

ORDINANCE NO. 01-2019

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 15. 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 19 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, Mayor

ATTEST:



Gary Ridenhower, City Auditor

First Reading: 12/04/2018

Second Reading: 01/02/2019

Final Passage: 01/02/2019