

ORDINANCE NO. 401

An Ordinance granting to the Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, permission to erect, construct, install and maintain within the City of Rolla, an electric light and power system and transmission lines and to operate the same and to install conduits, poles, wires, pipes and other fixtures in, upon and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing electric light, heat and power to said City and the inhabitants thereof.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF Rolla, North Dakota,  
Hereinafter called the "City":

SECTION 1

There is hereby granted to Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission lines and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

SECTION 2

Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys for public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

SECTION 3

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said 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 Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets, whenever practicable, shall be removed, and the locations of all of said poles shall be designated by the Mayor under the supervision of the City Council of the said City.

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 of placing of any waterpipes, sewers, or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstruction of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

SECTION 4

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said city, and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right for itself and its agents to 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 it may deem necessary for the best interests of the City but the City will not by an such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

SECTION 5

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks crossings or curbs on any of the avenues, streets and alleys or public places in said City or shall make any excavations thereon; such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the said City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the said City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

SECTION 6

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said 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 intended.

Said Grantee shall have full right and authority to assign 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.

*(Original in file  
Under Contract)*

SECTION 7

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 said Grantee from liability for negligence.

SECTION 8

The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

SECTION 9

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or an any amendment or addition to such laws and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

SECTION 10

The City reserves the right during the term hereof to enact and assess a franchise fee such as it deems necessary, upon reasonable advance notice to Grantee of not less than thirty (30) days.


SECTION 11

In the event the City should sell or transfer real property which is subject to Grantee's franchise and should it become necessary to remove conduits, poles, wires or pipes installed by virtue of this ordinance the removal shall be done at the expense of the Grantee upon the request of the City.

Section 12

This Ordinance shall take effect and be in full force from and after its passage and approval by the City Council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Approved this 3rd day of October, 2005

  
Mayor, City of Rolla

Attest Mary Madgala

Title City Auditor

City Clerk, City of Rolla

ACCEPTANCE

OTTER TAIL CORPORATION, a Minnesota corporation, acting through its proper officers thereunto duly authorized, does hereby accept Ordinance No. 401 of the City of Rolla, North Dakota, being an Ordinance granting a franchise to Otter Tail Power Company, and being entitled:

"AN ORDINANCE GRANTING TO THE OTTER TAIL CORPORATION, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT, CONSTRUCT, INSTALL, AND MAINTAIN WITHIN THE CITY OF ROLLA, NORTH DAKOTA, AN ELECTRIC LIGHT AND POWER SYSTEM AND TRANSMISSION LINE, AND TO OPERATE THE SAME, AND TO INSTALL CONDUITS, POLES, WIRES, PIPES, AND OTHER FIXTURES IN, UPON AND UNDER THE STREETS ALLEYS, BRIDGES, AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF FURNISHING ELECTRIC LIGHT, HEAT, AND POWER TO SAID CITY AND THE INHABITANTS THEREOF";

and all of the terms, conditions, requirements, and provisions of said Ordinance No. 401.

IN WITNESS WHEREOF, Otter Tail Corporation has caused this Acceptance to be duly executed this 17<sup>th</sup> day of October, 2005.

In Presence of:

OTTER TAIL POWER COMPANY,  
a Division of Otter Tail Corporation

Becky Lubning  
Diana Murray

By Chuck MacFarlane  
President  
And Bruce Gerhardson  
Associate General Counsel,  
Otter Tail Corporation

STATE OF MINNESOTA )  
                                  )SS  
COUNTY OF OTTER TAIL)

On this 17<sup>th</sup> day of October, 2005, before me, a Notary Public within and for said County, personally appeared Chuck MacFarlane and Bruce Gerhardson to me personally known, who, being each by me duly sworn, did say that they are, respectively, the President of Otter Tail Power Company and the Associate General Counsel of Otter Tail Corporation, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Chuck MacFarlane and Bruce Gerhardson acknowledged said instrument to be the free act and deed of said corporation.



Penny Mosher

(Notarial Seal)

The foregoing Acceptance was duly filed in the office of the City Auditor of the City of Rolla, North Dakota, this 28<sup>th</sup> day of October, 2005.

Mary Hadman  
City Auditor

