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ATTORNEYS AT LAW

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OF COUNSEL  
ROBERT O. STRAUGHN  
PETER L. COOPER  
ANDREW J. SHEA  
(1938-2018)

May 22, 2019

VIA ELECTRONIC FILING

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Place East  
St. Paul, MN 55101

Re: In the Matter of the Joint Request of the Light and Power Commission of the City of Glencoe and McLeod Cooperative Power to Update Electric Service Territory Records  
**Revised Joint Petition**  
MPUC Docket: SA-19-331

Dear Mr. Wolf:

I represent the Light and Power Commission of the City of Glencoe (the "Municipal"). This letter constitutes a revised joint petition between the Municipal and McLeod Cooperative Power (the "Cooperative") (collectively, the "Parties"). It is meant to replace the joint filing made on May 13, 2019.

Summary of the Joint Request

This filing constitutes the Parties' joint request that the MPUC update the official service territory map to reflect an agreed-upon change in the Parties electric service territory boundaries. This joint request concerns two areas that have been annexed in the city limits and are to be permanently transferred to the Municipal's assigned service territory (the "Affected Areas").

Legal Authorities

Under Minnesota Statutes, Section 216B.44(a), a municipal utility expands its assigned electric service territory, upon reaching agreement with the neighboring utility as to compensation: "Notwithstanding the provision of sections 216B.38 to 216B.42, whenever a municipality which owns and operates an electric utility (1) extends its corporate boundaries through annexation or consolidation, or (2) determines to extend

its service territory within its existing corporate boundaries, the municipality shall thereafter furnish electric service to these areas unless the area is already receiving electric service from an electric utility, in which event, the municipality may purchase the facilities of the electric utility serving the area." And Section 216B.44(d) When property of an electric utility located within an area annexed to a municipality which owns and operates an electric utility is proposed to be acquired by the municipality, ratification by the electors is not required.

In this docket, the Parties seek to adjust the service territory boundaries to permanently transfer the Affected Areas to the Municipal's assigned service territory. There are no existing customers affected by this transfer.

### Underlying Information

1. Exhibit A – Affected Areas. Exhibit A contains the annexation documents of the two Affected Areas, including legal descriptions and maps. There are no customers involved in the Affected Areas. For clarity, the Parties note that the three-acre parcel will house the Cooperative's headquarters, as referenced in the service-by-exception filing on May 13, 2019.

2. Exhibit B – Agreement. In responding to inquiries from the Department of Commerce, it was discovered that the Electric Service Territory Agreement between the Parties dated April 27, 2010 (the "Agreement") had not previously been filed. Exhibit B is a copy of the Agreement. The Parties note that the Affected Areas are the first annexations to come forward under the Agreement.

As provided in the Agreement, the Municipal has provided written notice to the Cooperative of the transfer of the Affected Areas. Under Section 1.2 of the Agreement, the exclusive right and obligation to provide service has therefore transferred to the Municipal. Under the Agreement, the Parties have also agreed to compensation.

### Parties Contact Information

If there are any questions concerning this filing, you may contact the following representatives:

#### Glencoe Light and Power Commission

David C. Meyer, General Manager  
Glencoe Light and Power  
3305 11th St. East  
Glencoe MN 55336  
Phone: 320-864-7243  
dave@glencoelightandpower.com

#### McLeod Cooperative Power Association

McLeod Cooperative Power Association  
Carrie L. Buckley, General Manager  
McLeod Cooperative Power Association  
1231 Ford Ave., PO Box 70  
Glencoe MN 55336  
Phone: 320-864-7334  
cbuckley@mcleodcoop.com

May 22, 2019  
Page 3

Kathleen M. Brennan  
McGrann Shea Carnival Straughn  
& Lamb, Chartered  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402  
Phone: 612-338-2525  
kmb@mcgrannshea.com

Request

The Parties therefore petition the Commission to accept and file these documents and provide due acknowledgment to the Parties. The Parties further request that the Commission provide evidence of its acknowledgment of these changes of service territory boundaries, and the updating of the official service territory records.

The Parties appreciate the opportunity to clarify the record. Please feel free to contact me or any of the utility representatives if you have any questions.

Sincerely,



Kathleen M. Brennan

Enclosure  
cc (w/encl.): Service List

# EXHIBIT A

84-0331-35281

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of  
Certain Real Property to the City of  
Glencoe from Helen Township  
(MBAU Docket OA-1700-1)

**ORDER APPROVING  
ANNEXATION**

Joint Resolution Number 2018-12 for orderly annexation (Joint Resolution) was adopted by the City of Glencoe (City) on May 21, 2018, and Helen Township (Township) on May 10, 2018, requesting the designation and immediate annexation of certain real property (Property) legally described as follows:

The West 314.80 feet of Outlot A, PANTHER HEIGHTS SECOND ADDITION, according to the recorded plat thereof, McLeod County, Minnesota.

AND

That part of 16<sup>th</sup> Street, as dedicated by PANTHER HEIGHTS FIRST ADDITION, according to the recorded plat thereof, McLeod County, Minnesota, lying west of the northerly prolongation of the east line of the West 314.80 feet of said Outlot A, PANTHER HEIGHTS SECOND ADDITION, and lying east of a line parallel with and distant 87 feet east of the northwest corner of Lot 1, Block 2, of said PANTHER HEIGHTS SECOND ADDITION.

Based upon a review of the Joint Resolution, the Chief Administrative Law Judge makes the following:

**ORDER**

1. Pursuant to Minn. Stat. § 414.0325 (2016), the Joint Resolution is deemed adequate in all legal respects and properly supports this Order.
2. Pursuant to the terms of the Joint Resolution and this Order, the Property is **ANNEXED** to the City.

3. Pursuant to the agreement of the parties and as allowed by Minn. Stat. § 414.036 (2016), the City will reimburse the Township \$146.18 as stated in the Joint Resolution.

Dated: May 22, 2018



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TAMMY L. PUST  
Chief Administrative Law Judge

### NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2016). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to McLeod County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2017). However, no request for amendment shall extend the time of appeal from this Order.

**IN THE MATTER OF THE ORDERLY ANNEXATION BETWEEN  
THE CITY OF GLENCOE AND HELEN TOWNSHIP  
PURSUANT TO MINNESOTA STATUTES § 414.0325**

*WHEREAS, a request from all of the property owners of the area proposed for designation and immediate annexation was received.*

**WHEREAS,** the City of Glencoe and Helen Township jointly agree to designate and request the immediate annexation of the following described land located within Helen Township to the City of Glencoe, County of McLeod, Minnesota;

*The West 314.80 feet of Outlot A, PANTHER HEIGHTS SECOND ADDITION,  
according to the recorded plat thereof, McLeod County Minnesota*

**AND**

*That part of 16<sup>th</sup> street, as dedicated by PANTHER HEIGHTS FIRST ADDITION,  
according to the recorded plat thereof, McLeod County, Minnesota, lying west of the  
northerly prolongation of the east line of the West 314.80 feet of said Outlot A,  
PANTHER HEIGHTS SECOND ADDITION, and lying east of a line parallel with  
and distant 87 feet east of the northwest corner of Lot 1, Block 2, of said PANTHER  
HEIGHTS SECOND ADDITION.*

and

**WHEREAS,** the City of Glencoe and Helen Township are in agreement as to the orderly annexation of the unincorporated land described; and

**WHEREAS,** Minnesota Statutes § 414.0325 provides a procedure whereby the City of Glencoe and Helen Township may agree on a process of orderly annexation of a designated area; and

**WHEREAS,** the City of Glencoe and Helen Township have agreed to all the terms and conditions for the annexation of the above-described lands; and the signatories hereto agree that no alteration of the designated area is appropriate and no consideration by the Chief Administrative Law Judge is necessary. The Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

**NOW, THEREFORE, BE IT RESOLVED,** jointly by the City Council of the City of Glencoe and the Township Board of Helen Township as follows:

1. **(Property.)** That the following described land is subject to orderly annexation pursuant to Minnesota Statutes § 414.0325, and that the parties hereto designate the area for orderly annexation; and agree that the land be immediately annexed:

*The West 314.80 feet of Outlot A, PANTHER HEIGHTS SECOND ADDITION, according to the recorded plat thereof, McLeod County Minnesota*

**AND**

*That part of 16<sup>th</sup> street, as dedicated by PANTHER HEIGHTS FIRST ADDITION, according to the recorded plat thereof, McLeod County, Minnesota, lying west of the northerly prolongation of the east line of the West 314.80 feet of said Outlot A, PANTHER HEIGHTS SECOND ADDITION, and lying east of a line parallel with and distant 87 feet east of the northwest corner of Lot 1, Block 2, of said PANTHER HEIGHTS SECOND ADDITION.*

2. **(Acreage/Population/Usage.)** That the orderly annexation area consists of approximately five (5) acres, the population in the area is zero (0), and the current land use type is undeveloped agriculture land.

3. **(Jurisdiction.)** That Helen Township and the City of Glencoe, by submission of this joint resolution to the Municipal Boundary Adjustment Unit of the Office of Administrative Hearings, confers jurisdiction upon the Chief Administrative Law Judge so as to accomplish said orderly annexation in accordance with the terms of this resolution.

4. **(Municipal Reimbursement).** Minnesota Statutes § 414.036.

**a. Reimbursement to Towns for lost taxes on annexed property.**

The City of Glencoe shall make a lump sum payment to Helen Township without delay in the amount of \$146.18.

**b. Assessments and Debt.**

That pursuant to Minnesota Statutes § 414.036 with respect to any special assessment assigned by the Township to the annexed property and any portion of debt incurred by the Township prior to the annexation and attributable to the property to be annexed, but for which no special assessments are outstanding, for the area legally described (herein or attached exhibit) there are (1) no special assessments or debt.

6. **(Review and Comment).** The City of Glencoe and Helen Township agree that upon receipt of this resolution, passed and adopted by each party, the Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

Adopted by affirmative vote of all the members of the Helen Township Board of Supervisors this 10<sup>th</sup> day of May 2018.

HELEN TOWNSHIP

By Rodney Mashek  
Chairperson  
Board of Supervisor

ATTEST:

By Karen Mackenthun  
Township Clerk

Adopted by affirmative vote of the City Council of Glencoe this 21<sup>st</sup> day of May 2018.

CITY OF GLENCOE

By: Randy Wilson  
Randy Wilson, Mayor

ATTEST:

By: Mark Larson  
Mark Larson, City Administrator

Approved this 21<sup>st</sup> day of May 2018





STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of  
Certain Real Property to the City of  
Glencoe from Helen Township  
(MBAU Docket OA-1726-1)

**ORDER APPROVING  
ANNEXATION**

Joint Resolution Number 2018-37 for orderly annexation (Joint Resolution) was adopted by the City of Glencoe (City) on December 17, 2018, and Helen Township (Township) on December 13, 2018, requesting the designation and immediate annexation of certain real property (Property) legally described as follows:

That part of the Northeast Quarter of Section 18, Township 115 North, Range 27 West, McLeod County, Minnesota, described as follows:

Beginning at the northeast corner of Lot 2, Block 2, GLENCOE INDUSTRIAL PARK SECOND ADDITION, according to the recorded plat thereof; thence South 00 degrees 36 minutes 50 seconds East along the east line of said Lot 2, a distance of 751.32 feet to the southeast corner of said Lot 2, thence South 89 degrees 22 minutes 50 seconds East along the easterly extension of the south line of said Lot 2, a distance of 35.63 feet to the west line of the East 990.00 feet of said Northeast Quarter as measured along the north line of said Northeast Quarter from the northeast corner of said Section 18 and as measured along the south line of said Northeast Quarter from the east quarter corner of said Section 18; thence North 00 degrees 36 minutes 50 seconds West along said west line of the east 990.00 feet 754.13 feet to the southerly right-of-way line of the Twin Cities and Western Railroad; thence South 86 degrees 06 minutes 26 seconds West along said southerly railroad right-of-way line 35.68 feet to the point of beginning. Subject to any and all easements of record.

AND

That part of the Northeast Quarter of Section 18, Township 115 North, Range 27 West, McLeod County, Minnesota, described as follows:

Commencing at the northeast corner Lot 2, Block 2, GLENCOE INDUSTRIAL PARK SECOND ADDITION, according to the recorded plat thereof; thence South 00 degrees 36 minutes 50 seconds East along the

east line of said Lot 2, a distance of 751.32 feet to the southeast corner of said Lot 2, thence South 89 degrees 22 minutes 50 seconds East along the easterly extension of the south line of said Lot 2, a distance of 35.63 feet to the point of beginning; said point lying on the west line of the East 990.00 feet of said Northeast Quarter as measured along the north line of said Northeast Quarter from the northeast corner of said Section 18 and as measured along the south line of said Northeast Quarter from the east quarter corner of said Section 18; thence continue South 89 degrees 22 minutes 50 seconds East along said easterly extension of the south line of said Lot 2, a distance of 158.42 feet; thence North 00 degrees 36 minutes 50 seconds West parallel to the east line of said Lot 2, a distance of 766.61 feet to the southerly right-of-way line of the Twin Cities and Western Railroad; thence South 86 degrees 06 minutes 26 seconds West along said southerly railroad right-of-way line 158.64 feet to said west line of the east 990.00 feet as previously described herein; thence South 00 degrees 36 minutes 50 seconds East along said line 754.13 feet to the point of beginning. Subject to any and all easements of record.

Based upon a review of the Joint Resolution, the Chief Administrative Law Judge makes the following:

### ORDER

1. Pursuant to Minn. Stat. § 414.0325 (2018), the Joint Resolution is deemed adequate in all legal respects and properly supports this Order.
2. Pursuant to the terms of the Joint Resolution and this Order, the Property is **ANNEXED** to the City.
3. Pursuant to the agreement of the parties and as allowed by Minn. Stat. § 414.036 (2018), the City will reimburse the Township \$72 as stated in the Joint Resolution.

Dated: February 11, 2019



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TAMMY L. PUST  
Chief Administrative Law Judge

## NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2018). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to McLeod County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2017). However, no request for amendment shall extend the time of appeal from this Order.

**RESOLUTION NO. 2018-37**

**IN THE MATTER OF THE ORDERLY ANNEXATION BETWEEN  
THE CITY OF GLENCOE AND HELEN TOWNSHIP  
PURSUANT TO MINNESOTA STATUTES § 414.0325**

**WHEREAS**, a request from all of the property owners of the area proposed for designation and immediate annexation was received.

**WHEREAS**, the City of Glencoe and Helen Township jointly agree to designate and request the immediate annexation of the following described land located within Helen Township to the City of Glencoe, County of McLeod, Minnesota;

See proposed descriptions on the attached Exhibit "A"

and

**WHEREAS**, the City of Glencoe and Helen Township are in agreement as to the orderly annexation of the unincorporated land described; and

**WHEREAS**, Minnesota Statutes § 414.0325 provides a procedure whereby the City of Glencoe and Helen Township may agree on a process of orderly annexation of a designated area; and

**WHEREAS**, the City of Glencoe and Helen Township have agreed to all the terms and conditions for the annexation of the above-described lands; and the signatories hereto agree that no alteration of the designated area is appropriate and no consideration by the Chief Administrative Law Judge is necessary. The Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

**NOW, THEREFORE, BE IT RESOLVED**, jointly by the City Council of the City of Glencoe and the Township Board of Helen Township as follows:

1. **(Property.)** That the following described land is subject to orderly annexation pursuant to Minnesota Statutes § 414.0325, and that the parties hereto designate the area for orderly annexation; and agree that the land be immediately annexed:

See proposed descriptions on the attached Exhibit "A"

2. **(Acreage/Population/Usage.)** That the orderly annexation area consists of approximately 3.38 acres, the population in the area is zero (0), and the current land use type is undeveloped agriculture land.

3. **(Jurisdiction.)** That Helen Township and the City of Glencoe, by submission of this joint resolution to the Municipal Boundary Adjustment Unit of the Office of Administrative Hearings, confers jurisdiction upon the Chief Administrative Law Judge so as to accomplish said orderly annexation in accordance with the terms of this resolution.

4. **(Municipal Reimbursement).** Minnesota Statutes § 414.036.

a. **Reimbursement to Towns for lost taxes on annexed property.**

The City of Glencoe shall make a lump sum payment to Helen Township without delay in the amount of \$72.

b. **Assessments and Debt.**

That pursuant to Minnesota Statutes § 414.036 with respect to any special assessment assigned by the Township to the annexed property and any portion of debt incurred by the Township prior to the annexation and attributable to the property to be annexed, but for which no special assessments are outstanding, for the area legally described (herein or attached exhibit) there are (1) no special assessments or debt.

6. **(Review and Comment).** The City of Glencoe and Helen Township agree that upon receipt of this resolution, passed and adopted by each party, the Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

Adopted by affirmative vote of all the members of the Helen Township Board of Supervisors this 13 day of Dec 2018.

HELEN TOWNSHIP

By: Rodney Mathews  
Chairperson  
Board of Supervisor

ATTEST:

By: Karen Mackenthun  
Township Clerk

Adopted by affirmative vote of the City Council of Glencoe this 17<sup>th</sup> day of December 2018.

CITY OF GLENCOE

By: Randy Wilson  
Randy Wilson, Mayor

ATTEST:

By: Mark Larson  
Mark Larson, City Administrator

Approved this 17<sup>th</sup> day of December 2018

DESIGNED BY:	SP
SURVEYED BY:	MS
CHECKED BY:	MH
SURVEY TEAM:	
NO. BY:	
DATE:	
REVISIONS:	

INDUSTRIAL PLANS THAT THIS SURVEY WAS PREPARED BY OR ON BEHALF OF THE STATE OF MINNESOTA, THE PUBLIC RECORDS DEPARTMENT HAS REVIEWED AND APPROVED FOR RECORD.

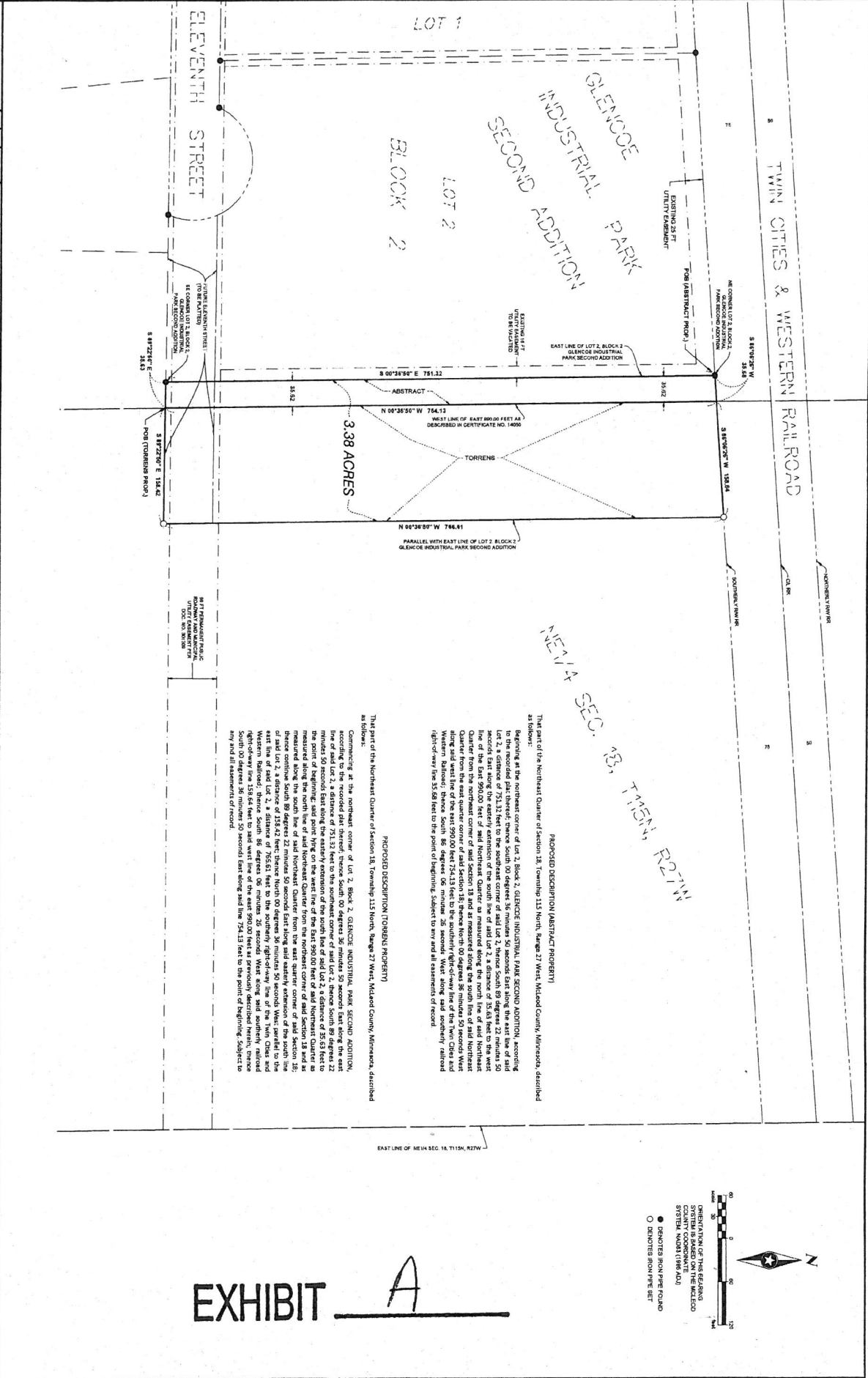
*Mark A. Kessler*  
 DATE: 11/19/2019  
 U.S. No. 4734

PHONE: 612.548.4400  
 FAX: 612.548.4401  
 1100 UNIVERSITY AVENUE, SUITE 200  
 MINNEAPOLIS, MN 55433

GLENCOE, MINNESOTA

PARCEL SPLIT  
 DONALD & JEAN GRUEHAGEN TRUST  
 PART OF NE 1/4 SEC. 18, T115N, R27W  
 MCLEOD, COUNTY MINNESOTA

FILE NO. 1  
 QLENC: 14541  
 1



NE 1/4 SEC. 18, T115N, R27W

PROPOSED DESCRIPTION (ABSTRACT PROPERTY)  
 The part of the Northeast Quarter of Section 18, Township 115 North, Range 27 West, Mead County, Minnesota, described as follows:  
 Beginning at the northeast corner of Lot 2, Block 2, GLENCOE INDUSTRIAL PARK SECOND ADDITION, according to the recorded plat thereof; thence South 00 degrees 36 minutes 50 seconds East along the east line of said Lot 2, a distance of 754.13 feet to the southeast corner of said Lot 2; thence South 89 degrees 22 minutes 50 seconds East along the east line of said Lot 2, a distance of 754.13 feet to the northeast corner of said Lot 2; thence North 00 degrees 36 minutes 50 seconds West along the west line of said Lot 2, a distance of 754.13 feet to the northwest corner of said Lot 2; thence North 00 degrees 36 minutes 50 seconds West along the west line of said Lot 2, a distance of 754.13 feet to the point of beginning. Subject to any and all easements of record.

PROPOSED DESCRIPTION (TORRENS PROPERTY)  
 That part of the Northeast Quarter of Section 18, Township 115 North, Range 27 West, Mead County, Minnesota, described as follows:  
 Commencing at the northeast corner of Lot 2, Block 2, GLENCOE INDUSTRIAL PARK SECOND ADDITION, according to the recorded plat thereof; thence South 00 degrees 36 minutes 50 seconds East along the east line of said Lot 2, a distance of 754.13 feet to the southeast corner of said Lot 2; thence South 89 degrees 22 minutes 50 seconds East along the east line of said Lot 2, a distance of 754.13 feet to the northeast corner of said Lot 2; thence North 00 degrees 36 minutes 50 seconds West along the west line of said Lot 2, a distance of 754.13 feet to the northwest corner of said Lot 2; thence North 00 degrees 36 minutes 50 seconds West along the west line of said Lot 2, a distance of 754.13 feet to the point of beginning. Subject to any and all easements of record.



LEGEND  
 ● DENOTES IRON PIPE FOUND  
 ○ DENOTES IRON PIPE SET

EXHIBIT     A

## EXHIBIT B

### ELECTRIC SERVICE TERRITORY AGREEMENT

This agreement ("Agreement"), made and entered into the 27<sup>th</sup> day of April, 2010 by and between the City of Glencoe, a municipal corporation duly organized and existing under the laws of the State of Minnesota, by its Light and Power Commission (the "City") and McLeod Cooperative Power Association, a rural electric cooperative organized and existing under the laws of the State of Minnesota (the "Cooperative"), individually or collectively referred to as a "Party" or "Parties."

**WHEREAS**, the laws of the State of Minnesota, namely Minnesota Statutes §§ 216B.37-216B.47, provide the terms and conditions under which the City may extend retail electric service throughout the corporate limits of the City, as well as authorize and permit electric utilities to define and revise their electric service territories by their written consent and agreement;

**WHEREAS**, from time to time the City may complete annexations of areas located within the electric service territory assigned to the Cooperative and the City seeks to provide exclusive electric service to such areas;

**WHEREAS**, the Parties have negotiated a mutual settlement and wish to avoid litigation regarding compensation for such electric service territory matters; and

**WHEREAS**, the Parties desire stability and reliability of service to the Parties' customers, as well as long-term planning for resources, power supply, and customer service; and

**WHEREAS**, by entering this Agreement the Parties desire to continue the successful and cooperative relationship between the utilities, to conduct prudent utility planning and practices, to focus on areas of mutual interest, and to better serve and benefit the Parties' customers and the region in general.



**NOW, THEREFORE** in consideration of the premises and of the mutual covenants contained herein, the Parties agree as follows:

**Article I: Transfer of Electric Service Territory Rights**

1.1 From time to time during the term of this Agreement, the City may (1) extend its corporate boundaries through annexation, consolidation, incorporation, merger, or other lawful addition (collectively "Annexation"), or (2) extend its assigned electric service territory within its existing corporate boundaries ("Extension"). If the area that is the subject of the Annexation or Extension (the "Affected Area") is located within the assigned electric service territory of the Cooperative, the date of transfer specified in Sections 1.2 and 1.3 below (collectively, the "Transfer Date") shall govern.

1.2 The exclusive right and obligation to provide electric service to any Affected Area that is the subject of an Annexation shall transfer to the City effective upon the date of that the City sends written notice to the Cooperative that the City will serve the Affected Area after the Annexation has been completed.

1.3 The exclusive right and obligation to provide electric service to any Affected Area that is the subject of an Extension shall transfer to the City effective ninety (90) days after the date on which the City provides written notice of the Extension to the Cooperative, or on a date mutually agreed by the Parties.

1.4 To avoid duplication of facilities and to consider the impact on affected customers, the Parties may mutually agree in writing in particular circumstances to a service-by-exception or other arrangement other than the Transfer Date specified in Sections 1.2 and 1.3 above.

## **Article II: Settlement Payments**

As settlement payment and in consideration of the covenants, releases and representations made by the Cooperative herein, City agrees to make the following payments to the Cooperative:

2.1 Facilities Costs. If the Cooperative has electric distribution facilities in the Affected Area, the City shall pay the original cost of such facilities, less depreciation through the Transfer Date, based on generally accepted accounting principles. Before installing new distribution facilities in areas likely to be transferred to the City under this Agreement, the Cooperative shall confer and cooperate with the City so that unnecessary duplication or removal of facilities may be avoided to the extent practicable.

2.2 Integration Expenses. If the City acquires Cooperative electric distribution facilities under Section 2.1, the City shall pay the Cooperative for reasonable, identifiable expenses to integrate the Cooperative's pre-existing distribution facilities into the Cooperative's remaining distribution system considering system reliability and continuity to remaining customers.

2.3 Loss-of-Revenue Payments. Subject to Sections 2.4, 2.5, and 2.6, the City shall annually pay the Cooperative an amount equal to the result of multiplying one-and one-half cents (\$0.015) times each kilowatt hour of electric energy sold by the City to each third party to whom the City provides retail electric service in the Affected Areas and for the periods specified below:

(a) For third-party customers who were already receiving service from the Cooperative on the Transfer Date, the City's payment shall be for a period of ten (10) years commencing on the Transfer Date.

(b) For third-party customers who begin receiving their initial service after the Transfer Date, the City's payment for the entire Affected Area shall be for a period of ten (10) years commencing on the date that the City first provides retail electric service to a point of service within the Affected Area with an annual electric usage of seven thousand five hundred (7,500) kilowatt hours or greater, but excluding street lighting.

2.4 Municipal Development. Consistent with Sections 1.1, 1.2, and 1.3 and notwithstanding Section 2.3, for an Affected Area that the City owns or acquires at the City's cost or risk and develops by installing or replacing utility facilities or streets, the loss-of-revenue rate shall be one cent (\$0.01) times each kilowatt hour of electric energy sold by the City to each third party customer to whom the City provides retail electric service for a period of ten (10) years, provided, however, that the City's payments shall be capped at a total lifetime of two hundred fifty thousand (250,000) kilowatt hours of usage per customer in that Affected Area.

2.5 Large Customer. Notwithstanding 2.3, the City shall pay loss-of-revenue pursuant to Section 2.3 for only the first fifteen million (15,000,000) kilowatt hours of usage by a customer per year. Thereafter, the City will pay 7.5 mills (\$.0075) times each kilowatt-hour of energy sold to that customer that exceeds 15,000,000 kilowatt hours per year. This Section 2.5 does not apply to a large customer located in an Affected Area under Section 2.4.

2.6 Municipal Facilities. The loss-of-revenue payments under this Article 2 shall not apply to future facilities owned by the City for providing City services, including, but not limited to, streetlights.

2.7 Payment. The City shall make payments under Sections 2.1 and 2.2 within 60 days after receiving a statement from the Cooperative for such costs. The

calculation of any other amount due under this Article 2 shall be made for the period concluding on December 31<sup>st</sup> of each year under consideration and payment of the annual amount so determined will be made by the City by February 15<sup>th</sup> of the following year. The City's sales shall be calculated on the basis of its meter readings, as made in the ordinary course of its utility business. With its annual payment, the City shall provide a written report to the Cooperative, certified as true and correct by the General Manager of the City, summarizing for each Affected Area, the kilowatt hours sold by the City and the basis for the calculation of the compensation due the Cooperative.

The City shall also provide the Cooperative copies of such additional supporting data as the Cooperative may reasonably request, at the Cooperative's expense, including metering data that reflects kilowatt hours sold but, pursuant to Minn. Stat. § 13.685, may not contain any data that could identify any customer (e.g., by name, address, phone, or social security number). Except as provided in this Article 2, no other payments shall be due for the transfer of the Affected Areas under the terms of this Agreement. Any dispute concerning amounts due under this Article 2 shall be governed by Article 7 of this Agreement.

### **Article 3: Filings**

3.1 Promptly after the execution of this Agreement, the Cooperative consents and authorizes and the City agrees that City shall file the Agreement with the Minnesota Public Utilities Commission ("MPUC").

3.2 In the event of a transfer of any electric service rights pursuant to Article 1, the Cooperative consents and authorizes and the City agrees that City shall file the Parties' joint request, under Minn. Stat. § 216B.39, subd. 3, legally describing and depicting the Affected Area, that the MPUC modify the service territory boundary and

recognize the service territory transfer. Notice and a copy thereof shall be provided by the City to the Cooperative not less than ten (10) days before filing with the MPUC. Unless required more often by law, the City may make such filings on an annual basis. If the service territory boundary modification procedure described in this Section 3.2 materially changes in the law, the Parties will follow the process provided by law.

3.3 If the MPUC or the Office of Energy Security raises any question or challenges any provision of this Agreement, a service territory transfer contemplated under this Agreement, or the due performance thereof, the Parties shall each, at their own expense, exercise any and all lawful efforts reasonable and necessary to respond to said questions and to assure the transfer of service territory. If for any reason the MPUC refuses to recognize any service territory transfer described in Article 1, the Cooperative shall return any payments made by the City pursuant to Article 2, upon demand by the City.

3.4 The Parties agree that Cooperative indebtedness to the Rural Utilities Services or any other Cooperative lender or party (collectively "RUS") shall not prevent the Parties performing under this Agreement. To the extent that approval of RUS may be necessary for completing the transfer of service rights under this Agreement, including release of any lien on physical facilities to be transferred to the City, the Cooperative shall promptly seek such approval, exercising all reasonable efforts and due diligence. To the extent that RUS delays, denies, or objects to the Parties performing under this Agreement, the Cooperative will use its best efforts to resolve any such issues, with the cooperation of the City.

#### **Article 4: Representations and Warranties**

4.1 The City and the Cooperative hereby mutually represent and warrant, each to the other, as follows:

(a) Each is duly organized and existing in good standing under the laws of the State of Minnesota and each has all requisite power and authority to own, lease and operate its electric service facilities;

(b) Each has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and has taken all the necessary corporate action to authorize the execution, delivery and performance of this Agreement; and

(c) This Agreement constitutes a valid and binding obligation of each Party enforceable in accordance with its terms.

#### **Article 5: Mutual Waiver and Release of Claims**

5.1 The Parties do hereby each unconditionally release and waive any and all claims, known or unknown, which they may now have or have in the future arising from any action or omission of the Parties or any fact or circumstance first occurring prior to the date hereof, whether or not continuing in nature, which relate to or arise from the right of either Party to provide electric service to any particular third party, area, facility or site by reason of the electric service territory laws of the State of Minnesota, now or hereafter in effect, or any prior agreement of the parties, oral or written. Provided, however, the foregoing provisions of this Article 5 do not waive or release any claim either party may have for any breach of any covenants or any misrepresentations contained in this Agreement.

5.2 The City does hereby agree to indemnify and hold harmless the Cooperative from all costs and damages arising from each and every claim made by

any third party against the Cooperative arising from or related to the transactions described or contemplated by this Agreement, including the reasonable costs and fees of legal counsel incurred in the defense thereof.

5.3 The Cooperative does hereby agree to indemnify and hold harmless the City from all costs and damages arising from each and every claim made by any third party against the City arising from or related to the transactions described or contemplated by this Agreement, including the reasonable costs and fees of legal counsel incurred in the defense thereof. Any facilities that the City acquires from the Cooperative under this Agreement, however, shall be acquired on an AS IS basis.

#### **Article 6: Term and Scope of Agreement**

6.1 The initial term of this Agreement shall be a period of ten (10) years from the date that the Agreement has been signed by both of the Parties and thereafter shall automatically renew for additional two (2) year terms. Provided, however, that after the initial term has expired, either Party may provide advance written notice to the other Party of its intention to terminate ("Notice"), with such termination effective six (6) months after the date of the Notice.

6.2 The Parties acknowledge that they have entered a Settlement Agreement dated February 25, 2003 concerning the Popelka addition (the "Earlier Agreement") and nothing in this Agreement affects the Parties' rights and obligations under the Earlier Agreement, which shall continue in effect and expire by its terms. In any event, this Agreement shall apply to and govern all Affected Areas that are the subject of an Annexation or Extension by the City starting with the date that both Parties sign this Agreement.

6.3 Subject to Section 6.2, this Agreement (including exhibits hereto) constitutes the entire Agreement and, with respect to the specific subject matter hereof, supersedes all prior agreements and understandings, oral and written, between the Parties hereto.

6.4 The Parties acknowledge that this Agreement is the result of arms length negotiations between the Parties, each taking into consideration the costs and risks of litigation otherwise required to resolve the matters addressed in this Agreement. This Agreement does not reflect the position of either Party as to the appropriate application of the law determining electric service territory rights or compensation in such matters. For any future electric service territory matters between the Parties not governed by this Agreement, the Agreement shall not act as precedent in the determination of compensation, if any be due.

#### **Article 7: Alternative Dispute Resolution**

7.1 In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet in person and confer in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods. If the Parties are unable to resolve the dispute through these methods, either Party may commence an action in the District Court for the county in which the service territory is located. The Transfer Date is not affected by any dispute or action to determine compensation.



## **Article 8: General Terms and Conditions**

8.1 Any notice permitted or required by this Agreement shall be made in writing by letter, electronic mail, personal service, facsimile, or other documentary form and shall be deemed given upon actual receipt by the Party to which such notice is given.

8.2 This Agreement will inure to the benefit of the Parties hereto and shall be binding on them and their respective legal representatives, successors and assigns. Provided, however, neither Party hereto may assign any of its rights herein to any person without the prior written consent of the other Party.

8.3 Each of the Parties acknowledges that the adjustment of electric service territory boundaries provided for herein is unique in that neither Party will have an adequate remedy at law if the other Party fails to perform any of its obligations hereunder. In such event, either Party shall have the right, in addition to any other rights it may have, to petition for and obtain specific performance of this Agreement in the District Court for the county in which the service territory is located.

8.4 This Agreement may be amended only in writing.

8.5 Headings are for convenience and are not a part of this Agreement.

8.6 This Agreement may be executed in counterpart copies by the Parties and each counterpart, when taken together with the other, shall be deemed one and the same executed Settlement Agreement.


8.7 By executing this Agreement, the Parties acknowledge that they: (a) enter into this Agreement knowingly, voluntarily and freely; (b) have had an opportunity to consult an attorney before signing this Agreement; and (c) have not relied upon any representation or statement not set forth herein.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the date first above written.

MCLEOD COOPERATIVE POWER ASSOCIATION

By   
Board Chairman, McLeod Cooperative Power Association

and

By   
General Manager, McLeod Cooperative Power Association

CITY OF GLENCOE

By   
Board Chairman, Glencoe Light and Power Commission

and

By   
General Manager, Glencoe Light and Power Commission