

**AN ORDINANCE PROPOSING TO SELL AND GRANT A
FRANCHISE FOR AN ELECTRIC LIGHT, HEAT, POWER,
AND DATA TRANSMISSION AND DISTRIBUTION SYSTEM IN
THE TOWN OF MARION, VIRGINIA, AND INVITING BIDS
THEREFORE FOR CONSIDERATION.**

MARION, VIRGINIA:

That a franchise granting permission for the construction, maintenance and operation of an electric light, heat, power, and data transmission and distribution system, with all rights incident thereto, on, along, over, upon and under the streets and other public places of the said Town, subject to the conditions as hereinafter more specifically set forth, be and the same is hereby proposed to be sold and that written bids addressed and delivered to the Mayor of said Town, and as such, President of the Council of said Town, are hereby invited and will be received for such franchise, on the 3rd day of October, 2022, at 5:00 P.M., and upon passage of this Ordinance and its approval by the Mayor of said Town, the Clerk of Council thereof is hereby directed to cause a descriptive notice of the Ordinance proposing to make the grant, be published once a week for four consecutive weeks in the Smyth County News, a newspaper of general circulation published in Marion, Virginia, prior to the said 3rd day of October, 2022, the cost of said advertisement to be paid by the Town of Marion, Virginia, which shall be reimbursed by the person or corporation to whom the grant of such franchise is finally made, if made, but the right to reject any and all bids is hereby reserved to said Town.

The said franchise proposed to be sold and for which bids will be received on the day and hour aforesaid, and if sold, proposed to be

SECTION I

-----, it successors and assigns,
(hereinafter called "Grantee"), is hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the street, thoroughfares, alleys, bridges and public places (as the same now exist or may hereafter be laid out), of the Town of Marion, Smyth County, Commonwealth of Virginia, lines for the

distribution of electric energy or data transmission, either by means of overhead or underground conductors, with all necessary or desirable appurtenances for the purpose of supplying electric energy and or data communication transmission to said Town and the inhabitants thereof and persons or corporations beyond the limits thereof, for light, heat, power or any other purpose or purposes for which electric energy or data transmission is now or may hereafter be used, and for the transmission of same through or across said Town

SECTION II

Said lines and appurtenances shall be constructed, regularly mitigated and properly maintained so as to interfere as little as possible with the public in its use of the streets, thoroughfares, alleys, bridges and public places, as well as minimize the frequency and duration of outages due to weather events . The location of all poles and conduits shall be made under the supervision of the proper Board or Committee of the Town government. Fiber Optic cable may not be buried without the prior written approval of the Town Manager, Town Engineer, or the proper Board or Committee of the Town government. Lines and poles located at or above ground level that are discontinued, inactive, or abandoned shall be removed within 12 months of abandonment.

SECTION III

The right, authority, privilege and franchise to construct, maintain, replace, repair and operate an electric light, heat and power, data transmission and distribution system and all other necessary and appropriate equipment and facilities for its transmission and distribution is hereby granted and shall be in force and effect for an initial term of Five (5) years from and after the passage and approval of this Ordinance. Thereafter, this franchise shall automatically renew for successive Five (5) year terms unless either party hereto gives notice of cancellation not less than Ninety (90) days before the end of the then current term. Notwithstanding the foregoing, in no event shall this franchise exceed a term (inclusive of the initial term and any successive terms) of Twenty (20) years from and after the passage and approval of this Ordinance. The rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of said Town hereby reserves the

right to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION IV

The granting of this franchise is made upon the express condition that the exercise of the same shall be subject to such regulations as may be adopted by the State Corporation Commission of Virginia or such other body upon which said State may hereafter confer regulatory powers over like corporations, and that all such Rules and Regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set out in full. The granting of this franchise is also being made upon the express purpose of securing efficiency of public service at reasonable rates from said Grantee, its successors and assigns, in said Town of Marion, and the maintenance of the property and works of said Grantee in good order throughout the term of this franchise.

SECTION V

Said Grantee shall save the Town harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance or operation of said lines for the distribution of electric energy.

SECTION VI

Whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges and public places where such work is done in as good condition or repair as before such work was commenced. The Town may, after giving Grantee reasonable written notice of the failure by Grantee to make such restoration itself, have the restoration completed and charge the costs thereof to the extent reasonable to Grantee. Grantee shall be responsible for providing all necessary Flag persons and Signals to perform its work safely. Should Grantee request the Services of the Town of Marion, Grantee will reimburse the Town for those services within thirty (30) days of the date of the bill.

SECTION VII

Whenever, in this Ordinance, either the Town or the Grantee is referred to, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Town or by or on behalf of said Grantee, shall bind and inure to the benefit of the respective successors or assigns of said Town or of said Grantee, whether so expressed or not.

SECTION VIII

In consideration of the benefits which in the judgment of said Town will accrue to it by reason of the construction and operations of said electric light, heat, power, and data system and as an inducement to said Grantee proposing to construct, well maintain and operate said system, the said Town of Marion hereby agrees with said Grantee that no franchise or specific pole or wire tax shall be imposed or charged against Grantee, its successors or assigns by said Town during the life of this franchise, but said Town of Marion hereby expressly reserves the right of assessing or charging any valid tax of any other nature whether ad valorem or otherwise which is now authorized or which may hereafter be authorized by the general laws of the Commonwealth of Virginia.

SECTION IX

In the event it becomes necessary or expedient for the Town to change the course or grade of any public highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in which Grantee is maintaining an electric light, heat and power transmission and distribution system, upon notification by the Town, the Grantee will remove or change the location or depth of such mains, pipes or other appliances and fixtures as necessary to conform to the proposed street alteration at Grantee's own expense. However, the Town shall be responsible for providing Grantee with a suitable location to which the Grantee will relocate its mains, pipes, wire or other appliances and fixtures. In the event it becomes necessary or expedient for the Town to change the course or grade of any public highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other

public ground which requires Grantee to relocate its mains, pipes, wires or other appliances or fixtures that are located on Grantee's private easement, the Grantee shall relocate such mains, pipes, wires or other appliances or fixtures as necessary to conform to the proposed street alteration at the Town's expense. The Town shall also be responsible for providing Grantee with a suitable easement, which may be owned by the Town, to which Grantee will relocate its mains, pipes, wires or other appliances and fixtures.

SECTIONX

If any section or portion of any section of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, Grantee at its election (to be given to the Town by notice in writing within thirty (30) days after such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION XI

Grantee shall, within Sixty (60) days after the passage of the Ordinance, file with the Town Recorder/Clerk of the Town of Marion its unconditional acceptance, signed by its authorized officer, of the terms and conditions of this Ordinance and after filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the State Corporation Commission or such other regulatory body of the Commonwealth of Virginia as may hereafter succeed to the rights and powers of the State Corporation Commission or as may exercise statutory jurisdiction of over the operation of an electric light, heat and power transmission and distribution system companies furnishing such service in the Commonwealth of Virginia, be the measure of the rights, powers, obligations, privileges and liabilities of said Town and of said Grantee.

SECTION XII

All rights herein granted or authorized shall be subject to and governed only by this Ordinance to the extent not contrary to Town, State, or Federal laws, provided,

however, that the Town expressly reserves unto itself all of its police powers to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights herein granted not inconsistent with the provisions of this Ordinance. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of Grantee.

SECTION XIII

Grantee agrees that it will furnish the Town, upon reasonable request, with updated maps which provide the general location of its buried electric light, heat and power transmission and distribution system, during the term of this contract.

SECTION XIV

This franchise shall be accepted by the Grantee within Sixty (60) days from the date of the passage of the same.

Passed in Council this ____th day of _____, 2022.

Mayor David P. Helms

Clerk

Approved this _____ day of _____, 2022.

LEGAL NOTICE

An Ordinance Proposing to Sell and Grant a Franchise for an Electric Light, Heat, and Power Transmission and Distribution System in the Town of Marion, Virginia, and Inviting Bids therefor.

Be it Ordained by the Council of the Town of Marion, Virginia:

That a franchise granting the right, privilege, franchise and authority to acquire, construct,

maintain and operate in, above, under, across and along the street, thoroughfares, alleys, bridges and public places (as the same now exist or may hereafter be laid out), of the Town of Marion, Smyth County, Commonwealth of Virginia, lines for the distribution of electric energy or data transmission, either by means of overhead or underground conductors, with all necessary or desirable appurtenances for the purpose of supplying electric energy and/or data communication transmission to said Town and the inhabitants thereof and persons or corporations beyond the limits thereof, for light, heat, power or any other purpose or purposes for which electric energy or data transmission is now or may hereafter be used, and for the transmission of same through or across said Town. Public comment will be received at Marion Town Council's regular meeting. September 19th, 2022, at 5:30 P.M. at 138 West Main, Marion Virginia. A copy of the full text of the Ordinance is on file in the office of the Clerk of the Town of Marion, Virginia. The public is invited to attend.

Passed in Council this ___th day of _____, 2022.

Mayor

Clerk