

**TO: Honorable Mayor and City Council Members**

**FROM: City Administrator Ron Johnson**

**SUBJECT: Approve Dakota Electric Franchise Renewal**

**DATE: May 31, 2016**

### **BACKGROUND**

The current 10-yr franchise agreement with Dakota Electric expires on July 1, 2016. I have been working with Dakota Electric and our legal representative, Joel Jamnik, Campbell Knutson PA, to bring forward a new renewal agreement.

Campbell Knutson, PA has worked with the cities of Burnsville, Farmington and Lakeville on their renewals with Dakota Electric. This proposed agreement (in ordinance form) reflects the language in those agreements, and is being recommended for approval by Campbell, Knutson.

The Public Works Commission recommended approval of the attached ordinance renewing the Dakota Electric franchise agreement.

City Council conducted the first reading of this ordinance at the May 17, 2016 meeting.

### **REQUESTED COUNCIL ACTION**

Conduct second reading adopting the ordinance approving the renewal of the Dakota Electric franchise agreement, and approve the summary publication thereof.

Attachment(s): Existing franchise ordinance; Proposed franchise ordinance; Summary publication

**CITY OF CANNON FALLS  
GOODHUE COUNTY, MINNESOTA**

**ORDINANCE NUMBER 345**

**ELECTRIC FRANCHISE ORDINANCE**

**AN ORDINANCE GRANTING A FRANCHISE TO DAKOTA ELECTRIC ASSOCIATION, A MINNESOTA COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN AN ELECTRONIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES IN THE CITY OF CANNON FALLS, GOODHUE COUNTY, MINNESOTA, 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 CANNON FALLS 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 Cannon Falls, County of Goodhue, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sanitary sewer, storm sewer, street lighting and traffic signals, and water service, 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.** Dakota Electric Association, a Minnesota Cooperative, its successors and assigns.
- 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 written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the Chief Executive Officer, 4300 220<sup>th</sup> Street West, Farmington, MN 55024. Notice to the City shall be mailed to the City Administrator, City Hall, 918 River Road, Cannon Falls, MN 55009. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 10 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 Grounds and Public Ways of City, subject to the provisions of this franchise. 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 franchise.

2.2 **Franchise Fee.** The City reserves all rights under Minn. Stat. §§ 216B.36 and 301B.01 to require a franchise fee or amend an existing franchise fee at any time during the term of this ordinance. If the City elects to require a franchise fee or amend an existing franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee schedule. The fee shall be set forth in a separate ordinance and not adopted until at least ninety (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, including but not limited to the requirement of concurrent permit fees to defray costs of utility operations, each hereby consents to the jurisdiction of State District Court, Goodhue County, to construe their respective rights under the law, subject to all rights of appeal. City and Company expressly reserve all rights and arguments concerning franchise fees and related issues and this paragraph is not intended, and shall not be construed, as a waiver of any such rights or arguments.

2.3 **Service and Rates.** 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.

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 Goodhue County District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

### **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 previously installed therein. 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 franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

**3.2 Field Locations and Mapping Information.** Company shall provide field locations for its underground Electric Facilities within the City consistent with the requirements of Minnesota Statutes, Chapter 216D. Company shall provide accurate and current mapping information for any of its Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100 and other applicable state and federal laws.

**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. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

**3.4 Restoration.** After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, in accordance with Minnesota Rules Part 7819.1100, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years 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 remedy available to the City for noncompliance with this Section 3.4.

**3.5 Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

**3.6 Notice of Improvements.** The City must give Company reasonable notice of plans for improvements to Public Grounds or 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 Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or 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 upon terms and conditions acceptable to Company 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. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

#### **SECTION 4. RELOCATIONS.**

**4.1 Relocation of Electric Facilities in Public Ways.** Company shall comply with the requirements of Minnesota Rules, Part 7819.3100 and applicable law relating to relocation of Electric Facilities in Public Ways. If a relocation is ordered within five (5) years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment expenses on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense.

**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.

**4.3 Projects with Federal Funding.** Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. 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. But the City need not pay those portions of such for which reimbursement to it is not available.

4.4 **No Waiver.** The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under 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 on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the 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. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 **Defense of City.** In the event a suit is brought against the City under circumstances where this franchise 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 and 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. This franchise shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations 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. 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, until the reasonable cost of relocating the same and the

loss and expense resulting from such relocation is first paid to Company. 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. PROVISIONS OF ORDINANCE.**

9.1 **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.

9.2 **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 10. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. 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 11. PREVIOUS FRANCHISES SUPERSEDED.**

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

## **SECTION 12. EFFECTIVE DATE; WRITTEN ACCEPTANCE.**

This franchise shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City Council may revoke this franchise if Company does not file a written acceptance with the City within 90 days after publication.

**ADOPTED** by the City Council of the City of Cannon Falls, Minnesota this 7<sup>th</sup> day of June, 2016.

**CITY OF CANNON FALLS**

By: \_\_\_\_\_  
Lyman M. Robinson, Mayor

ATTEST:

\_\_\_\_\_  
Ronald S. Johnson, City Administrator



**CITY OF CANNON FALLS  
GOODHUE COUNTY, MINNESOTA**

**SUMMARY ORDINANCE NUMBER 345**

**AN ORDINANCE GRANTING DAKOTA ELECTRIC ASSOCIATION  
A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT AND OPERATE  
AN ELECTRIC UTILITY IN THE CITY OF CANNON FALLS**

The ordinance grants Dakota Electric Association a non-exclusive franchise to construct, operate, repair, and maintain in the City of Cannon Falls an electronic distribution system and transmission lines for the furnishing of electric energy and authorizes the use of public grounds and public ways for such purpose. The term of the franchise is ten (10) years. The franchise ordinance contains the following sections: Definitions, Adoption of franchise, Location and Other Regulations, Relocations, Tree Trimming, Indemnification, Vacation of Public Ways, Change in Form of Government, Provisions of Ordinance, Amendment Procedure, Previous Franchises Superseded, Effective Date and Written Acceptance.

A printed copy of the entire ordinance is available for inspection by any person during the City Administrator's regular office hours.

Approved for publication by the City Council of the City of Cannon Falls, Minnesota this 7<sup>th</sup> day of June, 2016.

CITY OF CANNON FALLS

BY: \_\_\_\_\_  
Lyman M. Robinson, Mayor

ATTEST:

\_\_\_\_\_  
Ronald S. Johnson, City Administrator