

RESOLUTION

A Resolution granting to \_\_\_\_\_, a Corporation, its successors and assigns, the franchise and right to construct, maintain and operate within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, an electric distribution system for transmitting and distributing electric energy for public and private use.

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

WHEREAS, pursuant to city ordinance the City may grant a franchise, by resolution, following public hearing; and,

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, a public hearing was held by the Board of City Commissioners; and,

WHEREAS, it is in the public interest that a franchise be granted to \_\_\_\_\_, for construction, operation and maintenance of an electric distribution system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

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

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means \_\_\_\_\_.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions and limitations contained herein, the right and privilege 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, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

To encourage harmony and operational efficiency in the provision of electric distribution service in the City of Bismarck, to promote safety and discourage unreasonable duplication of electric facilities, to assure adequate and reliable electric service for all consumers within the

City of Bismarck, and provide franchise grantees with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the City of Bismarck during the term of this Franchise, the authority granted by this Franchise to Grantee is limited to the use of the City's streets, alleys and public grounds for the purpose of distributing electric energy for public and private use within the service areas and to the service locations of the Grantee as designated and agreed to in the Service Area Agreement executed by Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co. and attached as Exhibit A to this Resolution, including any amendments or modifications to the Service Area Agreement as agreed and approved pursuant to the terms of the Service Area Agreement. The Grantee shall have all the rights, privileges, and obligations to provide electric distribution service within such service areas and to such service locations as stated in the Service Area Agreement. This limitation shall not restrict the Grantee's right to occupy and use the streets, alleys and public grounds of the City anywhere within the City to construct, operate, and maintain transmission and distribution line facilities for the purpose of providing adequate electric service within the service areas and to the service locations of the Grantee under the Area Service Agreement as provided in paragraph 15 of such Agreement.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at reasonable rates and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

Article IV. 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.

Article V. Compliance With Laws and Ordinances. Grantee shall at all times during the life of this Franchise comply with all applicable laws and ordinances of the City.

Article VI. Reservation of Rights. City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind.

Article VII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or new transmission lines, and existing lines whenever they are modernized,

upgraded or extensively rehabilitated, shall be placed underground, or they shall be constructed in a manner that causes minimum interference with the landscape or appearance of the City.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by the Grantee, the Grantee shall, at its own costs and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of six years.

3. In event that at any time during the period of this Franchise the City shall lawfully elect to alter, or change the grade of, any streets, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. The Grantee shall not place poles or other fixtures where the same will interfere with any electric light, water hydrant or water main, or in such a manner as to interfere with the usual travel on said streets, alleys and public ways.

5. The 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 48 hours advance notice to arrange for such temporary wire changes.

Article VIII. Insurance and Indemnification. Grantee shall maintain, at all times during the term of the Franchise, liability insurance, insuring Grantee and the City against any and all damages, losses or claims of any nature arising out of Grantee's operations under the Franchise, or a self-insurance or self-retention program with adequate reserves, in the minimum amount of \$500,000.00. Grantee agrees to protect and save harmless City from any claims for damages or injuries resulting from Grantee's operations under the Franchise, and to defend and indemnify City against all claims, actions, proceedings, costs, damages and liabilities, including attorneys' fees.

Article IX. Assignment. Grantee may assign this Franchise to another party or corporation, subject to all obligations of the Grantee hereunder, with the consent of the City, which may not be unreasonably withheld.

Article X. Acceptance. Within thirty days after Grantee is notified of adoption of this Resolution, Grantee shall file with the City Auditor its written acceptance of this Franchise, subject to all of its terms and conditions.

Article XI. Term. This Franchise shall continue and remain in full force and effect for a period of twenty years from the date upon which it is accepted by the Grantee.

Article XII. Termination of Prior Franchise. At the request of the Grantee, the franchise granted by resolution adopted \_\_\_\_\_ granting the Grantee the right to construct, maintain and operate an electric distribution system in the City of Bismarck for a term of twenty years is hereby terminated and the Grantee's right to construct, maintain and operate an electric distribution system in the City of Bismarck shall hereafter be governed by this Franchise.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

State of North Dakota )

County of Burleigh ) ss  
)

I, \_\_\_\_\_, so hereby certify that I am the duly appointed, qualified and acting \_\_\_\_\_ of the City of Bismarck, North Dakota, and that the attached is a full, true and correct copy of the resolution adopted by the Board of City Commissioners at its meeting of \_\_\_\_\_, 200\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(SEAL)

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