

ORDINANCE NO. 203

McKenzie Electric Limited Franchise

AN ORDINANCE REPLACING CHAPTER XVII OF THE CITY OF WATFORD CITY ORDINANCES REGARDING THE LIMITED FRANCHISE FOR McKENZIE ELECTRIC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WATFORD CITY, NORTH DAKOTA:

1. **Definitions.** For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the plural number. The word "shall" is always mandatory and not merely directory.
 - a. "City" is the City of Watford City, North Dakota.
 - b. "Company" is the grantee of rights under this franchise.
 - c. "Governing body" is the City Council of the City of Watford City, North Dakota.
 - d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
 - e. "Properties" as stated in paragraph 2 of this limited franchise are those properties currently being served by the company and shall include any additions to the properties as long as such additions are contiguous and not already being served by another electrical provider.
2. **Grant.** There is hereby granted by the City to the Company the right and privilege to service the properties that the Company is currently serving within the City limits, to extend and upgrade existing lines along existing rights of way, and to the extent necessary and consistent with this franchise, to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and fixtures necessary for the maintenance and operation in the City of Watford City. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways, and places, to any person at any time during the period of this franchise. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the same streets, alleys and public grounds of the City for like purposes.
3. **Compliance with Applicable Laws and Ordinances.** The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

4. **Company Liability - Indemnification.** The Company shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of said system. Specifically, the Company shall indemnify and hold the City harmless for any and all lawsuits, claims or actions brought by any entity, against either the City, the Company, or both, that relate, in any way, to the granting of this franchise. The Company shall carry and at all times maintain on file with the City and at all times keep in force, a public liability policy of insurance, insuring the Company and the City against:
- a. Any and all liability of not less than \$1,000,000.00 per occurrence property damage, \$1,000,000.00 per occurrence of personal injury or death, and \$2,000,000.00 general aggregate.
 - b. \$2,000,000.00 umbrella policy insuring both the Company and the City.
 - c. Automobile general liability coverage of not less than \$1,000,000.00 with an umbrella policy of not less than \$1,000,000.00.

Such policies of insurance or certificate thereof by a company licensed to do business in the State of North Dakota shall be filed with the City prior to the commencement of such use. The Company, upon receipt of due 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 injury or damages arose from the Company's activities in the operation of its utility.

5. **Service Standards.** The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations that may be set forth by the Governing body.
6. **Company Rules.** 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 this 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 hereof or of laws of the State of North Dakota.
7. **Conditions of Street Occupancy.**
- a. **Use.** All transmission and distribution structures, lines and equipment erected by the Company 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 other public ways and places. All new electric distribution lines (excluding

main line feeders and high voltage transmission lines) and other services constructed and providing service to customers shall be buried underground. This requirement shall apply to all new construction, upgrades to existing facilities, including planned replacement of poles, pole lines, and relocation of same.

- b. **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 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 three (3) years.
- c. **Relocation.** In the event that at any time during the period of this 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, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- d. **Placement of Fixtures.** The Company shall not place poles or other fixtures where the same will interfere with any utility fixture, 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 said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways; provided the Company will place its poles or fixtures underground when other utility services are so located unless permitted to do otherwise by the city engineer where extreme hardship would result or an underground installation is not workable.
- e. **Temporary Removal of Wire for Building Move.** 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 removed, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.
- f. **Tree Trimming.** Company shall have the authority to trim trees or other natural growth overhanging any of its utility system or facilities so as to reasonably prevent branches from coming in contact with the Company's wires, cables, or other equipment; however, the Company shall not engage in excessive trimming. The Company shall ensure compliance with the North American Electric Reliability Corporation's Transmission Vegetation Management Program, reliability standard FAC-003-1, the safety requirements for pruning, repairing, maintaining, and removing trees

endorsed by the American National Standards Institute (specifically the ANSI A300 pruning standards) and state law. Except during an emergency or the recovery after an emergency, Company shall notify the City and its residents as least three days prior to entering onto property to perform any tree trimming activities. The Company further agrees that, within one year of its acceptance of this franchise, and on a yearly basis thereafter, the Company will engage in a campaign to educate its customers within the City through bill inserts or other reasonable method regarding prudent tree selection and planting around power lines. All trimming will be done under the supervision and direction of the City and at the expense of the Company.

8. **Prohibited – Discriminatory Practices.** The Company shall not, as to rates, charges, service 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 franchise 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.
9. **Extension Policy.** The Company shall file with the city auditor its extension policy and amendments thereto, which shall be available for inspection by the public.
10. **Transfer – Approval Required.** The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this franchise to another without governing board approval. Provided, that 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, and agreeing to perform all the conditions thereof.
11. **City Rights in Franchise.** 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, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of North Dakota.

The City shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the Company within the City limits wire and police fixtures necessary for a police and fire alarm system; such wires and fixtures to be constructed and maintained to the satisfaction of the Company and in accordance with its specifications.

- a. **Compliance With Company Rules.** 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.

- b. **Liability.** The City shall be solely responsible for all damage to persons or property arising out of the City's negligent construction or maintenance of said wires and fixtures authorized by this section and shall save the Company harmless from all claims and demands whatsoever arising out of the City's negligent attachment, maintenance, change or removal of said 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 City's negligence in removal or construction of its wires or other fixtures.

The City shall have the right to supervise all construction or installation work performed subject to the provisions of this article and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

Upon the revocation of this franchise by the Governing body, or at the end of the term of this franchise the City shall have the right to determine whether the Company shall continue to operate and maintain its distribution system pending the decision of the City as to the future maintenance and operation of such system.

- 12. **Payment to the City.** The Company is not required to pay to the City for the privilege of operating its system under this franchise a franchise fee. The City has the option to initiate a reasonable franchise fee at a later time.
- 13. **Rates.** Rates charged by the Company for service hereunder shall be fair and reasonable and filed with the Governing body, and shall be available for inspection by the public.
- 14. **Records and Reports.** The City shall have access at all reasonable hours to all of the Company's plans, engineering and service records. The following records and reports shall be filed with the city auditor and the local office of the Company:
 - a. **Company Rules and Regulations.** Copies of such rules, regulations, terms, and conditions adopted by the Company for the conduct of its business.
 - b. **Gross Revenue.** An annual summary report showing gross revenues received by the Company from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the Company's service within the City.
- 15. **Modifications to Franchise.**
 - a. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has

taken place.

- b. Should either party hereto determine that based on a change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Company agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and acceptance of the amendment by Company.

16. Work by Company and Others.

- a. The City reserves the right to lay, and/or permit to be laid, storm sewer, sanitary sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to construct or change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, or any other City owned or operated property.
- b. The Company shall relocate its facilities at its expense to permit the construction, widening, straightening, or any change whatsoever of a street, including, but not limited to the addition of any acceleration, deceleration, center or side turn lanes, sidewalks, alleys, and like property, provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way.
- c. If City receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Company has facilities, Company shall be notified of such and given opportunity to comment about the impact of the proposed abandonment. Any such abandonment shall be conditioned on the grant of a utility easement for Company's right to continue its use of the former Public Rights-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation.
- d. If the City requires the Company to adapt or conform its facilities, or in any manner to alter, relocate, or change its property to enable any other entity

that is not a part of the City or the consolidated corporate structure of the Company to use, or use with greater convenience, said Public Right-of-Way, the Company shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's property or facilities.

- e. Company shall provide City with an annual capital improvements and/or maintenance plan to assist each entity with planning operations. Company shall provide City with at least thirty (30) days notice for new construction projects and major maintenance projects and shall specify a location for such facilities along the Public Rights-of-Way.

17. **Terms of Franchise.** This franchise shall continue and remain in full force and effect for a period of four (4) years from the date on which this ordinance shall become effective as provided by law, and unless the Governing body of the City votes to renegotiate any terms of this franchise prior to the expiration of the four years, shall automatically be effective for an additional four (4) year term. Unless the Governing body of the City votes to renegotiate any terms, this franchise shall automatically be effective for a third four (4) year term, for a total of twelve (12) years. In the event the Governing body of the City votes to renegotiate terms prior to granting an additional four (4) year term, this franchise shall not renew until the Governing body of the City votes to renew the franchise.

Council member Voll moved the adoption of the foregoing Ordinance. The motion was seconded by Council member Valenzuela. On roll call vote of the Council members, the following Council members voted "AYE": Erickson, Wold, Sanford, Valenzuela and Voll and the following Council members voted "NAY": None. ABSTAINED: Homiston. ABSENT and not voting: None.

WHEREUPON, the motion was passed and the Ordinance declared adopted this 2nd day of November, 2009.

Mayor Kent Pelton

ATTEST:

Patricia Skoglund, City Auditor

FIRST READING: 9/8/09
SECOND READING: 11/02/09
PUBLISHED: N/A
Effective Date: _____

ACCEPTANCE FORM

Please take notice that McKenzie Electric Cooperative Inc. hereby accepts all the terms and provisions of an Ordinance of the City of Watford City, North Dakota, entitled:

Ordinance No. 203, "McKenzie Electric Limited Franchise"

Which ordinance was passed by the City Council and was approved by the Mayor of the City of Watford City, North Dakota on the 2nd day of November, 2009.

Dated this _____ day of _____, 2009.

McKenzie Electric Cooperative Inc.

By: _____
President

Attest:

Secretary

I, Patricia Skoglund, City Auditor of the City of Watford City, North Dakota, do hereby certify that the foregoing is a true and correct copy of an original acceptance of the ordinance therein described and that said original acceptance was filed in my office on the _____ day of _____, 2009, and is now on file therein.

WITNESS my hand and the official seal of the City of Watford City, North Dakota this _____ day of _____, 2009.

Patricia Skoglund, City Auditor