

**WAMBACH & HANSON
LAW OFFICE, P.C.**

ANDREW J. WAMBACH
ELROY HANSON*
*LICENSED IN MN & ND

304 NORTHEAST MAIN STREET
P.O. BOX 340
MAHNOMEN, MN 56557

TELEPHONE: (218) 935-2266
FAX: (218) 935-2267
EMAIL: EHANSON@ARVIG.NET

October 14, 2015

VIA ELECTRONIC FILING

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

RE: Supplemental Documents re the Petition of Community Co-ops of Lake Park For
Exemption for Small Gas Utility Franchise
Docket: G6956/M-15-856

Dear Minnesota Public Utilities Commission:

The Community Co-ops of Lake Park (CCLP) filed a Petition for Exemption for Small Gas Utility Franchise (Docket #15-856) on September 25, 2015. The following documents were inadvertently not included with the Exhibit "A" attachment to the Petition. CCLP is filing these additional supplemental documents and requests the same be considered with the Petition. The attached documents include the following:

1. Summary of Ordinance No. 55.01 Natural Gas Franchise Community Co-ops of Lake Park adopted by the City of Mahnomen, MN, with attached Exhibit setting forth the entire language of said Ordinance No. 55.01 Natural Gas Franchise adopted by the City of Mahnomen, MN;

2. Summary of Twin Valley Ordinance No. 303 Natural Gas Franchise – Community Co-ops of Lake Park adopted by the City of Twin Valley, MN, with attached Resolution 2015-13 to Adopt Ordinance No. 303 setting forth the full text of said Ordinance granting Community Co-ops of Lake Park, a Minnesota Corporation, its successors and assigns, a non-exclusive franchise to construct, operate, repair and maintain facilities and equipment for the transportation, distribution, manufacture and sale of gas energy for public and private use and to

use the public ways and grounds of the City of Twin Valley, MN, for such purpose; and, prescribing certain terms and conditions thereof.

Respectfully submitted,

/s/ Bruce Nelson
President
Community Co-ops of Lake Park
14583 Hwy. 10 West, PO Box 329
Lake Park, MN 56554

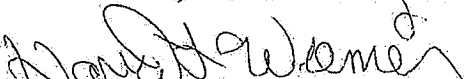
/s/ Elroy Hanson
Elroy Hanson
Wambach & Hanson Law Office, PC
PO Box 340
Mahnomen, MN 56557

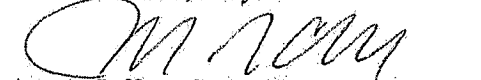
**SUMMARY OF ORDINANCE NO. 55.01
NATURAL GAS FRANCHISE
COMMUNITY CO-OPS OF LAKE PARK**

AN ORDINANCE GRANTING COMMUNITY CO-OPS OF LAKE PARK., A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF MAHNOMEN, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF MAHNOMEN, MINNESOTA, ORDAINS:

The following is the official summary of Ordinance No. 55.01 approved by the Mahnomen City Council on March 16, 2015. The purpose of the ordinance is to grant to Community Co-ops of Lake Park a 10 year franchise to operate, repair and maintain a natural gas distribution system within the city limits of the City of Mahnomen. The terms and conditions of service and the rates to be charged by Community Co-ops of Lake Park for natural gas energy are subject to the exclusive jurisdiction of the Five Member Utilities Commission identified in the full text of the ordinance. The ordinance provides for a method of dispute resolution if either the City of Mahnomen or Community Co-ops of Lake Park asserts that the other party has defaulted in the terms of the gas franchise ordinance. The ordinance provides that all 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. The ordinance also provides that Community Co-ops of Lake Park shall indemnify and hold the City of Mahnomen harmless from liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operations of the Gas Facilities located in the City of Mahnomen's public rights of way and public grounds. Adopted by the City Council of the City of Mahnomen, Minnesota on this 16th day of March, 2015 by a vote of 4 ayes and 0 nays.


David Wiemer, Mayor


Attest: Jeffrey Cadwell, Administrator

Published in the Mahnomen Pioneer March 26, 2015.

Exhibit "A"
NATURAL GAS FRANCHISE
COMMUNITY CO-OPS OF LAKE PARK

ORDINANCE NO. 55.01
CITY OF MAHNOMEN, MINNESOTA

AN ORDINANCE GRANTING COMMUNITY CO-OPS OF LAKE PARK., A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF MAHNOMEN, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF MAHNOMEN, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

City. The City of Mahnomen, State of Minnesota.

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

Commission. A five member Commission including three (3) representatives from Community Co-op (being 2 board members and the manager), one (1) from the City Council of Mahnomen, and one (1) from the City Council of Twin Valley, or any successor agency or agencies which preempt all or part of the authority to regulate gas retail rates currently proposed for this Commission.

Company. Community Co-ops of Lake Park its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.

Gas. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities.

Notice. A writing personally delivered or mailed by United States mail by the City or Company to the other. Notice to Company shall be mailed to P.O. Box 329 Lake Park MN. Notice to the City shall be mailed to P.O. Box 250 Mahnomon, MN. Either City or Company may change its respective address for the purpose of this Ordinance by written notice to the other.

Public Way. Public right-of-way within the City as defined in MINN. STAT. § 237.162, subd. 3.

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

SECTION 2. ADOPTION OF FRANCHISE.

2.1. **Grant of Franchise.** City hereby grants Company, for a period of 10 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell gas for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchased and delivered by the Company or (iii) purchased from another source by the retail customer and delivered by the Company. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such lawful regulations as may be adopted by separate ordinance.

2.2. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 Days after the date the City Council adopts this Ordinance, or otherwise places the City on written notice, at any time, that the Company does not accept all terms of this franchise, the City Council by resolution may either repeal this ordinance or seek its enforcement in a court of competent jurisdiction.

2.3. **Non Exclusive Franchise.** This ordinance does not grant an exclusive franchise.

2.4. **Legal Fees.** Each party is responsible for its own legal fees incurred related to granting of this franchise.

2.5. **Service and Gas 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.

2.6. **Publication Expense.** The expense of publication of this Ordinance shall be paid by Company.

2.7. **Dispute Resolution.** If either the City or the Company asserts that the other is in default in the performance of any obligation hereunder, the complaining entity shall, in writing, notify the other of the default and the desired remedy. Representatives of the City and Company 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 City and Company shall jointly select a mediator to facilitate further discussion. The City and Company will equally share the fees and expenses of this mediator. If a mediator is not used or if the dispute is not resolved within 30 days after first meeting with the selected mediator, either the City or Company may commence an action in Minnesota District Court to interpret and enforce this franchise ordinance or for such other relief permitted by law.

2.8. **Continuation of Franchise.** If this franchise expires and the City and the Company are unable within 90 days of the franchise expiring to in good faith agree on the terms of a new franchise, then the parties agree to mediate terms of a new franchise, by jointly selecting a mediator to facilitate further discussion. The City and Company will equally share the fees and expenses of a mediator. Should mediation be unsuccessful, then any controversy, claim, and/or the terms of a new franchise shall be settled/determined by Arbitration in accordance with the provisions of the American Arbitration Association. All hearings shall be held in Mahanomen, Minnesota.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1. **Location of Facilities.** Gas Facilities in the Public Way shall be located, constructed, and maintained so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities is subject to any permit requirements and other reasonable regulations required by other ordinances and regulations of the City.

3.2 **Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. 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 the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3 **Restoration of Public Ways and Public Ground.** After completing work requiring the opening of Public Ground, the Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits. If Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five days, have the right to make the restoration of the Public Ground at the expense of the

Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this section. In all other aspects, Company shall comply with the terms of Minnesota Rules 7819.1100 for restoration of Public Ways and Grounds, and Minnesota Rules 7819.3000 and 7819.0100.

3.4 **Avoid Damage to Gas Facilities.** The Company shall take reasonable measures to prevent the gas facilities from causing damage to persons or property. The Company shall take reasonable measures to protect the gas facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The Company shall take protective measures when the City performs work near the gas facilities, if given reasonable notice by the City of such work prior to its commencement. Such measures shall include marking of Company facility locations within 48 hours of request by City. City agrees to take reasonable measures to avoid the 48 hour period being over weekends or public holidays.

3.5 **Mapping Information.** The Company must promptly provide complete and accurate mapping information for any of its gas facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100 and the City's public right-of-way regulations.

SECTION 4. RELOCATIONS.

4.1. **Relocation of Gas Facilities.** Relocation of Gas Facilities in Public Ways shall be subject to Minnesota Rule 7819.3100. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Grounds 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 Grounds. Relocation of Gas Facilities in Public Ground shall comply with applicable City ordinances consistent with law.

4.2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46, as supplemented or amended. 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, unless agreement is made that the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting therefrom will be paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

4.3. **No Waiver.** The provisions of Section 4 apply only to Gas Facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. INDEMNIFICATION AND LIABILITY.

5.1 **Limitation of Liability.** Upon the effective date of this ordinance, the City does not assume any liability (1) for injuries to persons, damage to property or loss of service claims by parties other than the Company or the City, or (2) for claims or penalties of any sort resulting

from the installation, presence, maintenance or operation of equipment or facilities by the Company or its agents.

5.2 **Indemnification.** Company shall indemnify and keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, or out of any delay thereof, whether or not any act or omission complained of is authorized, allowed or prohibited by permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing any permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

5.3 **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense, shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

5.4 **Delay Damage Fee.** The City may establish and impose a damage fee for unreasonable delays in completion of any right-of-way excavation, obstruction, patching, restoration, removal, or relocation. The delay damage fee shall be established from time to time by a resolution of the City Council based upon its reasonable estimation of the actual costs that would be incurred due to any delay, the actual amount being undeterminable. The Company shall be advised in writing by facsimile, with the original to follow by United States mail, of the perceived delay and of the period within which the work must be completed to avoid a delay damage fee. A delay damage fee shall not be imposed if the delay in project completion is due to circumstances beyond the control of Company, including without limitation inclement weather, acts of God, or civil strife.

SECTION 6. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law.

SECTION 7. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 8. FRANCHISE FEE.

8.1. **Reservation of Rights.** The City reserves all rights under MINN. STAT. §216B.36, to require a franchise fee, at any time during the term of this franchise. Subject to the statutory rights of the City to require a franchise fee, if the City elects to require a franchise fee it shall notify the Company. The fee terms shall be set forth in a separate ordinance and not be adopted until at least 60 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or any terms related thereto, each hereby consents to mediate terms of a new franchise fee, by jointly selecting a mediator to facilitate further discussion. The City and Company shall equally share the fees and expenses of mediation. Should mediation be unsuccessful, then any controversy, claim, and/or the terms of a new franchise fee shall be settled/determined by Arbitration in accordance with the provisions of the American Arbitration Association. All hearings shall be held in Mahnomon, Minnesota.

8.2. **Form.** The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) – (iii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing and implementing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee.

8.3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of gas energy within the City by any other gas energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed upon franchise.

8.4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.5. **Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being

imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

SECTION 9. ABANDONED FACILITIES.

The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules Part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Facilities, including abandoned and retired Facilities.

SECTION 10. LIMITATION ON APPLICABILITY; NO WAIVER.

This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. No provision of this franchise agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

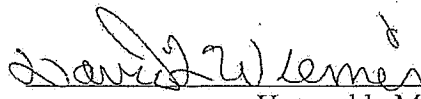
SECTION 11. AMENDMENT PROCEDURE.

Either the City or Company may at any time propose that this Ordinance be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance.

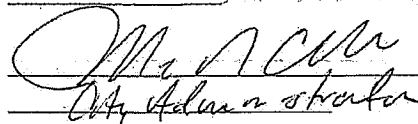
SECTION 12. SEVERABILITY.

Severability. If any portion of this franchise is found unenforceable for any reason the validity of the remaining provisions will not be affected.

Adopted this 16th day of March, 2015, by the City Council of the City of Mahanomen.


_____, Honorable Mayor

ATTEST:



City Administrator

Ordinance published in the legal newspaper on the 26th day of March, 2015.

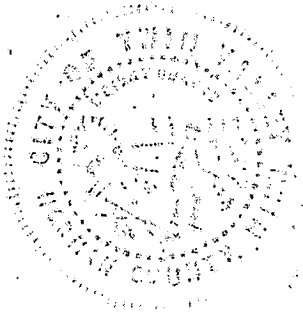
SUMMARY OF TWIN VALLEY ORDINANCE NO. 303
NATURAL GAS FRANCHISE – COMMUNITY CO-OPS OF LAKE PARK

AN ORDINANCE GRANTING COMMUNITY CO-OPS OF LAKE PARK., A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE FO GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF TWIN VALLEY, MINNESOTA, FOR SUCH PURPOSE; AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF TWIN VALLEY, MINNESOTA, ORDAINS:

The following is the official summary of Twin Valley Ordinance NO. 303 approved by the Twin Valley City Council on this 13th day of April 2015. The purpose of the ordinance is to grant to Community Co-ops of Lake Park, Minnesota, a 10 year franchise to operate, repair and maintain a natural gas distribution system within the city limits of the City of Twin Valley. The terms and conditions of service and the rates to be charged by Community Co-ops of Lake Park for natural gas energy are subject to the exclusive jurisdiction of the Five Member Utilities Commission, consisting of representatives from Community Co-op, City Council of Twin Valley and City Council of Mahnomon, as identified in the full text of the ordinance. The ordinance provides for a method of dispute resolution if either the City of Twin Valley or Community Co-ops of Lake Park asserts that the other party has defaulted in the terms of the gas franchise ordinance. The ordinance provides that all 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. The ordinance also provides that Community Co-ops of Lake Park shall indemnify and hold the City of Twin Valley harmless from liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operations of the Gas Facilities located in the City of Twin Valley's public rights of way and public grounds. Adopted by the City Council of the City of Twin Valley, Minnesota on this 13th day of April 2015 by a vote of five (5) ayes and (0) nays.


Tina M. Murn, City Clerk-Treasurer



NATURAL GAS FRANCHISE AGREEMENT - COMMUNITY CO-OPS OF LAKE PARK

RESOLUTION 2015-13

RESOLUTION TO ADOPT ORDINANCE NO. 303

AN ORDINANCE GRANTING COMMUNITY CO-OPS OF LAKE PARK, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF TWIN VALLEY, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF TWIN VALLEY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

City. The City of Twin Valley, State of Minnesota.

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

Commission. A Commission including representatives from Community Co-Op, City Council of Twin Valley, City Council of Mahanomen, or any successor agency or agencies which preempt all or part of the authority to regulate gas retail rates currently proposed for this Commission.

Company. Community Co-ops of Lake Park its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.

Gas. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities.

Notice. A writing personally delivered or mailed by United States mail by the City or Company to the other. Notice to Company shall be mailed to P.O. Box 329, Lake Park, MN. Notice to the City shall be mailed to P.O. Box 307, Twin Valley, MN either City or Company may change its respective address for the purpose of this Ordinance by written notice to the other.

Public Way. Public right-of-way within the City as defined in MINN. STAT. §237.162, Subd. 3.

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

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 10 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell gas for public and private use within in and through the limits of the City as its boundaries now exist or as they may be extended in the future. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchased and delivered by the Company or (iii) purchased from another source by the retail customer and delivered by the Company. For these purposes, Company may construct, operate, repair and maintain Gas

Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such lawful regulations as may be adopted by separate ordinance.

2.2 Effective Date; Written Acceptance. This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 Days after the date the City Council adopts this Ordinance, or otherwise places the City on written notice, at any time, that the Company does not accept all terms of this franchise, the City Council by resolution may either repeal this ordinance or seek its enforcement in a court of competent jurisdiction.

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

2.4 Publication Expense. The expense of publication of this Ordinance shall be paid by Company.

2.5 Dispute Resolution. If either the City or the Company asserts that the other is in default in the performance of any obligations hereunder, the complaining entity shall, in writing, notify the other of the default and the desired remedy. Representatives of the City and Company 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 City and Company shall jointly select a mediator to facilitate further discussion. The City and Company will equally share the fees and expenses of this mediator. If a mediator is not used or if the dispute is not resolved within 30 days after first meeting with the selected mediator, either the City or Company may commence an action in Minnesota District Court to interpret and enforce this franchise ordinance or for such other relief permitted by law.

2.6 Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 Location of Facilities. Gas Facilities in the Public Way shall be located, constructed, and maintained so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. Facilities located on private property will comply with all City Permit Ordinances and Codes.

3.2 Street Openings. Company shall not open or disturb the surface of any public rights-of-way for any purpose except in accordance with the public-right-of-way regulations as set forth in the City's General Regulations.

3.3 Restoration of Public Ways and Public Ground. After completing work requiring the opening of Public Ground, the Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits. If Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five days, have the right to make the restoration of the Public Ground at the expense of the Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this section.

3.4 Avoid Damage to Gas Facilities. The Company shall take reasonable measures to prevent the gas facilities from causing damage to persons or property. The Company shall take reasonable measures to protect the gas facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The Company shall take protective measures when the City performs work near the gas facilities, if given reasonable notice by the City of such work prior to its commencement. Such measures shall include marking of Company facility locations within 48

hours of request by City. City agrees to take reasonable measures to avoid the 48 hour period being over weekends or public holidays.

3.5 Mapping Information. The Company must promptly provide complete and accurate mapping information for any of its gas facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100 and the City's public right-of-way regulations.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities. Relocation of Gas Facilities in Public Ways shall be subject to Minnesota Rule 7819.3100. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Grounds 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 Grounds. Relocation of Gas Facilities in Public Ground shall comply with applicable City ordinances consistent law.

4.2 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46, as supplemented or amended. 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, unless agreement is made that the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting therefrom will be paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

4.3 No Waiver. The provisions of Section 4 apply only to Gas Facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State of County permit.

SECTION 5. INDEMNIFICATION AND LIABILITY.

5.1 Limitation of Liability. Upon the effective date of this ordinance, the City does not assume any liability (1) for injuries to persons, damage to property or loss of service claims by parties other than the Company or the City, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by the Company or its agents.

5.2 Indemnification. Company shall indemnify and keep and hold the City, its Officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, or out of any delay thereof, whether or not any act or omission complained of is authorized, allowed or prohibited by permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing any permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit.

5.3 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense, shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such

litigation without the consent of the City, which consent shall not be unreasonably withheld. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

5.4 Delay Damage Fee. The City may establish and impose a damage fee for unreasonable delays in completion of any right-of-way excavation, obstruction, patching, restoration, removal, or relocation. The delay damage fee shall be established from time to time by a resolution of the City Council based upon its reasonable estimation of the actual costs that would be incurred due to any delay, the actual amount being undeterminable. The Company shall be advised in writing by facsimile, with the original to follow by United States mail, of the perceived delay and of the period within which the work must be completed to avoid a delay damage fee. A delay damage fee shall not be imposed if the delay in project completion is due to circumstances beyond the control of Company, including without limitation inclement weather, acts of God, or civil strife.

SECTION 6. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 7. FRANCHISE FEE.

7.1 Reservation of Rights. The City reserves all rights under MINN. STAT. § 216B.36, to require a franchise fee at any time during the term of this franchise. Subject to the statutory rights of the City to require a franchise fee, if the City elects to require a franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee agreement. The terms shall be set forth in a separate ordinance and not be adopted until at least 60 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or on any terms related thereto, each hereby consents to the jurisdiction of State District Court, Norman County, to construe their respective rights under the law, subject to all rights of appeal.

SECTION 8. LIMITATION ON APPLICABILITY; NO WAIVER.

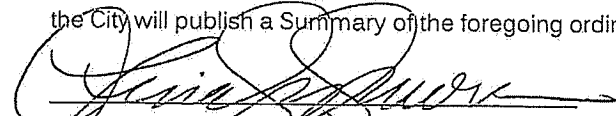
This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. No provision of this franchise agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.


SECTION 9. AMENDMENT PROCEDURE.

Either the City or Company may at any time propose that this Ordinance be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance.

Member Dan Mickelson seconded the foregoing resolution to enter into a franchise agreement with Community Co-ops Lake Park and to adopt this ordinance to be known as City Ordinance No. 303, and upon a roll call vote taken thereon the following voted in favor of said resolution and ordinance Dan Mickelson, Ben Fall, Mike Bolton, Joel

Pearson, Joe Peterick and the following voted against same: none. WHEREUPON said resolution and ordinance is duly adopted this 13th day of April 2015 and will become effective upon meeting the publication requirements of which the City will publish a Summary of the foregoing ordinance.


Tisha M. Murn, City Clerk-Treasurer


Joseph A. Peterick, Mayor

