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CHAPTER FIFTEEN

FRANCHISE

ARTICLE 1 – Grant of Franchises

15.0101 Power to Grant

The City governing body may grant to any person, association, corporation, or limited liability company firm a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article. (Source: North Dakota Century Code Section 40-05-01 (57))

15.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation, as the City shall by resolution or ordinance provide.

15.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims or costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

15.0104 Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars (\$250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars (\$500,000.00) for any single occurrence resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage through an insurance company licensed to do business in the State of North Dakota. (Source: North Dakota Century Code section 32-12.1-03)

Article 2 - Franchise Granted to Montana-Dakota Utilities Co. (Amendment #119, 2/10/2021)

15.0201 Definitions

For convenience, herein, said municipal corporation, its elected officials, agents, employees, and representatives are designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee". Any reference to either includes their respective successors and assigns.

15.0202 Grant

There is hereby granted to Montana-Dakota Utilities Co., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, and an electric distribution system for transmitting and distributing electric or a mixture of both, and an electric distribution system for transmitting and distributing electric energy for public and private use. The Grantee shall maintain and operate its system, including sufficient staffing to render efficient service at a level consistent with industry standards in North Dakota, and in accordance with the rules and regulations of the North Dakota Public Service Commission, the United States Department of Transportation and such other applicable federal, state or local laws or regulations.

15.0203 System Requirements

Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, and an electric distribution system for transmitting and distributing electric energy for public and private use at such reasonable rates as may be approved by the Public Service Commission of the state wherein and Municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof. Grantee shall, at all times during the term of this franchise, be subject to all lawful

exercise of the police power by the Municipality, and to such reasonable regulation as the Municipality shall hereafter by resolution or ordinance provide.

15.0204 Non Exclusive Franchise

This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

15.0205 Reservation of Police Powers

The Municipality 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. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's electric distribution system may be affected by the improvement.

15.0206 Conditions of Street Occupancy

- a. All pipelines and equipment erected by the Grantee within the Municipality shall be designed in accordance with common design practices in the industry in North Dakota, and 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 way and places.
- b. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Municipality 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 one (1) year.
- c. In the event that at any time during the period of this franchise the Municipality shall lawfully elect to alter or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the municipality, shall remove, relay, and relocate its pipelines and other equipment at its own expense except to the extent such relocation expense is eligible for reimbursement through funding from the United States.

15.0207 Trees and Shrubs

Unless otherwise provided in any permit or regulation of the Municipality under separate ordinance, Grantee may trim trees and shrubs in and over the streets alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

15.0208 Indemnification

Grantee shall indemnify and save and hold the Municipality harmless from all and any claims and actions brought by any party for personal injuries or property damages, and any other claims, costs, damages including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from due to acts or omissions of Grantee in connection with: (i) the construction, installation, operation, and maintenance of its distribution system and all other activities related to Grantee's operations, and (ii) Grantee's use of the streets, alleys and public grounds of the Municipality. Nothing in this paragraph shall impose liability upon Grantee for the negligent, reckless, or intentional acts of the Municipality or other parties not under the direction or control of the Grantee.

The Grantee shall carry and at all times keep in force, a commercial general liability policy of insurance, insuring the Grantee and with the Municipality as an additional insured against:

- a. Any and all liability of not less than one million dollars (\$1,000,000.00) per occurrence property damage, one million dollars (\$1,000,000.00) per occurrence of personal injury or death, and two million dollars (\$2,000,000.00) general aggregate.
- b. Two-million-dollar (\$2,000,000.00) umbrella policy.
- c. Automobile general liability coverage of not less than one million dollars (\$1,000,000.00) with an umbrella policy of not less than one million dollars (\$1,000,000.00).

15.0209 Transfer and Assignability

Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

15.0210 Municipality Rights in Franchise

The right is hereby reserved to the Municipality 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 Municipality shall have the right to inspect 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.

If the Grantee is in substantial default with the terms of this franchise after written notice and a reasonable opportunity to cure the default, the governing body of the Municipality upon such a finding may unilaterally terminate this franchise upon a sixty (60) percent or greater vote of the members of the governing body. Upon the revocation of this franchise by the governing body, or at the end of the term of this franchise, the Municipality shall have the right to determine whether the Grantee shall continue to operate and maintain its distribution system by the Municipality providing the Grantee a temporary franchise or an extension of the existing franchise pending the decision of the Municipality as to the future maintenance and operation of such system.

15.0211 Modifications to Franchise

Should either Grantee or the Municipality 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.

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 Municipality and Grantee agree to a change in provision of this Franchise, the change shall become effective upon passage of an ordinance by the Municipality in accordance with the Municipality Charter and acceptance of the amendment by Grantee.

15.0212 Franchise Fee

The Grantee is not required to pay to the Municipality for the privilege of operating its system under this franchise a franchise fee. The Municipality has the option to initiate a reasonable franchise fee at a later time.

15.0213 Work by Grantee and Others

- a. The Municipality reserves the right to lay, and/or permit to be laid, storm sewer, sanitary sewer, gas, water, wastewater and other pipelines, 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 Grantee. The Municipality 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 Municipality owned or operated property.
- b. The Grantee shall relocate its facilities at its expense, except to the extent such relocation may be eligible for reimbursement through funding from the United States, 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 Municipality shall provide Grantee with reasonable notice and shall specify a new location for such facilities along the Public Rights-of-Way.
- c. If Municipality receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Grantee has facilities, Grantee 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 Grantee'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 Grantee to remove or relocate its facilities and Grantee

- 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 Municipality requires the Grantee 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 Municipality or the consolidated corporate structure of the Grantee to use, or use with greater convenience, said Public Right-of-Way, the Grantee shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Grantee for any costs, loss or expense which will be caused by, or arises out of such change, alteration, or relocation of Grantee's property or facilities.
 - e. Upon request, the Grantee and the Municipality will provide the other with an annual capital improvement and/or non-routine maintenance plans to assist each entity with planning operations. The plans will be submitted in a timely manner at to provide the Municipality with at least thirty (30) days' notice for planned new construction projects and major maintenance projects and shall specify a location for such facilities along the public Rights-of-Way.

15.0214 Map

Upon request the Grantee shall provide, when available, a map showing the location of its facilities in the Municipality limits to the Municipality subject to the Municipality providing the Grantee with an agreement protecting the confidentiality of such information. Any such map or other information furnished to the Municipality pursuant to this Ordinance shall remain the Grantee's proprietary information for all purposes.

15.0215 Approval

Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

15.0216 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 by law.

Article 3 - Franchise Granted to McKenzie Electric Cooperative, INC. (Amendment 2023-01; 2/8/2023)

15.0301 Definitions

For convenience, herein, the City of Alexander, its elected officials, agents, employees, and representatives are designated and referred to as "Municipality" and McKenzie Electric Cooperative, Inc. is designated and referred to as "Grantee". Any reference to either includes their respective successors and assigns.

15.0302 Grant

The Municipality hereby grants to Grantee, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality 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. The Grantee shall maintain and operate its system, including sufficient staffing to render efficient service at a level consistent with industry standards in North Dakota, and in accordance with the rules and regulations of the North Dakota Public Service Commission, the United States Department of Transportation and such other Public Service Commission, the United States Department of Transportation and such other applicable federal, state or local laws or regulations.

15.0303 System Requirements

Grantee shall maintain an electric distribution system for transmitting and distributing electric energy for public and private use at such reasonable rates as may be approved by the Grantee's Board of Directors and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof. Grantee shall, at all times during the term of this franchise, be subject to all lawful exercise of the police power by the Municipality, and to such reasonable regulation as the Municipality shall hereafter by resolution or ordinance provide.

15.0304 Non Exclusive Franchise

This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

15.0305 Reservation of Police Powers

The Municipality 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. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's electric distribution system may be affected by the improvement.

15.0306 Conditions of Street Occupancy

- a. All electric transmission and distribution lines and equipment erected by the Grantee within the Municipality shall be designed in accordance with common design practices in the industry in North Dakota, and shall be so located as to cause minimum impact and 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 improvements installed by Grantee pursuant to this franchise must directly benefit the Municipality and/or its residence.
- b. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Municipality 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 one (1) year.
- c. In the event that at any time during the period of this franchise the Municipality shall lawfully elect to alter or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the Municipality, shall remove, relay, and relocate its facilities and other equipment at its own expense except to the extent such relocation expense is eligible for reimbursement through funding from the United States.

15.0307 Trees and Shrubs

Unless otherwise provided in any permit or regulation of the Municipality under separate ordinance, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

15.0308 Indemnification

Grantee shall indemnify and save and hold the Municipality harmless from all and any claims and actions brought by any party for personal injuries or property damages, and any other claims, costs, damages including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from due to acts or omissions of Grantee in connection with: (i) the construction, installation, operation, and maintenance of its distribution system and all other activities related to Grantee's operations, and (ii) Grantee's use of the streets, alleys, and public grounds of the Municipality. Nothing in this paragraph shall impose liability upon Grantee for the negligent, reckless, or intentional acts of the Municipality or other parties not under the direction or control of Grantee.

The Grantee shall carry and at all times keep in force, a commercial general liability policy of insurance, insuring the Grantee and with the Municipality as an additional insured against:

- a. Any and all liability of not less than one million dollars (\$1,000,000.00) per occurrence property damage, one million dollars (\$1,000,000.00) per occurrence of personal injury or death, and two million dollars (\$2,000,000.00) general aggregate.
- b. Two million dollar (\$2,000,000.00) umbrella policy.
- c. Automobile general liability coverage of not less than one million dollars (\$1,000,000.00) with an umbrella policy of not less than one million dollars (\$1,000,000.00) .

15.0309 Transfer and Assignability

Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

15.0310 Municipality Rights in Franchise

The right is hereby reserved to the Municipality 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 Municipality shall have the right to inspect all construction or installation work performed subject to the provisions of this article and to make such inspections as it shall find necessary to ensure compliance with governing ordinances.

If the Grantee is in substantial default with the terms of this franchise after written notice and a reasonable opportunity to cure the default, the governing body of the Municipality upon such a finding may unilaterally terminate this franchise upon a sixty (60) percent or greater vote of the members of the governing body. Upon the revocation of this franchise by the governing body, or at the end of the term of this franchise, the Municipality shall have the right to determine whether the Grantee shall continue to operate and maintain its distribution system by the Municipality providing the Grantee a temporary franchise or an extension of the existing franchise pending the decision of the Municipality as to the future maintenance and operation of such system.

15.0311 Modifications to Franchise

Should either Grantee or the Municipality 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.

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 Municipality and Grantee agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the Municipality in accordance with Municipality Charter and acceptance of the amendment by Grantee.

15.0312 Franchise Fee

The Grantee is not required to pay the Municipality for the privilege of operating its system under this franchise a franchise fee. The Municipality has the option to initiate a reasonable franchise fee at a later time.

15.0313 Work by Grantee and Others

- a. The Municipality reserves the right to lay, and/or permit to be laid cables, transmission lines, distribution lines, 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 Grantee. The Municipality 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 Municipality owned or operated property.
- b. The Grantee shall relocate its facilities at its expense, except to the extent such relocation may be eligible for reimbursement through funding from the United States, 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 Municipality shall provide Grantee with reasonable notice and shall specify a new location for such facilities along the Public Rights-of-Way.
- c. If Municipality receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Grantee has facilities, Grantee 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 Grantee'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 Grantee to remove or relocate its facilities and Grantee 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 Municipality requires the Grantee 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 Municipality or the consolidated corporate structure of the Grantee to use, or use with greater convenience, said Public Right-of-Way, the Grantee shall not be bound to make such changes until such other entity

shall have undertaken, with good and sufficient bond, to reimburse the Grantee for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Grantee's property or facilities.

- e. Upon request, the Grantee and the Municipality will provide the other with an annual capital improvement and/or non-routine maintenance plans to assist each entity with planning operations. The plans will be submitted in a timely manner to provide the Municipality with at least thirty (30) days' notice for planned new construction projects and major maintenance projects and shall specify a location for such facilities along the Public Rights-of-Way.

15.0314 Map

Upon request the Grantee shall provide, when available, a map showing the location of its facilities in the Municipality limits to the Municipality subject to the Municipality providing the Grantee with an agreement protecting the confidentiality of such information. Any such map or other information furnished to the Municipality pursuant to this Ordinance shall remain the Grantee's proprietary information for all purposes.

15.0315 Approval

Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

15.0316 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 by law.

