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ORDINANCE #92-13

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN ORDINANCE GRANTING TO ANOKA ELECTRIC COOPERATIVE, A MINNESOTA COOPERATIVE, AND ANOKA MUNICIPAL ELECTRIC, A MUNICIPAL ELECTRIC DISTRIBUTOR, THEIR SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF RAMSEY, 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 PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

SECTION 1. DEFINITIONS

- (1) "City" In this Ordinance, "City" means the City of Ramsey, County of Anoka, State of Minnesota.
- (2) "City Utility System" means the facilities used for providing sewer, water, or any other public utility service owned or operated by City or agency thereof.
- (3) "Cooperative" means Anoka Electric Cooperative, a Minnesota cooperative, its successors and assigns.
- (4) "Notice" means a writing served by any party or parties on any other party or parties. Notice to cooperative shall be mailed to the General Manager thereof at 2022 North Ferry Street, Anoka, 55303. Notice to City shall be mailed to the City Clerk. Notice to Municipal shall be mailed to the City Clerk at 2015 1st Avenue North, Anoka.
- (5) "Municipal" means Anoka Municipal Electric, a municipal electric distribution system.
- (6) "Public Way" means any street, alley, or other public right-of-way within the City.
- (7) "Public Ground" means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- (8) "Electric Facilities" means electric transmission and distribution towers, poles, lines, guys, anchors, ducts, fixtures, and necessary appurtenances owned or operated by the Company for the purpose of providing electric energy for public use.
- (9) "Operator" means both the Cooperative and the Municipal as defined above.

SECTION 2. FRANCHISE

- (1) Grant of Franchise. City hereby grants, for a period of twenty (20) years from date of passage, 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, Operator may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City subject to the provisions of this ordinance. Operator may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to zoning ordinances, other applicable ordinances, permit procedures, and to the further provisions of this franchise.

- (2) **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its passage and its acceptance by the Operator, and its publication as required by law. An acceptance by the Operator must be filed with the City Clerk within 90 days after publication.
- (3) **Service Rates and Area.** The service to be provided and the rates to be charged by Operator for electric service in City currently are subject to the jurisdiction of the Rural Electrification Administration, Washington D.C. in the case of the cooperative, and the Anoka Utilities Commission in the case of the Municipal. The area within the City in which the Operator may provide electric service currently is subject to the provisions of Minnesota Statutes.
- (4) **Publication Expense.** The expense of publication of this ordinance shall be paid by the City.
- (5) **Default.** 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. If the dispute is not resolved within 30 days of the written notice, 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 for breach of contract, or either party may take any other action permitted by law.

SECTION 3. LOCATION, OTHER REGULATIONS

- (1) **Location of Facilities.** Electric Facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and they shall be located on Public Grounds as determined by the City. The Operator's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to other reasonable regulations of the City.
- (2) **Field Locations.** The Operator shall provide field locations for any of its underground Electric Facilities within a reasonable period of time on request by the City. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the same county to locate municipal underground facilities for the Operator.
- (3) **Street Openings.** The Operator shall not open or disturb the paved surface of any Public Way or Public Ground for any purpose without first having obtained permission from the City, for which the City may impose a reasonable fee. Permit conditions imposed on the Operator shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Operator may, however, open and disturb the paved surface of any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event the Operator shall notify the City by telephone to the office designated by the City before opening or disturbing paved surface of a Public Way or Public Ground. Not later than the second working day thereafter, the Operator shall obtain any required permits and pay any required fees.
- (4) **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Operator shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if the Operator shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to the Operator 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 the Operator. The Operator shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead, plus

ten percent additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City.

- (5) **Shared Use of Poles.** The Operator 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 the Operator, 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 the Operator because of such use by City under a separate joint use agreement. Any City facilities shall be installed and maintained in accordance with the National Electric Safety Code and other applicable codes.

SECTION 4. RELOCATIONS

- (1) **Relocation of Electric Facilities in Public Ways.** Except, as provided in Section 4 (3), if the City determines to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order the Operator to relocate its Electric Facilities located therein. The Operator shall relocate its Electric Facilities at its own expense. The City shall give the Operator reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electrical Facilities, which was made at Operator expense, the City shall reimburse Operator 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, Operator may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Operator to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.
- (2) **Relocation of Electric Facilities in Public Ground.** Except as may be provided in Section 4 (3), City may require the Operator 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 of the public use to which the Public Ground is or will be put. The relocation or removal shall be at the Operator's expense. The provisions of this paragraph apply only to Electric Facilities constructed in reliance on a franchise and the Operator does not waive its rights under an easement or prescriptive right.
- (3) **Projects with State or Federal Funding.** Relocation, removal, or rearrangement of any Operator facilities made necessary because of the extension into or through City of a generally-aided highway project shall be governed by the provisions of Minnesota Statutes. It is understood that the right herein granted to Operator is a valuable right. City shall not order Operator to remove, or relocate its facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan 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 and the loss and expense resulting therefrom are first paid to Operator, but the City need not pay those portions of such for which reimbursement to it is not available.
- (4) **Liability.** Nothing in the Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

SECTION 5. TREE TRIMMING

The Operator may trim all trees and shrubs in the Public Ways and Public Grounds of City interfering with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that the Operator shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City. The Operator may spray herbicides approved by the Environmental Protection Agency to accomplish same only with the approval of the Municipality on a case by case basis.

SECTION 6. INDEMNIFICATION

- (1) The Operator 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 City. 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, the Operator'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 Operator, and such performance is nevertheless ordered or directed by City after notice of Operator's determination.
- (2) In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, the Operator at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to the Operator within a period wherein the Operator is not prejudiced by lack of such notice. If the Operator is required to indemnify and defend, it will thereafter have control of such litigation, but the Operator 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 the Operator, 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.

SECTION 7. VACATION OF PUBLIC WAYS

The City shall give the Operator at least two weeks' prior written notice of a proposed vacation of a Public Way. Except where required for a City street or other improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Operator of its rights to operate and maintain such Electrical Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Operator. In no case, however, shall City be liable to the Operator for failure to specifically preserve a right-of-way, under Minnesota Statutes.

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 the Operator, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE

- (1) Separate Ordinance. In lieu of any permit or other fees being imposed on the Operator, the City may impose on the Operator a franchise fee of not more than five percent of the Operator's gross revenues as hereinafter defined. The initial franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until written notice enclosing such proposed ordinance has been served upon the Operator by certified mail. The fee shall not become effective until after written notice enclosing such adopted ordinance has been served upon the Operator by certified mail.

- (2) Terms Defined. The term "gross revenues" means all sums, excluding any surcharge or similar addition to the Operator's charges to customers for the purpose of reimbursing the Operator for the cost resulting from the franchise fee, received by the Operator from the sale of electricity to its retail customers within the corporate limits of the City.
- (3) Collection of the Fee. The franchise fee shall be payable not less often than monthly, and shall be based on the gross revenues of the Operator during complete billing months during the period for which payment is to be made. The percent fee may be changed from time to time; however, each change shall meet the same notice requirements and the percentage may not be changed more often than annually. Such fee shall not exceed any amount which the Operator may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. The Operator may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee is subject to the mutual agreement of the City and the Utilities Board of Directors or Commission, which the Operator agrees to use best efforts to obtain. The Operator agrees to make its gross revenues records available for inspection by the City at reasonable times.
- (4) Conditions on the Fee. The fee shall not be effective against the Operator unless it lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.

SECTION 10. SEVERABILITY

If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.

SECTION 11. AMENDMENT

This ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which mandatory ordinance shall become effective upon notice provisions of Section 1, Subdivision 4, above.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED

This franchise supersedes any previous electric franchise or agreements, verbal or written, granted to the Operator or its predecessor.

SECTION 13. ORDINANCE SUMMARY FOR PUBLICATION

The following official summary of Ordinance #92-13 has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance:


It is the intent and effect of Ordinance #92-13 to grant to Anoka Electric Cooperative, a Minnesota cooperative, and Anoka Municipal Electric, a municipal electric distributor, their successors and assigns, permission to construct, operate, repair and maintain in the City of Ramsey, 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 public ways and public grounds of the City for such purposes.

A printed copy of Ordinance #92-13 is available for inspection by any person at the Ramsey Municipal Center.

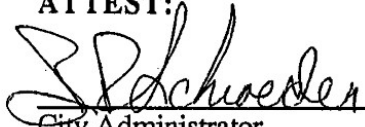
SECTION 14. EFFECTIVE DATE

This Ordinance becomes effective upon its passage and thirty (30) days after its publication according to law.

PASSED by the City Council of the City of Ramsey, Minnesota, this the 24th day of November, 1992.



Mayor

ATTEST:


City Administrator

Introduction Date:	November 10, 1992
Posting Date:	November 10 - 24, 1992
Adoption Date:	November 24, 1992
Publication Date:	December 4, 1992
Effective Date:	January 4, 1993