

Linn County REC Franchise Ordinance

AN ORDINANCE GRANTING LINN COUNTY RURAL ELECTRIC COOPERATIVE ASSOCIATION, AN IOWA COOPERATIVE, A FRANCHISE FOR TWENTY FIVE (25) YEARS TO OPERATE AN ELECTRIC UTILITY WITHIN THE CITY OF NORTH LIBERTY, IOWA

BE IT ORDAINED by the City of North Liberty, Johnson County, Iowa.

Section 1. Grant of Franchise.

There is hereby granted to Linn County Rural Electric Cooperative Association, hereinafter referred to as the "Cooperative," its electrical energy suppliers as necessary to provide the Cooperative distribution at 25,000 Volts or less, its successors and assigns, the right and franchise to construct, reconstruct, repair, maintain and operate in the City of North Liberty, Johnson County, Iowa, systems for the distribution of electric power, and the right to construct, reconstruct, repair, maintain and operate the necessary poles, lines, wires, conduits and other appurtenances for the distribution of electric power and energy along, under and upon the streets, avenues, alleys and public ways in the City of North Liberty, Johnson County, Iowa; also the right to erect and maintain upon the streets, avenues, alleys and public ways, distribution lines through the City of North Liberty, Johnson County, Iowa, to supply individuals, corporations, communities and municipalities both inside and outside of the City with electric light and power for the period of twenty-five (25) years, after which such period the franchise shall expire. However, the City of North Liberty shall retain the right to terminate this right and franchise effective at the end of the tenth (10th), fifteenth (15th), and twentieth (20th) year anniversary of the Anniversary Date as defined within. In order to exercise this right to terminate the right and franchise granted to the Cooperative, the City of North Liberty must give written notice to the Cooperative no later than six (6) months prior to expiration of the respective Anniversary Date. The Anniversary Date shall be the date this franchise is published following signature by the Mayor.

Section 2. Indemnification.

The Cooperative shall indemnify, defend and hold the City harmless from and against any and all claims, demands, losses, damages, cost and expenses (including, but not limited to, court costs, fines, penalties and reasonable attorney's fees, but excluding consequential or indirect damages), judgments, liabilities and causes of action of any nature whatsoever resulting from or relating to its negligent acts or omissions in the use or occupancy of the streets, avenues, alleys and public ways in the City, a default of this franchise, or arising in any manner out of the negligent acts or omissions of its agents, employees, or contractors in connection with same, or with respect to the violation of any laws, including without limitation, any environmental laws; provided, however, that the Cooperative shall not be obligated to defend, indemnify or save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or contractors. The Cooperative shall indemnify and defend the City for, from and against any and all mechanic's liens and other liens and encumbrances filed by any person claiming by, through or under the Cooperative and against all costs, expenses, losses and liabilities (including reasonable

attorney's fees) incurred by the City in connection with any such lien or encumbrance or any action or proceeding brought thereon.

The Cooperative shall maintain commercial general liability insurance coverage, or its equivalent, throughout the term of this franchise, so as to protect and indemnify the City from suits or claims arising out of the Cooperative's negligent acts subject to policy terms and conditions. Such insurance shall be comprehensive in nature, including, but not limited to, contractual liability. In addition, such insurance shall contain limits not less than \$1,000,000 combined single-limit person injury and property damage. The Cooperative's failure to meet this insurance requirement shall not relieve the Cooperative of its responsibilities under this franchise. Upon proof of financial responsibility to the reasonable satisfaction of the City, the Cooperative may be allowed to self-insure the coverages indicated herein resulting from the negligent acts or omissions of the Cooperative, the Cooperative's agents or employees. The Cooperative shall provide the City with certificates of insurance or a letter of self-insurance upon request.

The requirements of indemnification shall not be a waiver of any right that the City would have to assert defenses on its own behalf under state or federal law. The Cooperative's indemnification obligations under this franchise shall survive the expiration, cancellation, or termination of this franchise in accordance with applicable statutes of limitation in force within the state of Iowa.

Section 3. Meters and Service Lines.

The Cooperative, its successors and assigns shall furnish and install all meters at its own expense, and shall provide the service wire to buildings as set forth in the Cooperative's tariff filed with the Iowa Utilities Board.

Section 4. Right to Operate and Locate Facilities.

The Cooperative shall have the right to erect and maintain all necessary poles and to place thereon the necessary wires, fixture and accessories as well as excavate and bury conductors and install and place other underground electric system facilities and fixtures for the distribution of electric power and energy in and through the City. New electric distribution lines in new developments within the City shall be installed underground unless otherwise approved by the City. Said facilities shall not unreasonably interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City.

Section 5. Relocation.

The Cooperative shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficiency operation of any such improvement. If the City orders or requests the Cooperative to relocate its existing facilities or equipment as the result of the initial request of a commercial or private developer or other non-public entity, the Cooperative shall receive

payment for the cost of such relocation the respective commercial or private developer or other non-public entity as a precondition to relocating its existing facilities or equipment. The City shall give the Cooperative reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way at the request of a commercial or private developer or other non-public entity shall not deprive the Cooperative of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same for commercial or private purposes are paid to the Cooperative. In any event, the City shall utilize reasonable efforts to assist the Cooperative in securing an easement or other continued rights of record to continue to operate and maintain its facilities upon such relocation.

Section 6. Mapping.

Upon reasonable request, the Cooperative shall provide to the City, on a project specific basis, information indicating the horizontal location, relative to the boundaries of the right-of-way, of all equipment which it owns or over which it has control and which is located in the project right-of-way. Mapping information provided to the City by the Cooperative shall be in the format utilized by the Cooperative and shall be for the exclusive use of the City in administering the use and occupancy of the public rights-of-way within the City and shall not be provided to or relied on by any person for any other purpose. Any information provided to the City with respect to the location or type of equipment which the Cooperative owns or plans to install in the right-of-way shall be treated as confidential information or a trade secret and shall not be released to any party by the City without the prior written consent of the Cooperative. If requested, the Cooperative shall submit to the City complete mapping data specific to particular projects. At the request of the City, mapping information will be reviewed with the City staff. The Cooperative does not warrant or guarantee the accuracy of any information provided pursuant to this Section. The Cooperative's maps only show equipment and facilities that are above ground.

Section 7. Annual Planning Meeting.

The Cooperative operations staff will, at the request of the City, attend an annual meeting with City staff and other interested city entities to discuss utility reliability standards, including comparisons to regional and national reliability statistics, annual and long-term construction planning for the Cooperative and the City, tree trimming plans and other related items. This will not replace any periodic meetings needed on specific projects and issues.

Section 8. Right-of-Way Restoration.

In making excavations in any streets, avenues, alleys and public places the Cooperative shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the original condition.

Section 9. Undergrounding.

The City may request estimates for the undergrounding of replacement lines, upgrades or new lines, including lines to be adjusted for road moves, for specific projects addressed at the annual planning meeting, as referenced in Section 6. When requested, the Cooperative will provide to the City two estimates: 1) An estimate for the cost of the project with

overhead construction and 2) An estimate for the cost of the project with underground construction. If the City disputes the Cooperative's cost estimates, the City may request a third-party engineering estimate by a mutually agreed upon firm. The City will have no more than 60 days from the estimate date to determine if it wants the line built overhead or placed underground. If the City chooses underground construction for the project, the City will be responsible for the incremental cost of undergrounding, defined as the differential between the estimate for underground construction and the estimate for overhead construction.

Section 10. Non-exclusivity.

The franchise granted by this Ordinance shall not be exclusive.

Section 11. Continuous Service.

Service to be rendered by the Cooperative under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Cooperative's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

Section 12. City Use of Cooperative Facilities.

The Cooperative, upon request of the City, and without cost to it, may permit its poles, conduits and other distribution facilities, so far as may be done without interfering with the free use its own wires and fixtures, to be used for the purpose of maintenance thereon any control wires and other appurtenances which may be necessary for any use by the City. Upon an agreement between the Cooperative and the City, these parties shall enter into a Pole-Sharing Agreement to document the location and obligations of the parties related to the City's use of the Cooperative's facilities.

Section 13. Energy Efficiency and Renewable Energy.

The Cooperative will provide the City energy efficiency materials and incentive forms for display in the Building Department and other City departments as requested by the City. The Cooperative will participate in neighborhood and community events, when possible and upon a request from the City or neighborhood organization, to encourage City residents to utilize the Cooperative's energy efficiency programs.

Section 14. Future Agreements.

The Cooperative, upon request of the City, shall explore with the City agreements that are mutually beneficial and economically feasible to both parties for interconnection of alternative energy electrical facilities, use of facilities and purchase of excess alternatively produced power in a timely manner, adhering to all federal, state or local codes, rules and regulations in effect at the time of agreement. The Cooperative will work with the City for fair regulatory treatment of such projects. Agreements are subject to generation reliability requirements.

Section 15. Publication Expenses.

The expense of the publication of this Ordinance shall be paid by the Cooperative.

Section 16. Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances, insofar as they are in direct conflict herewith, are hereby repealed.

Section 17. Street Lights.

At the request of the City, the Cooperative shall provide the City with a count of metered and/or leased streetlights within the City limits and within the service territory of the Cooperative. If the City would at any time desire to purchase the Cooperative's street lights located within the City, the Cooperative agrees to negotiate the sale of such street lights. The terms and conditions of such a sale will include that the street lights will be purchased at a mutually agreed price and on an as is, where is basis. Upon sale, the City shall assume all risk and loss related to the operation and maintenance of the purchased street lighting. Any agreement will require the City to purchase all street lights in the corporate limits of the City that are owned by the Cooperative.

Section 18. Franchise Fee.

At anytime during the term of the Franchise Agreement, the City may adopt a franchise fee as a percentage of gross receipts from the sale of electricity for customers within the city limits of North Liberty, Johnson County, Iowa. The Cooperative shall commence collecting the franchise fee within six months of the date the City notifies the Cooperative of adoption of a franchise fee. The franchise fee may increase up to a maximum of five percent (5%) as allowed by law. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the ordinance term. Notwithstanding the foregoing, the collection of any franchise fee shall be in accordance with applicable law, including but not limited to any limitations upon the collection of such franchise fee.

The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2(f) and 423B.5, as amended, and subject to any modifications or the repeal of same. Only the City may grant exemptions or refunds of the franchise fee granted by the Code of Iowa applicable at the time of such exemption or refund. If at any time the Iowa Utilities Board or another authority having proper jurisdiction prohibits the collection or payment of a franchise fee, the Cooperative shall be relieved of its obligation to collect and pay to the City the franchise fee.

The City agrees that the Cooperative's obligations related to the franchise fee are limited to those obligations set forth in Section 18. The City further agrees to bear all costs (including attorney fees), and to defend, indemnify and hold the Cooperative harmless from any and all liability, claims or causes of action associated with disputes related to the billing and/or collections of the franchise fee, provided that the City shall not be obligated to bear such costs or to defend, indemnify and hold the Cooperative harmless if such disputes are the result of inaccurate billing or negligence by the Cooperative.

Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of the City, the City Clerk shall provide written notification to an

officer of the Cooperative of such annexation or change in the limits of the City, and the Cooperative shall apply the franchise fee to its members who are affected by the annexation or change in the limits of the City, commencing no later than six (6) months from the effective date of the annexation.

The sum of such additional charges for the franchise fee and any additional charges related to Section 18 shall be shown separately on the utility bill to each member.

The Cooperative shall remit collected franchise fees to the City on a basis determined by the City, but no more frequently than monthly, within thirty (30) days after last day of the last revenue month of the quarter.

Section 19. Rates.

Under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix or change rates and charges authorized to be charged by the Cooperative to electric energy members.

Section 20. Right of Way Accessions.

Where any electric distribution or service line is presently or in the future placed anywhere in the corporate limits of the City, either as now existing or hereafter extended, not in a public street and a street shall thereafter be opened or dedicated so as to include said line within the right of way of such street, said electric line shall then be operated and maintained under the terms of this franchise, provided the Company first receives reasonable compensation in accordance with Section 5 hereof for any property rights foregone thereby.

Section 21. Tree Trimming.

The Cooperative is authorized and empowered consistent with this franchise to prune or remove at the Cooperative's expense any tree extending into any street, alley, right-of-way or public grounds to maintain electric reliability, to promote general safety, to restore utility service, and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Cooperative. For scheduled tree trimming that is not associated with restoration of electric service, the Cooperative shall provide a one week notice to the City of the locations and specifics of scheduled tree trimming or pruning. The pruning shall be completed in accordance with nationally accepted safety and utility industry standards, ANSI A300-2001, American National Standard for Tree Care Operations, and ANSI Z133-2006 Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush Safety Requirements, or subsequent revisions to these standards, and City ordinances regarding the trimming of trees and the protection of its facilities upon public grounds. The removal of trees or pruning in public grounds other than public right-of-ways excluding emergency and outage situations shall require prior approval from the City.

Section 22. Abandoned Facilities.

The Cooperative shall not be required to remove abandoned facilities from the right of way if the act of removal causes degradation of the right of way, potential damage to other facilities, or if the Cooperative facilities may, at a reasonable future date, be placed back

into service. The City may require the Cooperative to demonstrate the potential for any of these circumstances.

Section 23. Compliance with City Ordinances.

The Cooperative shall at all times during the term of this franchise ordinance conform with, submit to, and carry out the provisions of any and all valid ordinances existing or as hereafter lawfully enacted relating to the City's exercise of its police powers.

Section 24. Closing.

This franchise ordinance sets forth and constitutes the entire agreement between the Cooperative and the City of North Liberty with respect to the rights contained herein and may not be superseded, modified or otherwise amended without the approval and acceptance of the Cooperative. Except as set forth in Section 23, in no event shall the City of North Liberty enact any ordinance or place any limitations, either operationally or through the assessment of fees, that create additional burdens upon the Cooperative, or which delay utility operations with respect to the right contained herein.

Section 25. Eminent Domain.

This franchise grants the Cooperative the right to exercise powers of eminent domain. The Cooperative shall notify the City of proposed eminent domain action at least thirty (30) days prior to exercising said powers of eminent domain and the Cooperative agrees not to exercise such powers to the extent the City notifies the Cooperative that it opposes specific aspects of the proposed eminent domain action.

Section 26. Assignment. The Cooperative shall file in the office of the City Clerk written notice of any proposed sale, transfer, disposition or assignment of this franchise or change in ownership of the Cooperative.

Section 27. Notice of Default. If either party determines there is a default under this franchise the other party shall be given written notice describing the default in detail, whether a forfeiture or termination of the franchise will be sought and where curable a reasonable time to cure the default which shall not be less than sixty (60) nor more than one hundred eight (180) days.

Section 28. Severability. If any such section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

Section 29. Acceptance.

This Ordinance and the rights and privileges herein granted shall become effective upon its approval and passage in accordance with the Iowa law and the written acceptance by the Company. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the Clerk of the City its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the Code of Iowa. The effective date of this ordinance shall be

the date of publication. In the event that Linn County Rural Electric Cooperative Association does not file its written acceptance of this ordinance within 30 days after its approval by the City Council, this ordinance shall be void and of no effect.

First reading passed on _____, 2012.

Second reading passed on _____, 2012.

PASSED AND APPROVED on third and final reading on _____, 2012.

CITY OF NORTH LIBERTY

By: _____
Thomas A. Salm, Mayor

Attest:

Tracey Mulcahey, City Clerk

Drafted and approved as to form by City Attorney:

Scott C. Peterson, City Attorney

I certify that the forgoing was published as Ordinance No. ___ in the *North Liberty Leader* on the ___ day of _____, 2012.

Tracey Mulcahey, City Clerk