

## CHAPTER 13. MISCELLANEOUS

### Section 1300 – ANNEXATIONS BY ORDINANCE

1300.01 Annexation of Rosier/Davidson Parcels. An ordinance extending the corporate limits of the City of Montgomery, Le Sueur County, Minnesota, to include certain land owned by Wallace Rosier and Brenda Rosier, husband and wife; and James D. Davidson and Jeanine L. Davidson, husband and wife, and abutting the City of Montgomery, Le Sueur County, Minnesota, a Minnesota municipal corporation. WHEREAS, Wallace Rosier and Brenda A. Rosier, husband and wife; and James D. Davidson and Jeanine L. Davidson, husband and wife, have filed a petition dated December 13, 2002, and which was amended on January 10, 2003, requesting that certain land as legally described below: ROSIER TRACT: All of that part of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 33-112-23, Le Sueur County, Minnesota, that lies east of the M. & St. L. R.R. right-of-way. This tract contains 13.68 acres of land. DAVIDSON TRACT: The west 704.55 feet as measured at a right angle to the west line of the following described Le Sueur County, Minnesota, tract: Commencing at a point 793.2 feet west of the Northeast corner of the SW  $\frac{1}{4}$  of Section 34-112-23, thence due South 462 feet, thence west 670.8 feet, thence south 858 feet, thence east 152.3 feet, thence south 1320 feet, more or less, to the south line of said SW  $\frac{1}{4}$ , thence West to the Southwest corner of said SW  $\frac{1}{4}$ , thence North on the West line of said SW  $\frac{1}{4}$  to the Northwest corner of said SW  $\frac{1}{4}$ , thence East on the North line of said SW  $\frac{1}{4}$  to the point of beginning. This tract contains 42.78 acres of land to be annexed to the City of Montgomery, Le Sueur County, Minnesota, a Minnesota municipal corporation (hereinafter City of Montgomery); and, WHEREAS, Wallace Rosier and Brenda A. Rosier, husband and wife, represent that they are the sole owners above identified as the "Rosier Tract", James D. Davidson and Jeanine L. Davidson, husband and wife, represent that they are the sole owners above identified as the "Davidson Tract", that the property is unincorporated, abuts the limits of the City of Montgomery, is not included within any other municipality, and is not included in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes Section 414.0325, will use this site for residential purposes, will need city services, and is approximately 56 acres in size; and, WHEREAS, such described land is now or about to become urban or suburban in character and that the same will be in need of municipal sewer and water services; and, WHEREAS, public hearings regarding the matter were held on January 21, 2003, and February 10, 2003, at 7:00 p.m. in the Montgomery City Hall per Minnesota Statutes Section 414.033, Subdivision 2(2b). NOW, THEREFORE, the City Council of the City of Montgomery, Minnesota, does hereby ordain: Section 1: The City Council determines and finds that the property abuts the municipality, that the area to be annexed is 60 acres or less, that the property is not included in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes Section 414.0325, that the municipality has received a properly prepared petition for annexation from the owners of the property, and that the petition complies with all provisions of Minnesota Statutes Section 414.033. Section 2: That property is urban in nature or about to become so and will be used by Wallace Rosier and Brenda Rosier, husband and wife; and James D. Davidson and Jeanine L. Davidson,

husband and wife, for residential purposes, and will need city services. Section 3: The corporate limits of the City of Montgomery are hereby extended to include the property and the same is hereby annexed to and included within the City of Montgomery as if the property had originally been part thereof. Section 4: The City Administrator is directed to file certified copies of this ordinance with Minnesota Planning, Lanesburgh Township, Montgomery Township, the Le Sueur County Auditor, the Le Sueur County Recorder, and the Minnesota Secretary of State. Section 5: The City will comply fully with the requirements of Minnesota Statutes Section 414.033, Subd. 12 (2003). Section 6: This ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 4 and upon approval of the ordinance by Minnesota Planning.

1300.02 Annexation of Independent School District 394 Parcel. An ordinance extending the corporate limits of the City of Montgomery, Minnesota, to include certain land owned by Independent School District 394 and abutting the City of Montgomery. WHEREAS, Independent School District 394 has filed a petition dated March 31, 1993, requesting that certain land as legally described below: That part of the North Half of the Southeast Quarter of Section 4, Township 111 North, Range 23 West of the Fifth Principal Meridian, Le Sueur County, Minnesota, described as follows: Beginning at the northeast corner of said North Half of the Southeast Quarter; thence on an assumed bearing of South 00 degrees 00 minutes 00 seconds East, along the east line of said North Half of the Southeast Quarter a distance of 1319.22 feet; thence South 89 degrees 11 minutes 46 seconds West, along the south line of said North Half of the Southeast Quarter, a distance of 954.00 feet; thence North 16 degrees 20 minutes 09 seconds West a distance of 171.07 feet; thence North 46 degrees 00 minutes 33 seconds West a distance of 278.58 feet; thence North 62 degrees 58 minutes 32 seconds West a distance of 303.02 feet; thence North 12 degrees 43 minutes 46 seconds West a distance of 218.02 feet; thence North 04 degrees 23 minutes 34 seconds East a distance of 159.24 feet; thence North 82 degrees 58 minutes 07 seconds East a distance of 169.68 feet; thence North 00 degrees 30 minutes 45 seconds West a distance of 433.07 feet to the north line of said North Half of the Southeast Quarter; thence North 89 degrees 29 minutes 15 seconds East, along said north line, a distance of 1343.75 feet to the beginning. Subject to easements of record. An easement for ingress and egress purposes over, under and across the north 30.00 feet of the east 1350.00 feet of the North Half of the Southeast Quarter of Section 4, Township 111 North, Range 23 West of the Fifth Principal Meridian, Le Sueur County, Minnesota. The total parcel containing 39.69 acres more or less be annexed to the City of Montgomery, and WHEREAS, Independent School District 394 represents that it is the sole owner of this property, that the property is unincorporated, abuts the limits of the City of Montgomery, is not included within any other municipality, and is not included in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes 414.0325, will use this site for the location of a new elementary school for grades pre-school through grade 3, will need city services, and is approximately 39.69 acres in size. NOW, THEREFORE, the City Council of Montgomery, Minnesota, does hereby ordain: Section 1: The City Council determines and finds that the property abuts the municipality, that the area to be annexed is 60 acres or less, that the property is not included in any area that has already been designated for orderly annexation pursuant to

Minnesota Statutes 414.0325, that the municipality has received a property prepared petition for annexation from the owners of the property, and that the petition complies with all other provisions of Minnesota Statutes 414.033. Section 2: The property is urban in nature or about to become so and will be used by Independent School District 394 for the location of a new elementary school for grades pre-school through grade 3 and will need city services. Section 3: The corporate limits of the City of Montgomery are hereby extended to include the property and the same is hereby annexed to and included within the City of Montgomery as if the property had originally been part thereof. Section 4: The City Administrator is directed to file certified copies of this ordinance with the Minnesota Municipal Board, Montgomery Township, the Le Sueur County Auditor, and the Minnesota Secretary of State. Section 5: This ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 4 and approval of the Ordinance by the Minnesota Municipal Board.

## Section 1320 – FEES BY ORDINANCE

1320.01 Fee Schedule. Certain City fees are required by state or local law to be set by City Ordinance. The following water, sewer, storm water, and special assessment rate fees shall take effect February 1, 2023, for utility services, and January 1, 2023, for septic dumping:

### UTILITY FEES

	<u>2022</u>
Water Monthly Residential Base Fee	\$ 35.00
Water Residential User Fee	
Tier 1 – 1,001 to 2,000 gallons	\$ 5.25 per 1,000
Tier 2 – 2,001 to 4,000 gallons	\$ 7.35 per 1,000
Tier 3 – 4,001 to 6,000 gallons	\$ 10.50 per 1,000
Tier 4 – 6,001 gallons and up	\$ 14.70 per 1,000
Water Monthly Commercial Base Fee per unit*	\$ 45.00
Water Commercial User Fee	\$ 4.00 per 1,000 Gallons
Water Connection Fee (based on size of service line) for Commercial and Industrial properties:	
(a) 1" service line	\$ 3,000
(b) 1 ¼" service line	\$ 3,400
(c) 1 ½" service line	\$ 3,800
(d) 2" service line	\$ 4,600
(e) 4" service line	\$ 7,750
(f) 6" service line	\$ 11,000
(g) 8" service line	\$ 14,050
Water Connection Fee for Single and Multi-Family Residences – R-1, R-2, and R-3 Districts:	\$ 3,000 per unit
There shall be no connection fee for an existing building with current water service to install a service specifically dedicated to service a fire sprinkler system.	
Each separate individual living unit in a multi-family residence (i.e. duplex, townhome, condominium, apartment building, or assisted living facility) shall be treated as a separate unit for determining water connection fees.	
New Water Meter Fee	Actual Meter Cost
Water Disconnect Fee	\$ 40.00
Water Reconnect Fee	\$ 40.00
Water Reconnect Fee after Business Hours	\$ 75.00
Snowbird Disconnect/Reconnect Fee	\$ 80.00
Mounting or Removing Antenna on Water Tower	\$750.00 Escrow \$10,000
Sewer Monthly Residential Base Fee per unit*	\$ 18.54
Sewer Residential User Fee	\$ 9.27 per 1,000 Gallons
Sewer Monthly Commercial Base Fee per unit*	\$ 18.54
Sewer Commercial User Fee	\$ 9.27 per 1,000 Gallons
Sewer User Fee-Qualified Commercial Accounts per	

1,000 Gallons (must use 25,000 or more gallons per month  
for a period of 1 year) \$ 7.50 per 1,000 Gallons  
Septic Dumping fee \$ 90.00 per 1,000 Gallons  
Sewer Connection Fee (based on size of service line)  
for Commercial and Industrial properties:  
    (a) 4" service line \$ 4,000  
    (b) 6" service line \$ 4,800  
    (c) 8" service line \$ 5,600  
Sewer Connection Fee for Single and Multi-Family  
Residences – R-1, R-2, and R-3 Districts: \$ 4,000 per unit  
Each separate individual living unit in a multi-family  
residence (i.e. duplex, townhome, condominium,  
apartment building, or assisted living facility) shall be  
treated as a separate unit for determining sewer connection fees.

Base rates for water and sewer will continue to be charged even when water service is  
terminated at the curb.

Monthly Storm Water Utility Residential \$8.47  
Monthly Storm Water Utility Non-Residential \$25.67 per acre as factored  
pursuant to Montgomery City Code, Chapter 3, Section 316.  
Water meter testing \$ 100.00\*  
\*if meter is found defective, the \$100.00  
will be refunded to the property owner

### **SPECIAL ASSESSMENT FEES**

	<u>REU</u>	<u>Comm. R-3</u>	<u>Indust.</u>
Mill and Overlay	\$1,783.98	\$23.79 per ft.	\$28.74 per ft.
Reclamation/Pavement			
Replacement	\$4,757.28	\$63.43 per ft.	\$76.12 per ft.
Partial Reconstruction	\$5,946.60	\$79.29 per ft.	\$95.15 per ft.
Full Reconstruction	\$7,730.58	\$103.05 per ft.	\$123.69 per ft.
Water service w/new main	\$1,427.18	Case by case for larger services	
Sewer service w/new main	\$1,189.32	Case by case for larger services	
Water service w/tap to existing		Case by case basis	
Sewer service w/tap to existing		Case by case basis	

Section 1321 – CHARGES FOR EMERGENCY SERVICES; COLLECTIONS; AND  
COLLECTION OF UNPAID SERVICE CHARGES AND FEES

1321.01 Authority. This Section is adopted pursuant to Minnesota Statutes Sections 415.01, 366.011, and 366.012, as they may be amended from time to time.

1321.02 Charges for Emergency Services; Collection.

Subd. 1 Charges and Collection. The City or any other entity of the City (hereinafter collectively referred to as the “City” throughout this Section) may impose a reasonable service charge for emergency services, including police, fire, rescue, medical, and related services provided by the City or contracted for by the City. If the service charge remains unpaid for thirty (30) days after notice of a delinquency is sent to the recipient of the service or the recipient’s representative or estate, the City or its contractor on behalf of the City may use any lawful means allowed to a private party for the collection of an unsecured delinquent debt. The City may also use the authority of Section 1321.03 herein to collect unpaid service charges of this kind from delinquent recipients of services who are owners of taxable real property in the City, or areas served by the City for emergency services.

Subd. 2 Additional Powers. The powers conferred by this Section are in addition to and supplemental to the powers conferred by any other law for a city to impose a service charge or assessment for a service provided by the City or contracted for by the City.

1321.03 Collection of Unpaid Service Charges and Fees. If the City is authorized to impose a service charge or fee on the owner, lessee, or occupant of property, or any of them, for a governmental service provided by the City, the City may certify to the County Auditor, on or before October 15 of each year, any unpaid service charges or fees which shall then be collected together with the property taxes levied against the property. A charge or fee may be certified to the Auditor only if, on or before September 15, the City has given written notice to the property owner of its intention to certify the charge or fee to the Auditor. The service charges or fees shall be subject to the same penalties, interest and other conditions provided for the collection of property taxes. This Section is in addition to any other law authorizing the collection of unpaid costs and service charges or fees.

## Section 1330 – ESTABLISHMENT OF TAX DISTRICTS

1330.01 Purpose. Pursuant to Minnesota Statutes Section 272.67, as amended, the City of Montgomery hereby divides the area within its corporate limits into an Urban Service District and a Rural Service District. Said districts shall be constituted as separate taxing districts for the purpose of all municipal property taxes, except those levied for the payment of bonds, judgments and interest thereon.

### 1330.02 Definitions/Criteria.

A. The Urban Service District shall include all properties located within the corporate limits of the City of Montgomery and which are not specifically included in the Rural Service District.

B. The Rural Service District shall include only lands permitted pursuant to the requirements of Minnesota Statutes Section 272.67, as amended or renumbered. No property shall be placed into the Rural Service District except upon the petition of 100% of the owners of the property, and then, only upon the owners' written agreement to abide by all zoning ordinances which may apply to the subject property from and after the date of the property's inclusion in the Rural Service District. To have property included in the Rural Service District the owner must provide proof satisfactory to the City that the petition or petitioners have 100% of the ownership of the property. The petitioner or petitioners must also submit as part of the petition a copy of the survey of the subject property, completed by a licensed surveyor.

C. The lands described in Exhibit A attached hereto and incorporated herein are included in the Montgomery Rural Service District upon the adoption of this Ordinance. Additional lands may be included in the Montgomery Rural Service District by amendment of this Section in conformance with the procedures set out in Minnesota Statutes Section 272.67, as amended or renumbered. The removal of lands from the Montgomery Rural Service District shall be accomplished using the procedures set out in Minnesota Statutes Section 272.67, as amended or renumbered.

1330.03 Zoning District Designation. The Montgomery City Zoning Code is amended to add a new zoning district known as the Rural Service District (RS). The City zoning map shall be amended to include the new district designation. All zoning regulations for R-1 Districts shall apply to Rural Service Districts.

1330.035 City Retains Right to Deny Petitions for Admission to Rural Service District. The Montgomery City Council retains sole discretion as to whether property petitioned to be in the Rural Service District is actually included in the Rural Service District. The fact the property petitioned for inclusion into the Rural Service District may meet all of the prerequisites set out in Section 1330.02(B) does not obligate the Council to include the subject property into the Rural Service District.

1330.04 Change in Use of Property Located in the Rural Service District. Any change in use shall require the Montgomery City Council to review whether, by resolution, the property should be transferred to the Urban Service District. The extension of municipal utilities to the property shall also require the Montgomery City Council to make and enter an order by resolution transferring such parcel from the Rural Service District to the Urban Service District. If the procedures set out in this Subdivision are inconsistent with those set out under Minnesota Statutes Section 272.67, as amended or renumbered, then the procedures set out in the state statute shall control.

1330.05 Tax Ratio. In the judgment of the Montgomery City Council, the ratio which exists between the benefits resulting from tax-supported municipal service to parcels in the Rural Service District, to parcels in the Urban Service District is 15.774%, plus any municipal property taxes levied for payment of bonds, and judgments, and interest thereon.

The property tax rate levied upon property in a Rural Service District shall be one hundred percent (100%) of the levy rate imposed upon properties in the Township in which the property is located, except those levied for the payment of bonds, judgments, and interest thereon.

1330.06 Properties Part of Rural Service District. All of the properties described in Exhibit "A" attached hereto and incorporated herein shall be included in the Rural Service District of the City of Montgomery. Any additional properties being considered for inclusion in the Rural Service District shall meet all of this Section's requirements and criteria to be included in the Rural Service District.

1330.07 Required City Services.

A. The City of Montgomery shall not provide any city water, storm sewer, sanitary sewer, or other utility services to any property located in the Rural Service District.

B. The City shall not provide any service to Rural Service District property beyond that which was provided by the township in which that property was located.

1330.08 Jurisdiction to Amend or Repeal. The City Council retains jurisdiction to amend or repeal any portion of Section 1330 of the City Code, and also retains sole discretion to include property in or remove property out from the Rural Service District.



## **EXHIBIT A**

### **TRACT #1, WALLACE ROSIER DESCRIPTION:**

Part of the Southwest Quarter of the Northwest Quarter of Section No. 3, T 111 N, R 23 W, Le Sueur County, Minnesota, described as follows:

Commencing at the West one quarter corner of said Section No. 3; thence on an assumed bearing of North 00 degrees 15 minutes 04 seconds West along the West line of said Northwest Quarter 952.11 feet to a point on the Easterly line of the M. & St. L. R.R. right-of-way, said point being the point of beginning of the tract to be described; thence continuing North 00 degrees 15 minutes 04 seconds West along said West line of the Northwest Quarter 358.94 feet to the Northwest corner of said Southwest Quarter of the Northwest Quarter; thence North 89 degrees 42 minutes 18 seconds East along the North line of said Southwest Quarter of the Northwest Quarter 666.12 feet; thence South 68 degrees 13 minutes 35 seconds West 235.00 feet; thence South 42 degrees 38 minutes 08 seconds West 593.18 feet to said easterly right-of-way line of the M. & St. L. R.R.; thence North 15 degrees 26 minutes 28 seconds West along said right-of-way 167.22 feet to the point of beginning. This tract contains 3.47 acres of land and is subject to any and all easements of record and is together with a 20.00 feet wide easement for utility purposes over, under and across part of said Southwest Quarter of the Northwest  $\frac{1}{4}$  of Section No. 3, said easement being described as follows: Commencing at the West one quarter corner of said Section No. 3; thence on an assumed bearing of North 00 degrees 15 minutes 04 seconds West along the West line of said Northwest Quarter 952.11 feet to a point on the Easterly line of the M. & St. L. R.R. right-of-way; thence South 15 degrees 26 minutes 28 seconds East along said right-of-way 167.22 feet to the point of beginning of said easement to be described; thence continuing South 15 degrees 26 minutes 28 seconds East along said right-of-way 818.92 feet to the South line of said Northwest Quarter; thence North 89 degrees 40 minutes 17 seconds East along said South line 20.71 feet; thence North 15 degrees 26 minutes 28 seconds West 836.83 feet; thence South 42 degrees 38 minutes 08 seconds West 23.54 feet to the point of beginning.

AND

Part of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section No. 3, Township No. 111 North, Range No. 23 West, Le Sueur County, Minnesota, described as follows:

Beginning at the Northwest corner of said Northeast Quarter (NE  $\frac{1}{4}$ ) of the Northwest Quarter (NW  $\frac{1}{4}$ ); thence on an assumed bearing of North 89 degrees 51 minutes 56 seconds East along the North line of said Northeast Quarter (NE  $\frac{1}{4}$ ) of the Northwest Quarter (NW  $\frac{1}{4}$ ) 23.00 feet; thence South 00 degrees 22 minutes 17 seconds East 1044.30 feet; thence South 68 degrees 13 minutes 35 seconds West 29.57 feet to the West line of said Northeast Quarter (NE  $\frac{1}{4}$ ) of the Northwest Quarter (NW  $\frac{1}{4}$ ); thence North 00 degrees 07 minutes 32 seconds West along said West line 1055.19 feet to the point of

beginning. This tract contains 0.61 acres of land and is subject to any and all easements of record.

AND

Northwest Quarter (NW ¼) of Northwest Quarter (NW ¼) of Section 3, Township 111, Range 23, Le Sueur County, Minnesota being subject to all easements of record.

EXCEPT

All that part of the Northwest one quarter of the Northwest one quarter of Section No. 3, T. 111 N., R. 23 W., Le Sueur County, Minnesota, described as follows: Commencing at the Northwest corner of said Section No. 3, thence East on the North line of said Section 394.00 feet to place of beginning of the tract to be described; thence South 284.00 feet, thence East 489.17 feet, thence North 284.00 feet to the north line of said Section No. 3, thence West on said North line 489.17 feet to place of beginning. Containing 3.19 acres and being subject to all easements of record.

ALSO EXCEPT

Part of the Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section No. Three (3), Township One Hundred Eleven (111) North, Range Twenty Three (23) West, Le Sueur County, Minnesota described as follows:

Commencing at the West One Quarter corner of said Section No. 3; thence on an assumed bearing of North 00 degrees 15 minutes 04 seconds West along the West line of said Northwest Quarter (NW ¼) 1,311.05 feet to the Southwest corner of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼); thence North 89 degrees 42 minutes 18 seconds East along the South line of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) 666.12 feet to the point of beginning of the tract to be described; thence continuing North 89 degrees 42 minutes 18 seconds East along said South line 660.00 feet to the Southeast corner of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼); thence North 00 degrees 07 minutes 32 seconds West along the East line of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) 260.00 feet; thence South 68 degrees 13 minutes 35 seconds West 710.08 feet to the point of beginning. This tract contains 1.97 acres of land and is subject to any and all easements of record.

TRACT #2, GERALD J. MALECHA AND SANDRA L. MARTINSON-MALECHA  
DESCRIPTION:

All that part of the Northwest one quarter of the Northwest one quarter of Section No. 3, T. 111 N., R. 23 W., Le Sueur County, Minnesota, described as follows: Commencing at the Northwest corner of said Section No. 3, thence East on the North line of said Section 394.00 feet to place of beginning of the tract to be described; thence South 284.00 feet, thence East 489.17 feet, thence North 284.00 feet to the north line of said Section No. 3, thence West on said North line 489.17 feet to place of beginning. Containing 3.19 acres

and being subject to all easements of record, including a 20-foot wide Drainage Easement pursuant to Doc. No. 148176.

**TRACT #3, TERRANCE HANSON DESCRIPTION:**

Parcel A: That part of the Northeast Quarter of the Northwest Quarter of Section 34; that part of the Southeast Quarter of the Northwest Quarter of Section 34; and that part of Government Lots 1 & 2, all in Township 112 North Range 23 West, Le Sueur County, Minnesota, described as:

Beginning at an iron pipe monument designating the West Quarter corner of Section 34; (the west line of the Northwest Quarter of Section 34 to have a bearing of North 00 degrees 09 minutes 53 seconds East-Minnesota County Coordinate System of 1983, Le Sueur County Zone); thence South 89 degrees 38 minutes 54 seconds East, along the East-West center line of Section 34, a distance of 1322.33 feet to the southeast corner of said Government Lot 1; thence North 00 degrees 15 minutes 59 seconds East, along the east line of said Government Lot 1 a distance of 330.08 feet to the southwest corner of the North  $\frac{3}{4}$  of the Southeast Quarter of the Northwest Quarter of Section 34; thence South 89 degrees 40 minutes 04 seconds East, along the south line of the North  $\frac{3}{4}$  of the Southeast Quarter of the Northwest Quarter of Section 34 a distance of 1322.37 feet to the southeast corner of the North  $\frac{3}{4}$  of the Southeast Quarter of the Northwest Quarter of Section 34; thence North 00 degrees 16 minutes 20 seconds East, along the North-South center line of Section 34 a distance of 1061.48 feet to the northeast corner of the South 69.90 feet of the Northeast Quarter of the Northwest Quarter of Section 34; thence North 89 degrees 43 minutes 34 seconds West, along the north line of the South 69.90 feet of the Northeast Quarter of the Northwest Quarter of Section 34 and along the north line of the south 69.90 feet of Government Lot 2 in Section 34, a distance of 2262.53 feet to the point of intersection with the easterly right of way line of the Chicago and Northwestern Transportation Company; thence South 15 degrees 40 minutes 10 seconds West, along said easterly line, 1439.27 feet to the point of intersection with the west line of said Government Lot 1; thence South 00 degrees 09 minutes 53 seconds West, along said west line, 0.79 feet to the point of beginning.

Said Parcel A contains 68.29 acres, subject to any and all easements of record.

Parcel B: That part of Government Lots 1 & 2 in Section 34, Township 112 North Range 23 West, Le Sueur County, Minnesota, described as:

Commencing at an iron pipe monument designating the West Quarter corner of Section 34; thence North 00 degrees 09 minutes 53 seconds East, (Minnesota County Coordinate System of 1983, Le Sueur County Zone), along the west line of the Northwest Quarter of Section 34, the same being the west line of said government Lot 1, a distance of 374.89 to the point of intersection with the westerly right of way line of the Chicago and Northwestern Transportation Company, the same being the easterly right of way line of Trunk Highway No. 13; said point being the point of beginning; thence North 15 degrees 40 minutes 10 seconds East, along said right of way lines, 1051.25 feet to the point of

intersection with the north line of the south 69.90 feet of Government Lot 2 in Section 34; thence North 89 degrees 43 minutes 34 seconds West, along said north line, 190 feet, more or less, to a point on the southeasterly water's edge of Lake Pepin; thence southwesterly, along said water's edge, 140 feet, more or less, to the point of intersection with the west line of said Government Lot 1; thence South 00 degrees 09 minutes 53 seconds West, along said west line, 900 feet, more or less to the point of beginning. Said Parcel B contains 3.1 acres, more or less, subject to any and all easements of record.

## Section 1339 – AMENDMENTS TO STREET NAMES

1339.01 The following street shall be renamed in the following fashion by this ordinance:

Subd. 1 That portion of Deer Trail located between Rogers Drive on the west and Deer Path on the east is hereby renamed Deer Path. All mailing addresses and street signs located in the affected area are to be changed to reflect the street name change contained herein. The City of Montgomery is renaming this street pursuant to the powers granted it under Minnesota Statutes Section 412.221, Subd. 18 (2005).

Subd. 2 The cul-de-sac serving and located in Block 1, The Preserve Third Addition to the City of Montgomery, Le Sueur County, Minnesota, is hereby named Deer Court. All mailing addresses and street signs located in the affected area are to be changed to reflect the street name change contained herein. This street had been unnamed as part of the platting process and the City is naming the street pursuant to its powers under Minnesota Statutes Section 412.221, Subd. 18 (2005).

## Section 1340-1349 – UTILITY FRANCHISES

1340.01-1340.11 – CenterPoint Energy Corp. d/b/a CenterPoint Energy, Minnesota Gas (“CenterPoint Energy”), a Minnesota Corporation, - City of Montgomery Franchise.

1340.01 Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

Subd. 1 City. The City of Montgomery, Le Sueur County, State of Minnesota.

Subd. 2 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.

Subd. 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.

Subd. 4 Company. CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”), a Minnesota corporation, 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.

Subd. 5 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.

Subd. 6 Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, V.P. Regulatory and Supply Service, 800 LaSalle Avenue, Minneapolis, Minnesota, 55402. Notice to the City shall be mailed to Montgomery City Administrator, City Hall, 201 Ash Avenue West, Montgomery, Minnesota, 56069. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

Subd. 7 Public Way. Any street, alley or other public right-of-way within the City.

Subd. 8 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.

1340.02 Adoption of Franchise.

Subd. 1 Grant of Franchise. City hereby grants Company, for a period of 20 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. 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 and subject to any City Ordinances governing the use of the City's Public Ways. 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 or permit requirements and to the further provisions of this franchise agreement.

Subd. 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 60 days after the date the City Council adopts this Ordinance, or otherwise informs the City, at any time, that the Company does not accept this franchise, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.

Subd. 3 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.

Subd. 4 Publication Expense. Company shall pay the expense of publication of this Ordinance.

Subd. 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.

Subd. 6 Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this

franchise continue for more than one year after expiration of the 20-year term set forth in Subdivision 1.

1340.03 Location, Other Regulations.

Subd. 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. Gas Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise.

Subd. 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.

Subd. 3 Restoration. After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All 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 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 of the Public Ground 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 1340. The Company shall also post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.

Subd. 4 Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or



property. The Company must 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 must 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.

Subd. 5 Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice will contain: (i) the nature and character of the improvements, (ii) the 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 Way is involved, the order in which the work is to proceed. The notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

Subd. 6 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.

#### 1340.04 Relocations.

Subd. 1 Relocation in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

Subd. 2 Relocation in Public Grounds. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Relocation shall comply with applicable city ordinances consistent with law.

Subd. 3 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.

#### 1340.05 Indemnification.

Subd. 1 Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. 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.

Subd. 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. 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.

1340.06 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, part 7819.3200 and applicable ordinances consistent with law.

1340.07 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.

1340.08 Franchise Fee.

Subd. 1 Form. During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. 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.

Subd. 2 Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall become effective twenty (20) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail.

Subd. 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.

Subd. 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.

Subd. 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. However, in no event shall this franchise fee continue for more than one (1) year after the franchise is allowed to expire, under the terms set forth in Section 1340.02, Subd. 1 and referenced in Section 1340.02, Subd. 6.

1340.09 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.

1340.10 Provisions of Ordinance.

Subd. 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.

Subd. 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.

1340.11 Amendment Procedure. Either party to this franchise agreement may at any time propose that the agreement 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 Administrator within 60 days after the effective date of the amendatory ordinance.

1341 – Greater Minnesota Gas, Inc., a Minnesota Corporation – City of Montgomery Franchise Ordinance.

1341.01 Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

Subd. 1 City. The City of Montgomery, Le Sueur County, State of Minnesota.

Subd. 2 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.

Subd. 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.

Subd. 4 Company. Greater Minnesota Gas, Inc., a Minnesota corporation, 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.

Subd. 5 Gas. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

Subd. 6 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.

Subd. 7 Mailing Addresses. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to Greater Minnesota Gas, Inc., 202 South Main Street, P.O. Box 68, Le Sueur, Minnesota, 56058. Notice to the City shall be mailed to Montgomery City Administrator, City Hall, 201 Ash Avenue West, Montgomery, Minnesota, 56069. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

Subd. 8 Non-Betterment Costs. Costs incurred by Company from relocation, removal, or rearrangement of facilities that do not result in an improvement to the facilities.

Subd. 9 Public Way. Any street, alley or other public right-of-way within the City.

Subd. 10 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.

1341.02 Adoption of Franchise.

Subd. 1 Grant of Franchise. City hereby grants Company, for a period of 20 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. 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 and subject to any City Ordinances governing the use of the City's Public Ways. 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 or permit requirements and to the further provisions of this franchise agreement.

Subd. 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 60 days after the date the City Council adopts this Ordinance, or otherwise franchise, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.

Subd. 3 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.

Subd. 4 Publication Expense. Company shall pay the expense of publication of this Ordinance.

Subd. 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.

Subd. 6 Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company services written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Subdivision 1.

#### 1341.03 Location, Other Regulations.

Subd. 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 operations of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise.

Subd. 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.

Subd. 3 Restoration. After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All 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 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 of the Public Ground 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 1341. The Company shall also post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.

Subd. 4 Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must 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 must 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.

Subd. 5 Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice will contain: (i) the nature and character of the improvements, (ii) the 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 Way is involved, the order in which the work is to proceed. The notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

Subd. 6 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.

#### 1341.04 Relocations.

Subd. 1 Relocation in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

Subd. 2 Relocation in Public Grounds. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will



become a substantial impairment to the existing or proposed public use of the Public Ground. Relocation shall comply with applicable city ordinances consistent with law.

Subd. 3 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.

#### 1341.05 Indemnification.

Subd. 1 Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. 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.

Subd. 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. 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.

1341.06 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, part 7819.3200 and applicable ordinances consistent with law.

1341.07 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.

1341.08 Franchise Fee.

Subd. 1 Form. During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the company a franchise fee. 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.

Subd. 2 Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall become effective twenty (20) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail.

Subd. 3 Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater percentage on the receipts from the sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within the City.

Subd. 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.

Subd. 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. However, in no event shall this franchise fee continue for more than one (1) year after the franchise is allowed to expire, under the terms set forth in Section 1341.02, Subd. 1 and referenced in Section 1341.02, Subd. 6.

Subd. 6 Annexation. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to the Company's addressee, as set forth in Section 1341.01, Subd. 6 of such annexation change in limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in limits of the City, commencing six (6) months from receipt of the written notice.

1341.09 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.

1341.10 Provisions of Ordinance.

Subd. 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.

Subd. 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.

1341.11 Amendment Procedure. Either party to this franchise agreement may at any time propose that the agreement 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 Administrator within 60 days after the effective date of the amendatory ordinance. This amendment procedure is subject, however, to the City's rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby if the parties are unable to agree on an amendment.

1341.12 Previous Franchises Superseded; Incorporation of Ordinance No. 4-2013. This franchise supersedes and replaces previous franchises granted to the Company, or its predecessors. Upon Company acceptance of this franchise under Section 1341.02(2), the previous franchise shall terminate.

## SECTION 1342

### 1342.01-1342.14 The Minnesota Valley Electric Cooperative – City of Montgomery Electric Franchise.

1342.01 Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

Subd. 1 City. The City of Montgomery, Le Sueur County, Minnesota.

Subd. 2 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.

Subd. 3 Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

Subd. 4 The Cooperative. The Minnesota Valley Electric Cooperative, its successors and assigns including all successors or assigns that own or operate any part or parts of the Electric Facilities subject to this franchise.

Subd. 5 Electric Facilities. Electric distribution equipment, towers, poles, lines, -guys, anchors, ducts, conduits, pipes, fixtures, and any and all necessary appurtenances owned or operated by The Cooperative for the purpose of providing electric energy for public and private use.

Subd. 6 Non-Betterment Costs. Costs incurred by The Cooperative from relocation, removal or rearrangement of Facilities that do not result in an improvement to the Facilities.

Subd. 7 Mailing Addresses. A writing served by any party or parties on any other party or parties. Notice to The Cooperative shall be mailed to Minnesota Valley Electric Cooperative, 125 Minnesota Valley Electric Drive, Jordan, MN 55352. Notice to the City shall be mailed to the City Administrator, City of Montgomery, 201 Ash Avenue West, Montgomery, Minnesota, 56069. Any party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Subd. 8 Public Way. Public right-of-way within the City as defined in Minnesota Statutes Section 237.162, Subd. 3.

Subd. 9 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.

1342.02 Adoption of Franchise.

Subd. 1 Grant of Franchise. City hereby grants The Cooperative, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for light, heat, and power 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, The Cooperative may construct, operate, repair, and maintain Electric Facilities in, on, over, under, and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. The Cooperative 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.

Subd. 2 Effective Date; Written Acceptance. This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by The Cooperative. If The Cooperative does not file a written acceptance of all terms of the Ordinance with the City within 90 days after the date the City Council publishes this Ordinance, the City Council by resolution may repeal this Ordinance. Notwithstanding the foregoing, promptly after passage of the Ordinance, the City shall provide The Cooperative any and all necessary documentation to review the Ordinance in order to meet its 90 day deadline.

Subd. 3 Service and Rates. The service to be provided and the rates to be charged by The Cooperative for electric service in City is subject to applicable Minnesota law. The area within the City in which The Cooperative may provide electric service is subject to the provisions of Minnesota law.

Subd. 4 Publication Expense. The expense of publication of this Ordinance shall be paid by The Cooperative.

Subd. 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 permitted by law or equity.

Subd. 6 Continuation of Franchise. If the City and The Cooperative are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or The Cooperative serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Subd. 1.

### 1342.03 Location, Other Regulations.

Subd. 1 Location of Facilities. Electric Facilities in the Public Way 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. Electric Facilities may be located on Public Grounds as determined by the City. The Cooperative's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to any permit requirements authorized in a separate ordinance and other reasonable regulations of the City, consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. The Cooperative may abandon underground Electric Facilities in place, provided, at City's request, The Cooperative will remove, at its own expense, abandoned metal conduits or concrete encased conduit or other Facilities interfering with a City improvement project, but only to the extent such conduit is near an excavation conducted as part of the City's improvement project.

Subd. 2 Street Openings. The Cooperative 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 The Cooperative shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Cooperative 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 Electric Facilities and (ii) The Cooperative gives telephone, e-mail, or similar notice to the City before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing repair, The Cooperative shall apply for any required permits and pay any required fees.

Subd. 3 Restoration. After completing work requiring the opening of Public Way, The Cooperative shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable City ordinances to the extent consistent

with law. The Cooperative shall restore the Public Ground to as good a condition as formerly existed in the work area defined in the permit, and shall warrant its repairs for two (2) years thereafter. This warranty is limited to repair or replace at City's sole option. All work shall be completed as promptly as weather permits. If The Cooperative shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after written demand to The Cooperative to cure, and The Cooperative has not cured or taken reasonable steps to cure (weather permitting), within 30 days of The Cooperative's receipt of City written notice, the right to make the restoration of the Public Ground at the expense of The Cooperative. The Cooperative shall, within 90 days of receipt of invoice from the City, pay to the City the cost of such work done for or performed by City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Subd. 3.

Subd. 4 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities or other persons or property while performing any activity.

#### 1342.04 Relocations.

Subd. 1 Relocation in Public Ways. The Cooperative shall comply with the requirements of any applicable ordinance of the City relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.

Subd. 2 Relocation in Public Grounds. The City may require The Cooperative at The Cooperative's expense to relocate or remove its Electric Facilities from Public Grounds upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Grounds. Such relocation shall comply with applicable City ordinances consistent with law.

Subd. 3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Cooperative Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46, as supplemented or amended. It is expressly understood that the right herein granted to The Cooperative is a valuable right. City shall not order The Cooperative to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned, because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable Non-Betterment Costs of such relocation are first paid to The Cooperative. The City however is obligated to pay The Cooperative 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 Cooperative.

Subd. 4 No Waiver. The provisions of Section 1342 apply only to Electric Facilities constructed in reliance on a franchise from City and The Cooperative does not waive its rights under an easement or prescriptive right or State or County permit.

1342.05 Tree Trimming. Unless otherwise provided in any permit or other reasonable regulation required by the City under separate ordinance, The Cooperative may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent The Cooperative finds necessary to avoid interference with the proper construction, operation, repair, and maintenance of any Electric Facilities installed hereunder, provided that The Cooperative shall hold the City harmless from any liability arising therefrom.

1342.06 Indemnification.

Subd. 1 Indemnity of City. The Cooperative shall indemnify and hold the City harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. 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 issue of permits for, or inspection of, The Cooperative's plans or work.

Subd. 2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, The Cooperative at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to The Cooperative within a period wherein The Cooperative is not prejudiced by lack of such notice. If The Cooperative is required to indemnify and defend, it will thereafter have control of such litigation, but The Cooperative 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 The Cooperative, 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 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.

1342.07 Vacation of Public Ways. The City shall give The Cooperative at least 30 days' prior written notice of a proposed vacating of a Public Way. Except where required solely for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive The Cooperative of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the

same and the loss and expense resulting from such relocation are first paid to The Cooperative. In accordance with Minnesota Rules, Part 7819.3200, if the City's order directing vacation of the Public Way does not require relocation of The Cooperative's Electric Facilities, the vacation proceedings shall not be deemed to deprive The Cooperative of its right to continue to use the right-of-way of the former Public Way for its Electric Facilities installed prior to such order of vacation.

1342.08 Notice of Improvement to Streets. The City must give The Cooperative reasonable written Notice of plans for improvements to Public Ways or Public Grounds where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements; (ii) the Public Ways or Public Grounds upon which the improvements are to be made; (iii) the extent of the improvements; and (iv) the time when the City will start the work. Notice must be given to The Cooperative a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit The Cooperative to make any additions, alterations, or repairs to its Electric Facilities.

1342.09 Mapping Information. Upon reasonable request The Cooperative shall timely provide to the City, on a project specific basis, detailed maps and information indicating the horizontal location, relative to the boundaries of the right-of-way, of all equipment which it owns or over which it has control and which is located in the project rights-of-way. Mapping information provided shall be the exclusive use of the City in the administering the use and occupancy of the public rights-of-way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the City, mapping information will be reviewed with the City staff. Prior to excavating in the rights-of-way both parties shall contact and shall follow the procedures therefore of the corporation organized pursuant to Minnesota Gopher One Call or an entity with a similar function utilized by both the City and The Cooperative. The shared section of map will be for information only, not for construction purposes, and cannot be reproduced or distributed. All requests for The Cooperative maps must follow The Cooperative processes and applicable state and federal regulations and protocols.

1342.10 Franchise Fee.

Subd. 1 Separate Ordinance. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on The Cooperative, the City may impose on The Cooperative a franchise fee of not more than five percent of The Cooperative's gross receipts as hereinafter defined. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon The Cooperative by certified mail. The franchise fee shall become effective upon written notice from the City.

Subd. 2 Terms Defined. The term "gross receipts" means any surcharge or similar addition to The Cooperative's charges to customers for the purpose of

reimbursing The Cooperative for the cost resulting from the franchise fee, received by The Cooperative from the sale of electricity to its retail customers within the corporate limits of the City.

Subd. 3 Collection of the Fee. The franchise fee shall be payable to the City quarterly, within 30 days after the last day of the last receipts month of the quarter and shall be based on the gross revenues of The Cooperative during complete billing months during the period for which payment is to be made. The fee may be changed in accordance with state law and by amendment to this Ordinance. The City shall provide The Cooperative a minimum six (6) month written notice by mail to the address stated in 1342.01, Subd. 7, prior to the request to implement an increase or decrease in the franchise fee. Such fee shall not exceed any amount which The Cooperative may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. The Cooperative may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee may be subject to the approval of the Public Utilities Commission, if required by state law. City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for the purpose as allowed by applicable law. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

Subd. 4 Conditions on the Fee. The separate ordinance imposing the fee shall not be effective against The Cooperative unless it lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City.

Subd. 5 Annexation. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to The Cooperative's addressee, as set forth in Section 1342.01, Subd. 7 of such annexation or change in the limits of said City, and The Cooperative shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing six (6) months from receipt of the written notice.

Subd. 6 Regulatory Approval.

- (a) If for any reason the time and manner of collecting, or any aspect of the franchise fee or any other payment to be made to City pursuant to this ordinance, is challenged by or before any regulatory body, The

Cooperative shall promptly give notice to City. If the Commission prohibits the collection or payment of a franchise fee, The Cooperative shall be relieved of its obligation to collect and pay the City the franchise fee.

- (b) Any and all proposed adjustments in the franchise fee may be submitted to the Commission for approval if required by law.

Subd. 7 Excessive Fees. If for any reason the amount or rate of the franchise fee shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City, be reduced to the maximum amount or rate permitted by law.

Subd. 8 Franchise Fee in Lieu of Permit Application Fee. In various City ordinances the City requires The Cooperative to pay City a permit fee simultaneously with The Cooperative obtaining a permit to do work in or on a public way or in or on public ground within the City. In the event City imposes a franchise fee pursuant to this Section, then, so long as the city franchise fee is in place, The Cooperative shall not be required to pay a permit application fee at the time The Cooperative submits a permit to work in a City public way or public ground. If the City rescinds the franchise fee, then the permit payment obligation shall automatically resume without further action by either party. The suspension of The Cooperative's obligation to pay a permit fee under this subdivision in no way impacts The Cooperative's ongoing obligation to obtain a permit from the City before disturbing any public way or public ground within the City.

#### 1342.11 Provisions of Ordinance.

Subd. 1 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 The Cooperative, succeed to all of the rights and obligations of the City provided in this Ordinance.

Subd. 2 Severability. Unless otherwise set forth in this Ordinance, 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; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

1342.12 Limitation on Applicability; No Waiver. This Ordinance constitutes a franchise agreement between the City and its successors and The Cooperative and its successors and assigns, as the only parties. 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. 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.

1342.13 Amendment Procedure. This Ordinance may be amended at any time by the mutual consent of the City and The Cooperative by City adoption of an amendatory ordinance, which shall become effective upon The Cooperative consent filed with the City. This amendment procedure is subject, however, to the City's rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby if the parties are unable to agree on an amendment.

1342.14 Previous Franchises Superseded. This franchise supersedes and replaces previous franchises granted to The Cooperative, or its predecessors. Upon The Cooperative acceptance of this franchise under Section 1342.02(2), the previous franchise shall terminate.

**Be it Further Ordained that the following summary clearly informs the public of the intent and effect of the ordinance and is approved for publication:**

**Ordinance No. 6-2013 sets for the terms of a 20-year franchise granted by the City to The Minnesota Valley Electric Cooperative for use of the rights-of-way and other public grounds to deliver electricity to residents and businesses in the City. This also includes the terms of compensation to the City for The Minnesota Valley Electric Cooperative's use of public property for these purposes.**

First Reading: YEAS: N/A  
NAYS: N/A

Second Reading: YEAS: 5  
NAYS: 0

## SECTION 1343 – FRANCHISE AGREEMENT REQUIRED WITHIN THE CITY OF MONTGOMERY

1343.01 Definitions. For the purpose of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

Subd. 1 City. The City of Montgomery, Le Sueur County, State of Minnesota.

Subd. 2 Person. Person is defined as an individual, private corporation, or a cooperative energy provider.

Subd. 3 Public Utility. Public utility shall have the same definition as contained in Minnesota Statutes Section 216B.02, Subd. 4 (2011), including all legislative amendments hereafter made to this definition.

1343.02 Franchise Required. Except pursuant to a franchise granted by the City, no person shall:

A. Own, construct, maintain, or operate a public utility within the City of Montgomery; or

B. Own, construct, maintain, or operate a public utility along, underneath, or intersecting any street, highway, or other public property within the City of Montgomery; or

C. Furnish services within the City of Montgomery via a public utility, or cause such services to be furnished.

1343.03 Required Terms of Franchise. Any franchise required by this Ordinance must be issued the specific franchisee pursuant to a separate ordinance, the terms of which have been provided the franchisee in advance of the promulgation with an opportunity to comment. No exclusive or perpetual franchise or privilege shall be granted or created, nor shall any franchise or privilege be granted for a term of more than 25 years. As part of any franchise granted pursuant to this Ordinance, the City may impose a franchise fee. The franchise fee may be changed by ordinance from time to time if done in accordance with procedural due process safeguard required by law. No change in the franchise fee may be adopted until at least 30 days after written notice enclosing such proposed ordinance has been served upon the grantee of a franchise by certified mail.

SECTION 1344 – MEDIACOM-CITY OF MONTGOMERY CABLE FRANCHISE  
ORDINANCE

1344.01-1344.14     Mediacom Minnesota, LLC-City of Montgomery Cable Communications Franchise.

1344.01 Statement of Intent and Purpose. The City intends, by the adoption of this Franchise, to bring about the further development and continued operation of a cable system. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a cable system. Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

1344.02 Findings. In the review of the request and proposal for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

Subd. 1 The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard.

Subd. 2 Grantee's plans for operating the system were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard.

Subd. 3 The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations.

Subd. 4 The Franchise granted to Grantee is nonexclusive.

1344.03 Short Title. This Franchise Agreement shall be known and cited as the Cable Franchise Agreement.

1344.04 Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

Subd. 1 "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C.543(b).

Subd. 2 “City” means the City of Montgomery, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

Subd. 3 “City Council” means the governing body of the City of Montgomery, Minnesota.

Subd. 4 “Cable Programming Service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- (1) Video programming carried on the basic service tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: consists of commonly identified video programming; and is not bundled with any regulated tier of service. Cable programming service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. Chapter 543(1)(2) (1993) and 47 C.F.R. 76.901(b) (1993).

Subd. 5 “Cable Service” or “Service” means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Subd. 6 “Cable Television System” or “System” or “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (2) A facility that serves subscribers without using the public rights-of-way.
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. SS 201-206 except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. SS 541) to the extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services.
- (4) Open video system that complies with the Section 653 of the Cable Act; or



(5) Any facilities of any electrical utility used solely for operating its electrical utility system.

Subd. 7 “Class IV Cable Channel” means a signaling path provided by a cable system to transmit signals of any type from a subscriber terminal to another point in the system.

Subd. 8 “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber and by an appropriate selector permits a subscriber to view all subscriber signals included in the service.

Subd. 9 “Drop” means the cable that connects the ground block on the subscriber’s residence or institution to the nearest feeder cable of the system.

Subd. 10 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Subd. 11 “Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. SS 546) issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

Subd. 12 “Grantee” is Mediacom Minnesota, LLC, its lawful successors, transferees or assignees.

Subd. 13 “Gross Revenue” means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%), from the operation of its system within the City including, but not limited to, all basic cable service, cable programming, services and pay television fees, franchise fees, installation and reconnection fees, upgrade and downgrade fees, advertising revenue, converter rental fees, and lockout device fees but only to the extent such revenue has not already been included in a franchise fee computation. The term gross revenues shall not include any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit. Gross revenues shall not include revenues received from Internet services, unless or until Internet services are defined as a cable service by lawful federal regulation or by a final decision of a court having lawful jurisdiction.

Subd. 14 “Installation” means the connection of the system from feeder cable to the point of connection including standard installations and custom installations.

Subd. 15 “Lockout Device” means an optional mechanical or electrical accessory to a subscriber’s terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the cable communication system.

Subd. 16 “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

Subd. 17 “Normal Operating Conditions” means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

Subd. 18 “Pay Television” means the delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

Subd. 19 “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.

Subd. 20 “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to, any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated rights-of-way for travel purposes and utility easements.

Subd. 21 “Standard Installation” means any residential installation which can be completed using a drop of 150 feet or less.

Subd. 22 “Subscriber” means any person who lawfully receives service via the system. In the case of multiple office buildings or multiple dwelling units, the “subscriber” means the lessee, tenant or occupant.

#### 1344.05 Grant of Authority and General Provisions.

Subd. 1 Franchise Required. It shall be unlawful for any person to construct, operate or maintain a cable communications system in the City unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Agreement. It shall also be unlawful for

any person to provide cable television service in the City unless such person shall have first obtained and shall currently hold a valid Franchise Agreement. All cable communications franchises granted by the City shall contain the same substantive terms and conditions.

Subd. 2 Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its proposal, which is expressly incorporated herein by reference. Failure of Grantee to provide a system as described in its proposal, or meet obligations and comply with all provisions therein, shall be deemed a violation of this Franchise.

Subd. 3 Grant of Nonexclusive Authority.

- a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the rights-of-way in the City a cable system and shall have the right and privilege to provide cable service and data service, including internet access and related services. The system constructed and maintained by Grantee or its agents shall not interfere with other uses of the rights-of-way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.
- b. Notwithstanding the above grant to use rights-of-way, no right-of-way shall be used by Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such right-of-way was created or dedicated, or with the present use of the right-of-way.
- c. This Franchise shall be nonexclusive, and the City reserves the right to grant a use of said rights-of-way to any person at any time during the period of this Franchise for the provision of cable service. The terms and conditions of any such grant of use of the rights-of-way shall be, when taken as a whole and taking into account the planned usage of the rights-of-way, no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.

Subd. 4 Lease or Assignment Prohibited. Except for commercial leased access as required by Federal law, no person may lease Grantee's system for the purpose of providing service until and unless such person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 1344.12(5). Subject to restrictions on transfer and change of control in Section 1344.12(5) Grantee may lease capacity on its cable

system for non-cable services, including, without limitation, private network services for business customers.

Subd. 5 Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.

Subd. 6 Previous Franchises. Upon acceptance by Grantee as required by Section 1344.15 herein, this Franchise shall supersede and replace any previous ordinance/Code section granting a Franchise to Grantee.

Subd. 7 Compliance with Applicable Laws, Resolutions and Ordinances. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of cable service and operation of the system in the City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance making authority, and eminent domain rights of the City. In the event any City Code section or regulation addressing usage of the rights-of-way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 1344.06 of this Franchise, Grantee shall comply with such Code or regulation of general applicability regardless of which requirement was first adopted except that Grantee shall not, through application of such City Code or regulation of rights-of-way, be subject to additional burdens with respect to usage of rights-of-way which exceed burdens on similarly situated rights-of-way users.

Subd. 8 Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction.

Subd. 9 Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by the City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided however, that Grantee shall not be required to extend service beyond its present system boundaries unless there is a density equivalent of 30 homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

Subd. 10 Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:	City of Montgomery Attn: City Administrator 201 Ash Avenue S.W. P.O. Box 78 Montgomery, MN 56069-0078
If to Grantee:	Mediacom Minnesota LLC Attn: Vice President 1504 2 <sup>nd</sup> Street Southeast P.O. Box 110 Waseca, MN 56093-110(?)
Copy to:	Mediacom Communications Corporation Attn: Legal Affairs Department One Mediacom Way Mediacom Park, NY 10918

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

Subd. 11 Subscriber Network Drops to Designated Building. Grantee shall provide, free of charge, installation of one (1) subscriber network drop, one (1) cable outlet, one (1) converter, if necessary, and basic cable service without charge to the institutions identified on Exhibit A attached hereto and made a part hereof, and such other public or educational institutions subsequently designated by the City which is located three hundred (300) feet or less from the existing subscriber network. Any such institution located more than three hundred (300) feet shall be connected if such institution agrees to reimburse Grantee for Grantee's actual costs in excess of the three hundred (300) feet installation action costs.

Alternatively, said institution may add outlets at its own expense, as long as such installation meets Grantee's standards. Grantee shall have three (3) months from the date of City designation of additional institution(s) to complete construction of the drop and outlet unless weather or other conditions beyond the control of Grantee requires more time.

Subd. 1 Registration, Permits and Construction Codes.

- a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the system in the City and give due consideration at all times to the aesthetics of the property.
- b. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law.

Subd. 2 Repair of Rights-of-Way and Property. Any and all rights-of-way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the system shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, as determined by the City in the case of streets and other public property, which approval shall not be unreasonably withheld. If Grantee shall fail to promptly perform the restoration required herein, after written request of the City and reasonable opportunity to satisfy that request, the City shall have the right to put the rights-of-way, public, or private property back into good condition. In the event the City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse the City for such restoration.

Subd. 3 Conditions on Right-of-Way Use.

- a. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any right-of-way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- b. All system transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of rights-of-way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said rights-of-way and not to interfere with existing public utility installations.
- c. If at any time during the period of this Franchise the City shall elect to alter or change the grade or location of any right-of-way, the Grantee shall, at its own expense, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system, and in each instance comply with the reasonable and lawful standards and specifications of the City.

- d. The Grantee shall not place poles, conduits, or other fixtures of system above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any right-of-way shall be so placed as to comply with all reasonable and lawful requirements of the City.
- e. The Grantee shall, upon request of any person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than ten (10) days advance written notice to arrange for such temporary changes.
- f. The Grantee shall have the authority to trim any trees upon and overhanging the rights-of-way of the City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.
- g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the rights-of-way.

Subd. 4 Undergrounding of Cable.

- a. Unless otherwise required by action of City Council, Grantee must place newly constructed facilities underground in areas of the City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all pursuant to plans submitted with Grantee's permit application(s) and approved by the City.
- b. In any area of the City where there are certain cables, wires and other like facilities of a public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- c. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by the City or new developments.

Subd. 5 Installation of Facilities. No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of the City.

Subd. 6 Safety Requirements.

- a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b. The Grantee shall install and maintain its system and other equipment in accordance with the City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c. All cable system structures, lines, equipment and connections in, over, under and upon the rights-of-way of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any person.

1344.07 Design Provisions.

Subd. 1 System Design.

- a. Grantee shall develop, construct and operate a system providing a minimum of 750 MHz capacity within twenty-four (24) months of the effective date of this Franchise Agreement.
- b. The system may utilize a hybrid fiber-coaxial architecture. In addition, the system will be designed with the capability to transmit return signals upstream.
- c. Grantee may develop, construct and operate a system capable of providing non-video services such as high-speed data transmission, internet access, and other competitive services.
- d. All final programming decisions remain the discretion of Grantee in accordance with the proposal, provided that Grantee notifies the City and subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C.531-536, and further subject to the City's rights pursuant to 47 U.S.C. Section 545. Location and relocation of the PEG channels shall be governed by Section 1344.09(1).

Subd. 2 Interruption of Service. The Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the system.

Subd. 3 Technical Standards. The technical standards used in the operation of the system shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to Title 47, Section 76.601 to



76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

Subd. 4 Special Testing.

- a. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the system if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the subscribers caused by such testing.
- b. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing. If the results of such testing indicate noncompliance with FCC regulations, cost of such testing shall be made at Grantee's expense.

Subd. 5 FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of the City also be filed with the City or its designee within ten (10) days of the conduct of such tests.

Subd. 6 Non-voice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for non-voice return communications.

Subd. 7 Lockout Device. Upon the request of a subscriber, Grantee shall provide by sale or lease a lockout device.

1344.08 Service Provisions.

Subd. 1 Regulation of Service Rates.

- a. The City may regulate rates for the provision of cable service, equipment, or any other communications service provided over the system to the extent allowed under federal or state law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.
- b. Grantee shall give the City and subscribers written notice of any change in a rate or charge at least thirty (30) days prior to the effective date of the change in accordance with 47 CRF 76.964. Grantee shall not be required to provide advance notice for changes relating to franchise fees, access charges or any franchise-related costs consistent with federal law. Bills must be clear, concise, and understandable, with itemization of all charges.

Subd. 2 Non-standard Installations. Grantee shall install and provide cable service to any person requesting other than a standard installation. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the standard installation.

Subd. 3 Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within the City. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

Subd. 4 Subscriber Inquiry and Complaint Procedures.

- a. Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive subscriber complaints and requests twenty-four (24) hours-a-day, seven (7) days-a-week. During normal business hours, trained representatives of Grantee shall be available to respond to subscriber inquiries.
- b. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and the City where applicable and lawful. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

Grantee shall respond to written complaints with copy to the City or its designee within thirty (30) days.

- c. Subject to Grantee's obligations pursuant to law regarding privacy of certain information, Grantee shall prepare and maintain written records of all complaints received from the City and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution upon request of the City. As to subscriber complaints, Grantee shall comply with FCC record-keeping regulations and make the results of such record-keeping available to the City upon request.
- d. Subscriber requests for repairs shall be performed to the extent possible within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Grantee may also schedule service calls outside normal business hours for the convenience of customers. Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

Subd. 5 Subscriber Contracts. Grantee shall file with the City any standard form subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the subscriber contract offered to customers. The length and terms of any subscriber contract(s) shall be available for public inspection during normal business hours.

Subd. 6 Refund Policy. In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing. In addition, in the event that an outage of service occurs for a total period of more than twenty-four (24) hours, a subscriber shall, upon request, be credited pro rata for such outage.

Subd. 7 Late Fees. Grantee may assess additional fees for late payment in accordance with Grantee's standard late fee policy and applicable law, but in no case shall Grantee require payment of a late fee until thirty (30) days after the date of the invoice.

#### 1344.09 Access Channel(s) Provisions.

Subd. 1 Public, Educational and Government Access.

- a. The City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter “PEG access”) programming on the cable system.
- b. Grantee shall dedicate one (1) channel for PEG access and community programming use. All residential subscribers who receive all or any part of the total services offered on the system shall be eligible to receive such channels at no additional charge. The channel shall be activated upon request of the City or its designee and thereafter maintained. The City may rename, reprogram, or otherwise change the use of these channels in its sole discretion, provided such use is non-commercial, lawful, and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City’s rights to secure additional channels pursuant to Minnesota Statutes Section 238.084, which is expressly incorporated herein by reference. The City shall provide ninety (90) days prior written notice to Grantee of the City’s intent to activate access channels.

Subd. 2 Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to the City and the public.

Subd. 3 Access Rules. The City, or its designee, shall implement rules for use of any access channel(s).

Subd. 4 Title to PEG Equipment. Grantor shall retain title to all PEG equipment and facilities purchased or otherwise acquired with funding made available by Grantee under this Franchise and any franchise, previously granted by the City. Within ninety (90) days of the effective date of this Agreement, Grantee shall provide to the Grantor equipment capable of providing text messaging and video playback on the PEG access and community program channel.

Subd. 5 State and Federal Law Compliance. Satisfaction of the requirements of this Section satisfies any and all of Grantee’s state and federal law requirements of Grantee with respect to PEG access.

Subd. 6 Technical Assistance. Grantee shall at all times cooperate with the City in providing technical assistance desired by the City regarding PEG access programming.

1344.10 Operation and Administration Provisions.

Subd. 1 Administration of Franchise. The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the system and the

Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the system as are consistent with the provisions of the Franchise and law.

Subd. 2 Delegated Authority. The City may appoint a citizen advisory body or may delegate to any other body or person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.

Subd. 3 Franchise Fee.

- a. During the term of the Franchise, Grantee shall pay quarterly to the City a franchise fee in an amount equal to five percent (5%) of its annual gross revenues.
- b. Any payments due under this provision shall be payable annually. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal year together with a report showing the basis for the computation.
- c. All amounts paid shall be subject to audit and precomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

Subd. 4 Access to Records. The City shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to system operations including specifically Grantee's accounting and financial records.

Subd. 5 Reports to be Filed with City. Grantee shall file with the City, at the time or payment of the franchise fee, a report of all gross revenues in form and substance as required by this Section.

Subd. 6 Periodic Evaluation.

- a. The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee.
- b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- c. As a result of a period review or evaluation session, upon notification from the City, Grantee shall meet with city and undertake good faith

efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

1344.11 General Financial and Insurance Provisions.

Subd. 1 Performance Bond.

- a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City in the amount of \$10,000.00 in a form and with such sureties as reasonably acceptable to the City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations. In the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes, due the City which arise by reason of the construction, operation, or maintenance of the system. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
- b. The time for Grantee to correct any violation or liability, shall be extended by the City if the necessary action to correct such violation or liability is such in nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.
- c. In the event this Franchise is revoked by reason of default of Grantee, the City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by the City as a result of said default or revocation.
- d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains after the expiration of the term of the Franchise or revocation for default thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

- e. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.

Subd. 2 Indemnification of City.

- a. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the system or as to any other action of Grantee with respect to this Franchise.
- b. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise, except because of the City's own programming.
- c. Nothing in this Franchise relieves a person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a right-of-way or public place or with the construction or reconstruction of a sewer or water system.
- d. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:
  - (1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
  - (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
  - (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

Subd. 3 Insurance.

- a. As a part of the indemnification provided in Section 1344.11(2) but without limiting the foregoing, Grantee shall file with the City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's

liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

- b. The policies of insurance shall be in the sum of not less than \$300,000.00 for personal injury or death of any one person, and \$1,000,000.00 for personal injury or death of two or more persons in any one occurrence, \$300,000.00 for property damage to any one person and \$1,000,000.00 for property damage resulting from any one act or occurrence.
- c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

#### 1344.12 Sale, Abandonment, Transfer and Revocation of Franchise.

##### Subd. 1 City's Right to Revoke.

- a. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by the City that:
  - 1. Grantee has violated material provision(s) of this Franchise; or
  - 2. Grantee has attempted to evade any of the provisions of the Franchise; or
  - 3. Grantee has practiced fraud or deceit upon the City.
- b. The City may revoke this Franchise without the hearing required by 1344.12(2)(b) herein if Grantee is adjudged bankrupt.

##### Subd. 2 Procedures for Revocation.

- a. The City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide Grantee with the basis of the revocation.



- b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the sixty (60) day notice provided in subparagraph (a) above.

The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

- c. Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.
- e. Upon satisfactory correction of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.

Subd. 3 Abandonment of Service. Grantee may not abandon the system or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the system or any portion thereof without compensating the City for damages resulting from the abandonment, including all costs incident to removal of the system.

Subd. 4 Removal After Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of the system, the City shall have the right to require Grantee to remove all or any portion of the system from all rights-of-way and public property within the City.
- b. If Grantee has failed to commence removal of system, or such part thereof as was designated by the City, within ninety (90) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the system to be in the City with all rights of ownership including, but not limited to, the right to operate the system or transfer the system to another for operation by it.

Subd. 5 Sale or Transfer of Franchise.

- a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee which includes the sale of a controlling interest in the Grantee's assets, a merger including the

merger of a subsidiary, and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.

- b. The City shall have such time as is permitted by state and federal law in which to review a transfer request.
- c. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.
- d. In the event of any proposed sale, transfer, or assignment pursuant to subparagraph (a) or (b) of this Section, the City shall have the right of first refusal of any bona fide offer to purchase the system. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to the City's rights under this Section. This written offer must be conveyed to the City along with the Grantee's written acceptance of the offer contingent upon the rights of the City provided for in this Section.
- e. The City shall be deemed to have waived its right to purchase the system pursuant to this Section only in the following circumstances:
  - 1. If the City does not indicate to Grantee in writing, within thirty (30) days of receipt of written notice of a proposed sale, transfer, corporate change, its intention to exercise its right of purchase; or
  - 2. It approves the assignment or sale of the Franchise as provided within this Section.
- f. No Franchise may be transferred if the City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by the City.

#### 1344.13 Protection of Individual Rights.

Subd. 1 Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

Subd. 2 Subscriber Privacy.

- a. No signals including signals of a Class IV channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever.
- b. Written permission from the subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this Section.

1344.14 Miscellaneous Provisions.

Subd. 1 Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

Subd. 2 Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 1344.10(6) or at any other time if the City and Grantee agree.

Subd. 3 Compliance with Federal, State and Local Laws.

- a. If any federal or state law or regulation shall require or permit the City or Grantee to perform any service or act or shall prohibit the City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated and to conform to federal laws and regulations regarding cable as they become effective.
- b. If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be thereby, and this Franchise and all the terms, provisions and

conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

Subd. 4 Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

Subd. 5 Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

Subd. 6 Grantee Acknowledgement of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

Subd. 7 Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof.

1344.15 Effective Date, Acceptance and Exhibits. The Effective Date of this Franchise Agreement is the date of final adoption by franchising authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise Agreement shall be for a term of ten (10) years from such Effective Date.

Considered and approved this 20<sup>th</sup> day of March, 2017.

This Franchise shall be for a term of ten (10) years from such Effective Date upon Mediacom's signed execution and shall expire on March 23, 2027.

EXHIBIT A

DESIGNATED BUILDINGS FOR SUBSCRIBER NETWORK DROPS

Montgomery City Hall	201 Ash Avenue S.W.
Montgomery School	101 2 <sup>nd</sup> Street N.E.
Montgomery Housing Building	300 Oak Street

Section 1360-Creation of Montgomery Human Rights and Resources Commission.  
Section repealed at regular Council meeting of February 10, 2014.

Section 1361-Creation of Montgomery Residential Rental Code. Section repealed at regular Council meeting of February 10, 2014.

## Section 1362 – MORATORIUM ON ISSUANCE OF CUPs PERMITTING THE MOVING OF PRINCIPAL STRUCTURES WITHIN OR INTO THE CITY

1362.01 Background. The City of Montgomery has established that a conditional use permit is required before principal buildings can be moved within or into the City under City Code Section 1120.06. City Code Section 1120.06 sets out the prerequisites which must be met before the City can issue a conditional use permit to allow the moving of any principal building from within or without the city limits to a new location within the City. A number of undeveloped residential lots have recently become available in the City which could have principal buildings moved onto them. There is a need to conduct a study that the City can consider whether its ordinances and zoning regulations pertaining to the moving of principal buildings from within or without the city limits needs to be implemented for the purpose of protecting the planning process as well as the health, safety, and welfare of the citizens of the City of Montgomery. There is an immediate need for an interim ordinance to be adopted for the purpose of protecting the City's planning process in this regard until a study has been completed and any modifications to the City's subject regulations are implemented. Minnesota Statutes Section 462.355, Subd. 4 permits the adoption of interim zoning ordinances during the planning process.

1362.02 Findings. The City Council finds there is a need to conduct a study that the City Council can consider possible amendments to its ordinances and zoning regulations pertaining to the moving of principal buildings from within or without the city limits to a new location within the City. The City Council further finds there is a need to adopt this moratorium ordinance until the City has completed its studies on the subject issue and determined whether to implement modifications to the City's current regulations.

1362.03 Planning Study; Moratorium. The City staff is directed, in the interest of protecting the planning process and in the interest of the public's health, safety, and welfare to undertake a study regarding the impact of moving principal buildings from within or without the city limits to a new location within the City. Upon completion of the study, the matter is to be considered by the Planning & Zoning Commission, with its written review and recommendation to be sent to the City Council. A moratorium is hereby adopted as concerns the issuance of any CUPs for the moving of any principal building from within or without the city limits to a new location within the City, until such time as the study authorized by this ordinance has been completed and any modifications of City ordinance on this issue have been enacted. Unless earlier repealed by the City Council, the moratorium established herein shall remain in effect until the end of the day on March 1, 2016. The subject moratorium period may be extended for a reasonable time, in accordance with Minnesota Statutes Section 462.355. The City may enforce this ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction.



## SECTION 1363 – MORATORIUM ON THE COMBINATION OF CONFORMING LOTS WITHIN THE CITY OF MONTGOMERY

1363.01 Background. The City of Montgomery has been receiving questions regarding the ability to combine conforming lots within established platted subdivision within the City. The Planning & Zoning Commission and the Zoning Administrator have determined that the only way permitted in code is to re-plat the parcels following the provisions in Montgomery City Code, Chapter 12 Subdivision of Land. Chapter 12 and Chapter 11, the Montgomery Zoning Code, do not adequately address the issue of combining conforming lots in existing platted subdivisions. Furthermore, existing rules do not adequately address such issues as park dedication fees, termination of services, WAC/SAC fees, storm water and other lot related fees.

1363.02 Findings. The City Council finds there is a need to conduct a study so that the City Council can consider possible amendments to its ordinances and zoning regulations pertaining to the combination of conforming lots. The City Council further finds there is a need to adopt this moratorium ordinance until the City has completed its studies on the subject issue and determined whether to implement modifications to the City's current regulations.

1363.03 Planning Study; Moratorium. City staff is directed, in the interest of protecting the planning process and in the interest of the public's health, safety, and welfare to undertake a study regarding the impact of combining conforming lots. Upon completion of the study, the matter is to be considered by the Planning & Zoning Commission, with its written review and recommendation to be sent to the City Council. A moratorium is hereby adopted as concerns the combination of conforming lots within the City, until such time as the study authorized by this ordinance has been completed and any modifications of City ordinance on this issue have been enacted. Unless earlier repealed by the City Council, the moratorium established herein shall remain in effect until the end of the day on December 31, 2017. The subject moratorium period may be extended for a reasonable time, in accordance with Minnesota Statutes Section 462.355. The City may enforce this ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction.

Section 1364 – MORATORIUM ON ISSUANCE OF RESIDENTIAL RENTAL  
LICENSES WITHIN THE CITY

1364.01 Background. The Montgomery City Council adopted a Residential Rental Licensing Code approximately 10 years ago. The Code, Chapter 14, covers licensing, dwelling unit, compliance, and other related requirements for having residential rental property in the City. Over the past several years, there has been a significant increase in the number of residential housing units being converted to residential rental property, creating concerns about the impact of the concentration and overall number of licensed and unlicensed residential rental properties within the City. There is a current need to conduct a comprehensive study on residential rental housing and possible revisions to the Montgomery Residential Rental Code, including the establishment of limits on the location and number of residential rental units within the City. This study is needed to protect the health, safety, and welfare of the citizens of the City of Montgomery. The City Council has determined an immediate need for the adoption of an interim ordinance to protect the integrity of neighborhoods.

1364.02 Findings. The Montgomery City Council finds there is a need to conduct a study, that the City Council can consider possible amendments to its Residential Rental Code, including amendments to that portion of the Code pertaining to the licensing of residential rental property. The Council further finds there is a need to adopt this moratorium ordinance until the City has completed its studies on the subject issue and determines whether to implement modifications to the City's current regulations.

1364.03 Licensing Study; Moratorium. The City staff is directed, in the interest of protecting neighborhoods and the public health, safety, and welfare to undertake a study regarding impact of residential rental housing on neighborhoods, property values, and concentration of residential rental housing on neighborhoods and property values. Upon completion of the study, staff is to prepare a written review and report along with any amendments to the Residential Rental Licensing Code and present same to the City Council at a scheduled work session. Until such time as the study and report is completed, a moratorium is hereby adopted as concerns the issuance of any new residential rental licenses in the City of Montgomery. Unless earlier repealed by the City Council, the moratorium established herein shall remain in effect for 12 months following adoption and publication. The City may enforce this ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction.

Section 1365 – A MORATORIUM ON THE SALE, MANUFACTURE, OR  
DISTRIBUTION OF HEMP DERIVED TETRAHYDROCANNABINOLS (THC)  
INFUSED FOOD AND BEVERAGES IN THE CITY OF MONTGOMERY,  
MINNESOTA

1365.01 Purpose. This Section establishes a moratorium on the establishment of a new use or the expansion of an existing use for the sale, manufacture, and/or distribution of hemp derived tetrahydrocannabinols (THC) infused food and beverages in order to allow the City time to study the issue in consideration of establishing possible licensing, rules and regulations, zoning controls, sales management, and other controls for the sale, manufacture, and/or distribution of THC infused foods and beverages.

1365.02 Restrictions. For a period of one (1) year from the effective date of this Section, there shall be establishment of a new use or the expansion of an existing use related to the sale, manufacture, and/or distribution of hemp derived tetrahydrocannabinols (THC) infused food and beverages within the City of Montgomery, Minnesota. The City Council reserves the right to extend this moratorium for such additional periods of time as are necessary to complete the study and enact necessary regulatory controls as is permitted by State law.