidential or proprietary.

Subd. 7. **Insurance, Indemnification and Bonds or Other Surety**

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	[\$1,000,000]per
occurrence, Combined Single Liability (C.S.L.)	[\$2,000,000]General
Aggregate	
Auto Liability including coverage	[\$1,000,000] per
occurrence C.S.L. on all owned, non-owned hired autos	
Umbrella Liability	
Umbrella Liability	[\$1,000,000] per occurrence
C.S.L.	

B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

D. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

Subd. 8. **Enforcement and Termination of Franchise**

- A. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

- B. Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the notice described in Subd. 8" (a) to respond to the City contesting the assertion of noncompliance or; (b) to cure such default or; (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date of completion.

- C. Public Hearing. In the event that Grantee disputes the noncompliance or fails to respond to the notice described in Subd. 8.A. pursuant to the procedures set forth in Subd. 8.B., or in the event that the alleged default is not remedied within thirty (30) days after the Grantee is notified of the alleged default pursuant to Subd. 8.A. or the Grantee fails to take steps to cure pursuant to Subd. 8.B, then, the City, or its Agent, shall issue a written notice to the Grantee to appear before the Franchise administrator, or other appropriate and delegated Agent, to resolve the issue of noncompliance. Upon determination by the City that the Grantee is in noncompliance with the Franchise Agreement and that no proposed remedy is satisfactory to the City, the City shall make a written recommendation to schedule a public hearing to investigate the alleged default. Said public hearing shall be held at the next regularly scheduled hearing of the City that is scheduled at a time that is not less than five (5) business days there from. The City shall notify the Grantee, in writing, of the time and place of such hearing and provide the Grantee with an opportunity to be heard.

- D. Enforcement.
 - 1. Subject to applicable federal and state law, in the event the City, after such hearing, determines that Grantee is in default of any provision of the Franchise, the City may:
 - i. Commence an action at law for monetary damages or seek other equitable relief;

- ii. In the case of a substantial default of a material provision of the Franchise, any attempt by Grantee to evade the provisions of the Franchise, or Grantee practices fraud or deceit upon the City, declare the Franchise Agreement, and the rights and privileges thereof, to be revoked; or
 - iii. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.
 2. Any such determination by the City shall be subject to review by a court of competent jurisdiction. During any appeal period, this Franchise shall remain in full force and effect unless the term thereof sooner expires.
 3. The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance.
- E. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, unavailability of equipment, access to third party facilities including by not limited to poles, conduits, or railroad crossings, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control.

Subd. 9. **Unauthorized Reception**

- A. Misdemeanor. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of

the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the City shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law that will enforce the intent of this section.

Subd. 10. **Consumer Protection Provisions**

- A. Customer Service Standards. The City hereby adopts the customer service standards set forth in 47 C.F.R. §76.309 and §§ 76.1601-1604 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

Subd. 11. **Miscellaneous Provisions**

- A. Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.
- B. Actions of City. In any action by the City or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- C. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Services System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Services Franchises granted by City shall contain the same substantive terms and conditions.
- D. Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party

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five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the City shall be addressed as follows:

City of Alexandria
Attn: City Administrator
704 Broadway
Alexandria, MN 56308

The notices or responses to the Grantee shall be addressed as follows:

Charter Communications
Attn: General Manager
3993 Heritage Place NW
Rochester, MN 55901

With a copy to:

Charter Communications
Attn: Legal Department
12405 Powerscourt Drive
St. Louis, MO 63131

City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

- E. Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- F. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Source: Ordinance 682-2nd Series
Effective Date: 02/11/13

Section 8.02. **Gas Franchise.**

Subd. 1. **Definitions.**

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

- A. "City". The City of Alexandria, County of Douglas, State of Minnesota.
- B. "City Utility System". Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- C. "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.
- D. "Company". CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas ("CenterPoint Energy") its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.
- E. "Gas Energy". Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.
- F. "Gas Facilities". Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.
- G. "Notice". A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to Alexandria City Administrator, 704 Broadway, Alexandria, MN 56308. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

- H. "Ordinance". This gas franchise ordinance, also referred to as the Franchise.
- I. "Public Way". Any highway, street, alley or other public right-of-way within the City.
- J. "Public Ground". Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

Subd. 2. **Adoption of Franchise.**

- A. Grant of Franchise. City hereby grants Company, for a period of 10 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law.
- B. Effective Date; Written Acceptance. This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution shall revoke this Franchise.
- C. Service and Gas Rates. The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.
- D. Publication Expense. Company shall pay the expense of publication of this Ordinance.

E. 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.

F. Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 10-year term set forth in Section 2.1.

Subd. 3. **Location, Other Regulations.**

A. Location of Facilities. Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location selected by the City. The location, relocation, construction, reconstruction, operation, repair, and maintenance of Gas Facilities shall be subject to reasonable 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 Franchise.

- B. Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.
- C. Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the Public Ground 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 Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to 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 of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Subdivision 3.3. The Company shall not be required to post a construction performance bond.
- D. Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. Per Minnesota Statute 216D.05, the City must take

protective measures when it performs work near the Gas Facilities.

- E. Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.
- F. Mapping Information. If requested by City, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.
- G. Emergency Response. As emergency first-responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company.

Subd. 4. **Relocations.**

- A. Relocation in Public Ways and Public Grounds. The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in either Public Ways or Public Grounds.
- B. Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46.

Subd. 5. Indemnification.

- A. Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.
- B. 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. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

Subd. 6. Vacation of Public Ways and Public Grounds.

The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3200 with respect to any request for vacation.

Subd. 7. Change In Form of Government.

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

Subd. 8. **Franchise Fee.**

- A. Form. During the term of the franchise hereby granted, the City may charge the Company a franchise fee. The Company will administer the collection and payment of franchise fees to City in lieu of permit fees, or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each retail customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company will provide a formula that will produce a substantially similar fee amount to the City. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of this Ordinance.
- B. Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council. The effective date of the franchise fee ordinance shall be no less than ninety (90) days after written Notice enclosing a copy of the duly adopted and approved ordinance has been served upon the Company by Certified mail. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same within the ninety (90) day period.
- C. Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise.
- D. Collection of Fee. The franchise fee shall be payable not less than quarterly during complete billing months

of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same Notice and acceptance requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

- E. Continuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this Franchise. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

Subd. 9. **Abandoned Facilities.**

The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities not located in Public Ways and Public Grounds.

Subd. 10. **Provisions of Ordinance.**

- A. 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.

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

Subd. 11. **Amendment-Procedure.**

Either party may propose at any time that this franchise Ordinance be amended. Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

Source: Ordinance 523-2nd Series
Effective Date: 11/10/03

Source: Ordinance 695-2nd Series
Effective Date: 01/27/14

Section 8.03. **Gas Franchise Fee.**

Subd. 1. **Definitions.**

For the purposes of this Ordinance, the following terms shall have the following meanings:

- A. "City". The City of Alexandria, County of Douglas, State of Minnesota.
- B. "Company". CenterPoint Energy Minnesota Gas ("CenterPoint Energy"), its successors and assigns.
- C. "Franchise Agreement". The franchise agreement between the City and Company pursuant to City Ordinance 695.
- D. "Gross Revenues". All sums received by CenterPoint Energy from the sale of gas energy to its retail customers within the corporate limits of the City.

E. "Notice". Notice means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, MN 55402. Notice to City shall be mailed to the City Clerk at Alexandria City Hall, 704 Broadway, Alexandria, MN 56308.

Subd. 2. **Purpose.** The Alexandria 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 natural gas and electric services within the City. Pursuant to the Franchise Agreement the City has the right to impose a franchise fee on Company.

Subd. 3. **Franchise Fee Statement and Schedule.** During the ten (10) year term of the Franchise Agreement between CenterPoint Energy and the City, the City shall charge, and CenterPoint Energy shall pay a franchise fee of five percent (5%) of its Gross Revenues.

Franchise fees are to be collected by the Company and submitted to the City 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.

Subd. 4. **Record Support for Payment.** The Company shall make each payment when due and, if requested by the City, shall provide a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total made to account for any non-collectible accounts, refunds or error corrections. The Company shall permit the City, and its representatives, access to the Company's records for the purpose of verifying such statements.

Subd. 5. **Payment Adjustments.** Payment to the City will be adjusted where the Company is unable to collect the franchise fee. This includes non-collectible accounts

Subd. 6. **Surcharge.** The City recognizes that the Minnesota Public Utilities Commission may allow the Company to add a surcharge to customer rates of city residents to reimburse the Company for the cost of the fee.

Subd. 7. **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 ordinance or for such other relief permitted by law.

Subd. 8. **Effective Date of Franchise Fee.** The effective date of this Ordinance shall be after its publication and ninety (90) days or more after sending written notice enclosing a copy of this adopted Ordinance to Company by certified mail. Collection of the fee shall commence as provided above. Collection of the existing franchise fee as defined in the City of Alexandria Ordinance No. 531, adopted on January 26, 2004 shall continue until such time as the second reading of this ordinance is passed and adopted.

Subd. 9 **Relation to Franchise Agreement.** This ordinance is enacted in compliance with the Franchise Agreement and shall be interpreted as such.

Subd. 10. **Periodic Review.** The City Council shall review this ordinance every two years in whatever manner the City Manager then determines to be appropriate, including, but not limited to, review by the City Council in either a work session or a regular session. Failure to review this ordinance shall not in any way invalidate or limit it.

Subd. 11. **Permit Fees.** The Company will administer the collection and payment of franchise fees to the City in lieu of permit fees, or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City so long as the following requirements are met:

- A. The Company applies for any and all permits, licenses and similar documentation as though this provision did not exist.
- B. The Company requests the fee to be waived at the time of application.

Source: Ordinance 696-2nd Series
Effective Date: 02/10/14