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ORDINANCE NO. 04-07  
CITY OF NEW RICHLAND, WASECA COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF NEW RICHLAND, MINNESOTA AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF NEW RICHLAND, WASECA COUNTY, MINNESOTA, ORDAINS:

SECTION 1. Definitions

Subd. 1. "City" means the City of New Richland, County of Waseca, State of Minnesota.

Subd. 2. "City Utility System" means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Subd. 3. "Commission" means 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. "Company" means Northern States Power Company, a Minnesota corporation, its d/b/a/Xcel Energy, its successors and assigns.

Subd. 5. "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Counsel, Legal Services, 800 Nicollet Mall, Suite 3000, Minneapolis, MN 55402. Notice to City shall be mailed to the City Clerk, 203 N. Broadway, PO Box 57, New Richland, MN 56072-0057. Either party may change its respective address for the purpose of this ordinance by written notice to the other party.

Subd. 5. "Public ground" means land owned by the city for park, open space or similar purpose, which is held for use in common by the public.

Subd. 6. "Public way" means any street, alley, walkway or other public rights-of-way within the City.

SECTION 2. Grant of Franchise

City hereby grants Company, for a period of 20 years from the date hereof, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain an electric distribution system and electric transmission lines, including poles, lines, fixtures, and any other necessary appurtenances in, on, over, under and across the public ways and public grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise agreements.

SECTION 3. Restrictions

Subd. 1. Company facilities included in such electric distribution system, transmission lines and appurtenances thereto, shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said public ways. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon its underground electric facilities in place, provided, at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

Subd. 2. Company shall not construct any new installations within or upon any public grounds without receiving the prior written consent of an authorized representative of City for each new installation.

Subd. 3. In constructing, removing, replacing, repairing, or maintaining said poles, lines, fixtures and appurtenances, Company shall, in all cases, place the Public Ways in, on under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter. City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install or maintain facilities in a Public Way.

SECTION 4. Tree Trimming

Company is also granted the permission and authority to trim all trees and shrubs in the public ways and public grounds of City interfering with the proper construction, operation, repair and maintenance of any

poles, lines, fixtures or appurtenances installed in pursuance of the authority hereby granted, provided that Company shall save City harmless from any liability in the premises.

SECTION 5. Service and Rates

The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Public Utilities Commission of this State or its successor agency.

SECTION 6. Relocating

Subd. 1. Whenever City at its cost shall grade, regrade or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its lines, services and other property located in said public way, materially interfering with the City's planned construction, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any City utility system therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five (5) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are requested because Company facilities materially and necessarily interfere with the extension of a City Utility System to previously unserved areas, Company may be required to relocate at its own expense at any time.

Subd. 2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal, replacement or reconnection is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Subd. 3. Any relocation, removal, or rearrangement of any Company 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 supplemental or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a public way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company.

Subd. 4. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement of prescriptive right

before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

**SECTION 7. Indemnification**

Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair or 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 issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts by city after notice of Company's determination.

**SECTION 8. Vacation of Public Ways**

The City shall give Company at least two (2) weeks prior written notice of a proposed vacation 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 Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall the City be liable to pay damages to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29.

**SECTION 9. Franchise Fee**

The City at the time of adopting this franchise agreement does not desire to require that Company collect a franchise fee from its customers in the city. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance. City shall negotiate in good faith with Company to so amend this franchise agreement.

**SECTION 10. Written Acceptance**

Company shall, if it accepts this ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this ordinance.

**SECTION 11. General Provisions**

**Subd. 1.** 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. 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 thirty (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 the mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

Subd. 3. 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.

Subd. 4. 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.

Subd. 5. Nothing in this ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

**SECTION 12. Publication Expense**

The expense of any publication of this Franchise Ordinance required by law shall be paid by Company.

**SECTION 13. Effective Date**

This ordinance is effective as provided by statute or charter, and upon acceptance by Company as provided in Section 10.

Passed and approved: July 12, 2004  
s/Wayne Billing, Mayor

Attest: s/Gail A. Schmidt, City Clerk

EXCERPTS OF MINUTES OF JUNE 11 REGULAR MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF NEW RICHLAND,  
WASECA COUNTY, MINNESOTA

June 15, 1984

A regular meeting of the City Council of the City of New Richland, Minnesota duly called, convened, and held in accordance with law, was called to order by Mayor Gerald Hullapeter on the 11th day of June, 1984, at 6:30 o'clock p.m. at the Council Chamber in said City..

The following members, constituting a legal quorum were present:

s/Gerald Hullapeter,  
s/Joyce Hanson  
s/Paul Harppaw  
s/Carol Hager

Councilman Paul Harppaw introduced a certain Ordinance No. 165 entitled:

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF NEW RICHLAND, MINNESOTA AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES AND FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

and on motion made, seconded, and duly adopted, the above-entitled Ordinance was read.

Thereafter a motion was made by Councilman Paul Harppaw and seconded by Councilman Carol Hager that the above-entitled Ordinance be adopted as read and in its entirety.

On roll call the vote was as follows:

AYES: 3  
NAYS: 0

The Mayor then declared said motion duly corned and the above-entitled Ordinance duly passed and adopted, and ordered the City Clerk to publish the same in accordance with the law in such case made and provided.

I DO HEREBY CERTIFY that I am City Clerk of the City of New Richland, Waseca County, Minnesota and that I am custodian of its records, that the above is true and correct copy of apart of the minutes of the regular meeting of the City Council of said City held on June 11, 1984.

s/ Mary Lou Weydert, City Clerk

ACCEPTANCE OF ORDINANCE NO. 165

CITY OF NEW RICHLAND, WASECA COUNTY, MINNESOTA

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS the City Council of the City of New Richland, Waseca County, Minnesota on the 11th day of June, 1984, passed and adopted Ordinance No. 165 entitled:

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF NEW RICHLAND, MINNESOTA AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES AND FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

which Ordinance was duly published according to law on the 21 st day of June, 1984, in the New Richland Star, a newspaper printed and published in the City of New Richland, County of Waseca, and State of Minnesota;

NOW THEREFORE, Northern States Power Company, a Minnesota Corporation for itself and its successors and assigns, does hereby accept all the terms and conditions of said Ordinance.

IN WITNESS WHEREOF, Northern States Power Company has caused these presents to be executed in its corporate name by its duly authorized persons and its corporate seal to be hereto affixed this 6th day of September, 1984.

Witness:

\_\_\_\_\_

By: \_\_\_\_\_  
Director, Minnesota Division Operations

\_\_\_\_\_

By \_\_\_\_\_  
Assistant Secretary

VILLAGE ORDINANCE NO. 76 - An Ordinance granting permission to the Electric Light & Power Co., its successors and assigns, to erect and maintain in the Village of New Richland transmission lines and electric distributing system, including necessary poles and lines and fixtures for the furnishing of electric current to the village and its inhabitants, and of transmitting into and through the village, and prescribing minimum rates thereof and to use the streets and public grounds of said village for such purposes.

The Village Council of the Village of New Richland, Minnesota, does ordain:

Section 1. That for and in consideration of \$1.00 and other valuables there be and hereby is granted to the Electric Light & Power Company, a Minnesota corporation, its successors and assigns, hereafter referred to as grantee, during the period of twenty-five years from and after the date hereof the right and privilege of erecting and maintaining in, upon and across the streets, alleys and public grounds of said Village, electric transmission lines and distributing system including all necessary, usual or convenient poles, pole lines, masts, wire lamps, transformers, and other fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith for the purpose of transmitting and furnishing electricity for light, heat, power and other purposes for public and private use in and to said Village and its inhabitants thereof, and others, and for the purpose of transmitting to and through said Village such electric current, provided that such poles and transmission lines shall be located as in no way to interfere with the safety and convenience of ordinary travel along said streets and alleys, and provided that the said grantee, its successors and assigns, in the erection and maintenance of such poles and transmission lines, shall be subject to such reasonable regulations as may be imposed by the Village Council.

Section 2. The rates to be charged by said grantee, its successors and assigns, for electric current sold within the said Village and throughout the first five years of this franchise shall not exceed a rate of 15 cents per KWH, and throughout the remaining twenty years of this franchise, shall not exceed 15 cents per KWH, provided, however, that nothing herein shall be construed as prohibiting the grantee from charging each consumer a minimum of \$1.25 per month per meter for light and \$1.00 per month per h. p. connected on all motors installed, which minimum charges shall be made only when the monthly current consumed shall amount to less than, the minimum charge computed of said rates, and shall be considered as payment of said current.

Section 3. There is also granted to the said grantee, its successors and assigns, during the term thereof, permission and authority to trim trees and shrubs in the streets and alleys and public grounds of said village, interfering with the proper erection and maintenance of any poles, cables, wires or any other fixtures installed in pursuance of the authority hereby granted, provided that said grantee shall save said village harmless from any liabilities in the premises.

Section 4. When any person, firm, or corporation shall move any building over or upon any street of the village of New Richland, and it shall be necessary to remove any wires belonging to or used by the grantee to permit the passage of such building, such person, firm or corporation shall notify the grantee and the Village President at least 24 hours before the time when such wires shall be removed, the grantee shall thereupon raise, lower, or otherwise remove such wires, so as to permit the passage of such building, and shall be entitled to collect a just compensation for labor and



material expended and for other costs incurred, if the grantee and the person moving such building fail to agree upon a sum, the Village President, acting as arbitrator shall determine the matter.

Section 5. Nothing in this ordinance contained shall be construed as giving to said grantee, its successors and assigns any exclusive privileges in, on, or over, across any streets, alleys or public grounds of said village.

Section 6. Said grantee shall have full right and authority to assign to any person or persons, firm or corporation, all rights conferred upon it by this ordinance, provided that assignee of such rights by accepting such assignment, shall become subject to the terms and provisions of this ordinance.

Section 7. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed December 3rd, 1918

(Seal)

s/F.H. Krueger, President

Attest: A.O. Lea, Recorder

Published: December 13, 1918

ASSIGNMENT OF FRANCHISE ORDINANCE NO. 76,  
HERETOFORE GRANTED BY THE VILLAGE OF NEW RICHLAND, MINNESOTA,  
TO THE ELECTRIC LIGHT AND POWER COMPANY.

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of \$1.00 and other good and valuable consideration to it in hand paid by the NORTHERN STATES POWER COMPANY, a Minnesota corporation, receipt whereof is hereby acknowledged, The Electric Light and Power Company does hereby grant, bargain, sell, convey and assign unto said Northern States Power Company, a Minnesota corporation, its successors and assigns, all right, title and interest in and to that certain Franchise Ordinance No. 76 heretofore granted by the Village of New Richland, Minnesota, to The Electric Light and Power Company.

IN WITNESS WHEREOF The Electric Light and Power Company has caused these presents to be executed in its corporate name by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, the 29th day of July, A.D. 1927.

Witnesses: THE ELECTRIC LIGHT AND POWER COMPANY,

\_\_\_\_\_ By \_\_\_\_\_  
President

\_\_\_\_\_ And \_\_\_\_\_  
Secretary

KNOW ALL MEN BY THESE PRESENTS that the NORTHERN STATES POWER COMPANY, a Minnesota corporation, does hereby accept the Assignment to it by The Electric Light and Power Company of that certain Franchise Ordinance No, 76 heretofore granted by the Village of New Richland, Minnesota, to The Electric Light and Power Company.

Dated this 8th day of July, A. D. 1927.

NORTHERN STATES POWER COMPANY,

By \_\_\_\_\_  
President

I DO HEREBY CERTIFY that I am the Village Recorder of the Village of New Richland, Minnesota, and I am the custodian of its records; that the foregoing is a true copy of that certain Assignment by The Electric Light and Power Company of Franchise Ordinance No. 76 of the Village of New Richland and the Acceptance of said assignment by the Northern States Power Company, which Assignment and acceptance thereof was filed in my office on the 9th day of August, 1927.

ORDINANCE NO. 12-01

AN ORDINANCE IMPLEMENTING AN ELECTRIC SERVICE FRANCHISE FEE ON NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, FOR PROVIDING ELECTRIC SERVICE WITHIN THE CITY OF NEW RICHLAND.

THE CITY COUNCIL OF THE CITY OF NEW RICHLAND DOES ORDAIN:

**SECTION 1.** The City of New Richland Municipal Code is hereby amended to include reference to the following Special Ordinance.

**Subdivision 1. Purpose.** The New Richland City Council has determined that it is in the best interest of the City to impose a franchise fee on those public utility companies that provide electric services within the City of New Richland.

- (a) Pursuant to City Ordinance 04-07, a Franchise Agreement between the City of New Richland and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, the City has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, in an amount and fee design as set forth in Section 9 of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

**Subdivision 2. Franchise Fee Statement.** A franchise fee is hereby imposed on Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, its successors and assigns, under its electric franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the Xcel Energy February, 2013 billing month.

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

**Subdivision 3. Payment.** The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 9 of the Franchise.

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

**Subdivision 5. Record Support for Payment.** Xcel Energy shall make each payment when due and, if required by the City, shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.

**Subdivision 6. Enforcement.** Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 2.5 of the Franchise Agreement.

**Subdivision 7. Effective Date of Franchise Fee.** The effective date of this Ordinance shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance to Xcel Energy by certified mail. Collection of the fee shall commence as provided above.

Passed and approved: October 22, 2012.

Mayor: Christine Gislason  
Attest: Wayne Billing, City Clerk

SEAL

#### SCHEDULE A

#### Franchise Fee Rates:

Electric Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$1.00
Small Commercial & Industrial - Non-Demand	\$1.00
Small Commercial & Industrial - Demand	\$1.00
Large Commercial & Industrial	\$1.00
Public Street Lighting	\$0.00
Muni Pumping - Non-Demand	\$0.00
Muni Pumping - Demand	\$0.00

Franchise fees are to be collected by the Utility at the rate listed below, and submitted to the City on a quarterly basis as follows:

January - March collections due by April 30.

April - June collections due by July 31.

July - September collections due by October 31.

October - December collections due by January 31.



B-II-GAS

An Ordinance granting  
Aquila, Inc., d/b/a Aquila Networks,  
a Delaware corporation, its successors and assigns,  
a natural gas franchise for a period of fifteen (15) years  
and the authority to construct, operate, maintain, and extend  
a natural gas distribution plant and system,  
and granting the right to use the streets, alleys, and other public places  
within the present or future corporate limits  
of the City of New Richland, Minnesota and this ordinance is to replace Appendix B - II - Gas,  
in the City of New Richland Code Book

Be it ordained by the City Council of the City of New Richland, Minnesota, as follows:

**AMENDMENT OF CITY CODE**

The provisions of the city code, Appendix B - II - Gas, are hereby repealed and replaced by the provisions of this ordinance.

**FRANCHISE GRANTED**

The City of New Richland, Minnesota, (hereinafter referred to as "Grantor") hereby grants a nonexclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation, (hereinafter called "Grantee"), its lessees, successors and assigns. This repeals the franchise previously granted by Ordinance No. 150. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, maintain, operate and extend in the present and future streets, alleys, avenues, bridge, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Grantor further grants Grantee the right, permission and authority to lay, install, maintain, and operate over, across and along all of the streets, avenues, alleys, bridges, public rights-of-way and public places of Grantor all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

**TERM**

The rights and privileges granted by this Ordinance shall remain in effect for a period of fifteen (15) years from the effective date of this Ordinance.

**GOVERNING RULES AND REGULATIONS**

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Minnesota. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

**CONSTRUCTION**

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

**MAINTENANCE**

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

**EXTENSION OF COMPANY FACILITIES**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor. No obligation shall extend to, or be binding upon, Grantee to extend its facilities if Grantee is, for any reason, unable to obtain and deliver an adequate energy supply.

**RELOCATION OF COMPANY FACILITIES**

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee. If Grantor orders or requests Grantee to relocate its facilities or equipment primarily for non-public purposes or the primary benefit of a commercial or private project, or as a result of the



initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities.

**CONFIDENTIAL INFORMATION**

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

**FORCE MAJEURE**

It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following:

- 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines;
- 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars;
- 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

**HOLD HARMLESS**

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

**DEFAULT**

Within 90 days of the discovery of a violation of any material provision of this Ordinance by either Grantor or Grantee, the non-violating party shall provide notice to the other party of such violation and the parties shall have a total of 60 days from the date of such notice in which the parties, without seeking

legal remedies, may cure such violation, resolve any disputes regarding the violation or agree to amend or terminate this Ordinance. If the material violation is not resolved upon the expiration of the 60 days, the aggrieved party reserves the right to seek all remedies available at law, including nonbinding arbitration, mediation or litigation, without limitation.

**SEVERABILITY**

If any clause, sentence or section of this Ordinance is deemed invalid, the remaining provisions shall not be affected.

**NON WAIVER**

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

**REPEAL CONFLICTING ORDINANCES**

All ordinances or parts of ordinances in conflict herewith are hereby repealed, with the express exception of Section 720 of the New Richland City Code, pertaining to Right-of-Way management, and any successor ordinances in conformity therewith.

**EFFECTIVE DATE AND ACCEPTANCE**

This Ordinance shall become effective upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the City Clerk of the City of New Richland, Minnesota. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

**NOTICES**

Any notices required to be given hereunder shall be sent to the following:

If to Grantee: Vice President  
Community Relations  
Aquila, Inc., d/b/a Aquila Networks  
20 West 9th Street  
Kansas City, Missouri 64105

If to Grantor: City Clerk  
New Richland, Minnesota 56072-00057

Passed and approved by the City Council of the City of New Richland, Minnesota, on this 13th day of May, 2002.

Richard Baker  
Mayor

ATTEST:  
Gail A. Schmidt  
City Clerk

**Ordinance No. 12-02**

**An ordinance establishing a Franchise Fee on Gas Utility companies operating in the City of New Richland, Minnesota.**

Be it ordained by the City of New Richland, Minnesota as follows:

The City of New Richland, MN, (hereinafter referred to as "the City") hereby establishes a Franchise Fee on every Gas Utility company, and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing any Gas Utility plant or system, generating, manufacturing, selling, distributing or transporting natural gas, (hereinafter referred to as "Energy Providers"). Energy Providers shall collect from their customers, but not from the City of New Richland, located within the corporate limits of the City of New Richland, and pay to the City an amount based on the following fee schedule, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered:

<b>CUSTOMER CLASS</b>	<b>FEE</b>
Residential	\$ 1.00/Month/Customer
Commercial Firm	\$ 1.00/Month/Customer
Commercial Interruptible	\$ 1.00/Month/Customer
Industrial Firm	\$ 1.00/Month/Customer
Industrial Interruptible	\$ 1.00/Month/Customer
Transportation	\$ 1.00/Month/Customer

The amount paid by Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other occupation, license or excise fees or taxes which the City may impose for the rights and privileges herein granted or for the privilege of doing business within the City, and in the event any such fee, charge, license, tax or assessment shall be imposed by the City, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect the obligation of the Energy Providers under this section.

Any consideration hereunder shall be reported and paid to the City by Energy Providers on a quarterly basis. Such payment shall be made not more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portion of the period at the beginning and end of the term of this Ordinance.

Energy Providers shall list the local Franchise Fee collected from customers as a separate item on bills for utility service issued to customers. If at any time the Minnesota Public Utilities Commission, or other authority having proper jurisdiction, prohibits such recovery, then Energy Providers will no longer be obligated to collect and pay the Franchise Fee herein contemplated. In addition, an Energy Provider may discount or reduce the Franchise Fee payable for natural gas delivered to a specific customer of an Energy Provider when it is required to reduce the Franchise Fee to retain the business of that customer. Modification or reduction of the Franchise Fee should occur if the Franchise Fee would cause the customer to cease purchase or transportation deliveries of natural gas from the Energy Provider by installing equipment to access Gas supply not subject to the City's Franchise Fee.

The City shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate Franchise Fee collection from customers within the corporate limits of the City.

The City shall have access to and the right to examine during normal business hours, those of Energy Providers' books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any Franchise Fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by Energy Providers shall be paid within 30 days of the recalculation and any over-payment by Energy Providers shall be discounted from the next payment(s) due.

Passed and approved by the City Council of the City of New Richland, MN on this 22nd day of October, 2012.

Mayor: Christine Gislason

Attest: Wayne Billing, City Clerk



B - III - Telephone

**NOTE: Is there a current telephone franchise?**

Ordinance No. 57 - An Ordinance to Permit Certain Persons to Erect Telephone Poles, String Wires Thereon, and Maintain a Telephone System in the Village of New Richland, Minnesota.

Whereas Henry Jaehning, C. Wagner and C.A. Wagner, E.E. Cram, J.R. Hoover, John E. Thamert and O.W. Dieckhoff, their associates and successors, have organized for the purpose of building and maintaining a telephone system in the Village of New Richland; therefore

It is hereby ordained by the Village Council of the Village of New Richland;

That consent, permission and authority are hereby given to Henry Jaehning, C. Wagner and C.A. Wagner, E.E. Cram, J.R. Hoover, John E. Thamert, and O.W. Dieckhoff, their successors and assigns to erect poles in and upon any alley or side street of the Village of New Richland, and string wires thereon and do any and all acts necessary to the maintenance and operation of a telephone system. That the operation of said telephone system be at all times subject to regulation by Village ordinance; and that the authority and permission herein granted be exclusive to said parties and their successors and assigns for the period of twenty years.

This ordinance to be in force and effect from and after its due publication according to law.

s/C.A. Wagner, President

Attest:

J.A. Tyrholm, Recorder

Published: February 6, 1896 By Village Recorder

