

**CITY OF OSAKIS  
ORDINANCE NO. 144**

**AN ORDINANCE AMENDING ORDINANCE NO. 59  
AN ORDINANCE OF THE CITY OF OAKIS, MINNESOTA, AMENDING  
ORDINANCE NO 59 (ELECTRIC FRANCHISE ORDINANCE) TO UPDATE AND  
REVISE THE TERMS OF THE FRANCHISE AGREEMENT WITH NORTHERN  
STATES POWER COMPANY.**

**ELECTRIC FRANCHISE ORDINANCE**

**ORDINANCE NO. 59.**

**CITY OF OSAKIS, DOUGLAS & TODD COUNTY, MINNESOTA**

**AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A  
MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO  
CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF OSAKIS,  
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.**

**THE CITY COUNCIL OF THE CITY OF OSAKIS, DOUGLAS & TODD COUNTY,  
MINNESOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

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

- 1.1 **City.** The City of Osakis, County of Douglas & Todd, State of Minnesota.
- 1.2 **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.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.
- 1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

1.6 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Clerk, Angela Jacobson. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of twenty (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.

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 ninety (90) days after publication. Each party is responsible for its own legal fees incurred related to granting of this Franchise.

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

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by the Company within a reasonable time, upon receipt of an invoice from the City.

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 thirty (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 thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

2.6. Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until ninety (90) days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one (1) year after expiration of the term set forth in Section 2.1, unless an extension is otherwise agreed in writing by the City and the Company in which case the franchise may be extended up to an additional six (6) months.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

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

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

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 subject to Section 9.1 of this Ordinance. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year 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.

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

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

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

#### **SECTION 4. RELOCATIONS.**

4.1 Relocation of Electric Facilities in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable law, and any applicable City ordinances consistent with law. If a relocation is ordered within three 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 shall be required to make the subsequent relocation at its expense.

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

4.3 Projects with Federal Funding. 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.

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

## **SECTION 5. TREE TRIMMING.**

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

## **SECTION 6. INDEMNIFICATION.**

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

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this 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.

6.3 Insurance. The Company is required to maintain Commercial General Liability Insurance on an occurring basis protecting it from claims or damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Insurance minimum limits shall be those contained in the Company's insurance certificate, applicable law, or as follows, whichever are greater:

- \$2,000,000 – per occurrence
- \$5,000,000 – annual aggregate

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

The City must be endorsed as an Additional Insured.

#### **SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two (2) weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, part 7819.3200. 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.

In accordance with Minnesota Rules, Part 7819.3200, if the City vacates a Public Way, which contains Electric Facilities of Company and the vacation does not require relocation of Company's Electric Facilities, the vacation proceedings shall not be deemed to deprive Company of its right to continue to use the right-of-way of the former Public Way for its Electric Facilities installed prior to such order of vacation.

#### **SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

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

#### **SECTION 9. FRANCHISE FEE.**

The City at the time of adopting this franchise agreement does not desire to require the Company to collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to adopt a franchise fee ordinance to authorize collection of a franchise fee by separate ordinance. Upon receipt of such Notice, Company and City shall negotiate in good faith to so amend this franchise agreement. Unless and until such time as the City adopts a franchise fee ordinance, the Company is not required to collect a franchise fee in the City.

#### **SECTION 10. ABANDONED FACILITIES.**

The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules, part 7819.3300, as they may be amended from time to time.

#### **SECTION 11. SERVICE RELIABILITY, INFRASTRUCTURE REPORTING.**

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to the Company's services reliability in the previous year, compared to other service areas, infrastructure plans for the coming year and other matters raised by the City of or the Company.

#### **SECTION 12. PROVISIONS OF ORDINANCE.**

12.1 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.

12.2 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 13. 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 ninety (90) days after the date of final passage by the City of the amendatory ordinance.

#### **SECTION 14. PREVIOUS FRANCHISES SUPERSEDED.**

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

Passed and approved: \_\_\_\_\_, 2025.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_

City Clerk

Date Published: \_\_\_\_\_