

CHAPTER THIRTEEN

FRANCHISE

ARTICLE 1 - GRANT OF FRANCHISES

13.0101 Power to Grant

The City Council may grant to any person, firm, partnership, association, corporation, limited liability company, company, or organization of any kind, a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article.

For the purposes of this chapter, the term "company" shall mean any grantee of rights under the terms of this chapter.

Source: Section 40-05-01 (57) NDCC

13.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulations as the City shall, by resolution or ordinance, provide.

Source: Section 40-05-01 (57) NDCC

13.0103 Indemnification

The grantee of any franchise shall indemnify and save the City, its agents and employees, harmless from all and any claims for personal injury or property damages, and any other claims, costs, including legal fees, expenses of investigation and litigation of claims and suits thereon, which may arise from the activities of the grantee of the franchise in this City.

Source: Section 40-05-01 (57) NDCC

13.0104 Liability Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability in an amount which shall be established by the City Council for property damage and for any one person, personal injury, or death as a result of the negligence of the franchisee, their agents, employees or the City, its agents or employees as a result of the franchisee's activities.. The City may demand proof of such insurance coverage with an insurance company licensed to do business in the State of North Dakota. Such policy or policies of insurance or certificates thereof by a company licensed to do business in the State of North Dakota shall be filed with the City prior to final approval of any franchise drafted hereunder.

Any company, upon receipt of notice in writing from the City, shall defend, at its own expense, any action or proceeding against the City in which it is claimed that an injury or damages arose from the company's activities in the operation of its franchise. The City shall notify the company's representatives in the City within thirty (30) days after presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence or actions on the part of the company.

Source: Section 40-05-01 (57) NDCC

13.0105 Term and Regulations

Except where given to a railroad company, the franchise term shall not exceed twenty (20) years and the City Council shall regulate use of the same; specifically, franchises granted pursuant to this chapter, are not to be exclusive or irrevocable but subject to the regulatory powers of the City Council.

Source: Section 40-05-01 (57) NDCC

13.0106 Standards

The company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the City Council and as provided by the applicable state law or state agency.

Source: Sections 40-05-01 (17, 24, 27, 28, and 57), 40-34-10, and Chapter 51-19 NDCC

13.0107 Grant of Authority - Exclusiveness

The right to use and occupy such streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant similar use of such streets, alleys, public ways and places to any other person or persons during the period of any franchise granted pursuant to this chapter.

Source: Section 40-05-01 (57) NDCC

13.0108 Conditions Upon Street Occupancy

For usage of any streets, alleys, public ways, and public places by a franchise business granted by the City Council, the following restrictions apply:

1. Use, generally. All structures, lines and equipment erected or constructed by the company within the City shall be so located as to cause minimum interference with any proper use of the streets, alleys, public ways and public places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any such streets, alleys, or other public ways and places, and must comply with all City Zoning Ordinances.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street, alley, public place or public way so disturbed in as good condition as before the work was commenced and shall maintain the restoration in an approved condition for a period of at least one year thereafter.
3. Relocation. In the event that at any time during the period of a franchise the City shall lawfully elect to alter or change the grade of any

street, alley or other public way, the company, upon reasonable notice by the City, shall remove, re-lay, and relocate its poles, wires, cables, underground conduits, manholes, and other telephone and television fixtures at its own expense.

4. Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main; and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley and then in such a manner as not to interfere with the usual travel on such streets, alleys, and public ways; provided, however, that the company will place all wires, cables, fixtures, and other equipment underground when other telephone, telegraph or other electrical utilities services are so located in such area unless the company is specifically, by action of the City Council, permitted to do otherwise where extreme hardship would result or where an underground installation is not workable. It is the intention of this section to require that any company granted a franchise hereunder use a portion of other utility poles already erected for the development of the company's above-ground distribution system, and no company shall be permitted to erect its own poles, except where existing utility poles are inadequate to handle the additional load and where the placing of such additional poles is specifically authorized by the City Council or its duly authorized representatives.

5. Temporary Removal of Wire for Building Moving. The company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such removal, etc., and the company shall have the authority to require such payment in advance. The company shall be given at least forty-eight hours advance notice to arrange for such temporary wire changes.

6. Tree Trimming. The company shall have authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so

as to prevent the branches of such trees from coming in contact with the wires, cables, fixtures, and equipment of the company; all such trimming shall be done under the supervision and direction of the City and at the expense of the company.

Source: Section 40-05-01 (57) NDCC

13.0109 Warranting by City of Authority to Use Streets

It is understood that there may be, within the City, various streets, alleys, and other public ways which the City does not have the unqualified right to authorize any company to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this chapter, the City does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any company to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the company.

Source: Section 40-05-01 (57) NDCC

13.0110 Approval of Transfer of System

The company shall not sell or transfer its plant or system or any portion thereof to any person nor transfer any right under any franchise except by operation of law to any person without prior approval of the City Council. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof.

Source: Section 40-05-01 (57) NDCC

13.0111 Access to Plans, etc.; Filing of Rules and Regulations; Inspection of Records

The City shall have access at all reasonable hours to all of the company's plans, engineering drawings, and statistical customer records relating to the property and

operation of the company and to all other records required to be kept pertaining to the City's business with the company.

Along with the other matters required to be filed by this chapter, a complete copy of the company's rules and regulations, adopted by the company for the conduct of its business, shall be filed with the City Auditor and in the local office of the company.

The City shall be entitled to inspection of any records bearing on the number of subscribers for service with the company and to require reasonable documentation of such information by the company when the annual payment, provided in Section 14.0117 is tendered.

Source: Section 40-05-01 (57) NDCC

13.0112 Promulgation of Rules and Regulations by Company

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the laws of the state.

Source: Section 40-05-01 (57) NDCC

13.0113 Penalty

Any violation by any company, its lessee or successor under any franchise granted pursuant hereto, or the failure to promptly perform any of the provisions of such franchise, shall be cause for the forfeiture of such franchise and all rights hereunder to the City after reasonable written notice to such company and continuation thereafter of such violation, failure or default.

Source: Section 40-05-01 (57) NDCC

13.0114

Application Generally; Final Approval of Application

1. Any person wishing to apply for a franchise under this chapter shall fill out its application and file the same in the office of the City Auditor for consideration by the City Council. Such application need not be in any particular form but shall include the following information:

a. The complete name and address of the applicant.

b. Type in full name if a corporation or limited liability company, the amount of authorized and issued stock, the names and addresses of all stockholders owning more than five per cent of the stock of such corporation or limited liability company and the interest held by each.

c. If a corporation or limited liability company, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with the business of such corporation or limited liability company.

d. A complete financial statement of the assets and liabilities of the applicant as prepared by a certified public accountant insofar as such are concerned with the completion of the project or business.

e. Any other information which may from time to time is requested by the City Auditor or the City Council.

f. Any other information the applicant may wish to submit bearing on its qualifications.

g. A complete schedule of all rates and charges to be effective following issuance of the franchise.

2. All applications received shall be considered by the City Council, which shall be authorized to accept any number it deems advisable. Such

acceptance shall be considered a preliminary approval and thereafter such successful applicant shall secure and submit, as required elsewhere in this chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The City Council shall then reconsider all information available to it, including the original application, and all other matters submitted pursuant to this chapter and shall then, in its own discretion, determine whether or not to grant final approval to any application. The final approval shall be indicated by the passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this chapter.

Source: Section 40-05-01 (57) NDCC

13.0115 Application Fee

Every applicant for a franchise shall be required to pay a franchise fee of Five Hundred and no/100 Dollars (\$500.00), which shall be submitted at the time of the initial application.

Source: Section 40-05-01 (57) NDCC

13.0116 Bonds and Commitments

1. Before any franchise shall be finally approved by the City Council, the company shall submit and file with the City Auditor the following commitment to be approved by the City Council at the time of or prior to the issuance of a franchise:

A written commitment signed by the company guaranteeing the City that all wires, cables, fixtures, and facilities of the company shall be removed at the termination of the franchise or at such earlier date as the franchise may be terminated by revocation or otherwise. Such commitment shall be in the minimum amount of Fifty Thousand and no/100 Dollars (\$50,000.00) and shall be made in favor of the City. The amount of such commitment shall be adjusted semi-

annually during the term of the franchise and such adjustments shall be subject to approval by the City Council. Such commitment must guarantee that the company has assets over and above all debts and liabilities equal to at least twice the amount of the commitment herein required from time to time.

2. Any bond or commitment required under this section is subject to approval by the City Council, which approval may be revoked at any time for cause. Such bond, etc., shall at all times be filed in the office of the City Auditor. Any franchise granted hereunder shall be immediately revoked upon the non-compliance of any franchisee with any requirements of this section.

Source: Section 40-05-01 (57) NDCC

13.0117 Submission of Extension Policy; Extensions Made Under Franchise

At the time that any application is submitted under the terms of this chapter, the applicant shall submit therewith its extension policy which shall be considered in connection with such application by the City Council. Such extension policy shall specify in detail the area of the City that will be served following the initial installation of the company's system and shall further indicate the plans of the company to extend services to other areas of the City, indicating the times and conditions precedent for such extensions. No precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the City Council in clarification of the company's extension policy. Once a company is granted a franchise under this chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension hereunder except as provided by such extension policy or as may otherwise be permitted by this chapter or subsequent enactments of the City Council. The extension policy, and any amendments thereto, which in turn must be first approved by the City Council before becoming effective, shall at all times be on file at the office of the City Auditor and be available for inspection by the public.

Source: Section 40-05-01 (57) NDCC

13.0118
Payment to City

Payment to City for Privilege; Method of Computation of

The company shall pay to the City, for the privilege of operating a system pursuant to any franchise granted under this chapter, a sum to be determined by the City Council, for each subscriber doing business with the company. Such payment shall be made annually at the end of the fiscal year of the company and shall be computed on the total number of subscribers doing business with the company at any time during the fiscal year just concluded. The failure to pay such amount within thirty days following the conclusion of the fiscal year shall be justification for the revocation of any franchise granted hereunder.

Source: Section 40-05-01 (57) NDCC

13.0119 **Term**

Any franchise and rights granted hereunder shall take effect and be in full force from and after final approval thereof by the City Council, as specifically provided in Section 14.0113, and upon filing of a written acceptance of such franchise by the company with the City Auditor, and such franchise shall continue in full force and effect for a term as determined by the City Council, not to exceed 20 years; provided, that if a written acceptance is not filed within sixty days after such final approval of the franchise by the City Council or if the system authorized hereunder is not completely constructed within six months after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonably explained to the City Council and the City Council, in its sole discretion, elects to grant an extension of time in which to complete such construction work. In the event any system contemplated hereunder requires approval by the Federal Communications Commission or any other state or federal board or agency prior to the commencement of construction, the six month period allowed herein for construction to be completed shall not begin until after such federal or state approval is obtained, although application therefore must be made no later than sixty days after the final approval of the franchise by the City Council.

Source: Section 40-05-01 (57) NDCC

13.0120

Rights of City in Franchise

1. Adoption of rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the laws of the state.
2. Use of system. The City shall have the right during the life of any franchise, free of charge where aerial construction exists, of maintaining upon the poles of the company within the City wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the company and in accordance with its specifications. The City in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the City. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures, the City shall save the company harmless from any damage to persons or property arising out of the removal or construction of the wires or other fixtures belonging to the City.
3. Supervision and inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.
4. Procedure after termination, etc., of franchise. Upon the revocation or termination of any franchise granted hereunder, the City shall have the

right to determine whether the company may continue to operate and maintain its distributing system pending the decision of the City as to future maintenance and operation of such system.

5. Revocation of franchise. Should any company fail or refuse to reasonably comply with all of the provisions of this chapter or any other rules, regulations, ordinances or resolutions enacted by the City or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the City Council shall have the power and authority, upon reasonable notice to such company and upon its failure thereafter to comply, to revoke or suspend, in the sole discretion of the City Council, any franchise granted hereunder.

Source: Section 40-05-01 (57) NDCC

13.0121 Standards Generally

Any company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the City Council, in this chapter or otherwise, by the Public Service Commission of the state, the Federal Communications Commission, or any other duly authorized public commission or authority.

Source: Section 40-05-01 (57) NDCC

13.0122 Notice of Interruption for Repairs

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such times as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, the company shall give reasonable notice thereof to its customers.

Source: Section 40-05-01 (57) NDCC

13.0123 Preferential or Discriminatory Practices

The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage; provided that nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Source: Section 40-05-01 (57) NDCC

13.0124 Rates Generally

Rates charged by any company for service shall be fair and reasonable and designed to meet all necessary costs of this service, including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The company agrees that its shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction to fix just, reasonable, and compensatory rates.

Source: Section 40-05-01 (57) NDCC

ARTICLE 2 – ROUGHRIDER ELECTRIC COOPERATIVE FRANCHISE AGREEMENT

13.0201 Roughrider Electric Cooperative Franchise Agreement

AN ORDINANCE GRANTING TO ROUGHRIDER ELECTRIC COOPERATIVE, INC., A CORPORATION, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF MEDORA, BILLINGS COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY FOR ALL PUBLIC AND PRIVATE USES.

WHEREAS, pursuant to applicable law, the City of Medora has the power to grant a non-exclusive franchise for a term of no more than twenty years;

WHEREAS, pursuant to applicable law, those that provide electrical service within city limits may do so pursuant to a franchise issued by the City;

WHEREAS, Roughrider Electric Cooperative, Inc. currently serves customers within the City of Medora, and a renewal of that franchise is requested by the City to serve these customers;

WHEREAS, to maintain appropriate procedures and controls over electric service providers, it is necessary to enter into a formal franchise with Roughrider Electric Cooperative, Inc.

BE IT ORDAINED BY THE BOARD OF CITY COUNCIL OF THE CITY OF MEDORA, NORTH DAKOTA, AS FOLLOWS:

Section 1. Definitions: As used herein, the following words and terms are defined as follows:

- a. "City" means the City of Medora, North Dakota.
- b. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
- c. "Grantee" means Roughrider Electric Cooperative, Inc.
- d. Any reference to either City or Franchise includes their respective successors and assigns.

Section 2. Grant of Authority: The City grants to Grantee, its successors and assigns, subject to the terms set forth in the Medora City Code and the provisions herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, and in and under the same, an electric distribution system for transmitting and distributing electric energy for all public and private uses.

The rights herein granted to Grantee shall further be subject to all valid laws, rules and regulations now or hereafter adopted and promulgated by any State or Federal authority having jurisdiction over Grantee and which may expand or limit Grantee's right to serve pursuant to this Franchise. To the extent that the terms of this Ordinance conflict with the rules and regulations promulgated by the City, the terms of this Ordinance shall govern.

Section 3. Grantee's Obligations: Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use during twenty-four (24) hours of each day at such reasonable rates as may be promulgated by Grantee and as the same may be regulated by the United States of America, its agencies, or by the State of

North Dakota or its agencies.

Section 4. Non-Exclusive Grant: This Franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys, and public grounds of the City for like purposes.

Section 5. Compliance with Laws and Ordinances: Grantee shall at all times during the term of this Franchise comply with all applicable laws and ordinances of the City. To the extent that the terms of this Ordinance conflict with the rules and regulations promulgated by the City, the terms of this Ordinance shall govern.

Section 6. Conditions on Street Occupancy:

1. During the construction, maintenance or enlargement of any part of said system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in the same or similar condition upon the completion of said work. All signing and traffic regulation shall conform to the Manual on Uniform Traffic Control Devices (MUTCD).
2. The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the Franchise hereby granted.
3. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the Engineering Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Except as is required for emergency restoration of power, prior to the disturbance of any street, sidewalk, alley, public way or paved area, Grantee shall provide written notice to the City at least two (2) days prior to said disturbance.
4. Grantee, at its expense, shall protect, support, temporarily disconnect, relocate along, under, or over any street, alley, or public place, or remove from any street, alley, or public place, any equipment or facilities when required by the City by reason of traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in as governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.
5. Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in

advance. The Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary wire changes, and shall be entitled to establish rules and policies regarding line moves as are generally implemented by the Grantee.

Section 7. Reservation of Rights: The City reserves any right it may have, under its police power or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power.

Section 8. Franchise provisions.

1. All franchises granted pursuant to this Ordinance will be subject to the following provisions:

(a) The continuing authority of the City to impose such other regulations of general applicability through lawful exercises of its police powers as may be determined by the City Council to be conducive to the health, safety, and welfare of the public.

(b) The continuing authority of the City to control and regulate the use of its streets.

(c) The authority of the City to inspect all construction or installation work performed subject to the provisions of the franchise and this Ordinance, and make such inspections as it will find necessary to insure compliance with the terms of the franchise, this Ordinance, and other pertinent provisions of law.

2. Federal, state, and City jurisdiction.

(a) This Ordinance and any franchise agreement will be construed in a manner consistent with all applicable federal and state laws.

(b) In the event that the state or federal government will discontinue preemption in any area of electrical service over which it currently exercises jurisdiction in such a manner as to expand rather than limit municipal regulatory authority, the City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

(c) Grantee will not be relieved of its obligation to comply with any of the provisions of this Ordinance or any franchise agreement granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

(d) In the event of a change in state or federal law which by its terms would require the City to amend this Ordinance, the parties shall modify the existing franchise as necessary in a mutually agreed upon manner.

Section 9. Franchise agreement.

1. The City and Grantee will execute a franchise agreement substantially in the form attached hereto as Exhibit A.

2. In addition to those matters required elsewhere in this ordinance to be included in the franchise agreement, it must contain the following express representations by the Grantee that:

(a) It accepts and agrees to all of the provisions of this ordinance, as to construction, operation, or maintenance of the system, subject to applicable state and federal law.

(b) It has examined all of the provisions of this ordinance and agrees that the provisions thereof are valid, binding at this time, and enforceable as of the effective date of the franchise.

(c) It recognizes the right of the City to adopt such additional regulations of general applicability as it will find necessary in the exercise of its police power.

3.. Waiver of City Code provisions. By virtue of this Ordinance, and due to the longstanding and beneficial relationship between the parties, Grantee and the City expressly agree that the requirements set forth in City Code sections 13.0104, 13.011, 13.0114, 13.0115, 13.0116 and 13.0118 are waived, and shall be of no force and effect as between the parties.

4. The franchise will specifically delineate the territorial extent of the City in which the Grantee is authorized to operate.

5. The franchise agreement will contain such further conditions or provisions as may be negotiated between the City and the Grantee. In case of such conflict or ambiguity between any terms or provisions of the franchise agreement and this Ordinance, the franchise agreement will control, except where conflict arises from lawful exercise of the City's police power.

Section 10. No Cause of Action for Damages. The Grantee shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of the franchise agreement, or because of the enforcement thereof by said City, for reasonable cause. By acceptance of the franchise agreement, the Grantee acknowledges that it accepts the rights and obligations therein granted and the terms of this Ordinance in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the franchise authorized therein with Grantee; provided further that a Grantee acknowledges by its acceptance of said franchise agreement that it has not been induced to enter into a franchise agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of the franchise agreement not expressed therein.

Section 11. Enforcement. The City shall be entitled to enforce this Ordinance and the franchise agreement through all remedies lawfully available.

Section 12. Relationship of the Parties. Under no circumstances shall any franchise authorized by this ordinance be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

Section 13. Nature of rights granted by franchise.

1. The franchise shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, for the purposes of providing electrical services and as may be further limited by the franchise agreement. A separate franchise or other

applicable authorization from the City may be required for non-electrical service or use of rights-of-way for purposes other than for the provision of electrical services. No franchise shall grant the right to use facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall the franchise agreement excuse Grantee from obtaining appropriate access or attachment agreements before locating its facilities on the facilities owned or controlled by the City or a third-party. The franchise agreement shall be deemed to incorporate and be limited by the provisions of this Ordinance and shall create rights for the sole and exclusive use of Grantee. Any franchise or other authorization for services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of communications services; or (ii) any permit, agreement, or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights-of-way.

2. The Grantee will not deny service, deny access, or otherwise discriminate against subscribers on the basis of race, creed, color, religion, national origin, or sex. The Grantee will comply at all times with applicable equal employment opportunity requirements and all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

Section 14. Assignment: Grantee may assign this Franchise to another party or corporation, subject to all obligations of the Grantee hereunder, and shall require notice and consent of the City of any such assignment.

Section 1715. Indemnification: Grantee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution systems, and its use of the streets, alleys, and public grounds of the City.

Section 16. Acceptance: Within thirty (30) days after passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the City, its written acceptance of this Franchise.

Section 17. Term: This Franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided in Section 20 below.

Section 18. Repeal of Conflicting Ordinances: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED.

Section 19. Effective Date: THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER FINAL PASSAGE.

Todd Corneil
Todd Corneil, Mayor

ATTEST:

Gary Ridenhower
Gary Ridenhower, City Auditor

First Reading: 12-4-18
Second Reading: 1-2-19
Final Passage: 1-2-19