

STATE OF MICHIGAN
COUNTY OF BERRIEN
ORONOKO CHARTER TOWNSHIP
ELECTRIC FRANCHISE ORDINANCE # 58

An ordinance, granting Nordic, L.L.C., its successors and assigns, the right, power and authority to transact a local electric business for the purpose of participating in the direct access program, approved by the Michigan Public Service Commission, known as the Rate DA Program, in Oronoko Charter Township, Berrien County, State of Michigan,

CHARTER TOWNSHIP OF ORONOKO ORDAINS:

SECTION I
GRANT

Oronoko Charter Township, (Grantor), hereby grants the right, power and authority to Nordic Electric, L.L.C., and its successors and assigns, hereinafter called the "Grantee", to furnish electricity and electrical service to customers in Oronoko Charter Township, Berrien County, State of Michigan, to the extent permissible by the direct Access Program approved by the Michigan Public Service Commission. Grantee does not have the right, power or authority to construct or maintain electric lines consisting of towers, masts, poles, cross-arms, guis, braces, feeders, transmission and distribution wires, transformers and other electrical appliances along, over or under the highways, streets, alleys, bridges, waterways and other public places in the Charter Township of Oronoko. Such right may be granted to Grantee, in the future, but only upon approval by the governing Board of the Township, and by amendment of this Ordinance.

SECTION II
TERM

This franchise shall be for a term of 30 years, subject, however, to the term being revoked, for good cause, and with written notice, by the governing Board of the Township.

SECTION III
CONSIDERATION

- A. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.
- B. In further consideration of the rights, power and authority granted by the Grantor, Grantee agrees:
- 1) To pay to the Grantor a non-refundable application fee in the amount of \$1,500.00; and

2) To compensate the Grantor: a) for the amount of its actual expenses incurred by the Grantor in the drafting and preparation of this Ordinance, including reasonable attorney fees, and b) for the amount of its actual expenses resulting from the process of adopting this Ordinance, including any cost of publication. Grantee's total obligation to compensate the Township for its actual expenses under this Paragraph (2) shall not exceed \$3,000.00; c) In the event that Grantee or any company which is a subsidiary, affiliate or other related company to Grantee, pays a fee, charge or other payment of any kind on a periodic basis (such as monthly, quarterly, annually, etc.), to any municipality in the State of Michigan as a condition, or in consideration for the right to transact a local utility business in that municipality, Grantee shall notify the Grantor, in writing, of the details of such fee or periodic charge within sixty (60) days of the effective date of such fee or periodic charge, at which time the franchise granted by this Ordinance shall be automatically revoked. Any new franchise granted by the Grantor to Grantee, thereafter, shall require payment of a similar fee or periodic charge as a condition of the new franchise; d) Grantee agrees to abide by any future ordinance(s) of the Grantor, if and when formally adopted, which may require the payment by Grantee of a fee, charge or other payment on a periodic basis, provided that any such future ordinance(s) apply equally to all electric franchise holders within Oronoko Charter Township. The Grantor shall notify Grantee within sixty (60) days of the formal adoption of such an ordinance by the Grantor, at which time the franchise granted by this Ordinance shall be automatically revoked. Any new franchise granted by the Grantor to Grantee shall be subject to the provisions of such future ordinance(s), and shall require payment of a similar fee or periodic charge as a condition of the new franchise.

SECTION IV **NO OBSTRUCTION**

No highway, street, alley, bridge, waterway, or other public place shall be obstructed by said Grantee in the performance of its business hereunder, other than as may be allowed in this Ordinance.

SECTION V **USE OF PUBLIC RIGHTS-OF-WAY BY GRANTEE**

A. No Burden on Public Ways. Grantee and its contractors, subcontractors and the Grantee's electric system shall not unduly burden or interfere with the present or future use of any of the Public Ways within Oronoko Charter Township. No Public Ways shall be obstructed longer than reasonably necessary in regard to necessary work or repair to such electric system. Grantee's cable, wires, structures and other related equipment which might be allowed and/or used, if authorized and in compliance with this Ordinance, shall be suspended or buried so as to not endanger or injure persons or property in the Public Ways.

B. Restoration of Public Ways. Grantee and its contractors and/or subcontractors shall immediately restore, at Grantee's sole cost and expense, and in a manner approved by the Grantor, any portion of the Public Ways that is in any way disturbed, damaged or injured by the construction, operation, or maintenance of said electric system, to as good or better condition than that which existed prior to any such disturbance. If such repair is not made within reasonable time, -or not made reasonably, then Grantor shall be entitled to complete the repair, and Grantee shall pay any such costs of the Grantor for such repair.

C. Easements. Any easements over or under private property, necessary for the maintenance or operation of said electric system, shall be arranged and paid for by Grantee. Any easements over or under property owned by the Grantor, other than the Public Ways, shall be separately negotiated with the Grantor.

D. Tree Trimming. The Grantee may trim trees, as stated herein, upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with said electric system. The Grantee shall minimize the trimming of trees to trimming only those that are essential to maintain the integrity of its electric system. No trimming shall be done in the public ways without prior notice and consent of the Grantor.

E. Compliance with All Laws. Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the ownership or use of its electric system, whether Federal, State or local law, now enforced or which hereafter may be promulgated (including, without limitation, any ordinance requiring the installation of additional conduit if and when Grantee installs underground conduit for its electric system). Grantee shall comply in all respects with applicable codes and industry standards, including, but not limited to, the National Electric Safety Code (latest edition), and the National Electric Code (latest edition). Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances, as may exist or may hereafter be amended and/or come into existence.

F. Street Vacation. If Grantor vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, the Grantee agrees, as a condition of this Ordinance, to consent to the vacation and to move any of its facilities as may be necessary, at its sole cost and expense, when asked to do so by Grantor, and/or a court of competent jurisdiction. Grantee shall relocate any such facilities to such alternative route as Grantor, acting reasonably and in good faith, designates.

G. Public Emergency. Grantor shall have the right to sever, disrupt, dig up or otherwise destroy facilities of Grantee, and/or in regard to any resulting disruption of electric service, and without any prior notice, if such action is deemed necessary because of a public emergency. A public emergency shall be any condition which, in the opinion of the governing Township Board, poses an immediate threat to the lives or property of the citizens of the Grantor, caused by any natural or man-made disaster. Grantee shall be responsible for any related and necessary repairs, at its sole expense, relative to any such action taken by the Grantor hereunder.

H. Miss Dig. If eligible to join, Grantee shall subscribe to and be a member of "MISS DIG", the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701 *et seq.*, and shall conduct its business in conformation with the statutory provisions and regulations promulgated thereunder.

I. Use of Existing Facilities; Compensation to Grantor. Grantee shall utilize existing poles, conduits, and other facilities where practical, and shall not construct or install any new, different or additional poles, or other facilities, unless expressly authorized by the Grantor, upon amendment of this Ordinance. Where existing utility wiring is located underground, either at the time of initial construction or subsequent thereto, Grantee's Electric System shall also be located underground, unless otherwise expressly authorized by Grantor. In the event Grantee desires to utilize any existing poles, conduits or other facilities owned by the Grantor, Grantee shall be obligated to pay any existing standard charge, and/or any such promulgated charge at that time, for attachment to, placement in or upon, or for other use of such facilities of the Grantor.

J. Underground Relocation. If Grantee has its facilities on, or is using, any other public, utility company's above ground utility poles and/or lines, and the owner of said poles and/or lines relocates its facilities to an underground conduit, Grantee shall relocate its facilities underground in the same location, at its expense.

K. Employee Identification. All personnel of Grantee, including contractors and/or subcontractors, who have as part of their normal duties, contact with the general public, shall wear on their clothing a clearly visible identification card, bearing their name and photograph. Grantee shall account for all identification cards at all times. Every service vehicle of Grantee, its contractors or subcontractors, shall be clearly identified as such to the public.

SECTION VI

NO GRANTOR LIABILITY: INDEMNIFICATION

A. Grantor Not Liable. Grantor, its agents, employees, and contractors, shall not be liable to Grantee or Grantee's customers, for any interference with or disruption in the operation of Grantee's electric system, or the provision of service over or through the Electric System, or for any damages arising out of Grantee's use of the Public Ways.

B. Indemnification. As part of the consideration for this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, agents, trustees, employees, departments, boards, and commissions, from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature, (including, without limitation, reasonable attorney fees and expenses, expert witness costs and fees, as well as those of consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, subcontractors, successors, and/or assigns, but only to the extent/percentage of the fault of Grantee, its officers, agents, employees, contractors, subcontractors, successors and/or assigns, as may be determined at law.

C. Assumption of Risk. Grantee undertakes and assumes for its officers, agents, contractors, subcontractors and employees, all risks of dangerous conditions, if any, on or about any Grantor-owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Grantor against and from any claim asserted or liability imposed upon the Grantor for personal injury or property damage to any such person arising out of the installation, operation, maintenance or condition of the electric system or Grantee's failure to comply with any Federal, State or local statute, ordinance or regulation.

D. Notice, Cooperation and Expenses. The Grantor shall give Grantee prompt notice of the making of any claim or the commencement of any actions, suits or other proceedings, covered by the provisions of this Section. Grantee, likewise, shall give Grantor prompt notice of the making of any claim or the commencement of any legal action or proceeding against it, arising out of the maintenance, operation and/or use/existence of said electric system.

Nothing herein shall be deemed to prevent Grantor from cooperating with Grantee, and/or participating in the defense of any litigation. If such participation is undertaken by Grantor, voluntarily and/or otherwise, Grantor may choose its own legal counsel for such representation and/or participation.

SECTION VII **INSURANCE**

A. Grantee shall, at the time of ownership, construction, use or operation of any system associated with the granting of this franchise ordinance, obtain and maintain in full force and effect, for the entire effective period of this Ordinance, the following insurance covering all insurable risks associated with its ownership and use of its Electric System:

- a) A comprehensive general liability insurance policy, including completed Operations Liability, Independent Contractor's Liability, Contractual Liability Coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than \$5 million dollars (\$5,000,000.00).
- b) An Automobile Liability Insurance Policy to cover any vehicles used in connection with its activities under this Ordinance, in an amount not less than \$2 million dollars (\$2,000,000.00).
- c) Workers' Compensation and Employer's Liability Insurance with statutory limits. The Grantor shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to Grantor. Grantee shall provide Grantor with a certificate of insurance evidencing such coverages as a condition of this Ordinance, and shall maintain on file with the Grantor a current certificate. All insurance required hereunder shall be issued by insurance carriers licensed to do business by or in the State of Michigan, or by surplus line carriers on the Michigan Insurance Commission Approved List of companies qualified to do business in Michigan. All insurance and/or surplus line carriers shall be rated 'A+' or better, by A.M. Best Company.

B. Each policy which is to be endorsed to add the Grantor as an additional insured, hereunder, shall contain cross-liability wording, as follows:

In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder.

C. If the insurance policies required by this Section are written with deductibles, then deductible amounts shall be approved in advance by the Grantor. Grantee agrees to /indemnify and hold harmless, the Grantor, from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

D. Grantee shall require that its contractors and subcontractors working in any Public Ways carry, in full force and effect, Workers' Compensation, Comprehensive Public Liability and Automobile Liability insurance coverages of the type which Grantee is required to obtain under the terms of this Section, with appropriate limits of insurance.

SECTION VIII
FRANCHISE NOT EXCLUSIVE

The rights, power and authority granted herein are not exclusive.

SECTION IX
RATES

Grantee shall be entitled to charge the inhabitants of the Grantor, for electricity furnished, at the rates approved by the Michigan Public Service Commission, which body, or its successors, have authority and jurisdiction to fix and regulate electrical rates and promulgate rules regulating such service in Oronoko Charter Township. Such rates and" rules shall be subject to review and change, any time, upon petition being made by either the Grantor acting through its governing Board, or by Grantee, or others as may be allowed by law.

SECTION X
REVOCATION

The franchise granted by this Ordinance is subject to revocation, for good cause upon passage of a resolution evidencing good cause, by the Township's governing Board, and upon ninety (90) days written notice to the Grantee.

SECTION XI
JURISDICTION LIMITATION

Nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under Michigan or Federal law, or a limitation upon the existing or future powers of the Grantor pursuant to its charter or under Michigan or Federal law.

SECTION XII
MICHIGAN PUBLIC SERVICE COMMISSION

A. Jurisdiction. Grantee shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to electric service by the Michigan Public Service Commission, or its successor body.

B. Filing. Grantee shall provide Grantor with copies of all documents which Grantee sends to the Michigan Public Service Commission, and copies of all orders, decisions, or correspondence Grantee receives from the Public Service Commission. Grantee shall permit Grantor inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

SECTION XIII
AMENDMENT

Grantor and Grantee agree that from time to time, the conditions, customers, services, and/or regulations of its franchise may require amendment to the terms and conditions herein set forth. Any such amendment to this Ordinance shall be made by mutual consent of Grantor and Grantee, and any such amendment shall be in writing and dated.

SECTION XIV
EFFECTIVE DATE

This Ordinance, upon passage, shall take effect the day after the date of publication, provided, that it shall cease and be of no effect ninety (90) from its effective date, unless within said period the Grantee shall accept the same, signed, in writing, and filed with the Oronoko Charter Township Clerk. Upon such acceptance, this Ordinance shall constitute a contract between Oronoko Charter Township, as Grantor, and Nordic, L.L.C., as Grantee.

First introduced and read prior to enactment by Township Board Trustee Jasper on February 9, 1999.

FEBRUARY 9, 1999.

Motioned for by Township Board Trustee Schinkel

Supported by Township Board Trustee Kerlikowske

Roll Call Vote:

Ayes:	<u>Calderwood</u>	<u>Schinkel</u>
	<u>Kerlikowske</u>	<u>Jasper</u>
	<u>Ladd</u>	<u>Hildebrand</u>

Nays: None

Abstain:

Absent: Meikle

Ordinance Enacted: Yes

The foregoing Ordinance was enacted by the Charter Township of Oronoko, State of Michigan, on the ninth day of March, 1999, and entered by its Supervisor and Clerk on said date.

CHARTER TOWNSHIP OF ORONOKO:

Ernest Hildebrand
Township Supervisor

Linda Meikle
Township Clerk

ORDINANCE NO. 58 WAS PUBLISHED IN THE *JOURNAL ERA*, ON THE 17th DAY OF February 1999, AFTER FIRST BEING INTRODUCED. SAID ORDINANCE WAS THEREAFTER PUBLISHED IN THE *JOURNAL ERA*, AFTER ENACTMENT, ON THE 17th DAY OF March, 1999.

EFFECTIVE IMMEDIATELY UPON SAID LATTER PUBLICATION.

Linda Meikle
Township Clerk

A true copy of the Ordinance may be obtained for purchase at reasonable cost, or upon inspection, at the Oronoko Charter Township Hall, located at 583 East Snow Road, Berrien Springs, Michigan, during normal business hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

Agreed and Accepted to by Nordic, L.L.C., this ____ day of ____, 1999,
by _____ (print name), its Authorized Representative.

Dated:

Nordic, L.L.C., by its Authorized Representative