

## **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:  
Second Reading:  
Final Passage:

This Franchise Agreement is accepted by GOLDENWEST Electric Cooperative, Inc. on this  
\_\_\_\_ of \_\_\_\_\_, 2013.

GOLDENWEST Electric Cooperative, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_