

**CITY OF OAKDALE
ORDINANCE NO. 907**

GRANTING TO THE CITY OF NORTH ST. PAUL MUNICIPAL ELECTRIC UTILITY, A MINNESOTA MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR, AND MAINTAIN IN THE CITY OF OAKDALE, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES, AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES

THE CITY COUNCIL OF THE CITY OF OAKDALE, WASHINGTON COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

1.1 **City.** The City of Oakdale, County of Washington, State of Minnesota.

1.2 **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 forms of energy.

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

1.4 **Company.** The City of North St. Paul Municipal Electric Utility, a Minnesota municipal corporation, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this Franchise.

1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

1.6 **Notice.** A writing served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the City Manager, City of North St. Paul Municipal Electric Utility, City Hall, 2400 Margaret St N, North St. Paul, MN 55109. Notice to the City shall be mailed to the City Administrator, City of Oakdale,

1584 Hadley Avenue North, Oakdale, MN 55128. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 **Ordinance.** This electric franchise ordinance, also referred to as the Franchise.

1.8 **Public Ground.** Land owned or otherwise controlled by the City for park or open space, which is held for use in common by the public.

1.9 **Public Way.** Public right-of-way within the City as defined in Minnesota Statutes, Section 237.163, subd. 3.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes 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 Electric Facilities in, on, over, under and across the Public Ways and as may be provided by separate instrument Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this Ordinance.

2.2 **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after passage of this Ordinance, and its publication as required by law and its acceptance by Company. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 60 days after passage.

2.3 **Service Rates and Area.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company within 30 days.

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.

2.6 Continuation of Franchise. If the City and 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 Company serves written Notice to the other party of its intention to allow the franchise to expire, but 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. Electric 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 including specifically any street lighting or traffic signal system of the City. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this Ordinance. Company may abandon underground Electric Facilities in place, provided at the City's request, Company at its own expense will remove abandoned metal or concrete encased conduit interfering with a City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way 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 any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Within two business days after commencing such a repair, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Way, Company shall restore the same, including paving and its foundation, in accordance with Minnesota Rules, Part 7819.1100 and applicable City ordinances. Company shall restore any Public Ground to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year thereafter. The 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 material, and put the Public Ground or Public Way 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 at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other security or remedy available to the City including City's right to require that the Company maintain a construction performance bond, letter of credit or other security in favor of the City as a condition of the City's permission to install, replace, or maintain facilities in a Public Way or Public Ground.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities, or persons or other property.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must 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 intends to start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police, or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. The City shall pay for any added cost incurred by Company because of such use by City.

3.8 Mapping Information. Company shall provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

SECTION 4. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. Company shall comply with the requirements of any applicable City ordinance relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable City ordinances.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. By entering this or any prior Franchise with the City, Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair, and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability claimed as a result of injury to persons or damage to property associated with the construction, maintenance, repair, inspection, issuance of permits, or operation of the Electric Facilities located in the Public Grounds and Public Ways.

The City shall not be indemnified for losses or claims 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.

6.2 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. 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. Nothing herein shall be deemed to constitute a waiver by City of any defenses, immunities, or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 7. 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. Except where required 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. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. 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 9. FRANCHISE FEE.

The City reserves all rights under Minnesota Statutes, Sections 216B.36 and 301B.01, to continue to require a franchise fee during the term of this Franchise and to amend the fee. The Parties acknowledge and agree that the City has lawfully adopted Ordinance No. 908 establishing a franchise fee on Company, and Company shall continue payment of such fee upon adoption and acceptance of this Franchise. If the City elects to amend the existing franchise fee, it shall notify Company. The fee shall be set forth in a separate ordinance and not be adopted until at least 90 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and

Company are unable to agree on a franchise fee or on any terms related thereto, Section 2.5 shall constitute the sole process for solving such dispute regarding fee amount and associated amendment to the separate franchise fee ordinance. City and Company expressly reserve all rights concerning franchise fees and related issues and this paragraph is not intended, and shall not be construed, as a waiver of any such rights.

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 Company 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. AMENDMENT PROCEDURE.

Either party to this Franchise agreement may at any time propose that the Ordinance be amended. If an amendment is agreed upon, 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 Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

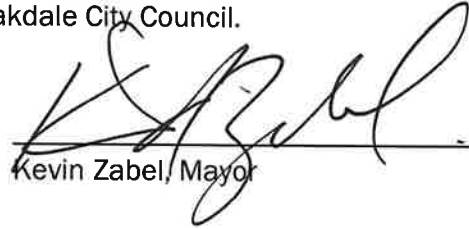
SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This Franchise supersedes any previous electric franchise granted to Company or its predecessor. Upon Company acceptance of this Franchise under Section 2.2, the previous franchise shall terminate.

Voting For: Mayor Zabel, Council Members Her, Ingebrigtsen, Morcomb, and Willenbring;

Voting Against: None.

Adopted this 10th day of October, 2023 by the Oakdale City Council.


Kevin Zabel, Mayor

Attest:


Sara Ludwig, City Clerk

Posted: September 29, 2023

Published: October 13, 2023