

ORDINANCE NO. 2026-1

AN ORDINANCE GRANTING TO THE ELKHORN RURAL PUBLIC POWER DISTRICT, A PUBLIC CORPORATION AND POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT AND FRANCHISE TO ERECT, OPERATE, MAINTAIN, REPAIR, REPLACE, AND REMOVE AN ELECTRIC LIGHT AND POWER DISTRIBUTION SYSTEM IN THE VILLAGE OF CLEARWATER, NEBRASKA; PRESCRIBING THE TERMS AND CONDITIONS THEREOF; PROVIDING FOR AN EXPIRATION DATE COTERMINOUS WITH THE PROFESSIONAL RETAIL OPERATIONS AGREEMENT; LIMITING RATES; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRPERSON AND BOARD OF TRUSTEES OF THE VILLAGE OF CLEARWATER, NEBRASKA:

SECTION 1. GRANT OF FRANCHISE. The Village of Clearwater, Nebraska (hereinafter referred to as "Village"), hereby grants unto the Elkhorn Rural Public Power District (hereinafter referred to as "Grantee"), a public corporation and political subdivision of the State of Nebraska, and to its successors and assigns, the non-exclusive right, privilege, and franchise to construct, erect, operate, maintain, repair, replace, and remove poles, wires, cables, transformers, conduits, fixtures, and other necessary equipment and appliances (collectively, the "System") in, upon, over, under, and across the streets, alleys, avenues, bridges, public ways, and public grounds of the Village of Clearwater, as they now exist or may hereafter be laid out or extended, for the purpose of transmitting and distributing electric energy to the Village and its inhabitants, and to other communities and customers connected to the Grantee's system. This grant is subject to the rights of the Village to use said streets and public grounds for its own purposes.

SECTION 2. TERM OF FRANCHISE. This franchise shall continue in full force and effect until 11:59 P.M. on December 31, 2038, at which time it shall expire, unless effectively renewed or extended by the Village Board of Trustees in accordance with the laws of the State of Nebraska then in effect. The expiration date of this franchise is established specifically to coincide with the expiration of the term of the "Professional Retail Operations Agreement" entered into between the Village and Grantee effective January 1, 2014, ensuring that the legislative grant of authority and the contractual operating agreement terminate simultaneously to facilitate unified renegotiation.

SECTION 3. MAINTENANCE. The Grantee is hereby authorized to trim trees upon and overhanging the streets, alleys, and public places of the Village to the extent necessary to keep the branches of such trees free and clear of the Grantee's electric lines and equipment.

SECTION 4. RATES AND CHARGES. The Grantee is authorized to charge and collect reasonable compensation for electric energy furnished to the Village and its inhabitants. The rates, charges, and rules and regulations regarding the service shall be established by the Board of Directors of the Grantee in accordance with Nebraska law; provided, however, that the Grantee shall at no time during the existence of this franchise charge a greater sum for electric energy for light and power purposes within the Village than is charged by the Grantee in other communities of like size and under similar conditions served by the Grantee.

SECTION 5. All ordinances or parts of ordinances in conflict be and the same hereby are repealed.

SECTION 6. This ordinance shall be effective from and after its passage, approval and publication as provided by law.

SECTION 7. This ordinance shall be published in pamphlet form and available for public inspection during normal village office business hours.

PASSED AND APPROVED THIS 9 DAY OF February, 2026.

VILLAGE OF CLEARWATER, NEBRASKA

By: Manda Hart
Chairperson Pro Tempore

ATTEST:

Angie Hupp
Angie Hupp, Village Clerk

(SEAL)



PROFESSIONAL RETAIL OPERATIONS AGREEMENT

between

ELKHORN RURAL PUBLIC POWER DISTRICT

and

VILLAGE OF CLEARWATER, NEBRASKA

EFFECTIVE JANUARY 1, 2014

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PROFESSIONAL RETAIL OPERATIONS AGREEMENT

between

ELKHORN RURAL PUBLIC POWER DISTRICT

and

VILLAGE OF CLEARWATER, NEBRASKA

This professional Retail Operations Agreement (Agreement) is made and entered into by and between Elkhorn Rural Public Power District, a public corporation and political subdivision of the State of Nebraska (ERPPD), and the Village of Clearwater, Nebraska, a municipal corporation of the State of Nebraska (Village).

RECITALS

WHEREAS, ERPPD operates a distribution electric utility system, including facilities for transmission and distribution of electric power and energy at wholesale and retail, and is engaged in the purchase, transmission, distribution, and sale of electric power and energy; and

WHEREAS, the Village owns an electric distribution system as hereinafter defined (Distribution System), which is directly or indirectly connected to ERPPD's electric system; and

WHEREAS, ERPPD and the Village entered into a Professional Retail Operations Agreement with Lease on January 1, 2002, which provided, among other things, for ERPPD's lease and operation of the Village's Distribution System; and

WHEREAS, ERPPD and the Village now desire to enter into a long-term Professional Retail Operations Agreement Co-designated as "lease" or "Agreement" in order to provide for ERPPD's continued lease and operation of the Villages Distribution System; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

TERM AND EFFECTIVE DATE

This agreement shall become effective January 1, 2014, and shall continue in force until December 31, 2038, and thereafter from year to year unless terminated on an anniversary thereof by at least five (5) years' prior written notice given by either party to the other, which notice can be given at any time on and after December 31, 2033.

ARTICLE II
LEASE OF DISTRIBUTION SYSTEM

During the term of this Agreement, the Village hereby leases and delivers possession of the Distribution system to ERPPD. The Distribution System shall constitute an addition to ERPPD's Electric System (the Electric System) under any Electric System Revenue Bond Resolution adopted from time to time by ERPPD (the Electric System Resolution).

The term "Distribution System" shall for the purposes of this Agreement, mean the electric distribution facilities consisting of wires, poles and appurtenant fixtures, meters, services, distribution transformers, and street lighting owned by the Village as of effective date of this Agreement and ERPPD, and such facilities may be modified from time to time by ERPPD. The facilities which comprise the Distribution System are identified in Exhibit A which is attached hereto and incorporated herein by this reference.

ARTICLE III
OPERATION AND USE OF FACILITIES

ERPPD shall operate the Distribution System as an integrated part of its electric distribution system and the Directors of ERPPD shall fix rates and other terms and conditions as provided in Nebraska Revised Statutes, and in particular sections 70-408 and 70-655.

ARTICLE IV
PAYMENTS

The gross retail electric revenues received during the term of this lease from sales to customers purchasing electricity from the Distribution System shall be adjusted to account for each of the following:

- i. any bad debt charge offs associated with such sales; and
- ii. discounts provided to tax-supported agencies;
- iii. any revenues associated with application of production cost and similar adjustments. During the life of this Agreement is in effect, an amount equal to twelve percent (12%) of the retail revenues, as determined by ERPPD records, shall be paid by ERPPD to the Village. The Village shall have the right to adjust the lease payment percentage up or down once every year. The Village shall be responsible for providing public notice and conducting such meetings or

hearings as may be necessary to formally adopt changes to the lease payment percentage; and

- iv. gross revenues less any of the items listed in subparagraphs (i) (ii) (iii) as set forth herein shall be deemed "Retail Revenue" as used in this Agreement.
- v. The Village further acknowledges and understands that ERPPD is not responsible for setting the lease rate percentage and also acknowledges that said percentage shall be added to each customer's power bill. The lease payment amount may be shown as a separate line item on each power bill.

Such payments shall be made quarterly, with the quarterly payment to be made on or before May 1, August 1, November 1 of that year, and the payment for the last three months of each year being made on or before February 1 of the following year. Payments shall be from the General Reserve Fund of ERPPD established under the Electric System Resolution (or such other fund as may be substituted therefore in the event of cancellation of the Electric System Resolution.

ARTICLE V TAXES

ERPPD shall make payments of taxes and/or in-lieu-of taxes with respect to its operation of the Village's Distribution System as may be required by law from time to time.

ARTICLE VI MAINTENANCE AND CONSTRUCTION OF FACILITIES

ERPPD shall maintain the Distribution System and construct any additions necessary for service to the extent such additions are within the established extension policies of ERPPD. Any additions to the Distribution System which are within the boundary shown on the Distribution System Boundary Map attached to Exhibit "A" hereto and which are rated at or below 15,000 volts shall become a part of the Distribution System and belong to the Village. Any materials removed in connection with maintenance or construction shall become the property of ERPPD.

ERPPD shall maintain the Villages Distribution System in good repair.

ARTICLE VII
SURRENDER OF DISTRIBUTION SYSTEM

Upon termination of this Agreement, ERPPD shall surrender the Distribution System to the Village in similar condition as it now is, (or better) with reasonable wear and tear accepted. Materials, supplies, tools, transportation and office equipment, transmission lines and facilities, and buildings owned by ERPPD shall remain the property of ERPPD.

ERPPD shall apply its normal depreciation rate then in existence for all physical plant installed or constructed by ERPPD during the term of this agreement. In the event the Village decides to let this Agreement expire or otherwise terminate the Agreement early, then the Village shall pay to ERPPD the undepreciated value of all physical plant installed or constructed during the term of this Agreement.

ARTICLE VIII
INSURANCE

To the extent it is obtainable at reasonable cost, ERPPD agrees at all times during the existence of this Agreement to have in force with a company authorized to issue such insurance in the State of Nebraska, General Liability, including Products and Completed Operations, and Independent Contractor's and Explosion, Collapse and Underground insurance with limits of \$5,000,000 combined single limit bodily injury and property damage per occurrence with specific contractual coverage insuring the hereinafter assumed liability of ERPPD. Under the same conditions, ERPPD also agrees at all times during the existence of this Agreement to have in force with a company authorized to issue such insurance in the State of Nebraska, automobile liability insurance on ERPPD's vehicles with limits of \$5,000,000 combined single limit bodily injury and property damage per occurrence. ERPPD agrees to save harmless the Village from loss (excluding liability of the Village to pay workmen's compensation benefits) as a result of legal liability to members of the public imposed upon the Village for bodily injury or death and for property damage arising out of ERPPD's operation of the Distribution System and performance of this Agreement, subject to the availability, limits, and scope of the coverage of said general/automobile liability insurance with specific contractual coverage.

This Article VIII, and the obtaining and maintaining of insurance coverage, is not intended to and it shall not be construed to create any liability to members of the public in excess of that provided by law. In any event, ERPPD shall provide no less than the minimum required by Nebraska law then in effect.

It is further agreed that the Village will consent to ERPPD solely deciding whether or not to insure against physical damage to all or any part of the property leased by ERPPD and in the care, custody or control of ERPPD in the performance of this

Agreement with the Village. ERPPD also agrees that the Village shall not be liable for any loss or damage to such property or for expenses incidental to such loss or damage.

**ARTICLE IX
AMENDMENTS**

Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

**ARTICLE X
REPLACEMENT OF PRIOR AGREEMENT**

This Agreement shall supersede the Professional Retail Operations Agreement With Lease which ERPPD and the Village entered into on January 1, 2002, together with any exhibits attached thereto and any amendments or supplements thereto. Said Professional Operations Agreement with Lease shall, upon the effective date of this Agreement, be null and void and without further force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Professional Retail Operation Agreement to be executed in duplicate by their duly authorized officers or representatives and their corporate seals to be hereunto affixed as of the dates indicated below.

ATTEST:

VILLAGE OF CLEARWATER, NEBRASKA

By: *Lina Snider*

By: *Steve Stearns*

Title: *Chairman of Board*

Date: *12/11/13*

ATTEST:

ELKHORN RURAL PUBLIC POWER DISTRICT

By: Stacie Young

By: Thomas E. Pridgett

Title: General Manager

Date: 12-16-2013

EXHIBIT A
PROFESSIONAL RETAIL OPERATIONS AGREEMENT
DISTRIBUTION SYSTEM

This Exhibit A is attached to and incorporated in the Professional Retail Operations Agreement (Agreement) between Elkhorn Rural Public Power District (ERPPD) and the Village of Clearwater, Nebraska (Village).

The facilities comprising the Distribution System as defined in Article II of the Agreement are identified in this Exhibit A and consist of the wires, poles and appurtenant fixtures, meters, services, distribution transformers, and street lighting owned by the Village, including any additions or improvements thereto which are rated at or below 15,000 volts and excluding any removals, disposition, or sales thereof, all as located within the area designated on the Distribution System Boundary Map, which is attached hereto and incorporated herein by this reference, except as may be otherwise specifically noted thereon. For any substation involving transformation to the Distribution System from a higher voltage, the Distribution System shall extend to the point at which the low-voltage switching and protection facilities connect to the low-voltage bus within said substation.

