

Section 2. Exclusive Permit and Tenure of Contract.

The City does hereby grant unto the Contractor an exclusive permit for the collection, transportation, and disposal of recyclables and the collection and transportation of refuse, all of which is herein defined from residential unit and multiple residences within the City, from October 4, 1995 until October 3, 1998. Upon the conclusion of the three-year term of this contract, the contract shall be automatically renewed for one year, each subsequent year, unless one or the other parties to this agreement shall serve written notice upon the other by first class certified or registered mail at least sixty (60) days prior to the termination of the contract in place that the contract is to be terminated.

Section 3. Renegotiation.

The parties do hereby agree, each with the other, that this Contract shall be reviewed at least annually at which time the parties shall meet and discuss any suggested changes or Amendments to this contract in order to minimize or eliminate inequities as may arise and be found to exist in the strict performance of the provisions hereof.

Section 4. Residential Collection.

The contractor shall collect and dispose of all refuse from all residential units within the corporate limits of the City of Cleveland, Minnesota as the same are and the same may hereafter be defined as follows:

Family Residential Units.- Once weekly during each and every week and every week of the year. All refuse containers shall be placed at the point of pickup no later than 7:00 a.m. on collection day.

Day of Service. - Tuesday will remain the scheduled day for collection of residential refuse and recyclables. Collections will take place between 7 a.m. and 6 p.m.

Special Needs.- For citizens with special needs, walk up service will be available at no extra charge

Collection Requirements.- Contractor will use lightweight collection vehicles, on weight restricted streets year round.

Collection Schedule.- The Contractor shall establish a weekly collection schedule which shall specify the day on which collection will be made from each residential unit. This schedule may be altered and amended from time to time as the occasion may arise, in order to facilitate efficient collection and to maintain the health and safety of the community.

Section 5. Residential Collection Rates.

Compensation to be paid to the Contractor for residential collection of refuse during the period beginning October 4, 1995 and ending October 3, 1998 (a 156 week contract) shall be determined in accordance with the following schedule:

Residential Refuse	\$3.20 per month
Residential Recycling	\$2.20 per month
Bag Price	\$1.50 per bag

The council may from time to time, vary the residential collection rates as set forth above, by resolution. The fee imposed for transportation, disposal and collection shall be guaranteed from a period of 24 months from October 4, 1995. In the third year any increase in the above listed will be based on the Consumer Price Index for Urban Workers.

Residential Refuse Carts. A 30, 60, or 90 gallon cart is available to any resident who requests one. The Contractor will bill for this cart, minus the monthly base fee collected by the City:

30 gallon cart	\$10.80
60 gallon cart	\$12.80
90 gallon cart	\$14.80

Section 6. City Refuse.

The contractor will provide additional municipal container and services as outlined in the Proposal framework at no charge. These services specifically include the following minimum requirements:

Park ----- 90 gal. container Fire Dept - - ----- 90 gal. container
 City Hall ---- - - 90 gal. container for both refuse and recycling
 Liquor Store ----- three 90 gal. containers 2 to 4 stops as agreed upon by the city

Section 7. Legal Requirements.

The Contractor agrees to comply with the legal and equipment requirements set out by state law, county ordinance, and City ordinance.

Section 8. Multiple Residential Collection.

Classification. Occupants of Residential Unit within a Multiple Residence shall be subject to the Compulsory Disposal List and collection service shall be afforded to each individual unit therein according to the class of such unit. The common council may from time to time determine that a particular multiple residence or a particular residential unit located therein can be more

effectively served by classifying the same as a commercial establishment.

Reclassification. In that event, either the Multiple Residence or the Individual Residential Unit therein having been so reclassified, shall be removed from the Compulsory Disposal List and such Multiple Residence or Individual Residential Unit shall be served in accordance with Section 6, designated as Other Collection. No Multiple Residence or Residential Unit located therein shall be removed from the Compulsory Disposal List and reclassified as a commercial establishment subject to commercial collection as provided herein, until such time as the Common Council shall, by resolution, so determine.

Section 9. City Billing and Payments to Contractor.

Charges for collection, and transportation shall be billed and collected by the City as part of the municipal utility billings. The City shall pay to the Contractor on or before the tenth day of the month the sum of money owed for one month's gross collections, based on the Compulsory Disposal List. A monthly statement showing the weight of the refuse collected from the residential route, will be sent to the City.

Section 10. Collection Equipment.

The contractor shall provide equipment necessary to the collection, transportation, and disposal of refuse and recyclables. All equipment used in the performance of this contract shall be maintained by the contractor in a clean and sanitary condition.

Section 11. Unacceptable Waste.

No person shall be permitted to deposit among his refuse any matter of unacceptable waste listed as such by the State of Minnesota or defined as such by the site as per its contract with the City of Cleveland. A copy of the contract between MWPC and the City of Cleveland is attached hereto as Exhibit A for reference. The Contractor shall not be required to collect unacceptable waste. The Contractor agrees to defend and indemnify, and hold the City, its officers, agents and employees harmless from any and all liability (statutory or otherwise), claims, suits, damages, judgments, costs or expenses, including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof, resulting directly or indirectly from the Contractor's delivering unacceptable waste, as defined elsewhere in this Section, to the Site.

Section 12. Collection Operations and Transportation.

The Contractor shall furnish all labor and equipment as shall be necessary and adequate to insure satisfactory collection, transportation, and disposal of refuse. Upon collection by the Contractor of refuse and recyclables as required by the nature and size of his equipment, such refuse shall be promptly and in a workmanlike manner transported to the site for disposal or processing. The Contractor shall make every effort to maintain established scheduled pick-ups even though conditions such as weather may be adverse. Any contents spilled shall be cleaned up and

disposed of immediately in a workmanlike manner.

Section 13. The contractor shall haul all refuse at its own expense to the Site.

Section 14. Contractor Insurance.

The Contractor shall maintain at its costs and expense and file with the City, policies or certificates of insurance for general liability, automobile liability and worker's compensation. General liability must have a minimum of at least \$1,000,000.00 per occurrence. Automobile liability must cover every vehicle used in the Contractor's operation, with a minimum of \$1,000,000.00 combined single limit per occurrence. The Contractor shall maintain statutory employers liability insurance for Worker's Compensation in such amounts as required by law. The Contractor shall name the City as an additional insured on all such policies of insurance and shall provide the City with certificates of insurance for all such policies, which shall evidence continuous coverage. Any lapse of required insurance coverage shall be cause for the city to immediately terminate this Contract. All policies evidencing insurance required by this paragraph shall insure the City and the Contractor for any act or omission, including negligence, of the contractor or the Contractor's employees or agents in connection with the performance of collection services including claims arising out of the use of or operation of any vehicles used by the Contractor for the contractor's employees or agents in performing collection services. Such policies shall be in form and content satisfactory to the City Attorney and shall be filed with the City Clerk.

Section 15. Indemnification.

The Contractor agrees to indemnify and hold harmless the City, its agents, officers and employees from any and all claims, causes of action, liabilities, losses, damages, costs expenses including reasonable attorney's fees, suits, demands and judgments of any nature, because of bodily injury to, or death of any person or persons and or because of damages to property of the Contractor or others, including loss of use from any cause whatsoever, which may be asserted against the City on account of any act or omission, including negligence, of the Contractor, or the contractor's employees or agents in connection with the Contractor's performance. The contractor agrees to defend any action brought against the City on any such matters, and to pay and satisfy any judgment entered thereon together with all costs and expenses incurred in connection therewith.

Section 16. Contractor Performance.

Upon failure of the contractor to fulfill any of the provisions of the contract the City may, at its option, declare the contract terminated and may thereafter hire such men and equipment as may be necessary to perform the Services contemplated by this contract. The cost for such performance by the City shall be charged to and deducted from any monies due the contractor.

Section 17. Assignments and Subcontractors.

The contractor shall not assign this contract to any interest therein or any privilege or right granted therein, except to affiliate, without the written consent of the governing body of the city. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment; neither shall the Contractor subcontract all or any portion of the work to be performed hereunder without the written consent of the governing body of the City.

Section 18. Waiver.

The waiver by the City of any breach or violation or any term, covenant or condition of this contract shall not be waiver of any subsequent breach or violation of the same or any other term, covenant or condition hereof

Section 19. Dispute.

In the event that a dispute shall arise between the Contractor and the City with respect to the amount of monthly compensation to which Contractor is entitled to receive from the City, duly appointed representatives of the city shall meet with the contractor and endeavor to resolve the difference. In the event the dispute cannot be so resolved, the City and the Contractor shall be bound by the terms and conditions of this contract.

Section 20. Terms and conditions Binding on Successors.

The terms, covenants, and conditions of this Contract shall apply to, shall bind and insure for the benefit of the parties, their heirs, successors, executors, and assigns.

..... IN WITNESS WHEREOF, the parties have hereunto executed this Contract individually and by their officers on the day and year first above written.

Dated this 26th day of September, 1995

City of Cleveland

By: /s/ Glen O'Connor
The Honorable Mayor
Glen O'Connor

Lake County Sanitation, INC.

By: Is/ Patrick T. Dohta
President
Patrick T. Doherty

Attest: /s/ Qmom Ploog
City Clerk/Treas.
Gwyn Ploog

AGREEMENT FOR WASTE
PROCESSING

AMONG,

MINNESOTA WASTE PROCESSING COMPANY, L.L.C.,

NRG ENERGY, INC.

AND

TBE CITY OF CLEVELAND

August 25, 1994

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AGREEMENT FOR WASTE PROCESSING

This Agreement, made and entered into this 25th day of August, 1994, between the City of Cleveland, Minnesota, (hereinafter referred to as the "City"), NRG Energy, Inc., a Delaware corporation with its principal place of business at 1221 Nicollet Mall, Suite 700, Minneapolis, Minnesota 55403 (hereinafter referred to as "NRG") and Minnesota Waste Processing Company, L.L.C., a Delaware limited liability company with its principal place of business at Route 4, Box 266, St. Peter, Minnesota 56082 (hereinafter referred to as "MWPC")

WHEREAS, MWPC controls and operates a waste transfer station located in Mankato, Minnesota pending construction of a permanent waste transfer station within the Counties of Blue Earth, Nicollet, Sibley and Le Sueur (hereinafter referred to as the "Counties") to be owned and operated by MWPC; and

WHEREAS, MWPC has contracts with NRG for processing of mixed municipal solid waste; and

WHEREAS, NRG manages or has the contractual right to use resource recovery facilities in the State of Minnesota where mixed municipal solid waste is received and processed into refuse derived fuel, certain other recoverable materials and processed residue; and

WHEREAS, the Counties have established Solid Waste Management Plans in conformance with state and federal policies and statutes, and

WHEREAS, the City, in order to realize the landfill abatement objectives contained within the Solid Waste Management Plan of its County, desires to make NRG facilities for mixed municipal solid waste processing capacity available to City hauler (s); and

WHEREAS, the parties wish to enter into an agreement for an extended period of time;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

ARTICLE I DEFINITIONS

For purposes of this Agreement, where written with an initial capital letter, the following terms, words and phrases listed in alphabetical order shall have the following meanings:

"Acceptable Household Quantities" shall mean waste which is otherwise Unacceptable Waste, but which is contained in garbage, refuse, and municipal solid waste generated from any permanent or temporary residential dwelling unit; provided, however, that no amount of

Hazardous Waste, Infectious Waste or any other waste that is regulated or restricted by law is Acceptable Waste.

"Acceptable Non-Household Quantities" shall mean waste which is otherwise Unacceptable Waste, but which is contained in garbage, refuse, and municipal solid waste generated from commercial, industrial, or community activities, where the quantity of such Unacceptable Waste contained in any load delivered to the Transfer Station constitutes an insignificant portion of such load; provided, however, that no amount of Hazardous Waste, Infectious Waste or any other waste that is regulated or restricted by law is Acceptable Waste.

"Acceptable Waste" or "MSW" shall mean waste delivered by the City which is acceptable and can be further processed at NRG Facilities, including garbage, refuse, and other municipal solid waste from residential, commercial, industrial and community activities that the generator of the waste aggregates for collection and which is not otherwise defined herein as Unacceptable Waste; provided, that waste which is otherwise Unacceptable Waste but which falls within the definitions of Acceptable Household Quantities or Acceptable Non-Household Quantities shall be included within the definition of Acceptable Waste or MSW.

"Confidential Information" shall mean information that is proprietary to a Party including, without limitation, know-how, trade secrets, inventions, discoveries, improvements and ideas or works of authorship or other information relating to the business of a Party; information concerning any past, current or possible future products, projects, or business opportunities or plans of a Party; information about the research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing of products by a Party; and information concerning any past, current or possible future customers or business prospects of a Party.

"Disposal Facilities" shall mean those facilities or sites designated by NRG for the proper disposal of Non-Processible Waste and the residues from the processing of MSW which are not RDF or Recoverable Materials.

"Haulers" shall mean the persons or corporations properly licensed, franchised or otherwise permitted by the City to collect MSW from the City and citizens permitted to dispose of MSW at the Transfer Station.

"Hazardous Waste" shall mean such waste as defined from time to time by local legislation and ordinances, state or federal law, including county regulations and laws of the State of Minnesota, as hazardous.

"Infectious Waste" shall mean such waste as defined from time to time by local regulations and ordinances, state or federal law, including county regulations and laws of the State of Minnesota, as infectious.

"Non-Processible Waste" shall mean waste which cannot be processed at NRG Facilities

due to its physical characteristics or potential harmful effects, including but not limited to: steel banding; baling wire; tree trunks or logs greater than 6" in diameter or 5' in length or other overweight or bulky waste; box springs, hide-a-bed or other bulky furniture; rolls of carpeting or other material greater than 12' in diameter; gasoline, kerosene or propane tanks in any size; pressurized tanks; tires in quantity; fencing materials; plastics in quantity; motor vehicles; automotive engines, transmissions, rear ends, springs, fenders or other major parts of motor vehicles; trailers; agricultural equipment; marine vessels or similar items; farm and other large machinery; non-burnable construction materials; waste except paper products from the following establishments: service stations, auto paint shops, chemical plants, plastic processing plants and textile plants.

"NRG Facilities" shall mean resource recovery facilities which are owned, controlled or managed by NRG or for which NRG has a contract to use and which are designed to process Acceptable Waste, including but not limited to the facilities of NRG at Elk River and Newport, Minnesota, and the Prairieland compost facility at Truman, Minnesota.

"Party" or "Parties" shall mean the City, NRG and/or MWPC as the context requires.

"RDF" shall mean refuse derived fuel without regard to its physical or chemical characteristics.

"Recoverable Materials" shall mean ferrous and non-ferrous metals, glass and grits and any other materials for which a market exists.

"Service Fee" shall mean the fee specifically set forth in Article 3 hereof as adjusted from time to time pursuant to the terms of such Article 3.

"Transfer station" shall mean the waste collection and transfer station located in M Minnesota controlled and operated by MWPC pending construction of a permanent waste transfer station located in the Counties to be owned and operated by MWPC.

"Unacceptable Waste" shall mean waste which would likely pose a threat to the health or safety or to the environment, or which may cause damage to or adversely affect the operation of NRG Facilities in a material way including, but not limited to: (a) Hazardous Waste of any kind or nature such as explosives, radioactive materials, cleaning fluid, crankcase oils, cutting oils, paints, acids, caustics, poisons, pesticides, insecticides or drugs; (b) Infectious Waste of any kind or nature such as pathological and biological waste; sanitary sewage and other highly diluted water-carried materials or substances; human or animal waste; sludge, including sewage sludge and septic and cesspool pumpouts; human and animal remains; and (c) other wastes including solvents and liquid wastes; street sweepings, mining waste; incinerator residue; transformers; batteries; aerosol cans; trees; demolition debris; ashes; foundry sand; concrete rubble; rock; gravel or construction debris.

"Utilization Facility" shall mean any entity using any of the RDF or Recoverable Materials from the MSW processed by or for NRG.

ARTICLE 2

WASTE DELIVERY AND PROCESSING

Section 2.1 Waste Delivery. Commencing on or about October 4th, 1994, and during the term of this Agreement, the City shall cause Haulers under contract with the City to deliver all City MSW to MWPC at the Transfer Station, subject at all times to the availability of City MSW. The City shall make a good faith effort to cause such Haulers to deliver to the Transfer Station only Acceptable Waste and such Non-Processible Waste as MWPC may expressly agree to accept for disposal from time to time in its discretion. Nothing in this Section 2.1 shall obligate the City to deliver any minimum quantity of MSW to the Transfer Station.

Section 2.2 Integrated Waste Disposal Plan. The Parties acknowledge and agree that this Agreement supports and meets the requirements of the Counties' Solid Waste Management Plans and has the following additional elements:

- a) Transfer Station. NRG and LJP Enterprises,, Inc. have entered into an agreement dated October 29, 1993 creating MWPC for purposes of owning and operating the Transfer Station (the "Formation Agreement").
- b) Processing of MSW. NRG has entered into an agreement dated as of the Formation Agreement with MWPC to accept and remove from the Transfer Station for processing all processible MSW and Non-Processible Waste accepted by the Transfer Station (the "Processing Agreement"). NRG has further entered into an Agreement for Waste Processing Services dated October 19, 1993 with the Prairieland Solid Waste Control Board (the "Prairieland Agreement") and has agreements with other NRG Facilities to process MSW originally delivered to the Transfer Station.
- c) Landfill. NRG has entered into an agreement with the Ponderosa Landfill dated November 10, 1993 for the delivery of Non-Processible Waste accepted by the Transfer Station and residues from the Processing of MSW delivered by NRG to Prairieland and other NRG Facilities, which residues are not suitable for use as RDF or other Recoverable Materials (the "Ponderosa Agreement"). Such agreement provides that all Non-Processible Waste delivered by NRG from the Transfer Station and all processed waste residues shall be temporarily stored on a segregated pad devoted exclusively to NRG delivered waste until the completion of the construction by Ponderosa of a separate landfill cell dedicated exclusively to NRG delivered waste and constructed and maintained in conformance to EPA regulations (40 CFR SS.258, Subtitle D), which segregated cell must be available for use

no later than August 1, 1994. Upon completion of the segregated cell, such temporarily stored waste shall be removed and placed in such dedicated cell and, thereafter, all NRG delivered waste shall be exclusively placed in such dedicated cell. If for any reason, NRG is compelled to utilize another or a different landfill facility to dispose of Non-Processible Waste and residues. NRG shall notify the city in writing. Any such additional or different landfill facility shall conform to all of the environmental safety standards describe above as they may be amended by the appropriate governmental environmental authorities.

Section 2.3 Waste Processing and Disposal. Consistent with the integrated waste disposal plan set forth in Section 2.2 above, MWPC shall receive City MSW at the Transfer Station. MSW will be transferred to NRG and will be processed at NRG Facilities. Non-Processible Waste accepted by MWPC and the residues from processing which are not RDF or Recoverable Materials shall be properly disposed of by NRG at the Disposal Facilities. MWPC and NRG shall be solely responsible for the method, location and processing of City MSW and Non-Processible Waste delivered to the Transfer Station.

Section 2.4 Waste Rejection Rights. A vehicle may be denied entrance to the Transfer Station if MWPC has reasonable basis to believe it contains Hazardous Waste, Infectious Waste or any other Unacceptable Waste. In addition, MWPC may require the Hauler, at the Hauler's sole expense, to recover and properly dispose of waste that is deposited upon the tipping floor if said waste contains Hazardous Waste, Infectious Waste or other Unacceptable Waste. MWPC agrees to notify the City in the event a vehicle is denied entrance or is required to recover Unacceptable Waste and to provide to the City the name of the Hauler, the name of the vehicle driver, the time, date of vehicle arrival and the nature of the waste causing the non-acceptance.

Section 2.5 Hazardous and Infectious Waste. In the event MWPC discovers Hazardous Waste or Infectious Waste contained in waste delivered to the Transfer Station or NRG discovers Hazardous Waste or Infectious Waste in waste delivered to the NRG Facilities or Disposal Facilities, MWPC or NRG, as applicable, shall use methods and procedures generally accepted within the industry to separate out such Hazardous Waste or Infectious waste from such waste. All Hazardous Waste or Infectious Waste separated out from waste at the Transfer Station or Disposal Facilities prior to processing shall be managed by MWPC in accordance with all local, state and federal regulations.

ARTICLE 3 FEES AND PAYMENT

Section 3.1 Service Fee. The City shall pay MWPC a service fee equal to \$78.50 per ton of Acceptable Waste delivered to the Transfer Station, as adjusted from time to time as provided in this Section 3,1 Such Service Fee shall be adjusted annually as of January I of each year during the term hereof, commencing January 1, 1995, by the annual change in the U.S. All Cities

Consumer Price Index for Urban Workers, base 1982-84=100 (CPI-U). Such adjustment shall be effective March 1, 1995, and annually thereafter during the term of this Agreement.

Section 3.2 Disposal Fee. MWPC shall publish and deliver to the City from time to time during the term of this Agreement a list of Non-Processible Waste which MWPC is willing to accept at the Transfer Station together with a schedule of disposal fees for each such item. In the event any Hauler delivers such acceptable items of Non-Processible Waste, MWPC shall invoice and collect from such Hauler the appropriate disposal fee. Disposal fees shall not be billed to the City nor included in the Service Fee.

Section 3.3 Reports. Within ten (10) days of the end of each month during the term of this Agreement, MWPC shall provide the City with a report summarizing the total tons of MSW delivered to the Transfer Station during the prior month, the tons of waste delivered to NRG for processing, the tons of Non-processible Waste delivered to NRG for disposal and the amount of Unacceptable Waste returned to Haulers.

Section 3.4 Invoices and Payment. Within ten (10) days of the end of each month during the term of this Agreement, MV*TC shall produce an invoice for all MSW delivered to the Transfer Station in the immediately preceding month as shown in the report issued by MWPC for such period. Such invoices shall be rendered, at the election of the City, in accordance with the following terms and conditions:

- a) The City may elect to request MWPC to issue the invoice directly to the City. In such case, the invoice shall be due and payable to MWPC directly by the City within twenty (20) days of the date of invoice; or
- b) The City may elect to request MWPC to issue the invoice to the City's Haulers. If the City elects to request MWPC to render the invoice to the Haulers, such invoice shall be due and payable to MWPC by the Haulers within twenty (20) days of the date of the invoice. Simultaneously with the issuance of the invoice to the Haulers, MWPC shall provide a copy of such invoice to the City. In the event the Haulers fail to pay such invoice by the due date, the City shall pay to MWPC all such deficiencies within three (3) days upon written request from MWPC.
- c) If and for so long as any payment from the City to MWPC pursuant to either Sections 3.4 (a) or (b) above is overdue, MWPC may charge interest and late payment fees at the amount of 1 1/2% of the amount of the unpaid balance or at the highest rate permitted by law, whichever is lower; and MWPC further reserves the right to reject delivery of MSW by the City until full amounts due to MWPC from the City have been received.

Irrespective of the method of invoicing selected by the City, the City shall at all times remain fully liable to MWPC for the payment of all Service Fees hereunder. Payment by the City to MWPC of the Service Fee shall in no way entitle the City to any portion of the proceeds from the utilization of RDF or any other Recoverable Materials.

ARTICLE 4 MANAGEMENT AND RECORDS

Section 4.1 Coordination. MWPC, NRG and the City shall each appoint a representative who shall be charged with coordinating and managing the affairs of each in relation to this Agreement. The representative for MWPC shall be its general manager. The representative for the City shall be its city administrator. The representative for NRG shall be its director of operations. Any Party may at any time change its designated representative on written notice to the other Parties.

Section 4.2 Access to Records. MWPC shall maintain complete and accurate records of all waste delivered to the Transfer Station, including MWS and Non-Processible Waste delivered to NRG and Unacceptable Waste rejected by MWPC hereunder. MWPC agrees that the City or its duly authorized representative, at any time during normal business hours and as often as the City may reasonable deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, records, etc., which are pertinent and involve transactions relating to this Agreement. Such material must be retained for six (6) years by MWPC. MWPC accounting practices and procedures relevant to this Agreement shall also be subject to examination by any or all of this aforesaid persons as often as and during such times as aforesaid. All such MWPC data shall be kept confidential in accordance with the provisions of Article 8 below. All expenses incurred by the City in examining such records shall be borne by the City.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

In order to induce the City to enter into and perform this Agreement, MWPC and NRG each represent and warrant to the City as follows:

Section 5.1 Organization and Standing. MWPC is a limited liability company duly organized under the laws of the State of Delaware. NRG is a corporation duly organized under the laws of the State of Delaware. Each of MWPC and NRG is validly existing and in good standing, has all requisite corporate authority to carry on its business as now being conducted by it, and is in good standing in each jurisdiction in which the nature of business conducted therein by it requires it to be qualified therein to do business.

Section 5.2 Authority. Each of MWPC and NRG has taken all corporate action necessary for the authorization, execution, delivery and performance of this Agreement.

Section 5.3 Valid and Binding Agreements. This Agreement, when accepted by the City and each of MWPC and NRG, and the NRG Processing Agreement, and NRG/LJP Agreement, the Prairieland Agreements and the Ponderosa Agreement constitute valid and binding agreements and obligations of the applicable parties thereto and are enforceable against each party thereto in accordance with their respective terms and conditions.

Section 5.4 Processing and Disposal of Waste. Acceptable Waste delivered by the City to MWPC shall be disposed of strictly in accordance with the integrated solid waste disposal plan set forth in Section 2.2 hereof and, to that end, MWPC shall deliver all MSW to NRG for processing and all Non-Processible Waste to NRG for disposal and NRG, for its part, shall process all MSW at NRG Facilities and shall provide for the utilization of all RDF and other Recoverable Materials at a Utilization Facility and shall dispose of all MSW residue and Non-Processible Waste at the Ponderosa landfill in segregated landfill facilities dedicated exclusively to NRG delivered waste in accordance with the terms of the Ponderosa Agreement and applicable state and federal environmental regulations, including specifically 40 CFR 258, Subtitle D.

ARTICLE 6 LIABILITY

Section 6.1 Indemnification. Each Party agrees to defend, indemnify, and hold the other Parties, their officers, agents, contractors and employees harmless from any and all liability (statutory or otherwise), claim, suits, damages, judgments, costs and expenses, including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof, resulting directly or indirectly from or caused by any negligent act and/or omission of its officers, agents, contractors or employees in the performance of this Agreement. This Section 6. 1 is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and NRG and MWPG in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf

Section 6.2 Disclaimer of Liability. No Party shall in any event be liable to another for any special, incidental, indirect, exemplary, punitive or consequential damages such as, but not limited to, lost profits, revenue or good will, interest, loss by reason of shutdown or non-operation of equipment or machinery, increased expense of operation of equipment or machinery, loss of use of equipment or machinery, cost of purchased or replacement services or claims by customers or haulers, whether such loss or cost is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

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ARTICLE 7
INSURANCE

Section 7.1 Coverage. MWPC shall contract for and maintain during the term of this Agreement such insurance as will protect N1WPC from liability arising out of potential claims in connection with the operations and services to be provided by MWPC to the City hereunder for the coverages and in the amounts set forth below:

a) Workers' Compensation and Employees Liability Insurance:

- (i) Workers' Compensation Insurance shall be as required by law and shall include an all-states or universal endorsement.
- (ii) Employees Liability Insurance shall be written for not less than \$ 100,000 per occurrence.

b) Automobile Liability Insurance, if applicable:

Minimum Limits:	
Bodily and Personal Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Annual Aggregate	\$1,000,000

c) General Liability Insurance:

Such policy shall cover normal liabilities arising out of the operation of N1WPC's business as contemplated by this Agreement with an annual aggregate coverage of \$1,000,000.

Section 7.2 Notification and Inspection. All such policies of insurance shall be made available by N1WPC to the City for inspection and review at the City's request. All certificates evidencing such insurance shall provide that the carrier shall give the City thirty (30) days prior written notice in the event of any cancellation, non-renewal or material reduction in coverage provided under such policy.

ARTICLE 8
CONFIDENTIALITY

Section 8.1 Confidential Information. The Parties agree that they will not use or disclose Confidential Information of any other Party to any person not authorized to receive it. In the event of termination of this Agreement, each Party will promptly turn over to the relevant Parties all records and any compositions, articles, devices, apparatus and other items that disclose, describe or embody Confidential Information of such other Parties.

Section 8.2 Protection of Confidential Information. Each Party shall, and shall cause its employees, agents and representatives to, protect all Confidential Information delivered or disclosed to it pursuant to this Agreement against unauthorized disclosure to third parties by maintaining all such Confidential Information in confidence. Each Party shall not, and shall not permit its employees, agents or representatives to, divulge such Confidential Information, in whole or in part, to any third party or to any of its own personnel not having a need to know, provided that no Party shall be liable for the use or disclosure of Confidential Information which:

- a) was in the possession of the receiving Party prior to its receipt from the disclosing Party;
- b) is or becomes part of the public knowledge or literature through no fault of the receiving Party;
- c) is or becomes available to the receiving Party from a source other than the disclosing Party which source has rightfully obtained such Confidential Information and has no obligation of confidentiality to the disclosing Party with respect thereto; or
- d) is made available by the disclosing Party to a third party unaffiliated with the disclosing Party on an unrestricted basis.

ARTICLE 9 TERM AND TERMINATION

Section 9.1 Term and Termination. This Agreement shall take effect as of the date first above written and shall continue in force for an initial period of fifteen (1) years. Thereafter, this Agreement shall be automatically renewed for additional periods of one (1) year each, unless a Party gives the other Parties at least six (6) months' prior written notice of its intention not to renew the Agreement upon the expiration of the initial or any renewal term.

Section 9.2 Other Events Permitting Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated in accordance with the following provisions:

- a) In the event that the City can demonstrate to the reasonable satisfaction of NWC and NRG that a commercially viable technology or methodology for waste disposal is available to the City which produces the same or superior degree of environmental protection as the integrated waste disposal plan described in Section 2.2 above and which will produce annual economic benefits to the City in excess of twenty-five percent (25%) per year of the annual cost to the City under this Agreement, MWPC and NRG shall within one (1) year of such demonstration by the City, notify the City in writing of their election of one of the following alternatives:

- (i) within five (5) years of such election, to incorporate the commercially viable technology and have such technology available for use by the City under this Agreement, with correspondent reductions in the Service Fee to reflect any cost savings to MWPC and NRG; or
 - (ii) within five (5) years of such election, to match the economic savings to the City were such commercially viable technology to be incorporated; or
 - (iii) to refuse to perform either (i) or (ii) above, in which case, the City shall have the right to terminate this Agreement upon six (6) months' prior written notice subject to the obligation of the City to pay to MWPC a pm = share of MSPC's unamortized debt relating to the original cost of the Transfer Station, such = = share to be determined by the proportion which the average annual tonnage of MSW delivered to the Transfer Station by the City over the previous three years (or such shorter period , if applicable) bears to the total average annual tonnage of MSW delivered to the Transfer Station from all sources during such period. The projected cost of the construction of the waste transfer station has been estimated at approximately \$1.25 Million Dollars.
- b) This Agreement may be terminated by the nonbreaching Party on written notice if another Party shall be in material breach of its obligations under this Agreement and shall have failed to cure such breach within sixty (60) days after receipt of written notice thereof from the non-breaching Party;
- c) This Agreement may be terminated by a Party on written notice if another Party shall have: (i) been adjudicated bankrupt; (ii) filed a petition of any kind as to its bankruptcy or insolvency; (iii) had a receiver or trustee appointed for or with respect to all or a substantial part of its assets; (iv) entered into any composition with its creditors; (v) made a general assignment for the benefit of its creditors; or (vi) otherwise lost legal control of its business or assets; or
- d) This Agreement may be terminated by a Party on written notice if the performance of another Party of its obligations hereunder shall have been prevented by an event of Force Majeure for a continuous period of more than one hundred eighty (180) consecutive days as provided in Section 10.4 below.

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ARTICLE 10
FORCE MAJEURE

Section 10.1 Definition. Force Majeure shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonable foreseeable as of such date and not reasonable within the control of any Party, which prevents in whole or in material part the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of State or, governmental action (other than a discretionary or unilateral act by the City), material changes in law, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion.

Section 10.2 Notice. Upon giving notice to the other Parties, a Party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The Party claiming Force Majeure shall promptly notify the other Parties of the termination of such event.

Section 10.3 Suspension of Performance. During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other Parties may likewise suspend the performance of all or part of their obligations hereunder to the extent that such suspension is commercially reasonable.

Section 10.4 Termination. if the period of Force Majeure continues for more than one hundred eighty (180) consecutive days, a Party whose performance is not prevented by the event of Force Majeure may terminate this Agreement upon written notice to the other Parties.

ARTICLE 11
GENERAL TERMS AND CONDITIONS

Section 11.1 Independent Contractor. This Agreement does not make any Party hereto the employee, agent, partner, joint venturer or legal representative of any other Party for any purpose whatsoever. No Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of any other Party. In fulfilling its obligations pursuant to this Agreement, each Party hereto shall act as an independent contractor.

Section 11.2 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof

Section 11.3 Assignment. No Party may assign or transfer this Agreement to another party without the prior written consent of the other Party; provided, that MWPC and NRG may freely subcontract or sublet all or part of this Agreement to third parties. No such subcontracting or subletting shall operate to relieve MWPC or NRG of their respective obligation hereunder. This Agreement shall inure to the benefit of and shall be binding on the successors and permitted assigns of the Parties. This Agreement and the rights and obligation arising hereunder shall not be affected by any change in the corporate structure or ownership of the Parties.

Section 11.4 Notice. All notices permitted or required to be given hereunder shall be delivered personally or sent by telecopy or registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses of the Parties hereto as set forth above or to such other addresses as the Parties may designate by like notice from time to time. Notices so given shall be effective (a) upon the date of personal delivery, (b) if sent by telecopy, concurrently with the transmission thereof if the sender's machine produces a transmission report without notice of a communication fault, (c) on the fifth (5th) business day following the date on which such notice is mailed by registered or certified mail.

Section 11.5 Amendment. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by a writing signed by the Parties hereto.

Section 11.6 Severability. In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement, and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

Section 11.7 Compliance with Applicable, Laws. The Parties to this Agreement shall at all times conduct their activities hereunder in accordance with all applicable federal, state and local laws, rules and government regulations.

Section 11.8 Waiver. No failure by a Party hereto to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

Section 11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument.

Section 11.10 Governing Law. The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement.

Section 11. 11 Remedies Cumulative. Each of the rights and remedies of the Parties set forth in this Agreement shall be cumulative with all other such rights and remedies, as well as with all rights and remedies of the Parties hereto otherwise available at law or in equity.

Section 11. 12 Data Privacy. MWPC, NRG and the City agree to abide by the provisions of the Minnesota Government Data Practices Act and all other applicable state and federal laws, rules and regulations relating to data privacy or confidentiality, and as any of the same may be amended. Each Party agrees to defend and hold the other Parties, their officers, agents and employees harmless from any claims resulting from such Party's unlawful disclosure and/or use of such protected data.

Section 11. 13 Affirmative Action. In accordance with the City's policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service or activity of MWPC or NRG on the ground of race, creed, color, religion, age, sex, physical or mental disability, marital status, affectional/sexual preference, public assistance status, veteran status, or national origin; and no person who is protected by applicable federal or state laws, rules, and regulations against discrimination shall be otherwise subjected to discrimination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

The City of Cleveland

By: /s/ Glen O'Connor

Its: Mayor

Date: Sept. 12th- 1994

NRG Energy, Inc., a

Delaware Corporation

By: (see Signed Contract)

Its: V.P. Operations and Engineer

Date: Stpt. 23rd. 1994

Attested By: Gwen Ploog

Its: City Clerk

Date: Sept. 12th- 1994

Attested By: (see Signed Contract)

Its: - Project Director

Date: Sept, 23rd- 1994

By: /s/ Larry Biederman

Its: . Management Committee

Date: Sept, 13- 1994

MINNESOTA WASTE PROCESSING COMPANY, L.L.C., a Delaware Limited Liability Company

Attested By: (see Signed Contract)

Its: - Management Committee

Date: Sept. 18th.- 1994

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FIRST AMENDMENT TO AGREEMENT FOR
WASTE PROCESSING AMONG
MINNESOTA WASTE PROCESSING COMPANY, L.L.C.
NRG ENERGY, INC.
AND
THE CITY OF CLEVELAND, MINNESOTA

Minnesota Waste Processing Company, L.L. C., ("MWPC"), NRG Energy, Inc. ("NRG"), and the City of Cleveland, Minnesota, (the "City"), have entered into an agreement for waste processing as of August 25th, 1994, (the "Agreement").

1. MWPC, NRG and the City hereby agree to amend Article 2 of the Agreement to delete Section 2.1 in its entirety and substitute thereto the following amended Section 2. 1:

Section 2.1 Waste Delivery. Commencing on or about July 1, 1994, and during the term of this Agreement, the City shall cause Haulers under contract with the City to deliver all City MSW to MWPC at the Transfer Station, subject at all times to the availability of City MSW. The City shall make a good faith effort to cause such Haulers to deliver to the Transfer Station only Acceptable Waste and such Non-Processible Waste as MWPC may expressly agree to accept for disposal from time to time in its discretion. Nothing in this Section 2.1 shall obligate the City to deliver any minimum quantity of MSW to the Transfer Station, nor shall the City be obligated to physically inspect the loads which such Haulers deliver to the Transfer Station under the terms of this Agreement.

2. MWPC, NRG and the City hereby agree to amend Article 11 of the Agreement to delete Section 6. 1 in its entirety, and substitute therefore the following amended Section 6. 1:

Section 6.1 Indemnification: MWPC and NRG agree to defend and indemnify, and hold the City, its officers, agents, contractors and employees harmless from any and all liability (statutory or otherwise), claims, suits, damages, judgments, costs or expenses, including reasonable attorneys fees, witness fees and disbursements incurred in the defense thereof, resulting directly or indirectly from or caused by any negligent act and/or omission of its officers, agents, contractors or employees in the performance of this Agreement.

The City agrees to defend, indemnify and hold MWPC and NRG, its officers, agents, contractors and employees harmless from any and all liability (statutory or otherwise), claims, suits, damages, judgments, costs or expenses, including reasonable attorneys fees, witness fees and disbursements incurred in the defense thereof, resulting directly or indirectly from, or caused by any negligent and/or omission of its officers or employees in the performance of this Agreement.

This Section 6.1 is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and NRG and MWPC in defending any action on behalf of the City shall be entitled to assert, in any action, every defense or immunity that the City could assert on its own behalf

3. Except as provided herein, all terms and conditions of the agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of this 13th day of September 1994.

NRG ENERGY, INC., a Delaware Corporation

By (see Signed Contract)
Its V.P. Operations & Engineer

Attested by (See Signed Contract)
Its Project Director

By /s/ Larry Biederman
Its Management Committee

Attested by (see Signed Contract)
Its Management Committee

THE CITY OF CLEVELAND

By /s/ Glen O'Connor
Its Mayor

Attested by /s/ Gwen Ploog
Its City Clerk

MINNESOTA WASTE
PROCESSING COMPANY, L.L.C.,
a Delaware Limited Liability
Company

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SECOND AMENDMENT TO AGREEMENT
FOR WASTE PROCESSING AMONG
MINNESOTA WASTE PROCESSING COMPANY, L.L.C.
NRG ENERGY, INC.
AND
THE CITY OF CLEVELAND, MINNESOTA

Minnesota Waste Processing Company, L.L.C. ("MWPC"), NRG Energy, Inc. ("NRG"), and the City of Cleveland, Minnesota (the "City"), have entered into an Agreement for Waste Processing as of July 1, 1994, (the "Agreement"), and a First Amendment to Agreement for Waste Processing (the "First Amendment") on the 13th day of September 1994.

That MWPC, NRG, and the City desire to further amend said Waste Processing Agreement to reflect the final agreement of the parties as to the contract, its terms and conditions,

NOW, THEREFORE, MWPC, NRG and the City agree to amend the Agreement as follows:

1. MWPC, NRG and the City hereby agree to amend the Section 3 of the Agreement to add the following sections:

"Section 3.5 Matching Fees. In the event that MWPC enters into subsequent contracts for waste processing with other municipalities on the same terms and conditions as this Agreement which contain service fees and/or disposal fees which are more favorable to such city or cities, then, in such event, this Agreement shall be amended to provide for comparable fees and payments of equal duration to those given to such city or cities; provided, that the economic considerations involved in such contract are identical to the economic considerations which provide the basis for the fees and payments provided to the City in this Agreement. In the event that this Agreement is so amended, the following provisions shall apply:

- a) Such amendment to this Article 3 shall continue for the same term as that of such other contract, but in no case shall such amendment be retroactive.
- b) MWPC **shall** notify the City in the event of the implementation of such a contract with a city or cities and shall deliver to the City the revised schedule of fees and payments as required pursuant to the terms of this Agreement.
- c) The effective date of any adjustment in such fees or payment shall be no later than sixty (60) days from the date of implementation of such other contract."

2. MWPC, NRG and the City hereby agree to amend Article 9 of the Agreement to delete Section 9.2 in its entirety and substitute therefore, the following amended Section 9.2:

"Section 9.2 Other Events Permitting Termination: Notwithstanding anything to the contrary contained herein, this Agreement may be terminated in accordance with the following provisions:

- (a) In the event that the City can demonstrate to MWPC and NRG that a commercially, viable technology or methodology for waste processing and disposal is available to the City which produces the same or a superior degree of environmental protection as integrated waste disposal plan described in Section 2.2 above, and which will produce annual economic benefits to the City in excess of 25% of the annual cost to the City under this Agreement, NIWC and NRG shall, within one (1) year of such demonstration by the City notify the City in writing of their election of one of the following alternatives:
- (i) Within five (5) years of such election, to incorporate the commercially viable technology and have such technology available for use by the City under this Agreement, with correspondent reductions in the service fee to reflect any cost-savings to MWPC and NRG, or
 - (ii) Within five (5) years of such election, to match the economic savings to the City where such commercially viable technology to be incorporated; or
 - (iii) To refuse to perform either (i) or (ii) above, in which case, the City shall have the right to terminate this Agreement upon six months prior written notice, subject to the obligation of the City to pay MWPC a pro-rata share of the unamortized debt relating to the original cost of the transportation, such pro-rate share to be determined by the proportion which the average annual tonnage of MSW delivered to the transfer station by the City over the previous three (3) years (or such shorter period, if applicable) bears to total average annual tonnage of MSW delivered to the transfer station from all sources during such period. The projected cost of the construction of the waste transfer station has been estimated at approximately \$1.25 million dollars.

That for purpose of this section "commercially viable technology or methodology for waste disposal available to the City shall mean that the City has received a binding offer to enter into a waste disposal contract from an entity which would be a least equal in to the time remaining under this Agreement; which would provide a guaranteed price, for the contract term which would produce an annual economic benefit to the City in excess of 25% per year, of the annual cost to the City under this Agreement; that the entity would have obtained all necessary federal or state permits to operate or conduct such a waste disposal process; that such process has been demonstrably shown to be commercially viable and uses proven technology and that such contract would meet the County Solid Waste Management Plan.

ARBITRATION: In the event the parties cannot agree whether such alternative contract meets the definition herein, then, in such event, either party may, by thirty (30) days written notice to the other party, submit the issue for binding determination pursuant to Rule 114 of the General Rules of Practice for the District Courts of the State of Minnesota, in the nature of binding arbitration.

3. Except as provided herein, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as to this 13th day of September, 1994.

NRG ENERGY, INC., a
Delaware Corporation
By (see signed contract)
Its VP Operations & Engineer

Attested by (see signed contract)
Its Project Director

MINNESOTA WASTE PROCESSING COMPANY, L.L.C., a
Delaware Limited Liability Company
By /s/ Larry Biederman
Its Management Committee

Attested by -(see signed contract)
Its Management Committee

CITY OF CLEVELAND a municipality of the State of Minnesota

By /s/ Glen O'Connor
Its Mayor

Attested by /s/ Gwyn Ploog
Its City Clerk

Drafted: August 5, 1994

THIRD AMENDMENT TO AGREEMENT
FOR WASTE PROCESSING AMONG
MINNESOTA WASTE PROCESSING CONVANY, L.L.C.
NRG ENERGY, INC.
AND
THE CITY OF CLEVELAND, MINNESOTA

Minnesota Waste Processing Company, L.L.C. ("MWPU), NRG Energy, Inc. ("NRG"), and the City of Cleveland, Minnesota (the "CITY") entered into an Agreement for Waste Processing as of August 25, 1994; a First Amendment to Agreement for Waste Processing, executed September 13, 1994, and a Second Amendment to Agreement for Waste Processing, executed September 13, 1994, (the "First Amendment and Second Amendment").

The MWPC, NRG, and the City desire to further amend said Waste Processing Agreement to reflect the further agreement of the parties as to the Contract, the First Amendment and Second Amendment, and their terms and conditions;

NOW, THEREFORE, MWPC, NRG and the City agree as follows:

I M[WPC, NRG and the City hereby agree to amend Article 9 of the Agreement to delete Section 9.2 in its entirety and to further amend the Second Amendment to delete paragraph 2 relating to said Section 2.2, and to substitute therefore, the following further amended Section 9.2:

"Section 9.2 Other Events Permitting Termination : Notwithstanding anything to the contrary contained herein, this Agreement may be terminated in accordance with the following provisions:

- (a) In the event that the City can demonstrate to MWPC and NRG that a commercially, viable technology or methodology for waste processing and disposal is available to the City which produces the same or a superior degree of environmental protection as integrated waste disposal plan described in Section 2.2 above, and which will produce annual economic benefits to the City in excess of 25% of the annual cost to the City under this Agreement, M[WPC and NRG shall, within one (1) year of such demonstration by the City notify the City in writing of their election of one of the following alternatives:
 - (i) Within five (5) years of such election, to incorporate the commercially viable technology and have such technology available for use by the City under this Agreement, with correspondent reductions in the service fee to reflect any cost-savings to M[WPC and NRG; or

- (ii) No later than the in-service date of the binding offer received by the City, to match the economic savings to the City were such commercially viable technology to be incorporated; or
- (iii) To refuse to perform either (i) or (ii) above, in which case, the City shall have the right to terminate this Agreement upon six months prior written notice, subject to the obligation of the City to pay MWPC a pro-rate share of the unamortized debt relating to the original cost of the transfer station, such pro-rate share to be determined by the proportion which the average annual tonnage of MSW delivered to the transfer station by the City over the previous three (3) years (or such shorter period, if applicable) bears to the total average annual tonnage of MSW delivered to the transfer station from all sources during such period. The projected cost of the construction of the waste transfer station has been estimated at approximately \$1.25 million dollars.

That for purpose of this section "commercially viable technology or methodology for waste disposal available to the City shall mean that the City has received a binding offer to enter into a waste disposal contract from an entity which would be at least equal in to the time remaining under this Agreement; which would provide a guaranteed price, for the contract term which would produce an annual economic benefit to the City in excess of 25% per year, of the annual cost to the City under this Agreement; that the entity would have obtained all necessary federal or state permits to operate or conduct such a waste disposal process; that such process has been demonstrable shown to be commercially viable and uses proven technology and that such contract would meet the County Solid Waste Management Plan.

ARBITRATION: In the event the parties cannot agree whether such alterative contract meets the definition herein, then, in such event, either party may, by thirty (30) days written notice to the other party, submit the issue for binding determination pursuant to Rule 114 of the General Rules of Practice for the District Courts of the State of Minnesota, in the nature of binding arbitration.

2. Except as provided herein, all terms and conditions of the Agreement, First Amendment and Second Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of this 19th day of October, 1994.

NRG ENERGY, INC., a Delaware Corporation

By See Signed Contract
Its VP Operations and Engineer

Attested /s/ Rebecca L Brose
Its Executive Assistant

By (See signed contract)
Its Management Committee

Attested by (See Signed Contract)
Its Management Committee

CITY OF CLEVELAND a municipality of the State of Minnesota

By /s/ Glen O Conner
Its Mayor

Attested by /s/ Gwyn Ploog
Its City Clerk

MINNESOTA WASTE PROCESSING COMPANY, L.L.C., a Delaware Limited Liability Company

SEC. 5210.00 CONTRACT WITH MINNEGASCO. (see pages 165a-165e for contract.)

Source: City Code
Effective Date: 5-7-84

(Sections 5220.00-5260.00, inclusive, reserved for future expansion.)

CenterPoint Energy Minnegasco Gas Franchise Ordinance

ORDINANCE NO.5210.00

CITY OF CLEVELAND, LESUEUR COUNTY, MINNESOTA

AN ORDINANCE GRANTING CENTERPOINT ENERGY MINNEGASCO, A NATURAL GAS UTILITY A DIVISION OF CENTERPOINT ENERGY RESOURCES CORPORATION, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR TIRE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC GROUND OF THE CITY OF CLEVELAND, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF CLEVELAND, LESUEUR COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

City. The City of Cleveland, County of LeSueur, State of Minnesota.

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

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

Company. CenterPoint Energy Minnegasco, a Division of CenterPoint Energy Resources 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.

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.

Notice A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy Minnegasco, v.p. Regulatory and supply service, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to City of Cleveland, PO Box 309, Cleveland, Minnesota 56017. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

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

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.

SEMON 2. ADOPTION OF FRANCHISE

2.1 **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. Con4mny may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as my be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

2.2 **Effective Date: Written Acceptance** This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and Its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise informs the City, at any tine, 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.

2.3. **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.

2.4. **Publication Expense.** Company shall pay the expense of publication of this Ordinance.

2.5. **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If *the dispute* is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the

selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

Additionally, if the Company is in default more than 60 days after written notice of the default, the City may take any action reasonably necessary to abate the condition caused by the default. Company agrees to reimburse the City for all of its reasonable costs associated with said action, including collection, and for costs to the City to commence an action in District Court, including attorneys fees, if the Court determines the Company to have been in default.

2.6. Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, 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 Section 2. 1.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1. Location of Facilities. Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. 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.

3.2. Street Openings Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fee&

3.3. 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 two years 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 maim* 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 including its administrative expense and overhead, together with ten percent additional as liquidated damages This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.3. The Company Shall also post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.

3.4. **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.

3.5. **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 In cases where streets are at final width and grade, and the Municipality has installed underground sewer and water mains and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, the Company may be required to install gas service connections prior to such paving or resurfacing, whenever it is apparent that gas service will be required during the five years following the paving or resurfacing.

3.6 **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.

SECTION 4. RELOCATIONS.

4.1. **Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3 100 and applicable City ordinances consistent with law.

4.2. **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.

4.3. **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.

SECTION 5. INDEMNIFICATION.

5.1. **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 claim 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.

5.2. **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.

SECTION 6. VACATION OF PUBLIC WAYS.

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

SECTION 7. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 8. FRANCHISE FEE.

8.1. 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 gable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claim that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing and implementing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee.

8.2. **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 thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company The fee shall become effective ten (10) days after written notice endorsing such adopted ordinance has been served upon the Company by certified mail.

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

8.4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula my 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 Cornpany my 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. 7be Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments

8.5. **Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

SECTION 9. ABANDONED FACILITIES

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

SECTION 10. PROVISIONS OF ORDINANCE.

10.1. **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Con4)any as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11.AMENDMIENT-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 the Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance.

Passed and Approved: February 3, 2003

Mayor of the City of Cleveland, Minnesota

Attest:

Gwyn Ploog

City Clerk, Cleveland, Minnesota

CITY OF CLEVELAND, LE SUEUR COUNTY, MINNESOTA

ORDINANCE NO. 5230.00

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 CLEVELAND, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE 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 CLEVELAND, LE SUEUR COUNTY, MINNESOTA, DOES ORDAIN:

Section 1. There be and hereby is granted to Northern States Power Company, a Minnesota corporation, its successors and assigns, hereinafter referred to as "Company", during the period of 20 years from the date hereof, the right and privilege of construction, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys and public grounds of the City of Cleveland, Le Sueur County, Minnesota, hereinafter referred to as "City" an electric distribution system and electric transmission lines, including poles, pole lines, and fixtures and appurtenances, usually conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds and provided that Company, in the construction, operation, repair and maintenance of such poles, pole lines, and fixtures and appurtenances, shall be subject to such reasonable regulation as may be imposed by the City Council.

Section 2. The service to be provided and the rates to be charged by Company for electric service in the City shall be subject to the jurisdiction of the Public Utilities Commission of this State. Company shall provide reasonably efficient and adequate service to members of the public within the City who apply for such service in accordance with the rules and regulations of Company.

Section 3. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City which may interfere with the proper construction, operation, repair, and maintenance of any poles, pole lines, and fixtures and appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises.

Section 4. After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if the Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public ground in the said condition, the City shall have, after demand to the Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of the Company. The Company shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead.

Section 5. 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 Company's electric facilities located in, on, over, under, or across the public ways and public grounds of City, unless such injury or damage grows out of the negligence of City, its employees, or agents, or results from the performance in a proper manner of acts reasonable deemed hazardous by Company, but such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreement to indemnify applies, Company at its sole cost and expenses shall defend 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 such notice is not reasonable given as hereinbefore provided, Company shall have no duty to indemnify nor defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but Company may not settle such litigation without the consent of City, which consent shall not be unreasonable withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City; and Company, in defending any action on behalf of City shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

Section 6. The City shall give the Company at least two 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 City be liable to the Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

Section 7. Company shall have full right and authority to assign to any person, person, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this Ordinance.

Section 8. 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 9. This Ordinance shall be in full force and effect from and after its passage, any publication required by law, and acceptance by Company.

Section 10. Where a provision of any other Ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail. Notice to Company shall be mailed to the Regional General Manager, thereof at 210 Lime Street, Mankato, MN 56001, and any notice to City shall be mailed to the CITY CLERK.

Passed and approved: August 3, 1992

Attest:

/s/ Gwyn Ploog
City Clerk

/s/ C. Gordon Dickie

SEC. 5270.00 KENNELS.

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Subd. 5270.01. Defined. For the purpose of this Section, the term "kennel" means any place, building, tract of land, abode or vehicle, wherein or whereon three or more dogs over ninety days of age, are kept, kept for sale, or boarded.

Subd. 5270.02. License Required. It is unlawful for any person to operate or maintain a kennel without a license therefore from the City.

Subd. 5270.03. Exception. Hospitals and clinics operated by licenses veterinarians exclusively for the care and treatment of animals are except from the provisions of this Section.

Source: City Code
Effective Date: 12-20-84

(Sections 5280.00-5300.00, inclusive, reserved for future expansion.)

SEC. 5310.00. DOG, CAT, FARM, AND WILD ANIMAL REGULATIONS AND LICENCES.

Subd. 53 10.01 Definitions.

A. Dangerous Cat. "Dangerous cat" means any cat that has: 1) without provocation, inflicted substantial bodily harm on a human being on public or private property; or 2) killed a domestic animal without provocation while off the owner's property; or 3) been found to be potentially dangerous, and after the owner has notice that the cat is potentially dangerous, the cat aggressively bites, attacks, or endangers the safety of humans or domestic animals.

B. Dangerous Dog. "Dangerous dog" means any dog that has: 1) without provocation, inflicted substantial bodily harm on a human being on public or private property; or 2) killed a domestic animal without provocation while off the owner's property; or 3) been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

C. Farm Animals. "Farm Animals" means cattle, horses, mules, sheep, goats, swine, ostriches, and ponies, and other mammals that are typically or customarily kept for purposes of agriculture and farm animal husbandry.

D. Owner. "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal.

E. Potentially Dangerous Cat. "Potentially dangerous cat"(1) when unprovoked, inflicts bites on a human or domestic animal on public or private property; or (2) when provoked, chases or approaches a person upon the streets, sidewalks, or any public property in an attitude of attack; or (3) has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of human or domestic animals.

F. Potentially Dangerous Dog. "Potentially dangerous dog" means any dog that: (1) when unprovoked, inflicts bites on a human or domestic animal or public or private property; or (2) when unprovoked, chases or approaches a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; (3) has a known propensity, tendency, or disposition to attack unprovoked causing injury or otherwise threatening the safety of human or domestic animals.

G. Poultry. "Poultry" means chickens, ducks, geese, pigeons, guinea hens, honey bees and turkeys.

H. Proper Enclosures. "Proper enclosures" means securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the animal from escaping and providing protection from the elements for the animal. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the animal from existing.

I. Run At Large. An animal is considered to be running at large if it is off the premises of its owner and the animal is not controlled, or the animal appears to have no owner.

J Substantial Bodily Harm. "Substantial bodily harm" has the meaning given it under Minnesota Statute 609.02, subdivision 7a.

K. Wild Animals. "Wild Animals" means and includes any mammal, amphibian or reptile of a species which, due to size, vicious nature, or other characteristic is inherently dangerous to human beings. Also includes exotic animals, meaning an animal species that are not native to the area. Examples of such wild animals include but are not limited to:

- (1) Any large cat of the family Felidae, such as lions, tigers, leopards, not including commonly accepted domesticated house cats.
- (2) Any member of the family Canidae, such as wolves, coyotes, dingoes, except domesticated dogs.
- (3) Any crossbreed such as crossbreeds between dogs and wolves, dogs and wolves, dogs and coyotes, but does not include crossbred domestic animals.
- (4) Any poisonous snake such as cobra or puff adder, any other snake or reptile which by size or other characteristic is dangerous to human beings.
- (5) Any skunk, raccoon, or fox, unless certified by a veterinarian to be free of rabies, and kept pursuant to a valid DNR permit, said certification to be obtained within seven (7) days of receipt of animal.
- (6) Any bear, ape, gorilla, monkey (except as exempted by this ordinance), or badger.
- (7) Any other animal or reptile that is commonly considered wild and not domesticated.

Subd. 5310.02. Dog and Cat License Requirement.

A~ All owners of dogs and cats which are more than three months of age are required to obtain a license for the dog or cat. It is unlawful for any owner of a dog or cat to fail to obtain a proper license therefore.

B. Dangerous Dogs: Registration. It shall be unlawful to own or possess a dangerous dog within the City limits which has not been registered with LeSueur County pursuant to M.S. 347.5 1.

Subd. 5310.03. License Application. Application for a dog or cat license shall be upon a form supplied by the City containing a certificate by a veterinarian, duly licensed to practice veterinary medicine within the State of Minnesota, which certificate shall state: (1) that the dog or cat for which application for license is made has been inoculated against rabies for at least the period for which a license is applied; and (2) whether the dog or cat has been spayed or neutered.

Subd. 5310.04. Tag Requirement. Owners of a dog or cat shall cause the animal to wear a collar and have a tag firmly affixed thereto evidencing the animal's license for the current year. The tag of any dangerous dog or cat shall comply with the provisions of subdivision 16 herein. A duplicate for a lost tag may be issued upon presentation of the receipt of the license fee for the current year, and upon payment of the fee as established by resolution of the Council for the issuance of a duplicate. Dog and cat licenses and tags shall not be transferable, and no refunds shall be made on any dog or cat licenses and tags because the owner or animal leaves the City or because of the death of the dog or cat before the expiration of the license. The following acts are unlawful: a)counterfeiting City tags; b) taking a tag legally placed upon a dog or cat by its owner; with the intent to place it upon another dog or cat; c) placing a tag issued for a particular dog or cat upon a different dog or cat; d)possessing a dog or cat which has the tag for another dog or cat.

Subd. 5310.05. Expiration of license. AD dogs' licenses shall expire on April 30 of each year and all cat licenses shall expire on March 31 of each year.

Subd. 5310.06. Fees and Costs. Fees shall be charged for the following; 1)obtaining a licenses and tag or duplicates thereof, 2)impounding an animal; 3)daily maintenance of an impounded animal; 4)adoption; 5)disposal of the bodies of dead animals if done by the City. In addition, the owner shall also be responsible for any costs incurred for veterinarian services for impounded or quarantined animals. All fees shall be set by resolution of the Council, which resolution shall be kept on file in the office of the City Clerk and open to public inspection.

Subd. 5310.07. Wild and Exotic Animals Exceptions Permit Required.

A. Any persons desiring to keep an animal prohibited by this ordinance may apply for a temporary Conditional Use Permit from the City Council. Such permit may be issued for a period not to exceed thirty (30) days and shall apply specific conditions under which such animals shall be kept. No such permit shall be issued unless such prohibited animal is brought in to the city for entertainment, exhibition, or show purposes only, or by persons keeping animals for a public zoo as volunteers, docents, or otherwise (a public zoo or other institution engaged in a permanent display of animals, and bona fide research institution or veterinary hospital may be issued a permanent Conditional Use Permit providing acceptable zoning requirements are met).

B. Nonpoisonous snakes or snakes not prohibited by this ordinance, bird kept indoors, ferrets, hamsters, mice, rabbits, lizards, and similar small animals capable of being kept in cages continuously are also exempt and do not require a permit.

C. Handicapped persons may keep monkeys trained as personal helpers by Conditional use Permit subject to annual review.

D. Before issuance of any temporary or permanent Conditional Use Permit, the applicant shall provide the City of Cleveland with proof of insurance, including public liability insurance with limits of not less than \$1,000,000.00. The insurance shall provide coverage for liability resulting from the ownership or possession of the specific animal or animals being permitted.

Subd. 5310.08. Farm Animals and Poultry. it is unlawful for any person to keep, maintain, or harbor with the City of Cleveland any of the following animals:

A. Any animals or species prohibited by Minnesota Law.

B. Any farm animals or poultry, except in those portions of the City of Cleveland that are zoned for taxing purposes as Agricultural.

C. Any farm animals kept in a residential zoning district as a pet, including pigs, goats, cattle, horses, llamas, or ostriches.

Subd. 5310.09. Exemptions from Subdivision 8. Farm animals kept in a clinic for treatment by a licensed veterinarian shall not constitute a violation of this Ordinance.

Subd. 53 10. 10. Sanitation. The dog, cat, or wild animal owner or permit holder shall be responsible for the sanitation of the dog, cat, or wild animal whether on the owner's property, private property of others or public property.

A. Private Property. No owner or permit holder of a dog, cat, or wild animal shall permit the dog, cat, or wild animal to urinate or defecate on the private property of another without the consent of the owner or other person in possession of the property. The permit holder or owner of a cat, dog, or wild animal shall remove any feces left by the animal and dispose of them in a sanitary manner. A dog, cat, or wild animal permit holder or owner shall clean, on a daily basis, any yard occupied by the animal or enclosure occupied by the animal, and any area in which the animal has been picketed so as to keep the surrounding area free from obnoxious odors.

B. Public Property. No person shall permit any dog, cat, or wild animal under their care to defecate upon any park or other public grounds, unless said person shall promptly clean up such waste and deposit the same in adequate sanitary facilities. The provisions of this subparagraph B do not apply to a Seeing Eye dog under the control of a blind person.

Subd. 53 10.11. **Limitation on Number of Dogs or Cats.** There are no limitations to the number of dogs or cats one owner may possess, so long as the animals are cared for in adherence to this ordinance.

Subd. 5310.12. **Animal Care.** The owner of the animal within the City of Cleveland shall provide said animal with sufficient, wholesome food and water, proper shelter and protection from weather, veterinary care when needed to prevent suffering, and with humane care and treatment. No owner of an animal shall abandon such animal to fend to itself in the wild.

Subd. 5310.13. **Abuse Prohibited.** No persons shall beat, torment, torture, or otherwise abuse an animal or cause or permit a fight.

Subd. 5310.14. **Animals in Motor Vehicles.** Unattended Dogs or Cats. A person may not leave a dog or a cat unattended in a standing or parked motor vehicle in a manner that endangers the dog's or cat's health or safety pursuant to Minnesota Statute 346.57, Subd. 1.

Subd. 5310.15. **Guard Dogs.** A person who uses a dog for security purposes within the City of Cleveland shall post a warning notice at the entrance of the premises.

Subd. 5310.16. **Resident occupant.** No person shall keep any number of dogs, cats or combination thereof at a location within the City except on a parcel or lot where there is a resident occupant, except for such locations which are (1) a City owned or operated dog pound, (2) a place of business of a licensed veterinarian, or (3) a kennel licensed by the Minnesota Board of Animal Health.

Subd. 5310.17. **Running at Large prohibited.** It is unlawful for a person who is the owner of a dog, cat, or wild animal to permit such animal to run at large; or to permit such animal onto the grounds of any City park or playground, whether at large or on a leash, unless the park is designated for dogs or cats by Council Resolution. The owner of any animal which is required to be quarantined pursuant to this section is subject to a penalty of 90 days in jail, a fine of \$700, or both if the animal is found to be running at large.

Subd. 5310.18. **Animal Noise.** It is unlawful for the owner of a dog, cat, or wild animal to suffer or permit such animal to disturb the peace and quiet of the neighborhood by excessive animal noise. Animal noise shall include, but is not limited to, barking, howling, whining, meowing and growling.

A. **Definition.** For purposes of this section, "disturb the Peace and quiet of the neighborhood by excessive animal noise" means any of the following:

1. The animal noise occurs at a time between 10:00 p.m. and 7:00 a.m. and can be heard from a location outside the building and premises where the animal is being kept, and the animal has made such noises intermittently for more than three (3) minutes with one minute or less lapse of time between each animal noise during the three minute period; or

2, The animal noise can be heard from a one block distance from the location of the building and premises where the animal has made such noises intermittently for more than three (3) minutes with one minute or less lapse of time between each animal noise during the three minute period; or

3. The animal noise can be heard from a location outside the building and premises where the animal is being kept, and the animal has made such noises intermittently for a period of at least five (5) minutes with one minute or less lapse of time between each animal noise during the five minute period.

B. **Complaint.** Any person may call or deliver a complaint to the Police Department stating facts and circumstances of a alleged violation of this Section. If after investigation of the complaint, the investigating officer has probable cause to believe there is a violation, all reports, witness statements and evidence may be submitted to the City Attorney for a formal complaint.

Subd. 5310.19. **Certain Animals Declared a Public Nuisance.** It is unlawful for a person, as owner or permit holder of a dog, cat, or wild animal to suffer or permit such an animal to be a public nuisance. Such animals may be impounded as provided in this section.. The following animals are declared to be a public nuisance:

A. Animals Which Chase Vehicles. Any animal which chases motor vehicles on public streets, or threatens, chases or attacks pedestrians, bicyclists or other persons on public property, public areas or private property other than the property owned or possessed by the owner of the animal is a public nuisance.

B. Attacking Animals. A dog, cat, or wild animal which attacks, wounds, injuries or kills any domestic animal or wildlife is a public nuisance.

C. Animal which Bite. A dog, cat, or wild animal which has bitten a person other than its owner or permit holder, or a member of its owners immediate family, is a public nuisance unless the bite was sustained by a person: 1) who was committing, at the time, a wiM trespass or other tort upon the premises occupied by the owner of the animal; or 2) who was provoking, tormenting, abusing, or assaulted the animal; or 3) who was committing or attempting to commit a crime. Such animal shall be quarantined pursuant to Subdivision 19 of this Section.

D. Animals Running at Large. Any dog, cat, or wild animal found running at large within the City limits is a public nuisance. An animal running at large may be immediately destroyed by the Community Service officer or a Police officer if any of the following circumstances exist.

1. The animal has bitten a person and cannot be impounded after reasonable effort.
2. A police or community service officer has reason to believe that the animal cannot be impounded without a serious risk of harm to persons attempting to impound it.
3. The animal is within the City limits and is without a license tag and police or community service officers are unable to identify an owner.
4. A police or community service officer has reason to believe the animal has rabies or a similar disease which may endanger the health of other domestic animals or of human beings.
5. The police or community service officer reasonable believe that the animal may suddenly attack while a person is peacefully walking or riding, or that killing the animal is necessary to prevent injury to persons or property.

E. Control Required. The owner of a dog and/or cat within the city of Cleveland shall cause such animal to be kept under immediate control and in the custody of a person of sufficient age and maturity to adequately control the animal at all times while in public places including but not limited to school yards, playgrounds, park, or streets.

F. Animals Causing Damage on Premises of Another. Any animal which damages property of another without the other's consent is a public nuisance. No owner or permit holder of a dog, cat or wild animal shall permit the animal to damage the property of another without consent.

Subd. 5310.20. **Immobilization.** For the purpose of enforcement of this section any peace officer or community service officer may use a so-called tranquilizer gun or other instrument for the purpose of immobilization and catching a dog, cat, or wild animal.

Subd.. 5310.21. **Regulations of Potentially Dangerous and Dangerous**

Animals.

A- Notification of a potentially dangerous dog, cat, or wild animal, or dangerous dog, cat, or wild animal. Upon determination that a dog, cat, or wild animal is classified as a potentially dangerous or dangerous dog, cat, or wild animal, the Police Department shall give written notice to the owner or permit holder of such animal that the animal is classified as potentially dangerous or dangerous and furnish to the owner the regulation and requirements pertaining to the keeping of a potentially dangerous or dangerous animal. The owner shall also be served personally or through the U.S. mail, if such owner be known or can be ascertained with reasonable effort, but if the owner be unknown or cannot be ascertained, then the notice shall be posted in three public places, giving a description of the animal and stating where it is currently located.

B. Exemption. Dogs, cats, or wild animals shall not be declared dangerous if the threat, injury, or damage was sustained by a person; 1) who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the animal; or 2) who was provoking, tormenting, abusing, or assaulting the animal or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the animal; or 3) who was committing or attempting to commit a crime.

C. Law Enforcement; Exemption. The provision of this section do not apply to dangerous dogs used by law enforcement officials for police work.

D. Hearing. Any owner of a potentially dangerous or dangerous dog, cat, or wild animal may object to the classification and/or impoundment of such animal by signing and filing an objection with the Police Department within five days of service of the notification of classification or impoundment under this section. Failure to file an objection within five days makes the initial determination final. Within 20 days of the Police Department receiving such written objection, the City Council shall hold a public hearing or appoint an administrative officer to hear the objections of the owner. Upon conclusion of the hearing, the City may order; (1) the return of the animal to its owner with or without payment of impounding and maintenance fees; or (2) re-classify the animal as not dangerous, potentially dangerous, or dangerous; or (3) sustain the classification and/or the impoundment of the animal and order payment of the impound fees, maintenance fee and costs of disposal, if any; or (4) if the animal has been

improperly disposed of, payment to the owner of the reasonable value of the animal. The owner shall be given written notification of the decision within five (5) days of adoption of a decision by the City Council. The decision of the City Council shall be final.

E. Potentially Dangerous Dogs and Cats; Regulations.

1. The owner of a potentially dangerous dog or cat shall not permit the dog to go unconfined.
2. The owner of a potentially dangerous dog or cat shall not permit the animal to go beyond the premises of the owner unless the animal is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or cat or interfere with its vision or respiration, but shall prevent it from biting any human or animal.
3. The owner of a potentially dangerous dog or cat shall display in a prominent place on the owner's premises a clearly visible warning signs indicating that there is a potentially dangerous dog or cat on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

F. Dangerous Dogs and Cats; Regulations.

1. A dangerous dog or cat must have a standardized, easily identifiable tag identifying the dog or cat as dangerous affixed to the animal's collar at all times.
2. An owner of a dangerous dog or cat shall keep the animal, while on the owner's property, in a proper enclosure. If the animal is outside the proper enclosure, the animal must be muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person. The muzzle must be made in a manner that will prevent the animal from biting any person or animal but that will not cause injury to the dog or cat or interfere with its vision or respiration.

G. Confiscation. The Police Department shall immediately seize any dangerous animal if (1) the animal is not validly registered with the County after 14 days from the final classification of the animal as dangerous; or (2) the owner does not secure the proper liability insurance or surety coverage as required by law after 14 days from the final classification of the dog as dangerous; or (3) the animal is not maintained in the proper enclosure; or (4) the animal is outside the proper enclosure and not under physical restraint of a responsible person as required under this section. The owner shall then reimburse the city for any and all costs of confining the animal.

H. Subsequent offences; seizure. If a person has been convicted of a violation of a provision of subdivision 16F, and the person is charged with a subsequent violation relating to the same animal, the animal shall be seized and impounded pursuant to Minnesota Statute 347.54 until final disposition of the case. If the owner is convicted of the crime for which the animal was seized, the prosecuting attorney shall inform the court of Minnesota Statute 347.54 subdivision 3 which requires the court to order that the animal be destroyed in a proper and humane manner and to order the owner to pay the cost of confining and destroying the animal. If the person is not convicted of the crime from which the animal was seized, the owner may reclaim the animal upon payment of a fee for the impoundment and maintenance of the animal. If the animal is not reclaimed by the owner within seven days after the owner has been notified that the animal may be reclaimed, the animal may be disposed of as provided under subsection 17 herein, and the owner shall pay a fee in a sum equal to the impoundment fee, maintenance fee, and cost of disposal of the animal.

Subd. 5310.22. Animal Pound.

A. Persons impounding. A police officer, community service officer or other member of the Police Department may impound any animal found, or, by complaint of the City, believe to be, in violation of this section or in violation of the laws of the State of Minnesota pertaining to dangerous animals and mistreated animals.

B. Interference with Officer. No person shall: (1) take or attempt to take from any police department personnel any animal found, or, by complaint of the City, believed to be, in violation of this section or in violation of the laws of the State of Minnesota pertaining to dangerous animals and mistreated animals.

C. Breaking Pound or City Vehicles. No person except a community service officer or police officer shall break open or aid or assist in, counsel, or advise, the breaking open of any private or public animal pound or City vehicle used in the enforcement of this section, or take or let out or attempt to take or let out, any animal placed therein.

D. Impounding of Dogs, Cats, or Wild Animals. Any dog, cat, or wild animal kept in violation of this ordinance may be impounded by the County of LeSueur unless such impounded animal is reclaimed and removed from the City of Cleveland or issued a permit to allow it to remain in the City of Cleveland or the owner petitions the District Court for a determination that the animal is exempt from the provisions of this ordinance. Such and impounded animal may be destroyed, sold, or otherwise disposed of five (5) days following notice to the owner of the animals impoundment and the provisions of this ordinance. Any animal not reclaimed by its owner within five working days shall become the property of the local government authority or humane society and shall be placed for adoption in a suitable home or humanely euthanized by sodium pentobarbital, FP-3, or cooled and bottled carbon monoxide only.

E. Reimbursing the City of Cleveland for Animal Confinement Costs.

Owners of pets confiscated by the City of Cleveland shall reimburse the City for any and all costs associated with confining the animal, in addition to any other fines or jail time associated with the case. This includes costs associated with keeping the animal at a special care facility for wild or exotic animals.

F. Records. An accurate record of impounding shall be kept on each animal. Impoundment records shall show: (1) the description of the dog, cat, or wild animal by species, breed, sex, approximate age, and other distinguishing traits; (2) the location at which the animal was seized; (3) the date of seizure; (4) the name and address of the person to whom any animal six months of age or over was transferred. City Council shall appoint a designated pound at an annual meeting.

G. Redemption Periods.

1. Dangerous and mistreated animals. Every dog or cat which is impounded as a mistreated animal under the laws of the State of Minnesota, or as a dangerous animal hereunder, shall be held for redemption by the owner for a period of not less than seven days. The owner of a dog or cat which has been impounded as a mistreated animal shall have the right to post a bond or other security to cover the cost of holding the animal for a period of up to 30 days from the date of impoundment, in which case the City shall hold the animal for that period.

2. Animals impounded for other violations. Every dog, cat, or wild animal which is impounded for a violation of this section other than those stated in subparagraph F. 1. shall be held for redemption by the owner for a period of not less than five regular business days. A "regular business day" is one during which the pound is open for business to the public for at least four hours between 8:00 o'clock A.M. and 5:00 o'clock P.M.

Subd. 5310.23. Notice of Impounding. Upon the impounding of any dog, cat or wild animal, the police shall notify the owner, personally or through the United States mail, if such owner be known or can be ascertained with reasonable effort, but if the owner be unknown or cannot be ascertained, then the officer shall post written notice in three public places, giving a description of the animal, stating where it is impounded and the condition for its release.

Subd. 5310.24. Disposition of Animals Impounded. Dogs, cats, and wild animals shall be released to their owners, or persons previously in possession of them, as follows:

A. If such animal is owned or possessed by a resident of the City, after purchase of a license if the animal is unlicensed, and payment of the impounding fee and any applicable maintenance fee. If the animal is a dangerous dog, cat, or wild animal, the owner must also provide proof that the registration requirements of Minnesota Statute 347.51 have been met.

B. If such animal is owned or possessed by a person not a resident of the City, after immunization for rabies or proof that the animal is currently vaccinated for rabies, and payment of an impounding fee and any applicable maintenance fee.

C. In each case, the person must sign for the animal, and state in writing whether the person is the owner of the animal..

D. **Unclaimed animals.** Any dog, cat, or wild animal which remains unclaimed after expiration of the applicable period for redemption shall be adopted out or humanely destroyed and the carcass disposed of. If adopted out, the person adopting shall purchase a license within 5 days if a resident of the City, and pay the adoption fee. In each case, the person adopting must show proof that the animal has received a rabies vaccination within 5 days of being adopted.

E. The Police Department may dispose of any animal, either deceased or alive, upon the request of the owner, upon receipt by the City of a liability release signed by the animal's owner, and upon payment to the City of a fee in an amount equal to the sum of the impoundment fee and the fee for one day of maintenance.

Subd. 5310.25. **Quarantine and inspection of Certain Animals.**

A. **Quarantine required in certain cases.** Any animal which is reported to have bitten a person shall be quarantined under care of a licensed veterinarian for 14 days. If proof of current rabies vaccination is presented to the police department, the owner may elect to quarantine the animal at the owner's residence, the owner shall keep the animal separate from other animals. At such time as the police department determines that a quarantine is required pursuant to this section, the owner of the animal shall be served with a notice of quarantine, personally or through the United States mail, if such owner be known or can be ascertained with a reasonable effort, but if the owner be unknown or cannot be ascertained, then the officer shall post written notice in three public places, giving a description of the animal, stating where it is being quarantined, and the conditions for its release.

B. **Inspection required.** Any quarantined animal shall be inspected by a licensed veterinarian at the end of the 14-day quarantine period. If such animal becomes ill or dies during the quarantine period, the Police Department shall be notified immediately and the animal, if alive, shall be quarantined under the care of a licensed veterinarian, and if deceased, shall be delivered to a licensed veterinarian to be submitted for rabies examination.

C. **Report of Inspection.** The owner of a quarantined animal shall deliver to the City the notice of quarantine served on the owner by the City at the time such quarantine is established, duly completed and signed by a licensed veterinarian acting as the inspecting veterinarian. Such notice shall be delivered to the Cleveland Police Department not earlier than 14 days, or later than 18 days, from the date of the establishment of the quarantine.

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If the inspecting veterinarian suspects the animal to be rabid, the veterinarian shall cause the animal to be destroyed in a proper and humane manner and submitted for rabies examination. If the inspecting veterinarian finds the animal not to be rabid, the animal shall be returned to its owner provided that the owner shall first pay the impounding and maintenance fees in addition to the costs for veterinary services. No such animal shall be released unless proof of vaccination for rabies is provided

Sec. 5320.00. **PENALTIES AND VIOLATIONS**

Subd. 5320.01. **Adoption of Penalty.** The City of Cleveland Code, Chapter 1, entitled, "General Provisions and Definitions Applicable to the City Code, Including Penalty for Violation: and Section 1030.00 entitled "Violation of a Misdemeanor is hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Subd. 5320.02. **Penalties on late Licenses.** A penalty shall be paid on all licenses issued after May 1. May 2' through May 14', the penalty shall be \$ 10. 00. May 15" through May 3 1". the penalty shall be \$15.00. June 1' until the purchase of the license, the penalty shall be \$20.00. A citation may be issued after June 1'. All penalties are in addition to the regular license tag price.

Subd. 5320.03. **Existing Dogs, Cats, Farm and Wild Animals.** Anyone keeping or maintaining any dog, cat, farm, or wild animal in violation of this ordinance at the time this ordinance is adopted has thirty (30) days in which to comply with the provision s of this ordinance. Extensions beyond thirty (30) days may be granted by the Cleveland City Council for good cause, but in no case shall such an extension permanently exempt a person from the requirements of this ordinance.

Subd. 5320.04. **Violations.** Any person who keeps any wild, dangerous animal within the City of Cleveland without a permit or otherwise in violation of this Article shall be guilty of a misdemeanor.

Source: City Code
Effective Date: 12-20-84

(Sections 5330.00-5360.00, inclusive, reserved for future expansion.)

SEC. 5370.00. PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS.

Subd. 5370.01. Definitions. As used in this Section, the following words and terms shall have the meanings stated:

A. "Peddler" - Any person with no fixed place of business who goes from house to house, from place to place, or from street to street, carrying or transporting goods, wares, or merchandise and offering or exposing the same for sale, or making sales and deliveries to purchasers.

B. "Solicitor" - Any person who goes from house to house, from place to place, or from street to street, soliciting or taking or attempting to take orders for any goods, wares, or merchandise, including books, periodicals, magazines, or personal property of any nature whatsoever for future delivery. "Solicitor" does not include any person taking or attempting to take orders to be filled by goods, wares, or merchandise delivered to the purchaser from other states.

C. "Transient Merchant" - Any person who engages temporarily in the business of selling and delivering goods, wares or merchandise within the City and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, vacant lot, motor vehicle, trailer, or railroad car.

Subd. 5370.02. License Required. It is unlawful for any peddler, solicitor or transient merchant to sell or offer for sale any goods, wares, or merchandise without a license therefore from the City.

Subd. 5370.03. Application and Issuance. Application for such license shall be made to the City Clerk on a form supplied by the City. The application shall state:

- A. The name and address of the applicant and of all persons associated with him in his business.
- B. The type of business for which the license is desired.
- C. In case of transient merchants, the place where the business is to be carried on;
- D. The length of time for which the license is desired;
- E. A general description of the thing or things to be sold;
- F. The places of residence of the applicant for the five years next preceding the date of application.

G. Every application shall bear the recommendation of the Police Officer or Mayor after investigation of the moral character of the applicant;

H. The completed application shall be approved upon the signing of the application by the City Clerk and payment of the license fee if any.

Subd. 5370.04. Exemptions.

A. The terms of this Section do not include the acts of persons selling personal property at wholesale to dealers in such articles; nor newsboys, nor to the acts of merchants or their employees in delivering goods in the regular course of business. Nothing contained in this Section prohibits any sale required by statute or by order of any court, or prevents any person conducting a bona fide auction sale pursuant to law.

B. Any organization, society, association or corporation desiring to solicit or to have solicited in its name money, donations of money, or property, or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons other than members of such organizations upon the streets, in office or business buildings, by house-to house canvass, or in public places for a charitable, religious, patriotic or philanthropic purpose shall be exempt from provisions of this section.

Subd. 5370.05. Duration of License. Each license shall be valid only for the period specified therein and no license may extend beyond the 31st day of December of the year in which it is granted.

Subd. 5370.06. License Not Transferable. Notwithstanding other provisions of this Section, all licenses shall be non-transferable. No refunds shall be made on unused portions of licenses except by resolution of the Council. Each peddler, solicitor, or transient merchant shall secure a separate license.

Subd. 5370.07. Practices Prohibited.

A. It is unlawful for any peddler, solicitor, or transient merchant to call attention to his business or to his merchandise, by crying out, by blowing a horn, by ringing a bell, or by any loud or unusual noise.

B. It is unlawful for any peddler, solicitor, or transient merchant to conduct any business activity between the hours of 9:00 o'clock P.M. and 8:00 o'clock A.M.

Source: City Code
Effective Date: 12-20-84

(Sections 5380.00-5430.00, inclusive, reserved for future expansion.)

SEC. 5440.00. AN ORDINANCE TO LICENSE THE SALE OF SOFT DRINKS AND TO REGULATE SOFT DRINK PLACES.

Subd. 5440.01. No person shall conduct or operate any soft drinks place or sell soft drinks within the City of Cleveland, Minnesota, without first obtaining a license to do so.

Subd. 5440.02. A license to conduct a soft drinks place and to sell soft drinks may be granted by the city council upon a written application therefore. The application shall be under oath and give the name or names of the applicant. If the license is granted the same shall be issued by the Clerk upon the payment of a fee and the cost of publishing said notice.

Subd. 5440.03. The term for which a license may be granted will be for one year. License shall not be transferable from one person to another and no part of any license fee shall be refunded.

Subd. 5440.04. No licensee shall receive, sell, give away, or have in possession any liquor or beverage which contains any alcohol in excess of the amount allowed by law.

Subd. 5440.05. The room where soft drinks are licensed to be sold shall be maintained without curtains or screen so that a clear view of the interior may be had at all times from the street.

Subd. 5440.06. No place where soft drinks are licensed to be sold shall be open for business or drinks sold therein between the hours of one and six a.m.

Subd. 5440.07. A license may be revoked and made void by the Council for the violation of any of the provisions of this ordinance.

Source: City Code
Effective Date: 12-20-84

(Sections 5450.00-5980.00, inclusive, reserved for future expansion.)

Sec. 5990-00. VIOLATION A MISDEMEANOR OR PETTY MISDEMEANOR.

Every person violates a section, subdivision, paragraph or provision of this Chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful and upon conviction thereof shall be punished as follows:

Subd. 1. Misdemeanor, Where the specific section, subdivision, paragraph or provision specifically makes violation a misdemeanor, the person shall be punished as for a misdemeanor.

Subd. 2- Petty Misdemeanor. As-to any violation not constituting a misdemeanor under the provisions of Subdivision 1I hereof, the person shall be punished as for a as a petty misdemeanor.

CHAPTER 6

BEER AND LIQUOR LICENSING AND REGULATIONS

SECTION 6000-00 RULES AND REGULATIONS CONTAINED HEREIN PERTAIN TO PRIVATE DISTRIBUTORS AS WELL AS MUNICIPAL OPERATIONS (UNLESS STATED OTHERWISE).

SEC. 6010.00. DEFINITIONS. As used in this chapter, unless otherwise stated in specific sections, the following words and terms shall have the meanings stated:

Subd. 6010.01. "Application" - A form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Subd. 6010.02. "Applicant" - Any person making an application for a license under this Chapter.

Subd. 6010.03. "License" - A document, issued by the City, to an applicant permitting him to carry on and transact the business stated therein.

Subd. 6010.04. "Licensee" - An applicant, who, pursuant to his approved application, holds a valid, current, unexpired license, which has neither been revoked nor suspended, from the City for carrying on the business stated therein.

Subd. 6010.05. "License Fee" - The money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

Subd. 6010.06. "Intoxicating Liquor" and "Liquor" - Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2% alcohol by weight.

Subd. 6010.07. "Beer" - Non-intoxicating malt liquor which contains not in excess of 3.2% alcohol by weight.

Subd. 6010.08. "Off Sale" The retail sale of beer or liquor in original packages for consumption off or away from the premises where sold.

Subd. 6010.09. "On Sale" - The retail sale of beer or liquor, by the glass or by the drink, for consumption on the premises where sold only.

Subd.6010.10. "Sale", "Sell", and "Sold" -All barter and all manners or means of furnishing beer or liquor to persons, including such furnishing in violation or evasion of law.

Subd. 6010.11. "Manufacturer" - Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces liquor or beer for sale.

Subd. 6010.12.. "Wholesaler" - Any person engaged in the business of selling liquor or beer to retail dealers.

Subd. 6010.13. "Package" and "Original Package" - An container or receptacle holding liquor or beer, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

Subd. 6010.14. "Club" - Any corporation duly organized under the laws of this State for civic, fraternal, social, or business purposes or for intellectual improvement or for the promotion of sports, or a congressionally chartered veteran's organization, which shall have more than twenty-five members, and shall, for more than a year, have owned, hired, or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, and whose affairs and management are conducted by a Board of Directors, Executive Committee, or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents, or employees are paid directly or indirectly any compensation by way of profit for the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the members or other governing body.

Subd. 6010.15. "Fraternal Club" - A club which serves only members and their guests and which uses any profits derived from liquor sales principally for sponsoring activities beneficial to the community and not for the profit of any individual and which has been in existence for fifteen years or more, or to a congressionally chartered veterans' organization which has been in existence for ten years. Such club, either of which, in order to be eligible, must be incorporated to come within this definition.

Subd. 6010.16. "Restaurant" - Any establishment, other than a hotel or motel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals, and where, in consideration of payment therefore, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests, the principal part of the business being the serving of foods, and which shall have seating facilities for seating not less than thirty guests at one time.

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Subd. 6010.17. "Hotel" and "Motel" - Includes any establishment having a resident proprietor or manager, where, in consideration of payment therefore, food and lodging are regularly furnished to transients, and which contains not less than ten guest rooms with bedding

and other suitable and necessary furnishings in each room, and which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and usual service, and which maintains under the same management and control as the rest of the establishment and has an integral part thereof a dining room with appropriate facilities for seating not less than thirty guests at one time, where the general public is, in consideration of payment therefore, served with meals at tables.

Subd. 6010.18. "Exclusive Liquor Store" - An on-sale establishment used exclusively for the sale of beer or liquor, at retail and under the control of an individual owner or manager, and as an incident thereof may also sell cigars, cigarettes, ice, all forms of tobacco, and soft drinks at retail.

Source: City Code

Effective Date: Dec. 19 & 20, 1984

(Sections 6020.00-6030.00, inclusive, reserved for future expansion.)