

MINUTES OF THE REGULAR MONTHLY MEETING
OF THE MANHATTAN BEACH CITY COUNCIL
November 7th, 2018

The regular monthly meeting of Manhattan Beach City Council was held on Wednesday November 7th, 2018 in the City Hall at 7pm. The following officers were present: Paul Allen-Mayor; Janis Allen, Barb Hanson-Wannebo-Council Members; Amy Wannebo-Clerk-Treasurer; Council Member Yurek was absent, approximately four residents and John Bowen-Crow Wing County Sheriff's Office.

The Pledge of Allegiance was recited.

Agenda Amendments: Mayor Allen asked if there were any amendments to the agenda, Clerk Treasurer Wannebo asked that under New Business a special meeting for the canvassing board be added. **A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to make the above mentioned amendment to the agenda. Motion carried.**

A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to recess the regular meeting for a Public hearing on Ordinance for Gas Franchise. Motion carried. The regular meeting recessed.

Public Hearing; Franchise Agreement: Mayor Allen stated that the hearing was for the purpose of the Gas Franchise agreement; ordinance attached. He asked Clerk-Treasurer Wannebo if anyone had sent in written comments, she indicated that no one had. Mayor Allen opened the floor for public comment. Kevin Larson asked what is the franchise agreement asking? Mayor Allen explained that it is a renewal of the original agreement, the only thing being different is that there won't be any special assessment. Doug Wannebo asked how long the new agreement would go for? Clerk-Treasurer Wannebo stated that the agreement would go for 20 years. Mayor Allen affirmed that there wouldn't be any fees associated with the agreement.

A motion was made by Clerk-Treasurer Wannebo and seconded by Council Member Allen to close the Public Hearing. Motion carried.

A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to reconvene the regular meeting. Motion carried.

Approval of October Minutes: **A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to approve the minutes as printed. Motion carried.**

Clerk-Treasurer's Report: Supporting documents attached. Clerk-Treasurer Wannebo asked if there were any questions. Mayor Allen asked about outstanding checks. Clerk-Treasurer Wannebo explained that the outstanding checks are the claims for the month. She also stated the Final TIF report has been completed. **A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to approve the claims as printed and to include Crow Wing Power. Motion carried.**

DRAFT

Check numbers 3195 through 3206 have been paid for a total amount of \$3,167.64

Communications: None.

Planning & Zoning Report: Mayor Allen read the P&Z report-attached.

OPEN FORUM:

Unfinished Business:

Big Trout Lake Storm Water Update: Amendments to the Memorandum of Understanding-attached. The changes have been highlighted. Council Member Allen stated that she attended the meeting. Mayor Allen said that basically they agreed to make the highlighted changes to protect WAPOA and the City. Council Member Allen explained that the tanks were cleaned and that CWC would handle coordinating the cleanings.

Goldenstein & Satchell Roads Update: Mayor Allen asked the City Attorney to contact Stonemark because he couldn't get any response from them. Mayor Allen read aloud the email from City Attorney to Stonemark Surveying-attached. Mayor Allen stated that the City Attorney did make a follow up call to Stonemark today but did not receive a call back.

Franchise Agreement: A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to accept Gas Franchise Ordinance No. 11-18. Motion carried. All Ayes.

Post Card: Clerk-Treasurer read the proposed post card aloud-attached. She explained the cost would be between \$41-\$51 not including stamps. A motion was made by Council Member Hanson-Wannebo and seconded by Council Member Allen to approve the language and have post cards printed. Motion carried.

OPEN FORUM:

New Business:

CWC updated Hazard Mitigation Plan-John Bowen CWC Sheriff's Office: John Bowen explained that the plan would need to be adopted by resolution. He stated that the City adopted this plan in 2012/2013 and that it gets updated every five years. He explained that FEMA reviewed the plan then the County Board reviewed and the last step is for the cities to adopt. The County's adoption is attached. The full plan is available on CWC website and a digital copy available in the office of the City Clerk. Mayor Allen read the resolution aloud-attached. A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to pass by resolution the CWC Hazard Mitigation Plan.

DRAFT

LMC Insurance Renewal/Christensen Agency: Clerk-Treasurer Wannebo said the policy appears to be the same as last year. **A motion was made by Council Member Hanson-Wannebo and seconded by Council Member Allen to renew the policy. Motion carried.**

Sourcewell Planning & Zoning Shared Services Agreement: Agreement attached. Mayor Allen stated that there were no changes made to the agreement and that it is an annual agreement. **A motion was made by Council Member Hanson-Wannebo and seconded by Council Member Allen to sign the agreement. Motion carried.**

Canvassing Board Meeting: Clerk-Treasurer Wannebo explained that she had been in contact with Debbie Erickson from CWC elections office and stated that the Council would need to set a date for next week to have a special meeting of the canvassing board. Instructions and information attached. **A motion was made by Council Member Allen and seconded by Council Member Hanson-Wannebo to set the special meeting for Wednesday November 14th, 2018 at 7pm in the City Hall. Motion carried.**

A motion was made by Council Member Hanson-Wannebo and seconded by Council Member Allen to adjourn the meeting. Motion carried.

Meeting was adjourned at 7:57pm.

Clerk-Treasurer Amy Wannebo

Mayor/Council Member

For the Period: 10/7/2018 To 11/7/2018

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>	<u>Less Deposits In Transit</u>	<u>Plus Outstanding Checks</u>	<u>Total Per Bank Statement</u>
General Fund	\$308,491.44	\$926.86	\$3,167.64	\$306,250.66	\$0.00	\$3,120.64	\$309,371.30
Road and Bridge	\$6,046.92	\$0.00	\$0.00	\$6,046.92	\$0.00	\$0.00	\$6,046.92
Tax Increment Financing Projects	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Building Fund	\$13,004.46	\$0.00	\$0.00	\$13,004.46	\$0.00	\$0.00	\$13,004.46
Total	\$327,542.82	\$926.86	\$3,167.64	\$325,302.04	\$0.00	\$3,120.64	\$328,422.68

City of Manhattan Beach

Receipts Register

11/7/2018

Fund Name: All Funds

Date Range: 10/07/2018 To 11/07/2018

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void Account Name</u>	<u>F-A-P</u>	<u>Total</u>
10/15/2018	Richard Radintz	44	Land use permit for for 50'x100' pole shed w/ living qtrs. & install septic system	(10/15/2018) -	N Building Permits (Excludes surcharge)	100-32210-	\$ 675.00
10/22/2018	Rob & Jean Amundson	46	Land Use permit	(10/31/2018) -	N Building Permits (Excludes surcharge)	100-32210-	\$ 185.00
10/30/2018	State of Minnesota MIN Management &	45	MV Credit-Agricultural for Farm Homestading	(10/31/2018) -	N Agricultural Market Value Credit	100-33426-	\$ 66.86
Total for Selected Receipts							\$ 675.00
							\$ 185.00
							\$ 66.86
							\$ 926.86

For the payroll period ending: 11/07/2018

<u>Account #</u>	<u>Employee #</u>	<u>Employee Name</u>	<u>Amount</u>
100-41425-101		Wannebo, Amy	577.19
		Account Total	577.19

Unallocated due to rounding	\$0.00
Total For Period	\$577.19

Barbara A Hanson-Wannebo *11-7-18*

Barbara A Hanson-Wannebo	City Council/Town Board	Date
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Janis Allen *11-7-18*

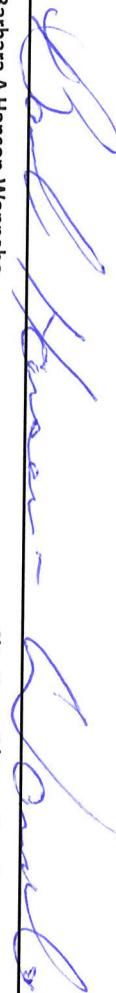
Janis A Allen	City Council/Town Board	Date
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Marlene Yurek	City Council/Town Board	Date
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Date Range : 9/9/2018 To 10/9/2018

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
10/09/2018	Crow Wing Power	September 2018 service	3189	\$47.00	100-41940-381-	General Government Buildings and Plant	\$47.00

Total For Selected Claims \$47.00 \$47.00


 Barbara A Hanson-Wannebo Date 11-7-18
 City Council/Town Board


 Janis A Allen Date 11-7-18
 City Council/Town Board

Marlene Yurek Date _____
 City Council/Town Board

Date Range : 10/7/2018 To 11/7/2018

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
11/07/2018	Crosslake Communications	November 2018 internet	3206	\$72.13	100-41940-321-	General Government Buildings and Plant	\$72.13

Total For Selected Claims \$72.13

Barbara A Hanson-Wannebo
 Barbara A Hanson-Wannebo
 City Council/Town Board

 Date *11-7-18*

Janis A Allen
 Janis A Allen
 City Council/Town Board

 Date *11.7.18*

Marlene Yurek
 City Council/Town Board

 Date

Date Range : 10/7/2018 To 11/7/2018

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
11/01/2018	Department of the Treasury	941 3rd Quarter taxes	110118Auto	\$286.88	100-41425-171-	Clerk	\$286.88
11/07/2018	Nicks Lawn Service, INC.	Mowing: 9/6/18 & 9/19/18 mow, trim and remove debris	3195	\$107.38	100-41001-405-	General Government	\$107.38
11/07/2018	Ryan, Brucker & Kalls, Ltd	legal services from 9/18/18-11/1/18	3196	\$243.75	100-41610-304-	City/Town Attorney	\$243.75
11/07/2018	LMC Insurance Trust P&C	insurance premium	3197	\$1,200.00	100-41001-361-	General Government	\$1,200.00
11/07/2018	Adam's Pest Control, INC. -Nisswa	10/12/18 semi-annual service for pest control spider & general insect	3198	\$106.30	100-41940-401-	General Government Buildings and Plant	\$106.30
11/07/2018	Northland Press	Legal Notice: Public Hearing Franchise Agreement 10/16/18	3199	\$38.25	100-41001-351-	General Government	\$38.25
11/07/2018	League of Minnesota Cities	2018-2019 Membership Dues Invoice #275488	3200	\$396.00	100-41001-304-	General Government	\$396.00
11/07/2018	The Office Shop	contract	3201	\$18.51	100-41001-202-	General Government	\$18.51
11/07/2018	Sourcewell Formerly NIPA	P&Z services for September 2018	3202	\$37.50	100-41910-106-	Planning and Zoning	\$37.50
11/07/2018	Pequot Lakes Sanitation	10/01 through 12/31 trash services	3203	\$36.75	100-41940-384-	General Government Buildings and Plant	\$36.75

Date Range : 10/7/2018 To 11/7/2018

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
				\$2,471.32			\$2,471.32

Barbara A Hanson-Wannebo
 Barbara A Hanson-Wannebo
 City Council/Town Board

11-9-18
 Date

Janis A Allen
 Janis A Allen
 City Council/Town Board

11-8-18
 Date

Marlene Yurek
 City Council/Town Board

Date

Federal Quarterly Income Tax Withholding Information

City of Manhattan Beach

10/31/2018

For the quarter ending 9/30/2018

Total wages subject to withholding	\$1,875.00
Total income tax withheld from wages	\$0.00
Taxable social security wages paid	\$1,875.00
	<u>X 12.40%</u>
Social security tax	\$232.50
Taxable Social security tips	\$0.00
	<u>X 12.40%</u>
Social security tips tax	\$0.00
Taxable medicare wages paid	\$1,875.00
	<u>X 2.90%</u>
Medicare tax	\$54.38
Total social security tax	\$286.88
Total taxes	\$286.88

October 31, 2018

City of Manhattan Beach
39148 County Road 66
Manhattan Beach, MN 56442

RE: November Report

Mayor and City Council,

1. There was no planning commission meeting this month since there was no business to discuss.
2. There was one land use permit issued to the Amundson property on highway 66. This was for a garage and all of the setbacks were met. There was also a land use permit for a pole shed/dwelling on the Raditz property on Satchel Rd. This permit included a new SSTS as well for the dwelling.

I do not plan to attend your upcoming meeting. If you have any questions or concerns, feel free to contact me at (218) 895-4142.

Sincerely,

Darrin Welle
Zoning Administrator

**AMMENDMENTS to the
MEMORANDUM OF UNDERSTANDING**

Whitefish Area Property Owners Association (WAPOA) provided several amendments to the MEMORANDUM OF UNDERSTANDING (MOU) in June 2017, following the legal review of the proposed MOU by the WAPOA attorney. Consistent with the advice of Don Ryan, CW County Attorney shared with us and others, WAPOA signed the MOU June 30, 2017.

WAPOA provided the several amendments in two categories – (1) substantive items and (2) clarifying items. At our October 17, 2018 work session, we reviewed the substantive items that are essential to both the City of Manhattan Beach (Council member Janis Allen in attendance) and WAPOA.

We repeat the substantive items next, for which there was no expressed opposition among all parties to the MOU present – CW SWCD (Melissa Barrick), CWC Engineer (Rob Hall), City of Manhattan Beach (Janis Allen), and WAPOA (Jeff Laurel and Tom Watson).

The following items, with redlining provided, identify the substantive amendments to the MOU:

A) SWCD agrees that:

3. SWCD will advertise for, accept, and review all bids, and award all contracts associated with the Project, subject to WAPOA's right, hereby granted, to reject any bids and/or contracts which would require additional funding in excess of current funding commitments;
7. SWCD, City of Manhattan Beach and WAPOA will work together to identify project implementation solutions and/or secure additional funding should actual Project costs exceed current funding commitments, provided nothing in this agreement shall obligate the City of Manhattan Beach or WAPOA to provide or otherwise secure such additional funding;

B) City of Manhattan Beach and WAPOA agree that:

1. City of Manhattan Beach (City) agrees to pay for 25 percent of the annual maintenance cost, subject City's right to review and approve bids, contracts, or plans, to clean the stormwater chambers 2019-2043 for the 25 year period beginning January 1, 2020, and ending December 31, 2044 (the "Term");

Commented [MDT1]: Section A(7) provided that WAPOA would have some obligations should the Project costs exceed current funding commitments, so I have proposed revisions to this Section as well as Section A(7) in order to remove ambiguities and protect WAPOA.

2. WAPOA agrees to pay 75 percent of the annual maintenance cost, subject City's WAPOA's right to review and approve bids, contracts, or plans, to clean the stormwater chambers starting in 2019-2043 during the Term;

—NOTE: the signed copy WAPOA received omitted the outlining for Section C) included at the top of Page 4. The outlining failed to retain the following Section C, which should be as shown next:

C) CWC agrees that:

1. CWC is and will remain the owner of the stormwater chambers and infrastructure, including stormwater chambers, and will reassume responsibility be responsible for replacement/removal of the infrastructure as determined appropriate in the future;
4. Following SWCD's completion of the installation and construction of the Project, defined as final sign-off and payment to project contractor, CWC shall be liable for claims, costs, loss, damages, expenses (including reasonable attorney fees) and causes of action, directly connected to the Project, and CWC hereby agrees to save, hold harmless, indemnify and defend WAPOA and the City of Manhattan Beach therefrom. CWC hereby agrees to hold harmless and indemnify WAPOA, and the City of Manhattan Beach and each of these parties' elected officials, officers and employees from the same during that period;

2.

2.3. Renumber remaining items

- D) The above represents the full and entire scope of this Memorandum of Understanding. This Memorandum of Understanding can only be altered in writing signed by all parties hereto.

END

Amy Wannebo

From: Paul Allen <paulphr@crosslake.net>
Sent: Tuesday, October 30, 2018 7:44 PM
To: Amy Wannebo
Subject: Fw: City of Manhattan Beach - Satchell and Goldenstein Roads

----- Original Message -----

From: Andrew Kalis
To: pat@stonemarksurvey.com
Cc: 'Paul Allen'
Sent: Friday, October 19, 2018 3:53 PM
Subject: City of Manhattan Beach - Satchell and Goldenstein Roads

Pat:

It was good to talk with you about this today. I was following up about your firm's work on the Satchell and Goldenstein road projects in Manhattan Beach. I believe your firm is working to create descriptions for where the roads currently lie. I do not believe that they necessarily lie where there are described to be, so we would likely need deeds from owners where the roads currently lie so we can make sure we have this situation corrected. There may also be some gaps or other issues, and we would like to get that resolved. I'm not trying to be difficult, but I've been getting contacted about homeowners who are curious about this project. In our conversation today, you indicated that you would be working at this next week, and I do appreciate your help in that regard. Please feel free to contact me or Mayor Allen if you need anything. My number is listed below, and Mayor Allen's is (218) 820-4854.

Have a great weekend!

Andy

Andrew B. Kalis
Ryan, Brucker & Kalis, Ltd.
201 Minnesota Avenue N.
P.O. Box 388
Aitkin, MN 56431
Telephone (218) 927-2136
Facsimile (218) 927-6114

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At the October 2nd 2018 City Council meeting, the Council commented on the results of the Community Planning event that was held this past summer. We encourage you to visit the City website www.manhattanbeachmn.org where you can view the Council's comments in the October Minutes, listen to the October audio recording and view links to the results of the Community Planning Event.

add - The City of Manhattan
Beach City Council

**ADOPTION OF THE
CROW WING COUNTY ALL-HAZARD MITIGATION PLAN**

WHEREAS, Crow Wing County has participated in the hazard mitigation planning process as established under the Disaster Mitigation Act of 2000, and

WHEREAS, the Act establishes a framework for the development of a County Hazard Mitigation Plan; and

WHEREAS, the Act as part of the planning process requires public involvement and local coordination among neighboring local units of government and businesses; and

WHEREAS, the Crow Wing County Plan includes a risk assessment including past hazards, hazards that threaten the County, an estimate of structures at risk, a general description of land uses and development trends; and

WHEREAS, the Crow Wing County Plan includes a mitigation strategy including goals and objectives and an action plan identifying specific mitigation projects and costs; and

WHEREAS, the Crow Wing County Plan includes a maintenance or implementation process including plan updates, integration of the plan into other planning documents and how Crow Wing County will maintain public participation and coordination; and

WHEREAS, the Plan has been shared with the Minnesota Division of Homeland Security and Emergency Management and the Federal Emergency Management Agency for review and comment; and

WHEREAS, the Crow Wing County All-Hazard Mitigation Plan will make the county and participating jurisdictions eligible to receive FEMA hazard mitigation assistance grants; and

WHEREAS, this is a multi-jurisdictional Plan and cities that participated in the planning process may choose to also adopt the County Plan.

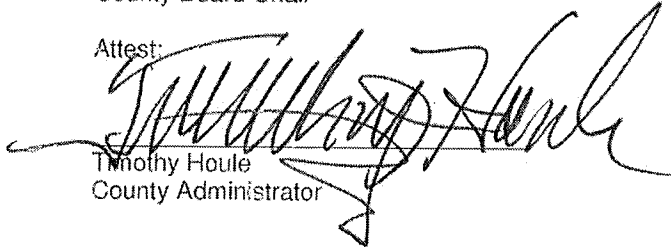
NOW THEREFORE BE IT RESOLVED that Crow Wing County supports the hazard mitigation planning effort and wishes to adopt the Crow Wing County All-Hazard Mitigation Plan.

This Resolution was declared duly passed and adopted and was signed by the Crow Wing County Board Chair and attested to by the Crow Wing County Administrator this 10th day of April, 2018.



Paul Thiede
County Board Chair

Attest:



Timothy Houle
County Administrator

SECTION 1:
REGULATION CHECKLIST

INSTRUCTIONS: The Regulation Checklist must be completed by FEMA. The purpose of the Checklist is to identify the location of relevant or applicable content in the Plan by Element/sub-element and to determine if each requirement has been 'Met' or 'Not Met.' The 'Required Revisions' summary at the bottom of each Element must be completed by FEMA to provide a clear explanation of the revisions that are required for plan approval. Required revisions must be explained for each plan sub-element that is 'Not Met.' Sub-elements should be referenced in each summary by using the appropriate numbers (A1, B3, etc.), where applicable. Requirements for each Element and sub-element are described in detail in this *Plan Review Guide* in Section 4, Regulation Checklist.

1. REGULATION CHECKLIST		Location in Plan (section and/or page number)	Met	Not Met
Regulation (44 CFR 201.6 Local Mitigation Plans)				
ELEMENT A. PLANNING PROCESS				
A1. Does the Plan document the planning process, including how it was prepared and who was involved in the process for each jurisdiction? (Requirement §201.6(c)(1))	Pg. 13-16: Planning Process description, including participants, planning activities and timeline. Appendices E and F: planning process and engagement documentation.	x		
A2. Does the Plan document an opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, agencies that have the authority to regulate development as well as other interests to be involved in the planning process? (Requirement §201.6(b)(2))	Pg. 13-16: Planning committee includes special districts and public service providers. Appendices E and F: planning process and engagement documentation.	x		
A3. Does the Plan document how the public was involved in the planning process during the drafting stage? (Requirement §201.6(b)(1))	Pg. 13-16: New releases and public meetings. Appendices E and F: planning process and engagement documentation.	x		
A4. Does the Plan describe the review and incorporation of existing plans, studies, reports, and technical information? (Requirement §201.6(b)(3))	Pg. 14, Appendix I: List of primary sources used for reference during plan development.	x		
A5. Is there discussion of how the community(ies) will continue public participation in the plan maintenance process? (Requirement §201.6(c)(4)(iii))	Pg. 116-117: Discussion of how local jurisdictions and public will be engaged throughout the 5 yr life of the plan.	x		
A6. Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a 5-year cycle)? (Requirement §201.6(c)(4)(i))	Pg. 115-117: Crow Wing EM will oversee plan maintenance and verify implementation on annual basis.	x		

1. REGULATION CHECKLIST		Location in Plan (section and/or page number)	Met	Not Met
Regulation (44 CFR 201.6 Local Mitigation Plans)				
ELEMENT A: REQUIRED REVISIONS				
ELEMENT B. HAZARD IDENTIFICATION AND RISK ASSESSMENT				
B1. Does the Plan include a description of the type, location, and extent of all natural hazards that can affect each jurisdiction(s)? (Requirement §201.6(c)(2)(i))	Pg. 31-90: Natural hazards profiled—tornadoes, windstorms, lightening, hail, flood, winter storms, extreme temperatures, drought, wildfire, landslide, and dam failure.	x		
B2. Does the Plan include information on previous occurrences of hazard events and on the probability of future hazard events for each jurisdiction? (Requirement §201.6(c)(2)(i))	Pg. 31-90, Appendix C: NCEI database primarily used for historical analysis of previous events. CPRI index included probability calculations.	x		
B3. Is there a description of each identified hazard's impact on the community as well as an overall summary of the community's vulnerability for each jurisdiction? (Requirement §201.6(c)(2)(ii))	Pg. 31-90: Vulnerability assessment included for each hazard, most detailed for flood with a HAZUS run. Appendix A: Additional maps conveying population density and location of critical facilities, 100 yr floodplain. Appendix B: inventory of critical facilities and replacement costs.	x		
B4. Does the Plan address NFIP insured structures within the jurisdiction that have been repetitively damaged by floods? (Requirement §201.6(c)(2)(ii))	Pg. 91-93: Plan states there are no RLPs in the planning area.	x		
ELEMENT B: REQUIRED REVISIONS				
ELEMENT C. MITIGATION STRATEGY				
C1. Does the plan document each jurisdiction's existing authorities, policies, programs and resources and its ability to expand on and improve these existing policies and programs? (Requirement §201.6(c)(3))	Appendix J: Crow Wing County Plans and Programs in Place Appendix K: Local Mitigation Capabilities Assessment Report Pg. 31-90: Risk assessment includes mention of existing plans and programs in place to address each hazard.	x		
C2. Does the Plan address each jurisdiction's participation in the NFIP and continued compliance with NFIP requirements, as appropriate? (Requirement §201.6(c)(3)(ii))	Pg. 91-93: Discussion of NFIP participation and flood insurance. Mitigation strategies include local planning/regulatory actions for continued compliance.	x		

1. REGULATION CHECKLIST		Location in Plan (section and/or page number)	Met	Not Met
Regulation (44 CFR 201.6 Local Mitigation Plans)				
C3. Does the Plan include goals to reduce/avoid long-term vulnerabilities to the identified hazards? (Requirement §201.6(c)(3)(i))	Pg. 93: Mitigation goals to reduce death, injury, loss, disruption from the natural hazards that can impact the planning area.	x		
C4. Does the Plan identify and analyze a comprehensive range of specific mitigation actions and projects for each jurisdiction being considered to reduce the effects of hazards, with emphasis on new and existing buildings and infrastructure? (Requirement §201.6(c)(3)(ii))	Pg. 98-113, Appendix G: mitigation activities range from planning and regulation, infrastructure projects, natural systems protections, education and awareness, and preparedness and response.	x		
C5. Does the Plan contain an action plan that describes how the actions identified will be prioritized (including cost benefit review), implemented, and administered by each jurisdiction? (Requirement §201.6(c)(3)(iv)); (Requirement §201.6(c)(3)(iii))	Pg. 91-113: STAPLEE method used; Mitigation action table reflects priority, action status, projected timeline, responsible department, potential funding source, and planning mechanism for implementation.	x		
C6. Does the Plan describe a process by which local governments will integrate the requirements of the mitigation plan into other planning mechanisms, such as comprehensive or capital improvement plans, when appropriate? (Requirement §201.6(c)(4)(ii))	Pg. 98-113, Appendix G: Mitigation action table indicates existing planning mechanisms to facilitate implementation of the mitigation action.	x		
ELEMENT C: REQUIRED REVISIONS				
ELEMENT D. PLAN REVIEW, EVALUATION, AND IMPLEMENTATION (applicable to plan updates only)				
D1. Was the plan revised to reflect changes in development? (Requirement §201.6(d)(3))	Pg. 42: Discussion of future development in the planning area.	x		
D2. Was the plan revised to reflect progress in local mitigation efforts? (Requirement §201.6(d)(3))	Appendix H: Status report on previous mitigation actions.	x		
D3. Was the plan revised to reflect changes in priorities? (Requirement §201.6(d)(3))	Pg. 13-16: Plan update goals included inputting more data on critical infrastructure and updating mitigation action priorities.	x		
ELEMENT D: REQUIRED REVISIONS				
ELEMENT E. PLAN ADOPTION				

1. REGULATION CHECKLIST		Location In Plan (section and/or page number)	Met	Not Met
Regulation (44 CFR 201.6 Local Mitigation Plans)				
E1. Does the Plan include documentation that the plan has been formally adopted by the governing body of the jurisdiction requesting approval? (Requirement §201.6(c)(5))	Pending			
E2. For multi-jurisdictional plans, has each jurisdiction requesting approval of the plan documented formal plan adoption? (Requirement §201.6(c)(5))	Pending			
ELEMENT E: REQUIRED REVISIONS				
ELEMENT F. ADDITIONAL STATE REQUIREMENTS (OPTIONAL FOR STATE REVIEWERS ONLY; NOT TO BE COMPLETED BY FEMA)				
F1.				
F2.				
ELEMENT F: REQUIRED REVISIONS				

RESOLUTION OF THE CITY OF MANHATTAN BEACH

ADOPTION OF THE
CROW WING COUNTY ALL-HAZARD MITIGATION PLAN

WHEREAS, the City of Manhattan Beach has participated in the hazard mitigation planning process as established under the Disaster Mitigation Act of 2000, and

WHEREAS, the Act establishes a framework for the development of a multi-jurisdictional County Hazard Mitigation Plan; and

WHEREAS, the Act as part of the planning process requires public involvement and local coordination among neighboring local units of government and businesses; and

WHEREAS, the Crow Wing County Plan includes a risk assessment including past hazards, hazards that threaten the County, an estimate of structures at risk, a general description of land uses and development trends; and

WHEREAS, the Crow Wing County Plan includes a mitigation strategy including goals and objectives and an action plan identifying specific mitigation projects and costs; and

WHEREAS, the Crow Wing County Plan includes a maintenance or implementation process including plan updates, integration of the plan into other planning documents and how Crow Wing County will maintain public participation and coordination; and

WHEREAS, the Plan has been shared with the Minnesota Division of Homeland Security and Emergency Management and the Federal Emergency Management Agency for review and comment; and

WHEREAS, the Crow Wing County All-Hazard Mitigation Plan will make the county and participating jurisdictions eligible to receive FEMA hazard mitigation assistance grants; and

WHEREAS, this is a multi-jurisdictional Plan and cities that participated in the planning process may choose to also adopt the County Plan.

NOW THEREFORE BE IT RESOLVED that the City of Manhattan Beach supports the hazard mitigation planning effort and wishes to adopt the Crow Wing County All-Hazard Mitigation Plan.

This Resolution was declared duly passed and adopted and was signed by the MAYOR and attested to by the Clerk this 7 day of NOV., 2018.



Attest:



SOURCEWELL PLANNING AND ZONING SHARED SERVICES AGREEMENT

This Shared Services Agreement (Agreement) is made effective upon execution by all parties (“Effective Date”), by and between Sourcewell, located at 202 – 12th Street NE, PO Box 219, Staples, MN 56479, and the City of Manhattan Beach (“City”), located at 39148 County Road 66, Manhattan Beach, MN 56442. Sourcewell and City shall be known collectively as the “Parties”.

ARTICLE I: PURPOSE

- 1.1 Purpose. Sourcewell and City agree that the purpose of this Agreement is to outline the Parties’ responsibilities with respect to City’s purchase of shared Planning and Zoning services from Sourcewell.

ARTICLE 2: SCOPE OF SERVICES

- 2.1 Services. City shall purchase planning and zoning services from Sourcewell, and Sourcewell shall furnish a Planning and Zoning Specialist to perform such services for City. Said Planning and Zoning Specialist shall be employed by Sourcewell and supervised by Sourcewell’s City/County Manager.
- 2.2 Scope of Work. The Planning and Zoning Specialist shall perform the following services on an as needed basis during the term of this Agreement:
 - 2.2.1 Permit Review;
 - 2.2.2 Legal notifications;
 - 2.2.3 Preparation of monthly agendas;
 - 2.2.4 Preparation and distribution of staff reports for public hearing applications for variances, plats, and similar efforts;
 - 2.2.5 Site inspections;
 - 2.2.6 Zoning code violation enforcement;
 - 2.2.7 Land use ordinance reviews and amendments;
 - 2.2.8 Correspondence with residents and city staff regarding related questions; and
 - 2.2.9 Other planning and zoning duties as assigned by City.
- 2.3 Additions and Modifications. Any modification this Agreement must be mutually agreed upon between the Parties and reduced to writing.

- 2.3.1 Unless otherwise agreed by the Parties, if the modification requires Sourcewell to provide additional services to City, City shall provide additional compensation consistent with the hourly rate outlined in Article 3.
- 2.3.2 If so requested, Sourcewell shall provide an estimate of costs prior to providing additional services and may not provide such services without City's consent.

ARTICLE 3: PAYMENT FOR SHARED SERVICES

- 3.1 Rate. Sourcewell shall provide planning and zoning services at a rate of \$ 50.00 per hour. Additional in-kind service hours may be offered at no charge at Sourcewell's discretion.
- 3.2 Billing and Payment. Sourcewell shall submit a monthly invoice to City for services rendered. City shall remit payment to Sourcewell for the invoiced amount within thirty (30) calendar days of the date of the invoice.
- 3.3 Expenses. Sourcewell shall pay all employment-related expenses for the Planning and Zoning Specialist, including salary, benefits, travel expenses, and training.
- 3.4 Limitation. Sourcewell shall not impose costs and fees other than those outlined above.

ARTICLE 4: TERM AND TERMINATION

- 4.1 Term. This Agreement will commence on the Effective Date and shall continue for three (3) years unless earlier terminated pursuant to the terms of this Agreement.
- 4.2 Termination for Convenience. Either party may terminate this Agreement at any time upon sixty (60) days' written notice. Termination pursuant to this Section does not relieve Sourcewell of its obligations to complete any open services. Nor will City be relieved of its obligation to pay for such open services.
- 4.3 Termination for Cause. Either party may terminate this Agreement if it provides written notice of material breach to the other Party, and the other Party does not cure the breach within thirty (30) calendar days of receiving the notice. The notice must describe the breach in reasonable detail and state the non-breaching Party's intent to terminate the Agreement.
- 4.4 Survival. Notwithstanding any expiration or termination of this Agreement, all payment obligations incurred prior to expiration or termination, and Articles 4, 5, and 6 will survive. All other rights granted under this Agreement shall cease.

ARTICLE 5: DATA AND MATERIALS

- 5.1 Government Data. The Parties acknowledge that each is subject to the Minnesota Government Data Practices Act (MGDPA) at Minnesota Statutes, Chapter 13. The Parties further acknowledge that any data collected, created, received, maintained or disseminated in conjunction with this Agreement is obtained for City's benefit and is the sole property of City.
- 5.1.1 City shall be responsible for ensuring government data related to this Agreement is appropriately classified, categorized, and inventoried as required by the MGDPA, for protecting such data in accordance with the Act, and for responding to any related public data requests.
- 5.1.2 Sourcewell shall restrict access to City's government data to staff whose work assignments reasonably require such access, and it shall take reasonable measures to protect City's data during the term of this Agreement. Upon expiration or termination of this Agreement, Sourcewell shall return or destroy City's data except to the extent that such data must be retained to satisfy auditing or statutory requirements.
- 5.2 Work Product. The Parties acknowledge that any reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation (Materials) developed or used in conjunction with this Agreement are generated for City's benefit and are the sole property of City.
- 5.2.1 City shall use all Materials only for the purpose for which they were prepared. If the Materials are used for any other purpose, City shall indemnify and hold Sourcewell harmless for such reuse.
- 5.2.2 Sourcewell shall return or destroy City's materials when this Agreement expires or terminates except to the extent that such Materials must be retained to satisfy auditing or statutory requirements.
- 5.2.3 Notwithstanding the foregoing, Sourcewell may maintain and reuse standard details related to this Agreement in the normal course of its business.
- 5.3 Audit and Record Disclosure. Pursuant to Minn. Stat. § 16C.05, subd. 5, Sourcewell acknowledges that the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by City, the State Auditor, and other duly authorized entities. For that purpose, Sourcewell shall maintain these and other related records for a period of six (6) years after the date of termination of this Agreement. This Section does not apply to government data generated or used solely for City's benefit and, therefore, owned by City as outlined above.

ARTICLE 6: GENERAL TERMS AND CONDITIONS

- 6.1 Subcontracting. Sourcewell shall not enter into any subcontract for performance of any services under this Agreement without the prior written approval from City.
- 6.2 Notices. All notices, invoices, and statements (Notice) related to this Agreement must be in writing. Notice of termination shall be delivered in person or mailed to the intended recipient at its current address. All other correspondence or communication may be mailed, hand delivered, or sent via fax or email to the other Party.
- 6.2.1 Each Party shall notify the other of any change to contact information, including address, telephone number, point of contact, and email address.
- 6.2.2 Notice will be deemed to have been given: (a) when delivered in person during normal business hours; (b) upon confirmation of receipt when transmitted by facsimile or electronic mail; (c) upon receipt when sent by registered or certified mail, postage prepaid; or (d) on the date of receipt if transmitted by national overnight courier with confirmation of delivery.
- 6.3 Governing Law, Jurisdiction and Attorney's Fees. This Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota. Any dispute arising out of this Agreement shall be adjudicated in Todd County, Minnesota. In any action or proceeding to enforce rights under this Agreement, the prevailing Party shall be entitled to recover costs and reasonable attorney's fees from the other Party.
- 6.4 Assignment. Neither Party shall have the right to assign or otherwise transfer its rights and obligations under this Agreement without prior written consent from the other Party. If such an assignment is permitted, any successor in interest shall acquire the assigning Party's entire interest in this Agreement. Any prohibited assignment shall be invalid.
- 6.5 Relationship. Each Party is an independent entity under the terms of this Agreement. Neither Party will have any right, power, or authority to act or create any obligation on behalf of the other Party. Except as otherwise provided, all operational expenses incurred by either Party will be borne by the Party incurring the expense.
- 6.6 Hold Harmless. Each party shall hold the other harmless from any claims and demands that may result from their negligence in connection with their duties and responsibilities under this Agreement, unless such action is a result of intentional wrongdoing by the other party. Each party shall be responsible for its own acts to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. Sourcewell's responsibility shall be governed by the Minnesota Statutes, Chapter 466.

- 6.7 Limitations of Liability. Excepting the Parties' indemnification obligations hereunder, neither party shall be liable to the other for any punitive, special, incidental or consequential damages including but not limited to: compensation or damages for loss of present or prospective profits or revenues, loss of actual or anticipated commissions on sales or anticipated sales, or expenditures, investments or commitments made in connection with the establishment, development or maintenance of the selling representation created by this Agreement or in connection with the performance of obligations regardless of the form of action, whether in contract, tort or other legal theory. The foregoing limitation shall apply: (a) even if such party has been advised of the possibility of such damages; and (b) notwithstanding any failure of essential purpose of any limited remedy herein.
- 6.8 Insurance. Sourcewell agrees to provide a minimum of one million dollars (\$1,000,000.00) per occurrence in general liability insurance with excess umbrella coverage of two million dollars (\$2,000,000.00) for Sourcewell staff assigned to provide services in conjunction with this Agreement.
- 6.9 Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable to carry out its obligations under this Agreement, that party shall give written notice to the other including an explanation of the circumstances.
- 6.10 Binding Effect. This Agreement binds and inures to the benefit of the Parties and their respective successors and permitted assigns.
- 6.11 Entire Agreement. The individuals signing this Agreement hereby represent that they are authorized to execute this Agreement on behalf of their respective organizations, and the Agreement contains the entire understanding between the Parties concerning the subject matter.
- 6.12 Severability. In the event that any terms of this Agreement are in conflict with or are otherwise unenforceable under any rule, law, or statutory provision, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any other terms of the Agreement unless the invalidity or unenforceability of such provisions substantially harms, compromises an integral part of, or are otherwise inseparable from the remainder of this Agreement.
- 6.13 Waiver. Failure by either party to take action or assert any right hereunder shall not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

6.14 Execution and Delivery of Documents. Each of the parties hereto, his or her heirs, legal representatives, successors, and assigns shall do all things to execute and deliver any documents necessary, at any time, to carry out and effectuate the terms and conditions of this Agreement.

ARTICLE 7: AGREEMENT

IN WITNESS THEREOF, City and Sourcewell have executed this Agreement as of the date hereof.

Sourcewell

By _____
Authorized Signature-**Signed**

By Anna Gruber
Name-**Printed**

Title Manager of City/County Solutions

Date _____

City of Manhattan Beach

By 
Authorized Signature-**Signed**

By PAUL L. ALLEN
Name-**Printed**

Title MAYOR

Date 11-07-18

Amy Wannebo

From: Debby Erickson <Debby.Erickson@crowwing.us>
Sent: Wednesday, November 7, 2018 11:46 AM
To: Debby Erickson
Subject: Election results, canvassing and recount information

Good morning – thank you all for a successful election yesterday! The work done by the judges in the polling places was excellent as always and I'm thankful we have such a great team here in Crow Wing County to work on these projects with!

I know some of you have questions as to the next steps in this process, so here is some information for you. If you haven't had a chance to see the results for your city or township yet, here is a link to the Crow Wing County municipality races <https://electionresults.sos.state.mn.us/Results/LocalRacesByCounty/115?districtid=18>. You'll need to scroll through the list to see the results for your individual municipalities.

- **Canvass Board** – Municipal results remain unofficial until your city council/town board canvasses the results. Canvassing occurs between the 3rd and 10th day after the election, so November 9th – November 16th this year. If you do not have a regular council or board meeting scheduled during this time period, you will need to call a special meeting to canvass the results. I will be emailing you a report you can use for your canvass board to show the results for the precinct. You can attach a copy of the results report to your canvass board resolution for your records. If you did not get "C" envelopes for your polling place AND absentee results last night, please make arrangements to stop in our office to pick them up – OR let me know if you would like them mailed to you by reply to this email.
- **Certificate of Election** - You cannot issue a certificate of election to the successful candidate until after the contest period has expired which is 7 days after your canvass board certifies the election results. Additionally, candidates must file their campaign finance report (even if they didn't spend or receive any money, they must file the report stating so) before the certificate of election can be issued. Terms for the newly elected officers begin on January 7, 2019.
- **Recounts** – There is no "automatic" recounts for local offices. If an unsuccessful candidate requests a recount, they must request it in writing to the clerk no later than 7 days after the canvass board meets. If the vote difference between the candidates is less than ½ of one percent or less than 10 votes if under 400 votes cast, the city or township would be responsible for paying for the recount. If the threshold is more than that, the candidate requesting would need to pay for the recount. A \$500 bond would be required to be provided along with the written request for recount. If the total cost is more than \$500 – the candidate would be billed for the difference, or refunded the difference if less than \$500. If it is a municipally funded recount – the city or town will be billed for the cost of the recount. All recounts would be conducted here at the Historic Courthouse by county elections staff. City or town staff would also be requested to be present; and the recounts are open to the public as well. The following races qualify for the municipally funded recount:
 - **Manhattan Beach Mayor (tie)**
 - **Trommald Mayor (1 vote difference)**
 - **Cuyuna Council Member (5 vote difference)**
 - **Ironton Council Member (3 vote difference)**
 - **Manhattan Beach Council Member (1 vote difference)**
- All other recounts would be at the cost of the requesting candidate.
- **Recount Dates** - If the candidate requests the recount by Thursday, November 15th, the recounts would be conducted on Monday, November 19th at 11 am. If the recount is requested after the 15th, the recount would be conducted on Wednesday, November 28th at 11 am. Recounts will be conducted on the 3rd floor of the Historic Courthouse. Following a recount, your canvass board would need to reconvene to certify the results of the recount.

If you have any further questions, please feel free to reach out to me.

Deborah A. Erickson

Administrative Services Director
326 Laurel Street, Suite 22
Brainerd, MN 56401

Office: [\(218\) 824-1049](tel:2188241049)

Cell: [\(218\) 831-4037](tel:2188314037)

Fax: [\(218\) 824-1046](tel:2188241046)

www.crowwing.us

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Our Mission: Serve well. Deliver value. Drive results.

Our Values: Be responsible. Treat people right. Build a better future.

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*Tie breaker must be random -
ie. coin toss, draw card.*

Amy Wannebo

From: Debby Erickson <Debby.Erickson@crowwing.us>
Sent: Wednesday, November 7, 2018 2:48 PM
To: Amy Wannebo
Subject: League of MN Cities info on ties

Amy –

Here's the statutory link and some info from LMC about ties in an elected office:

Ties

<https://www.revisor.mn.gov/statutes/cite/204C.34>

Under Minnesota law, when an election results in a tie, state law requires the canvassing board to declare the winner of the tie “by lot.” By lot means determining the winner of a tie by any game of chance in which both candidates have an equal chance of winning—like flipping a coin or drawing straws.

Deborah A. Erickson

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Mayoral Tie Breaker

- *Method of tie break should be chosen by a council member, i.e. flip coin or draw cards highest card is winner.
- *Council member will either flip coin or handle cards.
- *Council may choose the method tonight, so that it is ready for the special meeting.

GAS FRANCHISE ORDINANCE

ORDINANCE NO. 11-18.

CITY OF MANHATTAN BEACH, CROW WING COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF MANHATTAN BEACH, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CROW WING COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

- 1.1 **City.** The City of Manhattan Beach, County of Crow County, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.
- 1.5 **Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
- 1.6 **Gas Facilities.** Pipes, mains, regulators, and other facilities owner or operated by Company for the purpose of providing gas service for public use.
- 1.7 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 39148 County Road 66, Manhattan Beach, MN 56442. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

SECTION 2. ADOPTION OF FRANCHISE.

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

2.2 **Effective Date; Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 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 franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

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 Grounds as determined by the City. 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 the City to the extent not

inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

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

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

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

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

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

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. If the 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, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company 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 the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

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.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

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

SECTION 5. TREE TRIMMING.

Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

SECTION 6. INDEMNIFICATION.

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

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 7. VACATION OF PUBLIC WAYS.

The 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 Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 9. FRANCHISE FEE.

The City at the time of adopting this franchise agreement does not desire to require the Company collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance in an amount and upon such terms and conditions as Company at that time is willing to incorporate in its gas franchise agreements with other cities. Upon receipt of such Notice Company shall negotiate in good faith with City to so amend this franchise agreement.

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

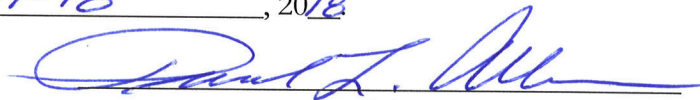
SECTION 11. AMENDMENT PROCEDURE.

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

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

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

Passed and approved: 11-07-18, 2018


Mayor

Attest:


City Clerk

Date Published: _____