

ORIGINAL

ORDINANCE 2010 - 01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, GRANTING TO BENTON RURAL ELECTRIC ASSOCIATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY FIVE (25) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN AND ON THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES, HIGHWAYS AND PUBLIC PLACES OF AND WITHIN THE CITY OF SUNNYSIDE, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO A PORTION OF THE CITY OF SUNNYSIDE, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THE ORDINANCE

WHEREAS, the City Council desires to grant to Benton Rural Electric Association a non-exclusive twenty-five year franchise, subject to appropriate terms and conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, DOES HEREBY ORDAIN as follows:

SECTION 1. The City of Sunnyside does hereby grant to Benton Rural Electric Association, and to its successors and assigns, hereinafter called "Grantee", a right and franchise for the period of twenty five (25) years from and after the effective date of this franchise, to construct, maintain and operate in and on the present and future streets, alleys, malls, bridges, highways and public places of and within the City, hereinafter referred to as "Streets", electric light and power lines, with all the necessary or desirable appurtenances, for the purpose of supplying electricity and electric service to the City and the inhabitants thereof, and to persons and corporations, subject to the terms and conditions hereinafter specified.

SECTION 2. The right and franchise hereby granted shall not be exclusive; and the City expressly reserves the right, at any time during the term of this franchise, to grant rights or franchises for such purposes to other persons or corporations, as well as the right in its own name as a municipality to use said streets for such purposes, in the event that the City shall hereafter decide to engage in the business of supplying electricity and electric service for municipal or other uses.

SECTION 3. The locations and methods of installation and maintenance of all poles, wires, fixtures, underground conduits, and appurtenances shall be subject at all times to reasonable regulation by the City, and all such poles, wires, fixtures, underground conduits, and appurtenances thereto (all hereinafter referred to as "facilities") shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All such facilities shall be installed and at all times maintained by Grantee in safe order and condition and in accordance with good

electrical practice. If the removal or relocation of facilities is caused by an identifiable development of private property in the area, this agreement shall not preclude the Grantee from charging the expense of removal or relocation to the developer where permitted by the Grantee's tariffs, provided that the city reserves the right, at Grantee's sole expense and liability, at all times to require the relocation, modification or reconstruction of any vault, poles, power lines and/or other physical facilities installed by the Grantee, its successors, assigns, or permittees, whether under or above the surface of any area encompassed in the franchise whenever in the judgment of the Director of Public Works, such relocation or reconstruction is deemed necessary.

SECTION 4. The service to be furnished hereunder by Grantee shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee, and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time or the proper conduct of its business. Such service and all rates and charges therefor, and all rules and regulations pertaining thereto or to the making of necessary and proper extensions of service, shall be subject at all times to any rules, regulations and orders lawfully prescribed by any authority having jurisdiction thereof.

SECTION 5. The Grantee shall reimburse and pay to the City the amount of actual administrative expenses incurred by the City, which expenses are directly related to receiving and approving a permit, license and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C of the Revised Code of Washington. As such expenses are incurred by the City, the City shall submit to the Grantee statements showing such expenses, and shall further submit billings for the same. The Grantee shall make payment to the City in reimbursement of such expenses, within thirty (30) days of the receipt of the respective statements and billings.

SECTION 6. When necessary, in order to permit any duly authorized person to move any building or other structure across or along any said street, Grantee shall temporarily raise or remove its facilities upon such street, upon reasonable notice in advance from the City, and at such time and in such manner as may be necessary reasonably to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, however, that the cost to Grantee of such temporary raising or removal, or any interruption of Grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure.

SECTION 7. During the term of this Franchise, and with respect to poles which are facilities and which are wholly owned by Grantee and within the franchise area, the City, subject to Grantee's prior written consent, which shall not be unreasonably withheld, may install and maintain City-owned overhead wires, cables and fibers upon such poles for police, fire, traffic control and other noncommercial municipal

communications purposes. The foregoing rights of the City to install and maintain such wires and cables are further subject to the following:

Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with applicable laws, and subject to such reasonable requirements as Grantee may specify from time to time;

Grantee shall have no obligation arising under the indemnity provisions in Section 8 of this agreement as to any circumstances directly or indirectly caused by or related to such City-owned wires and cables or the installation and maintenance thereof; and

Grantee shall not charge the City a fee for the use of such poles in accordance with Section 7 as a means of deriving revenue therefrom; provided, however, that nothing herein shall require Grantee to bear any cost or expense in connection with such installation and maintenance by the City.

SECTION 8. Grantee hereby agrees and covenants to indemnify and hold harmless the City and elected officials, officers, employees and agents thereof against and from any and all claims, and all damages, costs and expenses to which it or they may be subjected by reason of any acts or negligence of the Grantee, or its agents, or servants, in any manner arising out of the construction, maintenance or operation of any property of Grantee in or on any of said streets.

SECTION 9. If Grantee shall fail to perform or comply with any of the obligations and requirements imposed by this franchise, and shall continue to so fail after the receipt of written notice from the City, specifying the respect in which Grantee is deemed to be in default hereunder, and demanding that such default be remedied within a reasonable time as fixed in such notice, the right and franchise granted hereby may be terminated and annulled by the City Council; provided, however, that Grantee shall be afforded reasonable opportunity to be heard before any determination is made with respect to such alleged default.

SECTION 10. Grantee further covenants and agrees to pay business and occupation and other taxes which shall hereafter accrue on the revenues and services of the Grantee within the incorporated City, in accordance with City ordinances, all of which payments shall be timely made.

SECTION 11. In accordance with state statutes, a summary of this ordinance shall be published at least once in the official newspaper for the City of Sunnyside.

SECTION 12. This ordinance shall be effective on the 18th day of January 2010, and five (5) days after publication as provided above, but shall become null and void unless within sixty (60) days after such effective date, Grantee shall file in the office of the City Clerk, Grantee's unqualified written acceptance of all other terms, conditions, restrictions and obligations to be complied with or performed by it hereunder.

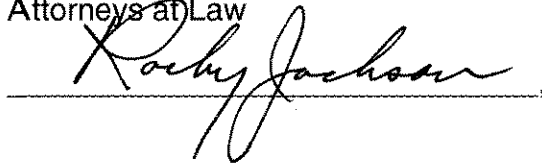
PASSED this 11th day of January, 2010.


PABLO GARCIA, MAYOR

ATTEST:


DELILAH CYR, DEPUTY CITY CLERK

APPROVED AS TO FORM:
MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys at Law



PUBLISH: 1-13-10
Date

CERTIFICATE

I, _____ the undersigned, Delilah Cyr, the duly appointed, qualified and acting Deputy City Clerk of the City of Sunnyside, Washington, hereby certify that the Ordinance hereto annexed is a full, true and correct copy of Ordinance No. 2010 - 01 of the City of Sunnyside, Washington, entitled as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, GRANTING TO BENTON RURAL ELECTRIC ASSOCIATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY FIVE (25) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN AND ON THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES, HIGHWAYS AND PUBLIC PLACES OF AND WITHIN THE CITY OF SUNNYSIDE, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO A PORTION OF THE CITY OF SUNNYSIDE, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THE ORDINANCE

That said Ordinance was passed by a majority of the entire Council of said City at a regular meeting after having been introduced at a meeting of the Council more than five (5) days prior to such regular meeting and after having been submitted to the City Attorney, and was published and posted according to the law; that said Ordinance was duly published in the official newspaper of said City on the 13th day of January, 2010.

Dated this 13th day of January, 2010.

(SEAL)




Deputy City Clerk of the City of Sunnyside, Wash.

ACCEPTANCE OF ORDINANCE

By

BENTON RURAL ELECTRIC ASSOCIATION

BENTON RURAL ELECTRIC ASSOCIATION, hereby unconditionally accepts Ordinance No. 2010 - 01 of the City of Sunnyside, Yakima County, Washington, and all the terms, provisions and conditions thereof, said Ordinance being entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, GRANTING TO BENTON RURAL ELECTRIC ASSOCIATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY FIVE (25) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN AND ON THE PRESENT AND FUTURE STREET, ALLEYS, BRIDGES, HIGHWAYS AND PUBLIC PLACES OF AND WITHIN THE CITY OF SUNNYSIDE, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO A PORTION OF THE CITY OF SUNNYSIDE, THE INHABITANTS THEREOF AND OTHERS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THE ORDINANCE

which said Ordinance was submitted at a regular meeting of the City Council of the City of Sunnyside, and duly adopted by the City Council of said City of Sunnyside on the 11th day of January, 2010, and was duly attested by the Deputy City Clerk and submitted to and duly approved and signed by the Mayor of the City of Sunnyside on the 11th day of January, 2010, a summary of which was published in the Daily Sun News on the 13th day of January, 2010.

IN WITNESS WHEREOF, said BENTON RURAL ELECTRIC ASSOCIATION has caused this acceptance to be executed on its behalf by its authorized representative and properly attested to on this 27th day of January, 2010.

BENTON RURAL ELECTRIC ASSOCIATION

Virgil Bayle

Title: President

ATTEST:

Fred Meyer

Title: Secretary/Treasurer

I, Delilah Cyr, Deputy City Clerk of the City of Sunnyside, do hereby certify that the foregoing is a full, true and correct copy of the Acceptance of Ordinance No. 2010 - 01, and that the original of said acceptance was filed in my office as such Deputy Clerk on the 2nd day of ~~January~~ February, 2010.

WITNESS, my hand and seal of the City of Sunnyside this 2nd day of ~~January~~ February, 2010.

Delilah Cyr
Deputy City Clerk of the City of Sunnyside