

**CITY COUNCIL PROCEEDINGS**  
**PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION**

A regular meeting of the Beach City Council was called to order by Mayor Walter Losinski at 7:00 pm on June 3, 2013. Present when the meeting was called to order was City Council Henry Gerving, Tim Marman, Mark Benes, Jeanne Larson, Wade Walworth, PWS Dell Beach, City Auditor Kimberly Nunberg, City Engineer Jon Wilczek, Sheriff Scot Steele and guests Ray Clouse, John Sokoloski, Jacob Zettel, Kevin Steen and Deb Walworth.

Minutes of the previous month meetings were read. Benes moved to approve the minutes, second by Larson. Motion carried unanimously. Vouchers were reviewed for payment. Larson moved to approve the following vouchers, second by Walworth. Motion carried unanimously.

16329 Beach Vet Clinic 54.00  
16330 Boss Office Products 623.46  
16331 Dakota Dust-Tex, Inc. 136.10  
16332 Don Hardy 1000.00  
16333 Expressway Inn 89.95  
16334 Fargo Water Equipment/DSG 2907.61  
16335 Farmers Union 1695.85  
16336 Floyd Braden 227.40  
16337 G&G Garbage Inc. 1500.00  
16338 Golden Valley County 7900.00  
16339 Golden Valley News 677.70  
16340 Golva Repair 357.60  
16341 Home on the Range 100.00  
16342 James Wosepka PC 3600.00  
16343 Jill Schatz 16.25  
16344 John Deere Financial 18.36  
16345 Kadrmas, Lee & Jackson 2625.36  
16346 La Playa Mexican Restaurant 60.79  
16347 Marman Plumbing and Construction 2300.00  
16348 Mid-American Research Chemical 273.55  
16349 Midstate Communications 275.68  
16350 Morrison Majerle Systems Corp 20.00  
16351 NAPA 171.17  
16352 National League of Cities Membership 536.00  
16353 One Call Concept 245.30  
16354 Prairie Lumber Company 259.47  
16355 Railroad Management Company 265.74  
16356 Rohan's Hardware 24.96  
16357 Sip-N-Sew 38.00  
16358 Southwest Building Improvement 60087.60  
16359 Southwest Water Authority 10592.76  
16360 Spirit of the West 48.00  
16361 Stockwell Cleaning or Nancy Stockwell 225.00  
16362 Verizon Wireless 173.55

16363 West Plains Inc. 8.02  
16288-16296 & 16304-16326 City Employee Wages for May 25620.44  
16297 NDPERS 100.00  
16298 City of Beach 256.51  
16299 Blue Cross Blue Shield 4742.72  
16300 Blue Cross Blue Shield 454.70  
16301 Jill Schatz 43.40  
16302 Kim Nunberg 92.62  
16303 USPS 185.31  
16327 NDPERS 100.00  
16328 NDPERS 1284.97  
-89954 First State Bank of Golva 5528.83

### **Sheriff" Report**

Sheriff Steele presented the monthly report consisting of 20 calls, 8 citations and 3 written warnings.

### **Public Works & Auditor's Report**

PWS Beach reported the radar speed signs on Hwy 16 have been installed and are working properly. All streets have been sweep once and crack sealing has been completed. City crew has been busy mowing, flushing sewers, spraying weeds and fogging for mosquitos. Nunberg reviewed her written report. The financial report for the month of May will be reviewed at next meeting.

### **Committee Reports:**

Mayor Losinski presented the Council with a recommendation on employee wages. A decision was tabled until the next meeting. Mayor Losinski suggested the Council be paid a monthly fee instead of being paid a base fee and a fee per meeting they attend. Benes moved to pay the Council \$300 per month rather than paying a base fee and fee per meeting, second by Walworth. Discussion. Gerving- yes, Marman – no, Benes – yes, Larson- yes, Walworth – yes. Motion carried.

### **Unfinished Business:**

#### **New Business:**

Southwest Building Improvements submitted a Contractor's Request for Extension of Contract Time on the Railroad Quiet Zone Project. Discussion. Marman moved to approve the request, second by Benes. Motion carried unanimously. At 7:30, a Public Hearing was held to address a Petition for Annexation and Annexation by Resolution. Nunberg read a letter from Patricia Rogers protesting annexation of her property. Since less than one-fourth of the property owners protested, the annexation process will continue. A copy of the resolution and map will be recorded with the County Recorder. Gerving moved to approve the First Reading of Ordinance 376, second by Larson.

## **ORDINANCE NO. 376**

AN ORDINANCE GRANTING A LIMITED FRANCHISE TO GOLDENWEST ELECTRIC COOPERATIVE, INC., A MONTANA ELECTRIC COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, WITH PERMISSION TO ERECT, CONSTRUCT, INSTALL, AND MAINTAIN WITHIN THE CITY OF BEACH, AN ELECTRIC POWER DISTRIBUTION SYSTEM AND TO OPERATE THE SAME AND TO INSTALL CONDUITS, POLES, WIRES, UNDERGROUND FACILITIES, PIPES, AND OTHER FIXTURES IN, UPON, AND UNDER THE STREETS, ALLEYS, BRIDGES, AND PUBLIC GROUNDS OF THE CITY FOR THE PURPOSE OF FURNISHING ELECTRICITY TO THE CITY AND THE INHABITANTS THEREOF.

BE IT ORDAINED, by the City Council of the City of BEACH, hereinafter called City:

### **Section 1. FRANCHISE**

Subject to the limitations, conditions, and requirements hereinafter set forth, there is hereby granted a limited Franchise to GOLDENWEST Electric Cooperative, Inc., a Montana electric cooperative corporation, its successors and assigns (hereinafter, the "Grantee). Such Franchise shall be for a period of twenty (20) years from and after the date of final passage of this Ordinance. During the time of such Franchise, the Grantee shall have permission to construct, install, and maintain an electric power distribution system and to transmit electricity to and from other points for the purpose of furnishing such electricity, and to erect, construct, install, and maintain conduits, poles, wires, underground facilities, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of the City for the purpose of furnishing and selling electricity for all purposes; which electricity may be used by any customers desiring such service. Notwithstanding anything to the contrary, this franchise shall be limited to extend only to existing customers of Grantee that were receiving utility services from Grantee prior to those customers being located within the city limits of the City of Beach.

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.

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 2.      STREETS AND ALLEYS

The Grantee shall use poles, wires, crossarms, equipment, and devices in conformance with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce. Any apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of the City or to endanger persons or property or to hinder or to obstruct the use of avenues, streets, and alleys or public places by the inhabitants of the City, or by the public in general, or to interfere with any street, sidewalk, curb, gutter, park improvements, or other public place of the City.

All conduits, poles, wires, and pipes installed by virtue of this Franchise shall be erected in such places and in such manner as to not unnecessarily encroach upon streets, alleys, bridges, or public grounds of the City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the erection thereof shall be subject to the reasonable supervision and direction of the City. Whenever practicable, all poles shall be set in alleys.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom, which has been or may be placed by authority of the City. In the event that the Grantee shall make any unnecessary obstructions of the streets, alleys, public grounds, or places not designated by the City, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

During the construction, maintenance, or enlargement of any part of the electric power distribution system, the Grantee shall not unnecessarily impede or block travel in the streets and highways in the City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes, and public places and all grounds disturbed by the construction in good condition upon the completion of the work. All signing and traffic regulation shall conform to the Manual on Uniform Traffic Control Devices.

The City reserves all its rights, under its police power or otherwise, to control or regulate the use of streets, alleys, and public grounds by the Grantee. The City may 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 the City may deem necessary for its own best interests; but the City will not, by any such regulations or by acts of its own or agents, unreasonably prevent or interfere with the Grantee carrying on its business in accordance with the Franchise hereby granted.

### Section 3. OPERATION AND MAINTENANCE

Whenever the Grantee, in erecting, constructing, and maintaining the lines or poles, shall take up any of the pavements, sidewalks, crossing, or curbs on any of the avenues, streets, and alleys, or public places in the City or shall make any excavations thereon, such excavations shall, at the Grantee's own cost and expense and in a manner approved by the City, be repaired and the sidewalk, crossing, or curb replaced under the direction of the City; and any excavation so made shall be properly lighted at night during the construction; and in case of the failure to so repair, replace, or light on the part of the Grantee, then the City may do the same at the expense of the Grantee and the Grantee agrees to pay the City for the reasonable cost or value of the work. Prior to the disturbance of any street, sidewalk, alley, public way or paved area, Grantee shall obtain a permit from the City at least two (2) days prior to the disturbance.

The Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the City caused by the Grantee, or its agents, servants, or employees in erecting, operating, and maintaining the electric system within the City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating, or maintaining the electric systems.

### Section 4. TRIMMING TREES

There is granted to the Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets, and public grounds of the City so as to remove all parts of the trees interfering with the proper erection, maintenance, and operation of poles, cables, wires, masts, or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

### Section 5. ASSIGNMENT

With prior notice to the City, the Grantee shall have full right and authority to assign to any person, persons, firm, or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and conditions of this Ordinance.

### Section 6. LIABILITY

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt the Grantee from liability for negligence.

## Section 7. REGULATORY LAWS

This contract shall be subject to any present or future laws of a regulatory nature applicable to Grantee and enacted by the State of North Dakota, or any amendment or addition to such laws.

## Section 8. APPROVAL AND ACCEPTANCE

This Ordinance shall take effect and be in full force from and after its passage and approval. The Grantee shall specify its acceptance of this Franchise in writing, to be filed with the auditor within thirty (30) days of final passage of this Ordinance, and in no event shall this Ordinance be binding on the Grantee until the filing of such acceptance.

## Section 9. PROTECTION OF PUBLIC IMPROVEMENTS

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 or 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.

## Section 10. FRANCHISE FEE

The City reserves the right, if not prohibited by Federal law or the laws of the State of North Dakota, to charge a fee to the Grantee for this franchise, which fee or charge shall be subject to change by the Beach City Council. Prior to the imposition of any franchise charge or fee, or change to an existing franchise charge or fee, the City shall provide the Grantee thirty (30) days written notice of its intent and shall hold a public hearing thereon.

## Section 11. INDEMNITY

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 12. REPEAL OF ORDINANCES IN CONFLICT

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

### Section 13. SEVERABILITY

In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

### Section 14. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after final passage.

APPROVED: CITY OF BEACH

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Mayor, City of Beach, North Dakota

ATTEST:

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Kimberly Nunberg, City Auditor

First Reading: June 3, 2014

Second Reading:

Final Passage:

There was discussion on altering the time frame of the franchise to expire at the same time the MDU franchise expires. No changes were made. Motion carried unanimously. Correspondence from Drew Hall requesting Zoning of Golden Valley Acres to Planned Unit Development was read. Recommendation from the Zoning Board is to approve the request and re-zone to a PUD. Larson moved to approve the request, second by Gerving. Motion carried unanimously. Thank you correspondence from Post Prom was read. City Engineer Jon Wilczek presented the revised Exhibit E of the sewer line for the Master Development Agreement. At the previous meeting, Wilczek was asked to determine costs for a street project in the NW area of the city. Wilczek explained the fee to determine these costs will be \$7,000. Benes moved to approve the Miscellaneous Professional Service Agreement, second by Walworth. Motion carried unanimously.

No other business was brought forward. Gerving moved to adjourn, second by Walworth. Meeting adjourned at 8:50 p.m.

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ATTEST:

Walter Losinski, Mayor

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Kimberly Nunberg, City Auditor