CHAPTER 15 - UTILITIES

15.01 ELECTRICAL FRANCHISE. (REPLACED IN ITS ENTIRETY 10-19-04)

SECTION 1. DEFINITIONS.

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

City. City of Mahtomedi, County of Washington, State of Minnesota.

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

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

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

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

Notice. A written notice served by a party to the franchise agreement to which this Ordinance pertains upon the other party to the franchise agreement referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to City shall be mailed to City Clerk, City Hall, 600 Stillwater Road, Mahtomedi, MN 55115. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

Statutory Reference. Any Minnesota Statute or Rule herein referred to shall be understood to include that statute or rule as supplemented, amended, or, in case the statute or rule is repealed or superseded, any successor statute or rule thereto.

SECTION 2. <u>ADOPTION OF FRANCHISE.</u>

2.1 <u>Grant of Franchise</u>. City hereby grants Company, for a period of 20 years from the date passed and approved by 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 City as its boundaries now exist or as they may be extended in the future. For these purposes, subject to the provisions of this Ordinance, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes subject to such reasonable regulations as may be imposed by City pursuant to the further provisions of this or other lawful ordinance or statute.

2.2 <u>Effective Date; Written Acceptance</u>. This Ordinance shall be in force and effect from and after its passage, its acceptance by Company, and its publication as required by law. City, by Council resolution, may revoke this Ordinance if Company does not file a written acceptance with City within 90 days after publication.

2.3 <u>Exclusive Service Right</u>. The area encompassed by this Ordinance shall be governed by and subject to the provisions of Minnesota Statutes § 216B.40, as may be amended from time to time.

2.4 <u>Service and Rates</u>. 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.

2.5 <u>Publication Expense</u>. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.6 <u>Dispute Resolution</u>. 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 as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

2.7 <u>Continuation of Ordinance</u>. In the event that City and Company are unable to agree on terms of a new Ordinance encompassing the agreement between the two parties for the provision of electrical services, prior to the expiration of this Ordinance, this Ordinance will remain in effect until a new Ordinance is agreed upon, or until 90 days after City or Company serves written Notice to the other Party of its intention to allow the terms of the Ordinance to expire. However, in no event shall this Ordinance

continue for more than one year after the expiration of the 20-year term set forth in Section 2.1.

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 Ground 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 City to the extent not inconsistent with the terms of this Ordinance. Company may abandon underground Electric Facilities in place, subject to the provisions of Minnesota Rule 7819.3300.

3.2 Underground Facilities. Company shall comply with Minnesota Statutes § 216D.

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

3.4 Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, 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 City the cost of such work done for or performed by City. This remedy shall be in addition to any other remedy available to City for noncompliance with this Section 3.4. 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 City, of a person or entity obtaining 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 or party from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity. Nor does anything in this Ordinance waive the tort limits as provided in Minnesota Statutes § 466.

3.6 Notice of Improvements. City must give Company reasonable notice of plans for improvements to Public Way or Public Ground where 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 Ways and Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when City will start work on the Public Way or Public Ground, and (v) if more than one Public Way or Public Ground 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 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. 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. If City determines to vacate a Public Way for a City improvement project; or at City's cost, to grade, regrade, or change the line of any Public Way; construct or reconstruct any City Utility System in any Public Way; or for any purpose as listed in Minnesota Rule 7819.3100, subd. 1, Company shall relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish City's proposed public improvement. Except as provided in Section 4.3, and in Minnesota Rule 7819.3100, subp. 1 and subp. 2, Company shall relocate its Electric Facilities at its own expense. City shall give Company reasonable notice of plans to vacate for any of the purposes listed in this Section 4.1. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, made at Company's expense, City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of City and is not reasonably necessary for one of the purposes previously mentioned in this Section.

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

4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes § 161.46. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense properly attributable thereto are paid to the Company, pursuant to Minnesota Statutes § 161.46. City, however, need not pay to Company those costs and expenses for which reimbursement to City as designated by the state and/or federal body or bodies is not available.

4.4 No Waiver. The provisions of this Ordinance apply only to facilities constructed in reliance on an electrical franchise from 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 Way or Public Ground 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 Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed, or maintained hereunder, provided that Company shall save City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by City.

SECTION 6. INDEMNIFICATION.

6.1 Indemnification of City. Company shall indemnify, keep and hold 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 Ways and Public Grounds. City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. 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 City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense, shall defend 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 City. Such consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. Company, in defending any action on behalf of City, shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf. Nothing in this Ordinance shall constitute a waiver by City of any of its defenses of immunity or limitations on liability under Minnesota Statutes § 466.

SECTION 7. VACATION OF PUBLIC WAYS.

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

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 9. FRANCHISE FEE.

9.1 Fee Schedule. During the term of this Ordinance, and in lieu of any permit or other fees being imposed on Company, City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to City in accordance with Section 9 shall be, initially set at the following amounts:

Class	Fee Per Premise Per Month
Residential	$ 1.30
Sm C & I – Non-Dem	$ 1.38
Sm C & I – Demand	$ 14.40
Large C & I	$ 110.28
Public Street Ltg	$ 12.71
Muni Pumping –N/D	$ 00.63
Muni Pumping – Dem	$ 14.84

9.2 Franchise Fee Adjustment. City may, from time to time, increase or decrease the amount of the franchise fee charged to Company. However, the total franchise fee shall not exceed three percent (3 %) of the total Company Electric Revenue billed by Company for the previous year, to the various Customer Classes. Each account in each respective Customer Class shall be billed for this franchise fee no more than that account's proportional share of the total amount billed by Company for that Class, not to exceed three percent (3 %), of the total amount billed by Company for that respective class, for the previous year. The franchise fee may be changed, in any event, only by separate ordinance. Notice of any such change shall meet the notice requirements as defined in Section 1, above, and a change in the franchise-fee rates shall occur no more often than once annually. No such increase shall be implemented, and/or become effective, sooner than 60 days, nor later than 90 days, from the date upon which City provides notice of the proposed increase.

9.3 Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.6 shall constitute the sole remedy for solving disputes between Company and City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by City to implement a separate ordinance, as contemplated by this Section, will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 9.2 above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

9.4 Terms Defined. For the purpose of Section 9, the following definitions apply:

9.4.1 "Customer Class" shall refer to the classes listed on the Fee Schedule and as defined or determined in Company's electric tariffs on file with the Commission.

9.4.2 "Fee Schedule" refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance providing for such were implemented after the effective date of this Ordinance. The Fee Schedule in the separate ordinance may include new Customer Classes added by Company to its electric tariffs after the effective date of this Ordinance.

9.4.3 "Company Electric Revenue" shall refer to the total amount collectively billed by Company to its various customer classes for electric services.

9.5 Collection of the Fee. The franchise fee shall be payable quarterly as follows:

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

Billings shall be based on the amount billed by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable Customer Class in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made, as illustrated above. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company shall pay City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds, and correction of erroneous billings. Company agrees to make its records available for inspection by City upon reasonable request, and City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. In addition, Company agrees to provide, at the time of each payment, a statement summarizing how the franchise-fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds, or error corrections.

9.6 **Equivalent Fee Requirement**. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and City, monthly or more frequently, collects a fee or tax of the "same or greater equivalent amount" on the receipts from sales of energy within City by any other energy supplier, provided that, as to such a supplier, City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for franchise-fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in

contravention of Section 9.6, the foregoing conditions will be waived to the extent of such written consent.

SECTION 10. PROVISIONS OF ORDINANCE.

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

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

SECTION 11. AMENDMENT PROCEDURE.

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

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This Ordinance supersedes any previous electric franchise ordinance or agreement granting any electric franchise rights to Company or its predecessor.

SECTION 13. WRITTEN ACCEPTANCE.

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance hereof with the City Clerk after the final passage and any required publication of this Ordinance. City, by Council resolution, may revoke this Ordinance and the franchise thereby granted if Company does not file a written acceptance thereof within 90 days following any required publication. **(REPLACED IN ITS ENTIRETY 10-19-04)**

15.011 ELECTRIC FRANCHISE FEE IMPLEMENTATION

SECTION 1. **ELECTRIC FRANCHISE FEE.**

1.1 The Mahtomedi City Council has determined that it is in the best interest of the City to impose a franchise fee on those public-utility companies that provide electric services within the City of Mahtomedi.

1.2 Pursuant to City of Mahtomedi Legislative Code, Chapter 15, Section 15.01, a Franchise Agreement between the City and Northern States Power Company, d/b/a Xcel Energy, the City has the right to impose a franchise fee on Xcel Energy in amounts as set forth in Section 9.1 of said Chapter 15, Section 15.01, and in the fee schedule attached hereto as Exhibit A.

SECTION 2. **FRANCHISE FEE STATEMENT.** A franchise fee is hereby imposed on Xcel Energy under its Electric Franchise in accordance with Section 9 of City of Mahtomedi Legislative Code, Chapter 15, Section 15.01, and the fee schedule attached hereto as Exhibit A, and made a part of this Ordinance, commencing with the Xcel Energy's January, 2005, billing month.

2.1 This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity subject to this Ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters which are billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise-fee assessment for electric service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entity covered by this Ordinance has more than one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the City will control.

SECTION 3. **PAYMENT.** The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 9.5 of City of Mahtomedi Legislative Code, Chapter 15, Section 15.01.

SECTION 4. **SURCHARGE.** The City recognizes that the Minnesota Public Utilities Commission allows the utility company to add a surcharge to customer rates to reimburse such utility company for the cost of the fee and that Xcel Energy will surcharge its customers in the City the amount of the fee.

SECTION 5. **RECORD SUPPORT FOR PAYMENT.** Xcel Energy shall make each payment when due and, if requested by the City, shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined,

including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.

SECTION 6. **<u>ENFORCEMENT</u>.** Any dispute, including enforcement of a default regarding this Ordinance will be resolved in accordance with Section 2.6 of City of Mahtomedi Legislative Code, Chapter 15, Section 15.01.

SECTION 7. <u>EFFECTIVE DATE OF FRANCHISE FEE</u>. Notwithstanding the effective date of this Ordinance and notwithstanding any contrary provisions in City of Mahtomedi Legislative Code, Chapter 15, Section 15.01, the effective date of the fee collected under Section 2 of this Ordinance is the latter of ten (10) days after the publication of this Ordinance or after the sending of written notice enclosing a copy of this adopted Ordinance upon Xcel Energy by certified mail. It has been agreed to in advance by Xcel Energy's representatives that Xcel Energy will abide by the provisions of this Section 7, provided that, fee collection will not commence before the latter of the Company billing month set forth in Section 2 or the first billing month commencing 20 days after the foregoing effective date of the franchise fee. **(ENACTED 10-19-04)**

EXHIBIT A
XCEL ENERGY ELECTRIC FRANCHISE
FEE SCHEDULE

Class	Fee Per Premise Per Month
Residential	$ 1.30
Sm C & I – Non-Dem	$ 1.38
Sm C & I – Demand	$ 14.40
Large C & I	$ 110.28
Public Street Ltg	$ 12.71
Muni Pumping –N/D	$ 00.63
MuniPumping – Dem	$ 14.84

15.02 GAS FRANCHISE. (REPLACED IN ITS ENTIRETY 10-14-04)

SECTION 1. <u>DEFINITIONS</u>.

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

City. City of Mahtomedi, County of Washington, State of Minnesota.

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

Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the

authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.

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

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

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

Notice. A written notice served by a party to the franchise agreement to which this Ordinance pertains upon the other party to the franchise agreement referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to City shall be mailed to City Clerk, City Hall, 600 Stillwater Road, Mahtomedi, MN 55115. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

Statutory Reference. Any Minnesota Statute or Rule herein referred to shall be understood to include that statute or rule as supplemented, amended, or, in case the statute or rule is repealed or superseded, any successor statute or rule thereto.

SECTION 2. ADOPTION OF FRANCHISE.

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

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

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

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

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Ordinance 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 Ordinance.** In the event that City and Company are unable to agree on terms of a new Ordinance encompassing the agreement between the two parties for the provision of gas services, prior to the expiration of this Ordinance, this Ordinance will remain in effect until a new Ordinance is agreed upon, or until 90 days after City or Company serves written Notice to the other Party of its intention to allow the terms of the Ordinance to expire. However, in no event shall this Ordinance continue for more than one year after the expiration of the 20-year term set forth in Section 2.1.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 **Location of Facilities.** Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Ground as defined in Section 1 of this Ordinance. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits, if required by separate ordinance, and to other reasonable regulations of City to the extent not inconsistent with the terms of this Ordinance. Company may abandon underground Gas Facilities in place, subject to the provisions of Minnesota Rule 7819.3300.

3.2 **Underground Facilities.** Company shall comply with Minnesota Statutes § 216D.

3.3 **Street Openings.** Company shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from City if required by a separate ordinance, for which City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities

for similar facilities or work. Company may, however, open and disturb any Public Way or Public Ground without permission from City where an emergency as defined in Minnesota Statutes § 216D.01, subd. 3, exists requiring the immediate repair of Gas Facilities. In such event Company shall notify City by contacting, via telephone, the office designated by City as soon as practicable. Not later than the second working day after so opening or disturbing a Public Way or Public Ground, Company shall obtain any required permits and pay any required fees.

3.4 **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, 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 City the cost of such work done for or performed by City. This remedy shall be in addition to any other remedy available to City for noncompliance with this Section 3.4. 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 City, of a person or entity obtaining City's permission to install, replace or maintain facilities in a Public Way.

3.5 **Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person or party from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity. Nor does anything in this Ordinance waive the tort limits as provided in Minnesota Statutes § 466.

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

SECTION 4. RELOCATIONS.

4.1 **Relocation of Gas Facilities in Public Ways.** If City determines to vacate a Public Way for a City improvement project; or at City's cost, to grade, regrade, or change the line of any Public Way; construct or reconstruct any City Utility System in any Public Way; or for any purpose as listed in Minnesota Rule 7819.3100, subp. 1, Company shall

relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish City's proposed public improvement. Except as provided in Section 4.3, and in Minnesota Rule 7819.3100, subp. 2, Company shall relocate its Gas Facilities at its own expense. City shall give Company reasonable notice of plans to vacate for any of the purposes listed in this Section 4.1. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, made at Company's expense, City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of City and is not reasonably necessary for one of the purposes previously mentioned in this Section.

4.2 **Relocation of Gas Facilities in Public Ground.** City may require Company, at Company's expense, to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Relocation shall comply with applicable city rules and ordinances consistent with law.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any 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 § 161.46. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, without paying the reasonable non-betterment costs of such relocation and reimbursing Company for the loss and expense properly attributable thereto. City, however, need not pay to Company those costs and expenses for which reimbursement to City, from the Federal Government, is not available.

4.4 **No Waiver.** The provisions of this Ordinance apply only to facilities constructed in reliance on a gas franchise from 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 Way or Public Ground 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 Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Gas Facilities installed, or maintained hereunder, provided that Company shall save City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by City.

SECTION 6. INDEMNIFICATION.

6.1 **Indemnification of City.** Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. 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 City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense, shall defend 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 City. Such consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. Company, in defending any action on behalf of City, shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf. Nothing in this Ordinance shall constitute a waiver by City of any of its defenses of immunity or limitations on liability under Minnesota Statutes § 466.

SECTION 7. VACATION OF PUBLIC WAYS.

City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Otherwise, vacation of a Public Way under this Ordinance shall be governed by the provisions of Minnesota Rule 7819.3200. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes § 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 9. FRANCHISE FEE.

9.1 **Fee Schedule.** During the term of this Ordinance, and in lieu of any permit or other fees being imposed on Company, City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated company customer classes. The parties

have agreed that initially, there shall be no franchise fee collected by the Company and paid to City. However, City reserves the right to impose such a franchise fee, as provided in this Section 9, by passage of a separate ordinance so enacting a franchise fee, pursuant to the terms of this Ordinance.

9.2 **Initial Franchise Fee.** Upon passage of an ordinance imposing a franchise fee pursuant to this Ordinance, the initial franchise fee shall not exceed three percent (3%) of the total amount of Company Gas Revenue billed by Company to the various customer classes.

9.3 **Franchise Fee Adjustment.** City may, from time to time, increase or decrease the amount of the franchise fee charged to Company. However, the total franchise fee shall not exceed three percent (3 %) of the total Company Gas Revenue billed by Company for the previous year, to the various Customer Classes. Each account in each respective Customer Class shall be billed for this franchise fee no more than that account's proportional share of the total amount billed by Company for that Class, not to exceed three percent (3 %), of the total amount billed by Company for that respective class, for the previous year. The franchise fee may be changed, in any event, only by separate ordinance. Notice of any such change shall meet the notice requirements as defined in Section 1, above, and a change in franchise-fee rates shall occur no more often than once annually. No such increase shall be implemented, and/or become effective, sooner than 60 days, nor later than 90 days, from the date upon which City provides notice of the proposed increase.

9.4 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.6 shall constitute the sole remedy for solving disputes between Company and City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by City to implement a separate ordinance, as contemplated by this Section, will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 9.3 above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

9.5 **Terms Defined.** For the purpose of Section 9, the following definitions apply:

9.5.1 "Customer Class" shall refer to the various classes of customers as determined for billing by Company and as defined or determined in Company's gas tariffs on file with the Commission.

9.5.2 "Company Gas Revenue" shall refer to the total amount collectively billed by Company to its various customer classes for gas services.

9.6 **Collection of the Fee.** The franchise fee shall be payable quarterly as follows:

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

Billings shall be based on the amount billed by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable Customer Class in all customer billings for gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made, as illustrated above. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas service. Company shall pay City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds, and correction of erroneous billings. Company agrees to make its records available for inspection by City upon reasonable request, and City and its designated representative agree not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. In addition, Company agrees to provide, at the time of each payment, a statement summarizing how the franchise-fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds, or error corrections.

9.7 **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and City, monthly or more frequently, collects a fee or tax of the "same or greater equivalent amount" on the receipts from sales of energy within City by any other energy supplier, provided that, as to such a supplier, City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for franchise-fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of Section 9.7, the foregoing conditions will be waived to the extent of such written consent.

SECTION 10. PROVISIONS OF ORDINANCE.

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

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

SECTION 11. AMENDMENT PROCEDURE.

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

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This Ordinance supersedes any previous gas-franchise ordinance or agreement granting any gas-franchise rights to Company or its predecessor.

SECTION 13. WRITTEN ACCEPTANCE.

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance hereof with the City Clerk after the final passage and any required publication of this Ordinance. City, by Council resolution, may revoke this Ordinance and the franchise thereby granted if Company does not file a written acceptance thereof within 90 days following any required publication. **(REPLACED IN ITS ENTIRETY 10-14-04)**

15.03 ADOPTION OF STANDARDS.

1. The "City of Mahtomedi General Specifications and Standard Detail Plates for Street and Utility Construction" and "City of Mahtomedi Stormwater Management Standards" as prepared by the City Engineer and as hereafter amended is hereby adopted and incorporated by reference.

All work done pursuant to this Chapter shall conform with the specifications and requirements of the latest version of the publication available at the time. A copy is on file in the office of the City Administrator.

15.04 SEWER CODE.

1. Sewer Disposal System.

   A. Metropolitan Council Environmental Services Rules and Regulations. The "Water Discharge Rules for the Metropolitan Disposal System" are hereby adopted by reference as though set forth verbatim herein. A copy of said Rules and Regulations shall be kept on file in the office of the City Administrator and open to inspection and use by the public.

   B. Subsurface Sewage Treatment Systems. The location, design, installation, use, maintenance, and inspection of subsurface sewage treatment systems shall be governed by the Washington County Development Code and the relevant provisions of this Chapter and administered by County officials and personnel. No permit shall be issued for the installation, expansion, or alteration of a subsurface sewage treatment system or for a new building or the remodeling or expansion of an existing building which provides for or requires the installation, expansion, or alteration of a subsurface sewage treatment system unless and until Washington County has issued a permit for such system. (passed 4/28/15)

2. Installations to Municipal Systems.

   A. Application. Any person desiring service installation, alteration, repair, or extension to the City Sewer Disposal System shall apply in writing to the City Administrator on a form to be furnished by him or her for that purpose for an installation permit. Such application shall contain the name of the applicant, the legal description of the property to be served, the name of the owner thereof, his or her address, the various purposes for which the sewer is to be used, and the location and the size of the service connection. All costs and expenses incident to the installation and connections shall be borne by the owner of the property, and the owner shall indemnify the City for any loss or damage that may, directly or indirectly, be occasioned by the installation of the sewer connection including restoring streets and street surfaces.

   B. Permit. If the application is determined to be in proper form, the City Administrator shall issue a permit to connect to the Sewer Disposal System. Permits shall be issued only to such persons who

are duly licensed by the City to engage in the business of plumbing and who have filed with the City the bonds and insurance certificate required as herein provided, however, that permit may be issued to any person who is duly licensed by the City as a Private Sewer Contractor and who has filed with the City the bonds and insurance certificates required herein for building and repairing that portion of the house or building sewer extending from the property line to the main sewer or other outlet. Before any permit required hereunder is issued, the licensee applying therefor shall file with the City Administrator the following bond and insurance certificate:

i. A bond in favor of the City of Mahtomedi, Minnesota, issued by an approved corporate surety, in the amount of ten thousand dollars ($10,000), the conditions of which shall be that the licensee shall hold the City harmless from all costs and charges that may accrue on account of the doing of any work authorized or permitted by this Section; that the licensee shall hold the City harmless from any loss or damage by reason of improper or inadequate work performed by the licensee under the provisions of this Section; and further that the licensee shall hold the City harmless from any damage to utility lines, curbs, streets, street surfaces, or sidewalks.

ii. A certificate that insurance is in force covering the licensee for the period covered by the license in the following minimum amounts: Property Damage – fifty thousand dollars ($50,000); Public Liability – one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident. The certificate shall state that the policies covering the licensee shall not be canceled without ten (10) days prior written notice to the City.

If construction is not commenced within sixty (60) days after the issuance of the permit, said permit will be canceled and the permit fee forfeited.

C. Inspections. The Building Official shall supervise all house sewer connections made to the municipal sanitary sewer system and excavations for the purpose of installing or repairing the same.

D. State Code. Except as specifically stated herein, the Building Official shall follow and enforce the provisions of the Minnesota Plumbing Code as adopted by the Minnesota State Board of Health together with all amendments thereto.

E. <u>Completion.</u> No installation shall be completed and covered until it has received final inspection by the City. The permittee or his or her agent shall notify the Building Official when the installation is ready for final inspection. Approval shall not be given until all work has been completed in accordance with applicable state and local codes.

F. <u>Fees.</u> The applicant shall pay the fee established by the Fee Schedule which shall be deposited to the credit of the Sewer System Fund by the City Administrator.

3. <u>Construction Requirements.</u>

A. The "Recommended Standards for Wastewater Facilities," also known as the "10 State Standards" and as hereafter amended shall apply to all construction pursuant to this Section. A copy is on file in the office of the City Administrator.

B. <u>Sewer Connections.</u>

i. Every connecting sewer shall be connected to the municipal sewer system at the WYE designated for the property served by the connection, except where otherwise expressly authorized by the Building Official. All connections made at points others than the designated WYE shall be made only under the direct supervision of the Building Official and in such manner as he or she may direct.

ii. If a sewer connection must be made at a location where no WYE or riser connection has been provided, the City Engineer and/or Building Official must approve of the manner and location at which the WYE location is to be made.

iii. Unless special permission is granted by the City Council, each premises shall have a separate and distinct service connection.

iv. Unless special permission is granted by the City Council, no more than one (1) housing unit or building shall be supplied from one (1) service connection

v. The drainage and plumbing system of each new building and of new work installed in an existing building shall be separate from and independent of that of any other building

and every building shall have an independent connection with a public sewer when such is available.

C. Cleanouts. If any sewer service shall be one hundred (100) feet or more from the foundation to the public sewer main, an accessible cleanout must be installed.

D. Existing Drainage and Plumbing Systems. Prior to connection to the public sanitary sewer system, the Building Official shall examine the existing drainage system and the interior plumbing system. All such systems shall conform to the requirements of this Section and the requirements of the Minnesota Plumbing Code. In the event that such drainage system or plumbing system is determined to be non-conforming to the above requirements, the contractor shall do whatever corrective work may be necessary before final hook-up to the public sanitary sewer system is made, and the decision of the Building Official as to the extent of corrective work to be done in each individual case to conform to the above requirements shall be final.

E. Service Connections. It shall be the responsibility of the consumer or property owner of record to properly maintain the sewer service from the sewer main to the house or building. Frozen, damaged, obliterated, or otherwise defective service lines and appurtenances thereto shall be restored to a proper functional condition within a reasonable time set by the City.

F. Imminent Danger. If there is sewer water leakage which poses an imminent danger to public health and/or to the environment, as determined by the City in the City's sole discretion, the repair must be made by the owner within forty eight (48) hours after the time the consumer or owner discovers the leakage.

G. Defective Sewer. If sewer service is defective and such defect(s) does not pose an imminent danger to public health and/or to the environment, as determined by the City in the City's sole discretion, the consumer or owner shall make the repair within thirty (30) days after the date the consumer or owner discovers the defect.

H. Notice. Notice will be served by certified mail or in person. If the consumer or property owner fails to repair or restore the service connection, the City may perform the work and charge the cost therefor to the property served.

I. Water Shut Off. When it becomes necessary for City crews to shut off/turn on the water service for whatever purpose, a minimum charge as set forth in the Fee Schedule will be charged for this service. In the event that the sewer service pipe is frozen, such pipe shall be restored by the owner of the property to its operating condition only under the supervision of an authorized City employee and at the expense of the customer or owner as provided in this Section and the City Fee Schedule.

4. Connection to Municipal Sanitary Sewer System.

A. Connection Approvals.

No connection to the municipal sanitary sewer system shall be finally approved until all streets, pavements, curbs, and boulevards or other public improvements thereon have been restored to their former condition to the satisfaction of the Building Official. The City Council requires the filing of a bond or other surety to insure proper restoration.

B. Removal and Abandonment of Subsurface Sewage Treatment Systems.

Tank abandonment procedures for sewage tanks, cesspools, leaching pits, dry wells, seepage pits, privies, and distribution devices are as follows: all solids and liquids shall be removed and disposed of in accordance with the applicable Minnesota Rules, and abandoned chambers shall be removed or filled with soil material.

Access for future discharge to the system shall be permanently denied.

If soil treatment systems are removed, contaminated materials shall be properly handled to prevent human contact and shall be disposed of in a manner assuring that public health and the environment are protected in accordance with Minnesota law.

C. Connections with Sewer Required.

i. Any existing buildings used for human habitation and located on property adjacent to a sewer main, or in a block through which the system extends, shall be connected to the municipal sanitary sewer system within:

a. Five (5) years from the date the municipal sanitary sewer main is available for lateral connection; or

b. Ten (10) years from the date municipal sanitary sewer main is available for lateral connection provided that an existing subsurface sewage treatment system (“SSTS”)

servicing the property had been constructed and/or substantially replaced within the ten (10) year period prior to the date that the City Council ordered a public improvement project extending the municipal sanitary sewer main pursuant to Minnesota Statutes Section 429.031.

c. In the event that any existing SSTS fails, the property owner shall connect to the available municipal sanitary sewer system as soon as practical. In any event, the existing property owner shall connect to the available municipal sanitary sewer system prior to a subdivision.

ii. All new buildings hereafter constructed within the City on property adjacent to a sewer main or in a block through which the system extends shall be provided with a connection to the municipal sanitary sewer system for the disposal of all human wastes and shall connect to the system prior to the issuance of a certificate of occupancy. (CC Amended on 5/15/07)

5. <u>Inspections of SSTS.</u>

A. <u>Initial Inspections of Existing Systems.</u>

i. All existing SSTS shall be subject to a compliance inspection by a business that is licensed as an Inspection business within one (1) year of the date of adoption of this ordinance. The owner of property on which a SSTS is located shall be responsible for obtaining the required compliance inspection and shall be responsible for the cost of such compliance inspection. A compliance report and a certificate of compliance or notice of non-compliance shall be prepared and submitted to the owner, the City, and Washington County within ninety (90) days of the inspection. The compliance inspection shall include verification of the conditions listed in Chapter Four, Section Eight of the Washington County Development Code. Following the initial inspection, all existing SSTS shall be subject to additional compliance inspections as required in Subpart B.

B. <u>Inspections of Systems Required.</u>

i. All SSTS shall be inspected within:

a. Six (6) years from the date of previous inspection for all systems installed with a Washington County permit after March 31, 1996 and determined to meet compliance criteria for new construction.

b. Three (3) years from the date of previous inspection for

all systems determined to meet compliance criteria for existing systems.

C. Noncompliant SSTS.

i. A SSTS that is found to be out of compliance with the requirements of Chapter Four of the Washington County Development Code or relevant state statutes or rules related to SSTS shall be repaired or replaced as required by the Washington County Department of Public Health and Environment.

D. Penalty. When the City, or its designated representative, determines that an inspection has not been completed in accordance with the requirements of this Section, it shall issue a written notice of violation to the owner of the property.

Failure to comply with the inspection requirements of this Section shall constitute a violation of this Section and each day such violation shall continue shall constitute a separate offense.

6. Tampering with Municipal Sewer System Prohibited. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewer system.

7. Certain Connections Prohibited. No buildings located on property lying outside the limits of the City shall be connected to the municipal sanitary sewer system unless express authorization therefor is obtained from the City Council and the Metropolitan Council Environmental Services.

8. Disposal of Septic Tank Sludge. No person collecting and disposing of waste from septic tanks or other similar facilities shall discharge such material into the disposal system without prior issuance of an annual permit from the City for such discharge and vehicle making the discharge. The cost of the annual permit fee shall be set forth in the Fee Schedule.

9. Industrial User Strength Charges.

A. Establishment of Strength Charges. For the purpose of paying the costs allocated to the City each year by the Metropolitan Council Environmental Services that are based upon the strength of discharge of all industrial users receiving waste treatment services within or served by the City, there is hereby established, in addition to the sewer charge based upon the volume of discharge, a sewer charge upon each person, company, or corporation receiving waste treatment services within or served by the City, based upon

strength of industrial waste discharged into the sewer system of the City (the "Strength Charge").

B. Establishment of Strength Charge Formula. For the purpose of computation of the Strength Charge established by Subpart A, there is hereby established, in compliance with the Federal Water Pollution Control Act, the same strength charge formula designated in Resolution No. 76-172 adopted by the governing body of the Commission on June 15, 1976, such formula being based upon pollution qualities and difficulty of disposal of the sewage produced through an evaluation of pollution qualities and quantities in excess of an annual average base and the proportionate costs of operation and maintenance of waste treatment services provided by the Commission.

C. Strength Charge Payment. The Strength Charge established by Subpart A shall be paid by each industrial user receiving waste treatment services and subject thereto before the twentieth (20th) day next succeeding the date of billing to such user by or on behalf of the City, and such payment shall be deemed to be delinquent if not so paid to the billing entity before such date. Furthermore, if payment is not made before such date an industrial user shall pay interest compounded monthly at the rate of two-thirds of one percent per month on the unpaid balance due.

D. Establishment of Tax Lien. If payment of the Strength Charge established by Subpart A is not made before the sixtieth (60th) day next succeeding the date of billing to the industrial user by or on behalf of the City, said delinquent sewer strength charge, plus accrued interest established pursuant to Subpart C, shall be deemed to be a charge against the owner, lessee, and occupant of the property served, and the City or its agent shall certify the unpaid delinquent balance to the County Auditor with taxes against the property served for collection as other taxes are collected; provided, however, that such certification shall not preclude the City or its agent from recovery of the delinquent sewer strength charge and interest thereon under any other available legal remedy.

10. Fees and Costs. A property owner connecting to the City sewer system must pay the connection fee and service location charge established by City Council and set forth in the Fee Schedule.

11. Rates.

A. Metered. All metered sewer service customers shall pay the following charges for the purpose of defraying the costs of

operating and maintaining the city municipal sewage disposal system:

i. Demand Charge. All metered customers shall pay a quarterly demand charge at the rate set forth in the Fee Schedule.

ii. Use Charge. All metered customers shall pay in addition to the demand charge a quarterly use charge at the rate set forth in the Fee Schedule. Residential metered customers (single-family and multi-family dwellings) shall be based upon the water metered during the winter quarter (1st quarter) for the year except when water metered during the 2nd, 3rd, and 4th quarters of the year is less than water metered during the winter quarter (1st quarter). (12/16/08)

B. Non-metered. All non-metered sewer service customers shall pay a quarterly charge in the amount set forth in the Fee Schedule.

12. Statements.

A. Accounts. All accounts shall be kept on the books of the City by the house and street number and under the account number assigned thereto and by the name of the owner or of the person signing the application for service. All bills and notices sent out by the City shall be sent to the house and street number of the property. If non-resident owners or agents desire personal notice sent to a different address, they shall file an application therefore with the City.

B. Quarterly. Statements for charges for sewer service for the period shall be mailed to each customer on or before the 1st day of January, April, July, and October of each year. Such statements shall be due and payable to the City within thirty (30) days following the quarterly period covered by such statement. It shall be the duty of the City to endeavor to collect delinquent accounts as promptly as possible, and in all cases where satisfactory arrangements for payment have not been made, instructions shall be given to discontinue service by shutting off the water at the stop box.

C. Delinquent Accounts. All statements not paid within thirty (30) days from the date of billing shall be deemed unpaid and shall be assessed a penalty of ten percent (10%) of the unpaid balance including past penalties assessed. All delinquent accounts may be certified to the City Administrator who shall prepare an

Assessment Roll each year providing for assessment of the delinquent accounts against the respective property served. This Assessment Roll shall be delivered to the City Council for adoption on or before October 1 of each year and upon approval thereof, the City Administrator shall certify to the County Auditor the amount due and the County Auditor shall thereupon enter such amount as part of the tax levy on such premises to be collected during the ensuing year. Such action may be optional or subsequent to taking legal action to collect delinquent accounts.

D. Liability for Rental Property Sewer Accounts. In the event the property owner rents the property, the owner remains liable for any delinquency on the sewer service account associated with the property and the City may certify any such delinquent accounts for assessment against the property.

13. Annual Review. The City Council shall provide for an annual review of the sewer charges within the City of Mahtomedi to ensure such charges properly reflect the costs of the operation and maintenance of the municipal sewage disposal system.

14. Discharge of Surface Waters Prohibited.

A. Purpose. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Mahtomedi through the regulation of non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4).

B. Definitions. For the purpose of this Ordinance, the following terms listed in alphabetical order shall have the following meanings:

Authorized Enforcement Agency. The City of Mahtomedi.

Discharge. Adding, introducing, releasing, leaking, spilling, casting, throwing, or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state.

Illegal Discharge. Any direct or indirect non-stormwater discharge to the storm drain system.

Illicit Connections. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm

drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connection from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Municipal Separate Storm Sewer System (MS4). The systems of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

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

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

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

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes and yard wastes, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, pesticides, herbicides, and fertilizers, hazardous substances and wastes and residues that result from constructing a building or structure, and noxious or offensive matter of any kind.

Sanitary Sewer. A pipe, conduit, or sewer owned, operated, and maintained by the City and which is designated by the Public Works Director as one dedicated to the exclusive purpose of carrying sanitary wastewater to the exclusion of other matter.

Storm Drain System. Publicly-owned facilities by which storm water is collected and / or conveyed, including but not limited to

any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

Surface Waters. All waters of the state other than ground waters, which include ponds, lakes, rivers, streams, wetlands, ditches, and public drainage systems except those designed and used to collect, convey, or dispose of sanitary sewage.

C. Applicability. This ordinance shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless explicitly exempted by an authorized enforcement agency.

D. Discharge Prohibitions.

i. Prohibition of Illegal Discharges.

a. It shall be unlawful to discharge or cause to be discharged into the municipal sewer system or watercourses, either directly or indirectly, any roof, storm, surface, or ground water of any type or kind, or water discharged from any air conditioning unit or system, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable state water quality standards, other than storm water.

b. If a sewer service connection is gravity flow to the public sewer system and a sump pump is presently used, said sump pump shall be disconnected, discontinued, and removed from service.

c. The City Administrator shall be authorized to issue property owners a temporary permit allowing discharge of water into the sanitary sewer system between November 15 and March 15 in the following instances:

1. When freezing of surface water discharge from a sump pump or footing drain causes a

dangerous condition, such as ice buildup or flooding, on either public or private property;

2. When a property owner has shown the existence of a danger that a sump pump or footing drain pipe may freeze and result in either failure or damage to the sump pump unit or the footing drain thereby causing basement flooding;
3. When water discharged from a sump pump or footing drain cannot be readily discharged into a storm drain or other acceptable drainage system;

4. When other dangerous circumstances occur that may be corrected by allowing such alternate discharge.

d. Surface water discharge that causes a dangerous condition such as ice buildup or flooding, on public property shall constitute a Public Nuisance in violation of the Public Nuisance provisions of Chapter 12.

e. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.

ii. Prohibition of Illicit Connections.

a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was

permissible under law or practices applicable or prevailing at the time of the connection.

c. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

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

15. Suspension of MS4 Access.

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

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

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

16. Monitoring of Discharges.

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

B. Access to Facilities.

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

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

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

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

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

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

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

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

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

19. Penalties.

A. Notice of Violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this

Ordinance, the City may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

i. The performance of monitoring, analysis, and reporting;

ii. The elimination of illicit connections or discharges;

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

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

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

vi. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

C. Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of

any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

D. Cost of Abatement of the Violation. Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation.

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

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

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

H. Criminal Prosecution. Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of $1,000 dollars per violation per day and/or imprisonment for a

period of time not to exceed days. The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

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

15.05 WATER CODE.

1. Installations.

A. Application. Any person desiring service installation in the City Water System shall apply in writing to the City Administrator on a form to be furnished by him or her for that purpose, for an installation permit. Such application shall contain the name of the applicant, the legal description of the property to be served, the name of the owner thereof, his or her address, the various purposes for which the water is to be used, the location of the proposed shut-off box, and the size of the service connection.

B. Permit. If the application is determined to be in proper form, the City Administrator shall issue a permit to connect to the Water System. No permit shall be issued except to a licensed plumber.

C. Fees. The applicant shall pay the fee established by the City Council and listed in the Fee Schedule which shall be deposited to the credit of the Water System Fund by the City Administrator. Any installation larger than one inch (1") shall be installed at the sole expense of the applicant.

D. Completion. No installation shall be completed and covered until it has received final inspection by the City. The permittee or his or her agent shall notify the Building Official when the installation is ready for final inspection. Approval shall not be given until all work has been completed in accordance with applicable state and local codes.

2. Meters.

A. Use Mandatory. Except for municipal purposes, no person shall use water from the water supply system of the City or permit water to be taken therefrom unless the same is metered by passing

through a water meter approved by the City. The City's standard and required meter shall be identified by the City Engineer.

B. Installation. The City and/or a licensed Master Plumber shall furnish, supply, and install water meters for each water service customer under the provisions of this Section. All meters shall remain the property of the City and shall not be connected, disconnected, disassembled, or otherwise altered or interfered with except by direction of the Superintendent of the Water System Utility.

C. Sealed. All meters, couplings, and remotes for all meter installations shall be properly sealed, and no one other than authorized City officials or employees shall interfere with, tamper with, or repair any water meter or break any seal thereon while such meter is used in connection with the City water system.

D. Separate Connections.

i. Unless special permission is granted by the City Council, each premises shall have a separate and distinct sewer service connection, operable service stop and curb box, shut-off valve inside the building on each side of the water meter, and water meter.

ii. No more than one (1) housing unit or building shall be supplied from one service connection except by special permission of the City. Where two (2) or more residences receive water through the same meter, the amount of water used by all shall be divided by the number of residences so served, and each residence shall be charged according to the rate scheduled as though separately metered for such proportionate amount of water.

iii. Where two (2) or more residences receive water through a single service connection but with separate meters, the installation shall be so valved that either service may be shut off without interrupting service to the other.

E. Access and Inspection. Authorized City officers and employees shall have right of access to any consumer's premises at all reasonable hours for the purpose of reading, inspecting or repairing meters, pipes, hydrants, and valves used in connection with the water service and for any other purpose related to the operation of the water system. City staff may apply to the district court for an appropriate administrative search warrant if a property owner

refuses to allow an inspection of or entry onto the owner's property for any purpose permissible under this Section.

3. Maintenance.

A. Meters. No persons shall use or permit to be used a damaged water meter to meter municipal water service. No person shall negligently damage or permit damage to such meter and if damage occurs by reason of freezing or other neglect or negligence of any person the cost of any necessary maintenance, repair, or replacement as determined by the City shall be borne by the person responsible for the damage. All meters installed and in use upon the effective date of this Section and thereafter shall be maintained, repaired, or replaced by the City at no cost to the water service customer, except that any residential meter larger than standard will receive a credit for the City's cost of a standard meter with the property owner paying the difference of City's cost for replacement meter of same size, and a service charge established by the City Council and listed in the Fee Schedule will be added to the quarterly utility bill if the City is unable to obtain an accurate water meter reading because of a non-functioning or inaccessible water meter or remote reader. The service charge will be added to future quarterly utility bills and the water bill estimated until the property has a properly functioning and accessible water meter and remote reader.

B. Service Connections. It shall be the responsibility of the consumer or property owner of record to properly maintain the water service from the watermain to the house or building. Frozen, damaged, obliterated, or otherwise defective service lines and appurtenances thereto shall be restored to a proper functional condition within a reasonable time set by the City. Notice of any needed repairs or replacements shall be served on the consumer or property owner by certified mail or in person.

Failure to repair or restore the service connection shall be cause for the City to perform the work and charge the cost therefor to the property served. In the event of leakage of water, the repair shall be made within forty-eight (48) hours. When the waste of water is great, or when damage is likely to result from the leak, water may be turned off immediately pending repair. When it becomes necessary for City crews to shut off/turn on the water service for whatever purpose, a minimum charge as set forth in the Fee Schedule will be charged. In the event that the service pipe is frozen, the customer or owner shall restore the pipe to its operating condition only under the supervision of an authorized City employee and at the expense of the customer or owner as provided in this Section.

4. <u>Rates.</u>

   A. <u>Demand Charge.</u> All water service customers shall pay a quarterly demand charge at the rate set forth in the Fee Schedule.

   B. <u>Consumption Charge.</u> All water service customers shall pay, in addition to the demand charge, a consumption charge at the rate set forth in the Fee Schedule.

   C. <u>Sales Tax.</u> In addition to the total quarterly charges for demand and consumption, the water service customer shall pay the applicable Minnesota Sales Tax as computed by the City Administrator.

5. <u>Fees and Costs.</u> The following fees and costs, as set forth in the Fee Schedule, shall be imposed as applicable:

   A. Connection Fee.

   B. Shut-off and Turn-on Fee.

   C. Meter Placement Fee.

   D. Service Charge.

   E. Meter Replacement Fee.

   F. Service Location Charge.

   G. Service Callback Fee.

   H. Meter Reading Fee.

6. <u>Accounts.</u> All accounts shall be kept on the books of the City by the City Administrator according to the house and street number and under the account number assigned thereto and by the name of the owner or of the person signing the application for service. All bills and notices sent out by the City shall be sent to the house and street number of the property. If non-resident owners or agents desire personal notice sent to a different address, they shall file an application therefore with the City.

7. <u>Statements.</u>

   A. <u>Quarterly.</u> Statements for charges for water service for the period shall be mailed to each customer on or before the first (1st) day of January, April, July, and October of each year. Such statements shall be due and payable to the City within thirty (30) days following the quarterly period covered by such statement. It shall

be the duty of the City to endeavor to collect delinquent accounts as promptly as possible, and in all cases where satisfactory arrangements for payment have not been made, instructions shall be given to discontinue service by shutting off the water at the stop box.

B. Delinquent Accounts. All statements not paid within thirty (30) days from the date of billing shall be assessed a penalty of ten percent (10%) of the unpaid balance, including past penalties assessed. All delinquent accounts may be certified to the City Administrator who shall prepare an Assessment Roll each year providing for assessment of the delinquent accounts against the respective property served. This Assessment Roll shall be delivered to the City Council for adoption on or before October 1 of each year and upon approval thereof, the City Administrator shall certify to the County Auditor the amount due and the County Auditor shall thereupon enter such amount as part of the tax levy on such premises to be collected during the ensuing year. Such action may be optional or subsequent to taking legal action to collect delinquent accounts.

C. Hardship. If a water service customer demonstrates a genuine hardship to the City Council, the Council may, at its discretion, establish an alternate payment schedule of monthly payments pro-rated over the next succeeding quarter as a means of collecting a delinquent account.

D. Liability for Rental Property Water Accounts. In the event the property owner rents the property, the owner remains liable for any delinquency on the water service account associated with the property and the City may certify any such delinquent accounts for assessment against the property.

8. Discontinuance of Water Service.

A. Generally. Water service may be shut off at any stop box connection whenever:

i. The owner or occupant of the premises served, or any person working on any pipes or equipment thereon which is connected with the water systems, has violated or threatens to violate, or causes to be violated, any of the provisions of this Section.

ii. Any charge for water, service, meter, or other financial obligation imposed on the present or former owner or occupant of the premises served is unpaid.

iii. Fraud or misrepresentation by the owner or occupant of the premises served in connection with an application for service.

B. Disconnection for Late Payment. It is the policy of the City to discontinue utility services to customers because of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The City's form for application for utility service and all bills shall contain, in addition to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

i. That all bills are due and payable on or before the date set forth on the bill;

ii. That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill is not paid within five (5) days of the mailing of the second bill, service will be discontinued for nonpayment; and

iii. That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time the customer may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the City official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.

In the absence of payment of the bill rendered or resort to the hearing procedure provided herein or a finding of hardship, service will be discontinued at the time specified, but in no event shall service be discontinued until the charges have been due and unpaid for at least thirty (30) days.

When it becomes necessary for the City to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with the turn on fee set forth in the Fee Schedule.

9. Authorized Water Shut Downs. The City shall not be liable for any deficiency or failure in the supply of water to consumers, whether occasioned by shutting the water off for the purpose of making repairs or connections, or from any other cause whatsoever. In case of fire or alarm of fire, water may be shut off to ensure a supply for fire fighting; or in making repairs or construction of new works, water may be shut off at any time and kept shut off as long as necessary.

10. Use of Fire Hydrants. Except for extinguishment of fires, no person, unless authorized by the Public Works Department, shall operate fire hydrants or interfere in any way with the water system without first obtaining a permit to do so from the City as follows:

A. A permit to use a fire hydrant shall be issued for each individual job or contract for a minimum of thirty (30) days and for an additional thirty (30) day period as the City shall determine. The permit shall state the location of the hydrant and shall be for the use of that hydrant and none other.

B. The user shall make an advance cash deposit to guarantee payment for water used and to cover breakage and damage to the hydrant and meter, which shall be refunded upon expiration of the permit, less applicable charges for use.

C. The user shall relinquish the use of the hydrant to authorized city employees in emergency situations.

D. The user shall be pay a rental charge as set forth in the Fee Schedule for each day including Sundays and legal holidays, and a fee as established in the Fee Schedule for each one thousand (1,000) gallons of water used.

11. Penalties.

A. Unlawful Use. It is hereby declared unlawful for any person to take any water from the City water system except through a meter owned or approved by the City, or to take any water from any premises not owned by him or her without permission of the owner.

B. Tampering. It shall be unlawful for any person to turn on any shut-off box or to open or interfere with any of the hydrants except as expressly permitted in this Section, or to tamper with any part of the water works system.

12. Water Emergency. A water emergency occurs when the City's available water supply is inadequate to meet the water demand by the City's customers. During water emergency periods, the City will restrict water use to its customers based on the water allocation priorities recommended by Minnesota Statutes Section 103G.261. These priorities are included in the City's Emergency and Conservation Plan ("Water Supply Plan"), dated November 2007. Based on these priorities, domestic uses such as general household purposes for human needs such as cooking, cleaning, drinking, washing, and waste disposal are Priority 1 and will be eliminated last and non-essential water uses such as lawn sprinkling, vehicle washing, and park irrigation are Priority 6 and will be eliminated first.

Water use will be restricted based on the severity of the water emergency. Customers will be notified of water emergency conditions by the local cable access television channel, local newspapers or local television, and radio stations. The newspaper article or television or radio announcement will describe the type or types of water use that is restricted and when the water use restriction begins. After twenty-four (24) hours notice following broadcast by local radio or television stations or after forty-eight (48) hours notice by local newspapers that a "Water Emergency" exists, it shall be unlawful for the owner of any property to use water for any use restricted by the water emergency notice. Such water emergency shall continue until further notice which shall be broadcast by local radio, television, or newspaper.

13. Water Use Restrictions.

A. General. Each year from May 1 to September 30 the use of the City water supply system for lawn and garden sprinkling, irrigation, or other nonpotable uses shall be prohibited between the hours of 11:00 a.m. and 6:00 p.m. and shall be limited to an odd-even schedule corresponding to the property address. During this time residents with even-numbered addresses may water only on even-numbered days and residents with odd-numbered addresses may water only on odd-numbered days.

B. Exception. The City Administrator may issue a permit to property owners to allow daily lawn and garden sprinkling for up to thirty (30) days following the installation of new sod or plantings between the hours of 6:00 p.m. and 11:00 a.m. (Effective January 1, 2009.)

15.06 CABLE COMMISSION FRANCHISE.

An ordinance including a Franchise Agreement as Exhibit I to such Ordinance, granting a Franchise to Meredith Cable as the successor to Group W Cable of

Ramsey/Washington Inc., to operate and maintain a Cable Communications System in the Municipality of Mahtomedi; setting forth conditions accompanying the grant of Franchise; defining the meaning of Franchise; providing for regulation and use of the System; and including penalties for violations hereof.

ARTICLE 1.

Statement of Intent and purpose, Authority, Franchise Applications. The Municipality of Mahtomedi ("Grantor") intends by the adoption of this Ordinance, to bring about the development and operation of a Cable Television System ("System") to better utilize public services and to better facilitate the communication needs and desires of citizens of Grantor, and the surrounding area and the Member Municipalities of the original Ramsey/Washington Counties Suburban Cable Communications Commission ("Commission"). In addition to this Ordinance, Grantor and Company shall execute a Franchise Agreement ("Agreement") governing the relationship between Grantor and Company; the terms and conditions of the Agreement are incorporated into the Ordinance by reference and are attached as Exhibit I.

The Commission granted the original Franchise for a System operating within the Commission's territorial boundaries and the Commission carried out the ongoing administration and enforcement of the Franchise. The original Commission is to be dissolved, a successor Commission is to be created, and the individual Member Municipalities comprising Commission, including Grantor, must individually enter into a franchise relationship with Group W Cable of Ramsey/Washington, Inc. d/b/a Meredith Cable ("Company") pursuant to the same substantive terms and conditions of the original Commission's Franchise.

ARTICLE 2.

Short Title. This Ordinance shall be know and cited as the "Cable Communications Franchise Ordinance".

ARTICLE 3.

Definitions. The definition section contains 24 terms which are defined for the purpose of the Franchise.

ARTICLE 4.

1. **General**. Grantor intends to adopt a replacement Franchise and enter into a Franchise relationship on substantially the same terms and conditions as previously existed between the original Commission and Company and the prior Franchise terms and conditions continue in full force and effect, and supersede any inconsistent term or condition. The Franchise is granted pursuant to the terms and conditions contained herein which shall be

subordinate to all applicable provisions of state and federal laws, rules and regulations.

2. **Review**. Company's technical ability, financial condition and legal qualifications were considered and approved by the original Commission, including Grantor. Grantor accepts the review of the original Commission and approves Company's qualifications for the purposes contemplated herein.

3. **Authority**. The grantor grants to Company authority to use the streets for constructing, repairing, and operating such facilities and equipment as are necessary for the operation of the System; subject to Grantor's regulatory authority.

4. **Term**. The Franchise is granted for 15 years.

5. **Non-Exclusive**. The Franchise is non-exclusive.

6. **Required.** Any System which makes use of the streets must be Franchised.

ARTICLE 5.

Design Provisions. The System shall contain 450 MHz cable with 64 downstream channels, 4 return (upstream) channels, and shall have a separate Institutional Network. The System shall comply, at a minimum, with the technical and performance standards promulgated by the FCC. The Grantor may require testing of the System.

ARTICLE 6.

Construction Provisions. All facilities of Company shall be constructed and maintained in compliance with applicable law and shall not interfere with or endanger use of the streets or public property.

ARTICLE 7.

Operation and Maintenance. The Company shall maintain a toll-free number for the reception of complaints, and shall maintain a repair service capable of responding to complaints or requests for service within 24 hours. All regulatable rates and charges shall be subject to regulation by Grantor.

ARTICLE 8.

General Financial and Insurance Provisions. Company shall furnish a performance bond approved by Grantor in such amount as Grantor deems to be adequate compensation for damages resulting from Company's nonperformance.

Company shall indemnify and hold harmless Grantor and maintain liability insurance in such amount as Grantor may require.

ARTICLE 9.

Revocation, Abandonment, Purchase and Removal of System. Grantor may terminate and cancel the Franchise in the event: (1) Company substantially violates the Franchise, (2) Company attempts to evade the Franchise, (3) Company practices any fraud or deceit upon Grantor, (4) Company becomes insolvent, (5) Company is adjudged bankrupt, (6) Company materially misrepresents a fact in the application for or negotiation of the Franchise, or (7) upon the conviction of any agent of Company of the offense of bribery or fraud connected with awarding of the Franchise. Upon termination of the Franchise Company shall remove its facilities.

If the System or Franchise is offered for sale Grantor shall have the right to purchase System.

ARTICLE 10.

Rights of Individuals Protected. No Subscriber shall be monitored to determine viewing patterns or practices without the express written permission of the Subscriber. No information or data obtained by monitoring shall be sold or otherwise made available to any party other than to Company, unless Company has received specific written authorization.

The Company may conduct System sweeps to review System performance. The Company shall provide a Subscriber, upon request, with copies of all information related to such Subscriber.

ARTICLE 11.

Community Programming, Community Programming Channels and Institutional Network Requirements. Company shall provide Community Programming, pursuant to the Agreement. The Grantor shall provide at least one specially designated non-commercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one channel for use by local educational authorities; at least one channel for local government use; and at least one channel for lease.

Whenever a specially designated channel is in use a sufficient period, as set forth in the Ordinance, Company shall provide an additional specially designated channel.

Grantee shall also provide an Institutional Network (I/Net") as set forth in the Agreement. Grantor will assume responsibility for the I/Net in accordance with

the Agreement. The Grantor shall have complete and unrestricted access to the Community Programming Channels and the I/Net and the Company shall have full responsibility for the maintenance, repair, and technical performance of the same.

ARTICLE 12.

Miscellaneous Provisions.

1. **Compliance with Laws**. Company shall conform with all federal, state and local laws and regulations regarding cable communications.

2. **Sale or Transfer**. Any sale or transfer of the Franchise or creation of a new controlling interest in Company is prohibited, except upon the approval of Grantor.

3. **Amendment**. The Ordinance sets forth procedures for amendments.

4. **Franchise Renewal**. Grantor may review and assess a request to renew the Franchise in accordance with federal law.

5. **Administration of Franchise**. The Ramsey/Washington Counties Suburban Cable Communications Commission shall be responsible for the continued administration of the Franchise. Grantor may issue such reasonable rules and regulations concerning the construction, operation and maintenance of System as are consistent with the provisions of the Franchise.
6. **Penalties**. Exclusive of contractual damages or other rights in law or equity, a violation of any provision of this Ordinance is a misdemeanor and is enforceable by Grantor.

ARTICLE 13.

The company shall accept the Franchise pursuant to the procedures included in this section.

The Commission may be terminated only upon the expiration of the Joint Powers Agreement or by the operation of state or federal law. Upon dissolution of Commission, all remaining assets of Commission, after payment of obligations, shall be distributed among the Member Municipalities in proportion to their contributions and in accordance with procedures established by Commission.

A complete copy of the Franchise Ordinance, Franchise Agreement and joint and Cooperative Agreement for Administration of the Franchise are available for review in the office of the City Clerk.

15.07 STORM DRAINAGE UTILITY.

1. Establishment of Storm Drainage Utility. Pursuant to Minnesota Statutes Section 444.075, the City hereby establishes a storm drainage utility and authorizes the imposition of just and reasonable charges for the use and availability of storm drainage facilities. The storm drainage utility shall be under the administration of the City Administrator.

2. Findings, Determination, and Purpose.

   A. In the exercise of its governmental authority and in order to promote the public health, safety, convenience, and general welfare, the City has constructed, operated, and maintained a storm drainage system (the "system"). This Section is adopted in the further exercise of such authority and for the same purpose.

   B. The system, as constructed, heretofore has been financed and paid for and through the imposition of special assessments and ad valorem taxes. It is now necessary and desirable to provide an alternative method of recovering some or all of the future costs of improving, maintaining, and operating the system through the imposition of charges as provided in this Section.

   C. In imposing charges, it is necessary to establish a methodology that undertakes to make said charges just and equitable. Taking into account the status of system completion, past methods of recovering system costs, the topography of the City, and other relevant factors, it is determined that it would be just and equitable to assign responsibility for some or all of the future costs of operating, maintaining, and improving the system on the basis of expected storm water runoff from various parcels of land within the City during a standard rainfall event. For the purposes of this Section, a standard rainfall event is defined as SCS Type II, 5-year, 24-hour storm, Soil Types A and B, as established in the Soil Conservation Service National Engineering Handbook.

3. Storm Drainage Utility Fund and Use of Fund. There is hereby created a Storm Drainage Utility Fund, into which all charges, when collected, and all monies received from the sale of any facilities or equipment or any by-products shall be placed. Such charges and monies shall be used first to pay normal, reasonable, and current costs of operating and maintaining the system. Charges and monies from time to time received in excess of such costs may be used to finance improvements to and betterments of the system.

4. Establishment of Charges and Residential Equivalent Unit (REU). The City Council shall establish rates and charges for the use of the storm

drainage system, and shall determine a standard residential equivalent unit (REU). For the purposes of this Section and resolutions adopted under the provisions of this Section, residential equivalent unit (REU) is defined as the volume of surface water runoff coming from a 0.46 acre single family lot during a standard rainfall event, calculated through the use of engineering principles. Designated REU quantities for various types of land uses and properties shall be established by resolution.

5. Adjustment of Charges. The City Council may by resolution adopt policies providing for the adjustment of charges for parcels or groups of parcels, based upon land use data supplied by affected property owners, which data must demonstrate a runoff volume for the standard rainfall event substantially different from the REU number being used for the parcel or parcels. Such adjustment shall be considered only after receiving the recommendation of the City Engineer and shall not be made effective retroactively.

6. Recalculation of Charges. If a property owner or person responsible for paying the storm water drainage charge questions the correctness of such a charge, such person may have the determination of the charge recomputed by written request to the City Administrator. Such requests shall be made within thirty (30) days of the mailing of the billing in question. Any adjustment in the REU basis must be made under the above provisions of Section 15.07(5).

7. Supplying Information. The owner, occupant, or person in charge of any premises shall supply the City with such information as the City reasonably requests related to the use, development, and area of the premises.

8. Estimated Charges. If the owner, occupant, or person in charge of any premises fails or refuses to provide the information requested pursuant to Section 15.07(7), the charge for such premises will be estimated and billed in accordance with the estimate based upon information then available to the City.

9. Excluded Lands. A system charge will not be made against land that is either:

   A. Public street right-of-way; or,

   B. Vacant and unimproved with substantially all of its surface having vegetation as ground cover.

10. Billings and Collections. Bills for system charges are rendered by the City finance department in accordance with its usual and customary practice in

rendering of water and sanitary sewer service bills. Bills are rendered quarterly, and are payable at the office of the City finance department and may be rendered in conjunction with billings rendered for water or sanitary sewer service, or both.

11. Penalties and Remedies. Penalties and remedies for late payments or non-payment of billings shall be the same as those applicable to billings rendered for water and sanitary sewer service. (12/4/00)

15.08 STORM WATER MANAGEMENT.

1. Statutory Authorization. This Section is adopted pursuant to Minnesota Statutes Section 462.351.

2. Findings. The City of Mahtomedi hereby finds the uncontrolled and inadequately planned use of wetlands, woodlands, natural habitat areas, areas subject to soil erosion, and areas containing restrictive soils adversely affects the public health, safety, and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources, and hindering the ability of the City of Mahtomedi to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas that may be affected by unplanned land usage.

3. Purpose. The purpose of this Section is to promote, preserve, and enhance the natural resources within the City of Mahtomedi and protect them from adverse effects occasioned by poorly sited development or incompatible activities by regulating land disturbing or development activities that would have an adverse and potentially irreversible impact on water quality and unique and fragile environmentally sensitive land; by minimizing conflicts and encouraging compatibility between land disturbing and development activities and water quality and environmentally sensitive lands; and by requiring detailed review standards and procedures for land disturbing or development activities proposed for such areas, thereby achieving a balance between urban growth and development and protection of water quality and natural areas.

4. Definitions. For the purposes of this Section, the following terms, phrases, words, and their derivatives shall have the meanings stated below. When not inconsistent with the 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 word “shall” is always mandatory and not merely directive.

A. “Applicant” means any person who wishes to obtain a building permit or zoning or subdivision approval.

B. “Best Management Practice” means measures taken to minimize the negative effects on the environment. BMP guidance is documented in Protecting Water Quality in Urban Areas (MPCA, 2000), Metropolitan Council Urban Small Sites Best Management Practices Guidebook (Metropolitan Council & Barr Engineering Company, 2001) and Minnesota Stormwater Manual (MPCA, 2005)

C. “Control Measure” means a practice or combination of practices to control erosion and attendant pollution.

D. “Detention Facility” means a permanent natural or man-made structure, including wetlands, for the temporary storage of runoff which contains a permanent pool of water.

E. “Erosion” means the process by which the land’s surface is worn by action of wind, water, ice, or gravity.

F. “Final Stabilization” means all land disturbing construction activities at the construction site have been completed and a uniform perennial vegetative cover has been established, with a density of at least seventy percent (70%) of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

G. “Flood Fringe” means the portion of the floodplain outside of the floodway.

H. “Floodplain” means the areas adjoining a watercourse or water basin that have been or may be covered by a regional flood.

I. “Floodway” means the channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood.

J. “Hydric Soils” means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

K. “Hydrophytic Vegetation” means macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

L. “Land Disturbing or Development Activities” means any change of the land surface including removing vegetative cover, excavating, filling, grading, and the construction of any structure.

M. “Person” means any individual, firm, corporation, partnership, franchisee, association, or governmental entity.

N. “Public Water” means waters of the state as defined in Minnesota Statutes Section 103G.005, subd. 15.

O. “Regional Flood” means a flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a one hundred (100) year recurrence interval.

P. “Retention Facility” means a permanent natural or man-made structure that provides for the storage of storm water runoff by means of a permanent pool of water.

Q. “Sediment” means solid matter carried by water, sewage, or other liquids; or, settleable solid materials that are transported by runoff, suspended within runoff or deposited by runoff away from its original location.

R. “Storm Water Management Plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.

S. “Structure” means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, pools, parking lots, and paved storage areas.

T. “Wetlands” means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three (3) attributes;

i. A predominance of hydric soils;

ii. Be inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

iii. Under normal circumstances support a prevalence of such vegetation.

5. Scope and Effect.

A. Applicability.

i. Every applicant for a building permit, subdivision approval, or other permit to allow land disturbing activities must submit a grading, drainage, and erosion control plan to the City. No building permit, subdivision approval, or other permit to allow land disturbing activities shall be issued until approval of the grading, drainage, and erosion control plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this Section. The provisions of Subdivision 9 of this Section shall apply to all land, public or private, located within the City of Mahtomedi.

ii. Every applicant for a building permit, subdivision approval, or other permit to allow land disturbing activities one acre or greater must submit a stormwater management plan to the City. No building permit, subdivision approval, or other permit to allow land disturbing activities one acre or greater shall be issued until approval of the stormwater management plan or a waiver of the approval requirement has been obtained in conformance with the provisions of this Section. The provisions of Subdivision 21 of this Section shall apply to all land, public or private, located within the City of Mahtomedi.

B. Exemptions. Unless deemed necessary by the Zoning Administrator, the provisions of this Section shall not apply to:

i. Any part of a subdivision if a plat for the subdivision has been approved by the City on or before the effective date of this Section;

ii. Any land disturbing activity for which plans have been approved by the applicable watershed district within six (6) months prior to the effective date of this Section;

iii. A lot for which a building permit has been approved on or before the effective date of this Section;

iv. Installation of fences, signs, telephone and electric poles, and other kinds of posts or poles;

v. Emergency work to protect life, limb, or property;

vi. Minor Subdivisions; or

vii. Single family dwellings and accessory structures not adjacent to any feature listed in Section 15.08(6)(B)(i)(d) except that such applications shall comply with 15.08(6)(B)(ii).

C. Waiver. The City Council may waive any requirement of this Section upon making a finding that compliance with the requirement will involve an unnecessary hardship and the waiver of such requirement will not adversely affect the standards and requirements set forth in Section 15.08(6)(B). The City Council may require as a condition of the waiver such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet said standards and requirements.

6. Storm Water Management Plan Approval Procedures.

A. Application. A completed permit application signed by the landowner (or contractor on non-City government project) along with the proposed grading, drainage, and erosion control plan, storm water management plan, and maintenance agreement as required shall be filed with the Public Works Director. It shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this Section. A narrative describing the purpose of the project and efforts taken to avoid or minimize wetland or shoreland impacts must be included.

Three (3) copies of all necessary maps, plans including the grading plans and erosion control plans, wetland delineation report, sequencing and alternatives analyses, wetland replacement plan applications, specifications, and calculations shall be submitted to the City Administrator along with a bond when required by this Section. Drawings shall be prepared to a scale appropriate to the

site of the project and suitable for the review to be performed. At a minimum the scale shall be 1 inch (1") equals one hundred (100) feet.

B. Grading, Drainage, and Erosion Control Plan. At a minimum, the grading, drainage, and erosion control plan shall contain the information in the Construction Site Runoff Control section of the City of Mahtomedi Stormwater Management Standards.

C. Storm Water Management Plan. At a minimum, the storm water management plan shall contain the information in the Storm Water Management Plan Requirements of the City of Mahtomedi Stormwater Management Standards and include a maintenance agreement that meets the requirements of Section 15.08(11).

7. Plan Review Procedure.

A. Process. Storm water management plans meeting the requirements of Subdivision 6 shall be analyzed and submitted to the Planning Commission for review in accordance with the standards of Subdivision 8. The Planning Commission shall recommend approval, recommend approval with conditions, request additional information and consideration, or recommend denial of the storm water management plan. Following Planning Commission action, the storm water management plan shall be submitted to the City Council at its next available meeting. City Council action on the storm water management plan must be accomplished within the statutory period for review of planning applications, subsequent to the receipt of a complete permit application by the City.

B. Duration. Approval of a plan submitted under the provisions of this subdivision shall expire one (1) year after the date of approval unless construction has commenced in accordance with the plan. Any plan may be revised in the same manner as originally approved.

C. Conditions. A storm water management plan and maintenance agreement may be approved subject to compliance with conditions reasonable and necessary to ensure that the requirements contained in this Section are met. Such conditions may, among other matters, limit the size, kind, or character of the proposed development, require the construction of structures, drainage facilities, storage basins, and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure buffering, and

require the conveyance to the City of Mahtomedi or other public entity of certain lands or interests therein.

D. Performance Bond. Prior to approval of any storm water management plan and maintenance agreement, the applicant shall submit an agreement to construct such required physical improvements, to dedicate property or easements, or to comply with such conditions as may have been agreed to. Such agreement shall be accompanied by a bond in the amount set by the City Administrator on a case by case basis to cover the amount of the established cost of complying with the agreement. The agreement and bond shall guarantee completion and compliance with conditions within a specific time. The amount of the bond will typically be the sum of two thousand dollars ($2,000) per acre of site, plus the estimated value of all erosion control facilities in the plan multiplied by 1.25.

E. Upon receipt of the stormwater management plan and maintenance agreement, the City Administrator shall determine the fee amount on a case-by-case basis. The fees will be set in accordance with the Fee Schedule.

8. Approval Standards.

A. Approval. No storm water management plan that fails to meet the local watershed district requirements and the City of Mahtomedi Stormwater Management Standards shall be approved by the City Council. The storm water management plan shall meet the submittal criteria for the plans of the City of Mahtomedi Stormwater Management Standards prior to starting construction."

9. Storm Water Management Criteria for Permanent Facilities.

A. An applicant shall install or construct, on or for the proposed land disturbing or development activity, all storm water management facilities necessary to manage increased runoff so that the one-year, two-year, ten-year, and 100-year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. The applicant shall submit appropriate calculations demonstrating this. In certain instances runoff may be directed to facilities offsite that have been or will be constructed by the City or others. In these cases the applicant shall share in the costs of these offsite facilities in accordance with City policies.

B. The applicant shall give consideration to reducing the need for storm water management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales, and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of the wetland or pond.

C. The following storm water management practices shall be investigated in developing a storm water management plan in the following descending order of preference:

i. Natural infiltration of precipitation on-site including the usage of natural or vegetated areas on the site, minimizing impervious surfaces, and directing runoff to vegetated areas rather than to adjoining streets, storm sewers, and ditches;

ii. Flow attenuation by use of open vegetated swales and natural depressions;

iii. Storm water retention facilities using skimmers and submerged outlets to prevent surface discharge; and

iv. Storm water detention facilities using the criteria cited herein and those established by the governing watershed district for implementation of detention facilities based on the receiving water body quality category.

D. A combination of successive practices may be used to achieve the applicable minimum control requirements specified in Subpart (A) above. The applicant shall provide justification for the method selected.

10. Design Standards. Unless determined by the City to be exempt or granted a waiver, all site designs shall establish storm water management facilities to control the peak flow rates and pollutants of stormwater discharge associated with specified design storms and runoff volumes, as detailed in the City of Mahtomedi Stormwater Management Standards and local watershed district requirements.

11. Maintenance Plan and Agreement. All storm water management facilities shall be designed to minimize the need of maintenance, to provide access for maintenance purposes and to be structurally sound.

A. A Maintenance Agreement with the respective watershed district that documents all responsibilities for operation and maintenance

of all permanent storm water management facilities shall be received by the City prior to permit approval. Such responsibility shall be documented in a maintenance plan and executed through a Maintenance Agreement that is executed and recorded against the parcel. The Maintenance Agreement shall be in a form approved by the respective watershed district and provided to the City prior to permit approval. The Maintenance Agreement shall describe the inspection and maintenance obligations of this section and shall, at a minimum:

i. The Responsible Party who is permanently responsible for maintenance of the structural and nonstructural measures.

ii. Pass responsibilities for such maintenance to successors in title.

iii. Allow the City and its representatives the right-of-entry for the purposes of inspecting all permanent storm water management facilities.

iv. Allow the City the right to repair and maintain the facility, if necessary maintenance is not performed after proper and reasonable notice to the responsible party of the permanent storm water management facility.

v. Include a maintenance plan that contains, but is not limited to the following:

    a. Identification of all structural permanent storm water facility.

    b. A schedule for regular inspection, monitoring, and maintenance of each practice. Monitoring shall verify whether the practice is functioning as designed and may include, but is not limited to quality, temperature, and quantity of runoff.

    c. Identification of the Responsible Party for conducting the inspection, monitoring and maintenance for each practice.

    d. Include a schedule and format for reporting compliance with the maintenance agreement to the City.

vi. The issuance of a permit constitutes a right-of-entry for the community or its contractor to enter upon the construction site. The applicant shall allow the community and their authorized representatives, upon presentation of credentials, to:

a. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations or surveys.

b. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations.

c. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit.

d. Inspect the stormwater pollution control measures.

e. Sample and monitor any items or activities pertaining to stormwater pollution control measures.

f. Correct deficiencies in stormwater and erosion and sediment control measures.

B. <u>Inspection programs</u> shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other storm water management practices as required by the associated watershed district.

C. The Responsible Party shall make records of the installation and of all maintenance and repairs of the storm water management

facilities, and shall retain the records for at least three (3) years. These records shall be made available to the City during inspection of the storm water management facilities and at other reasonable times upon request.

D. If a Responsible Party fails or refuses to meet the requirements of the Maintenance Agreement, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the storm water management facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the City shall notify the Responsible Party in writing. Upon receipt of that notice, the Responsible Party shall have thirty days to perform maintenance and repair of the facility in an approved manner. After proper notice, the City may specially assess the owner(s) of the storm water management facility for the cost of repair work and any penalties; and the cost of the work shall be assessed against the property and collected along with ordinary taxes by the county.

12. Wetlands. All activities shall be in compliance with the Wetland Conservation Act of 1991 or the following, whichever is more restrictive:

A. Runoff shall not be discharged directly into wetlands without presettlement of the runoff.

B. A protective buffer strip of natural vegetation at least one rod (16.5 feet) in width shall adjoin all delineated wetland boundaries or at the OHW, whichever is greater in elevation.

C. Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value. Replacement must be guided by the following principles in descending order of priority:

i. Avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

ii. Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

iv. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

v. Compensating for the impact by replacing or providing substitute wetland resources or environments. All replacement wetland shall be located within the respective Watershed District, unless the Watershed District finds the need for exception.

13. Steep Slopes. No land disturbing or development shall be allowed on slopes of eighteen percent (18%) or more.

14. Drain Leaders. All newly constructed and reconstructed buildings shall route drain leaders to pervious areas wherein the runoff can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so no erosion occurs in the pervious areas.

15. Models/Methodologies/Computations. Hydrologic models and design methodologies used for the determination of runoff and analysis of storm water management structures shall be approved by the City Engineer. Plans, specification, and computations for storm water management facilities submitted for review shall be sealed and signed by a registered professional engineer. All computations shall appear on the plans submitted for review, unless otherwise approved by the city engineer. The submitted calculations shall include:

A. Calculations demonstrating that post-development, peak discharge rates are not increased over existing conditions for the 1-, 2-, 10-, and 100-year storm events.

B. Calculations demonstrating that detention facilities have been designed with permanent pool volume sufficient to retain the runoff from a 2.5-inch rainfall.

C. A tabulation of normal, 1-year and 100-year flood elevations for all lakes, ponds, creeks, and wetlands.

16. Watershed Management Plans/Groundwater Management Plans. Storm water management plans shall be consistent with adopted watershed management plans and groundwater management plans prepared in accordance with Minnesota Statutes Section 103B, 103D and Minnesota Rules 8410.0160, and as approved by the Minnesota Board of Water and Soil Resources in accordance with state law.

17. Easements. If a storm water management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the applicant to

obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water.

18. Lawn Fertilizers Regulations.

A. Use of Impervious Surfaces. No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces, or within storm water drainage systems, natural drainage ways, or within wetland buffer areas.

B. Unimproved Land Area. Except for driveways, sidewalks, patios, areas occupied by structures, or areas which have been improved by landscaping, all areas shall be covered by plants or vegetative growth.

C. Fertilizer Content. No lawn fertilizer containing any amount of phosphorus or other compounds containing phosphorus such as phosphates shall be applied within the City except in the following circumstances:

i. In newly established vegetation areas during the first growing season; and

ii. In areas in which a soil test confirms that phosphorus levels are lower than needed to maintain vegetative growth, as determined by the University of Minnesota Extension Service. Fertilizer applied in these areas shall not exceed the amount of phosphorus fertilizer at the appropriate application rate recommended in the soil test evaluation.

19. Buffer Zone. Fertilizer applications shall not be made within 16.5 feet of any wetland or water resource.

20. Other Controls. In the event of any conflict between the provisions of this Section and the provisions of an erosion control or shoreland protection plan adopted by the City, the more restrictive standard shall prevail.

21. Penalty.

A. Notice of Violation. When the City, or designated representative, determines that an activity is not being carried out in accordance with the requirements of this ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

i. The name and address of the owner of Applicant,

ii. The address when available or a description of the land upon which the violation is occurring,

iii. A statement specifying the nature of the violation,

iv. A description of the remedial measures necessary to bring the development activity into compliance with this ordinance and a time schedule for the completion of such remedial action,

v. At statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed, and

vi. A statement that the determination of violation may be appealed to the City by filing a written notice of appeal within 15 days of services notice of violation.

B. Stop Work Order. Persons receiving a stop work order will be required to halt all construction activities. This Stop Work Order will be in effect until the City confirms that the Land Disturbance Activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this ordinance.

C. Civil or Criminal Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this ordinance shall be guilty of a misdemeanor and subject to prosecution. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.

D. Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which may, after notice and opportunity for hearing, be specially assessed against the property and collected along with the ordinary taxes by the county.

22. Appeals.

A. Appeals. Any person aggrieved by the action of any official charged with the enforcement of this ordinance, as the result of the

disapproval of a properly filed application for approval, issuance of a written notice of violation, or an alleged failure to properly enforce the ordinance in regard to a specific application, shall have the right to appeal the action to the City.

i. The Applicant shall submit the appeal in writing and include supporting documentation.

ii. City staff shall make a decision on the appeal within 15 business days of receipt of a complete appeal application.

iii. The Applicant may appeal the decision of city staff to the city council. This appeal must be filed with the City within 30 days of City staff's decision.