

TITLE XIV

FRANCHISES

CHAPTERS:

- 14-01. Northern States Power Company - Gas.
- 14-01A. Gas Service Franchise Fee. Source: Ord. 1143, Sec. 1, (2019)
- 14-02. Northern States Power Company - Electrical.
- 14-03. Cass County Electric Cooperative, Inc.
- 14-04. Regulation of Cable Communications
- 14-05. Dickey Rural Services - Fiber Optic Data Franchise  
Source: Ord. 1211, Sec. 1 (2022)

CHAPTER 14-01

NORTHERN STATES POWER COMPANY - GAS

Source: Ord. 1140, Sec.1 (2019)

SECTIONS:

- 14-0101. Definitions.
- 14-0102. Adoption of Franchise.
- 14-0103. Location, Other Regulations.
- 14-0104. Relocations.
- 14-0105. Tree Trimming.
- 14-0106. Indemnification.
- 14-0107. Vacation of Public Ways.
- 14-0108. Change in Form of Government.
- 14-0109. Provisions of Ordinance.
- 14-0110. Amendment Procedure.
- 14-0111. Previous Franchises Superseded.
- 14-0112. Franchise Fee.

---

14-0101. Definitions.

1. City. The City of West Fargo, County of Cass, State of North Dakota.
2. City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
3. Commission. The North Dakota Public Service Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate Gas retail rates now vested in the North Dakota Public Service Commission.
4. Company. Northern States Power Company, a Minnesota corporation, its successors and assigns.
5. Gas. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
6. Gas Facilities. Pipes, mains, regulators, and other facilities owner or operated by Company for the purpose of providing gas service for public use.
7. Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the

General Counsel, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 800 Fourth Avenue East, Suite 1, West Fargo, ND 58078. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

8. Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
9. Public Way. Any street, alley, walkway or other public right-of-way within the City.

14-0102. ADOPTION OF FRANCHISE.

1. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.
2. Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.
3. Service and Rates. The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.
4. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
5. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy.

The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

14-0103. LOCATION, OTHER REGULATIONS.

1. Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company, at Company's sole cost and expense, will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.
2. Street Openings. Company shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3. Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, Company, at Company's sole cost and expense, shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
4. Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.
5. Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.
6. Franchise Fee.
  - 6.1 Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose

on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 9 shall not exceed two percent (2%) of the Company's Gross Revenues, as hereinafter defined.

6.2 Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 6.1 above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

6.3 Terms Defined. For the purpose of this Section 9, the following definitions apply:

6.3.1 "Customer Class" shall refer to the classes listed on the Fee Schedule and as defined or determined in Company's electric tariffs on file with the Commission.

6.3.2 "Fee Schedule" refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new

Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.

6.3.3 "Gross Revenues" means all sums, excluding the added charge, received during the term of this franchise by Company from the sale of electricity within the corporate limits of the City provided, however, that there shall be expressly excluded from the computation of gross revenues all sums received by the Company for electricity sold for municipal street and highway lighting, municipal water pumping, municipal sewage pumping, municipal traffic signal, and municipal fire siren services.

6.4 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 6. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

- 6.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 9.5, the foregoing conditions will be waived to the extent of such written consent.

14-0104. RELOCATIONS.

1. Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in paragraph 3 below, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own



expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

2. Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.
3. Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of North Dakota Century Code, Chapter 24-01-41, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.
4. No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.
5. Failure to Relocate. Upon Company's receipt of notice from City to relocate its Gas Facilities, Company must respond to City regarding said notice within sixty (60) days and work with City on said relocation. Failure by Company to respond to the notice and work with City regarding relocation is punishable as an infraction. Each day following the sixty (60) day response requirement will constitute a separate violation.

14-0105. TREE TRIMMING. Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction,

operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

14-0106. INDEMNIFICATION.

1. Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
  
2. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

14-0107. VACATION OF PUBLIC WAYS. The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota Century Code, Chapter 40-39.

14-0108. CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

14-0109. PROVISIONS OF ORDINANCE.

1. Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
2. Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

14-0110. AMENDMENT PROCEDURE. Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

14-0111. PREVIOUS FRANCHISES SUPERSEDED. This franchise supersedes any previous Gas franchise granted to Company or its predecessor.

Source: Ord. 277, Sec. 1-11 (1979); Ord. 572, Sec. 1 (1999); Ord. 1140, Sec. 1 (2019)

CHAPTER 14-01A

GAS SERVICE FRANCHISE FEE

SECTIONS:

- 14-0101A. Purpose.
- 14-0102A. Franchise Fee Statement.
- 14-0103A. Payment.
- 14-0104A. Enforcement.
- 14-0105A. Effective Date of Franchise Fee.

---

14-0101A. PURPOSE. The West Fargo City Commission has determined that it is in the best interest of the City to impose a franchise fee on those public utility companies that provide natural gas services within the City of West Fargo.

A. Pursuant to City Ordinance 1140, a Franchise Agreement between the City of West Fargo and Northern States Power Company, a Minnesota corporation, its successors and assigns, the City has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation (the "Company"), its successors and assigns, in an amount and fee design as set forth in Section 6 of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

14-0102A. FRANCHISE FEE STATEMENT. A franchise fee is hereby imposed on Northern States Power Company, a Minnesota Corporation, its successors and assigns, under its gas franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the Company's January 2020 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise fee assessment for gas service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by this ordinance have more than one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the city will control.

14-0103A. PAYMENT. The said franchise fee shall be payable to the City in accordance with the terms set forth in the Franchise Agreement.

14-0104A. ENFORCEMENT. Any dispute, including enforcement of a default regarding this Ordinance will be resolved in accordance with the Franchise Agreement.

14-0105A. EFFECTIVE DATE OF FRANCHISE FEE. The effective date of this Ordinance shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance to the Company by certified mail. Collection of the fee shall commence as provided above.

## **SCHEDULE A**

---

---

### **Franchise Fee Rates:**

#### Gas Utility

The franchise fee shall be in the amount of two percent (2.0%) of NSPM's Gross Revenues, as defined in Chapter 14-01 of the Revised Ordinances of 1990 of the City of West Fargo, a Franchise Agreement between the City of West Fargo and Northern States Power Company, a Minnesota corporation, its successors and assigns.

Franchise fees are submitted to the City on a quarterly basis as follows:

- January - March collections due by April 30.
- April - June collections due by July 31.
- July - September collections due by October 31.
- October - December collections due by January 31.

CHAPTER 14-02

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

Source: Ord. 428, Sec. 1 (1992); Ord. 919, Sec. 1 (2012)

14-0201. There be and hereby is granted to Northern States Power Company, A Minnesota Corporation D/B/A Xcel Energy, its successors and assigns, hereinafter referred to as "Company," during the period of 20 years from May 1, 2012, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys, and public grounds of said City, an electric distribution system and electric transmission lines, including all poles, pole lines, and fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power, and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company in the construction, operation, repair and maintenance of such poles, pole lines and fixtures and appurtenances, shall be subject to such conditions, restrictions and regulations as may be imposed by the governing body of the City of West Fargo.

14-0202. In consideration of the permit hereby granted and in order to defray the City's costs of administering and regulating the activities of the Company in connection therewith and for the use of the streets, alleys, public grounds of the City by the Company, the Company hereby agrees to pay City a fee equal to two per cent (2%) of the Company's gross revenues from sales of electricity within the City. It is understood that Company may add to its billings to consumers within the City, a surcharge of two percent (2%) to reimburse the Company for the costs of such fee. This fee shall be payable monthly and Company agrees, upon execution of this Agreement, to file monthly statements with the City, within fifteen days of the end of each month, setting out the amount of its gross revenues from the sale of electricity within the City the previous month. Company shall also submit at that time whatever fee payments may then be due. On or before 120 days after the end of Company's fiscal year and in each year of this agreement, Company shall provide City with a certification of the gross revenues for the preceding year, prepared by an independent certified accountant in accordance with generally accepted auditing standards, and that fairly and accurately represents the gross revenues of the Company for said year. The calculation of the 2% franchise fee shall be clearly shown as part of this certification in a form approved by the City Administrator. This certification shall be used to determine the exact amount of payments due the

City and to correct any overpayments or underpayments by the Company. Provided, that the 2% fee will commence with Company's first billing month that does not include any sales of electricity prior to June 1, 2012. Nothing in this paragraph shall be construed as restricting the City from either raising or lowering the two per cent franchise fee provided herein in a non-discriminatory basis. Nor shall the Franchise be construed as a limitation on the City's power to tax the Company.

The franchise fee payable by the Company will be generally applicable and uniformly applied to all other suppliers of electricity in the City of West Fargo. Should the scope of application, exclusions, or rates charged to any other supplier of electricity in the City of West Fargo result in the other supplier paying less than it would have paid had the fee payable hereunder been applied to it, the Company will be entitled to pay its franchise fee on the same basis as the City of West Fargo charges such other supplier.

14-0203. The granting of this franchise by the City of West Fargo, shall in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0204. The granting of this franchise by the City of West Fargo shall in no way be construed to limit or restrict the right of the City to establish a municipal electric distribution system in accordance with Chapter 40-33 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0205. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City interfering with the proper construction, operation repair and maintenance of any poles, pole lines, and fixtures or appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises, and provided the Company shall comply with all ordinances of the City relating thereto.

14-0206. The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company.

14-0207. Nothing in this Ordinance contained shall be construed as giving to Company any exclusive privilege in, on, under, or across the streets, alleys or public grounds of said City.

14-0208. Nothing in this Ordinance shall be construed as granting Company an exclusive franchise to provide electric service to all users located within the corporate limits of the City of West Fargo.

14-02309. Company shall have full right and authority to assign to any person, persons, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignment is authorized by applicable laws and regulations and that the assignee of said rights, by accepting such assignment shall become subject to the terms and provisions of this Ordinance.

14-0210. Company shall, if it accepts this Ordinance and the rights herein granted file a written acceptance of the rights hereby granted with the City Auditor within 30 days from the final passage of this Ordinance.



CHAPTER 14-03

CASS COUNTY ELECTRIC COOPERATIVE, INC.

Source: Ord. 429, Sec. 1 (1992); Ord. 911, Sec. 1 (2012)

14-0301. There be and hereby is granted to Cass County Electric Cooperative, Inc., a North Dakota corporation, its successors and assigns, hereinafter referred to as "Company," during the period of 20 years from May 1, 2012, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys, and public grounds of said City, an electric distribution system and electric transmission lines, including all poles, pole lines, and fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power, and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company in the construction, operation, repair and maintenance of such poles, pole lines and fixtures and appurtenances, shall be subject to such conditions, restrictions and regulations as may be imposed by the governing body of the City of West Fargo.

14-0302. In consideration of the permit hereby granted and in order to defray the City's costs of administering and regulating the activities of the Company in connection therewith and for the use of the streets, alleys, public grounds of the City by the Company, the Company hereby agrees to pay City a fee equal to two per cent (2%) of the Company's gross revenues from sales of electricity within the City. It is understood that Company may add to its billings to consumers within the City, a surcharge of two percent (2%) to reimburse the Company for the costs of such fee. This fee shall be payable monthly and Company agrees, upon execution of this Agreement, to file monthly statements with the City, within fifteen days of the end of each month, setting out the amount of its gross revenues from the sale of electricity within the City the previous month. Company shall also submit at that time whatever fee payments may then be due. On or before 120 days after the end of Company's fiscal year and in each year of this agreement, Company shall provide City with a certification of the gross revenues for the preceding year, prepared by an independent certified accountant in accordance with generally accepted auditing standards, and that fairly and accurately represents the gross revenues of the Company for said year. The calculation of the 2% franchise fee shall be clearly shown as part of this certification in a form approved by the City Administrator. This certification shall be used to determine the exact amount of payments due the

City and to correct any overpayments or underpayments by the Company. Provided, that the 2% fee will commence with Company's first billing month that does not include any sales of electricity prior to June 1, 2012. Nothing in this paragraph shall be construed as restricting the City from either raising or lowering the two per cent franchise fee provided herein in a non-discriminatory basis. Nor shall the Franchise be construed as a limitation on the City's power to tax the Company.

The franchise fee payable by the Company will be generally applicable and uniformly applied to all other suppliers of electricity in the City of West Fargo. Should the scope of application, exclusions, or rates charged to any other supplier of electricity in the City of West Fargo result in the other supplier paying less than it would have paid had the fee payable hereunder been applied to it, the Company will be entitled to pay its franchise fee on the same basis as the City of West Fargo charges such other supplier.

14-0303. The granting of this franchise by the City of West Fargo, shall in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0304. The granting of this franchise by the City of West Fargo shall in no way be construed to limit or restrict the right of the City to establish a municipal electric distribution system in accordance with Chapter 40-33 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0305. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City interfering with the proper construction, operation repair and maintenance of any poles, pole lines, and fixtures or appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises, and provided the Company shall comply with all ordinances of the City relating thereto.

14-0306. The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company.

14-0307. Nothing in this Ordinance contained shall be construed as giving to Company any exclusive privilege in, on, under, or across the streets, alleys or public grounds of said City.

14-0308. Nothing in this Ordinance shall be construed as granting Company an exclusive franchise to provide electric service to all users located within the corporate limits of the City of West Fargo.

14-0309. Company shall have full right and authority to assign to any person, persons, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignment is authorized by applicable laws and regulations and that the assignee of said rights, by accepting such assignment shall become subject to the terms and provisions of this Ordinance.

14-0310. Company shall, if it accepts this Ordinance and the rights herein granted file a written acceptance of the rights hereby granted with the City Auditor within 30 days from the final passage of this Ordinance.

CHAPTER 14-04

REGULATION OF CABLE COMMUNICATIONS  
(Source: Ord. 566, Sec. 1, 1999)

Section:

- 14-0401. Cable Franchises
- 14-0402. Statement of Intent and Purpose
- 14-0403. Short Title
- 14-0404. Definitions
- 14-0405. Grant of Authority and General Provisions
- 14-0406. Design Provisions
- 14-0407. Service Provisions
- 14-0408. Operation and Reporting Provisions
- 14-0409. Consumer Protection Provisions
- 14-0410. General Financial and Insurance Provisions
- 14-0411. Foreclosure, Receivership and Abandonment
- 14-0412. Removal, Transfer and Purchase
- 14-0413. Rights of Individuals Protected
- 14-0414. Miscellaneous Provisions

---

Section 14-0401. CABLE FRANCHISES.

A. Cable One, Inc. is hereby granted a non-exclusive franchise to install, construct, operate and maintain a cable television system within the corporate limits of the City of West Fargo, North Dakota, effective upon their acceptance and entering into a franchise agreement consistent with this ordinance governing the relationship between the City and Cable One, Inc.

B. Midcontinent Communications, G.P., is hereby granted a non-exclusive franchise to install, construct, operate and maintain a cable television system within the corporate city limits of the City of West Fargo, North Dakota, effective upon their acceptance and entering into a franchise agreement consistent with this ordinance governing the relationship between the City and Midcontinent Communications, G.P. The prior granted limited cable television franchise will terminate upon the effective date of the new franchise.

Source: Ord. 777, Sec. 1 (2006); Ord. 801, Sec. 1 (2007)

Section 14-0402. STATEMENT OF INTENT AND PURPOSE. The City intends, by the adoption of this ordinance, to bring about the continued development and operation of a cable communications System. Such a development can contribute significantly to the communication needs and desires of citizens of the City of West Fargo. Further, by the continued development and operation of a

System, City may help achieve better utilization and improvement of public services. No person or company shall operate a cable communications system within the City of West Fargo without being granted a franchise by the City of West Fargo.

Section 14-0403. SHORT TITLE. This ordinance shall be known and cited as the "City of West Fargo Cable Communications Ordinance," hereinafter in this document referred to as "Ordinance."

Section 14-0404. DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Approved" means approval by the City under the requirements of this Ordinance as applied to a location, condition, technical standard, or method of construction or approval by other authorities designated by law, ordinance, or this Ordinance to give approval to the matter in question.
- B. "Basic Service" means a group of Cable Services distributed over the subscriber network, consisting of that service tier which, at a minimum, includes the retransmission of local television broadcast signals.
- C. "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385; the Telecommunications Act of 1996, Pub. L. No. and any amendments thereto.
- D. "Cable Programming Service" means all video programming provided over a Cable System except that provided on Basic Service or Pay Television.
- E. "Cable Service" means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- F. "Cable Television System" or "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation,

reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility System.

- G. "Channel" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal.
- H. "City" means the City of West Fargo, North Dakota, or, as appropriate in the case of specific provisions of this Ordinance, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of West Fargo, or any officer, official, employee, or agent thereof, the designee of any of the foregoing, or any successor thereto.
- I. "City Commission" means the governing body of the City.
- J. "Complaint" means any verbal or written inquiry, allegation or assertion made by a person which requires subsequent corrective action to the System or any portion thereof, or raises an objection to the programming or business practices of a cable Operator. The term "Complaint" does not include an inquiry which is immediately answered by an Operator.
- K. "Converter" means an electronic device with an appropriate channel selector which permits a Subscriber to view all signals purchased.
- L. "Drop" means the cable that connects the Subscriber terminal at a point in the Subscriber's home,

designated by the Subscriber, to the nearest feeder cable of the System.

- M. "FCC" means the Federal Communications Commission, its designee, or any successor thereto.
- N. "Franchise Area" means the territory within the City throughout which an Operator shall be authorized to construct, maintain and operate its System and shall include any enlargements thereof and additions thereto.
- O. "Gross Revenues" means any and all revenue in any way derived and collected directly or indirectly by Operator, its affiliates, subsidiaries, parents, or any person in which Operator has a financial interest, from or in connection with the operation, of all or any part of a Cable Television System franchised pursuant to this Ordinance, including, but not limited to, revenue from all Cable Service fees including user fees, regular subscriber service fees, installation and reconnection fees, leased channel fees, Converter and other equipment rentals, and advertising revenues (advertising revenues attributable to the City shall be determined by apportioning the total advertising revenue of the Operator's System among those governmental units entitled to a portion of those revenues based on the number of Subscribers in each such unit as a percentage of the total number subscribers in all such units); provided, however, that this shall not include any taxes imposed directly upon any Subscriber or user by a state, local or other governmental unit and collected by such operator on behalf of such governmental unit. It does include money collected from subscribers that is allocated by Operator to pay the franchise fee.
- P. "Installation" means the act of connecting the System from the feeder cable to the Subscriber terminal so that Cable Service may be received by the Subscriber.
- Q. "Noncable Service" means any service which is distributed over the System other than a Cable Service.
- R. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases "Normal Business Hours" shall include at least the hours from 8:00 a.m. to 5:00 p.m.
- S. "Operator" means any person, persons, partnership, firm, company, corporation or association, or the assignee, affiliate, parent, subsidiary, or successor

of the operator, operating a Cable System within the corporate limits of the City.

- T. "Pay Television" means the delivery over the System of per-channel, per-channel group or per-program audio-visual signals to Subscribers for a fee or charge, in excess of the charge for Basic Service or Cable Programming Services.
- U. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
- V. "Public Property" means any real property, other than a street, owned by any governmental unit.
- W. "Signal" means any transmission of radio frequency energy or of optical information.
- X. "Street" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, utility easement or any public easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City, entitle an Operator to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- Y. "Subscriber" means any person or entity who lawfully subscribes to a Cable Service provided by an Operator by means of or in connection with the System.
- Z. "System Upgrade" means the process by which the System shall be upgraded pursuant to Section 14-0406.C herein.
- AA. "Two-way Operational System" means that the headend, trunk cables, distribution plant, amplifiers, and other technical components of the System have the requisite equipment in place to pass video, audio, voice, and/or data signals in both directions simultaneously.

Section 14-0405. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

A. Authority for Use of Streets.

1. For the purpose of constructing, operating, and maintaining a System in the City, an Operator may



erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

2. Prior to any construction, reconstruction, or rebuild of the System in the right of way, the Operator shall, in each case, file plans with the City and receive written approval of such plans.
3. The operator shall submit to the City all requests for the construction of new poles and/or new underground cable construction, and their proposed locations. Approval of the new location of new poles and/or new underground cable construction shall be granted by the City after such locations have been approved by the appropriate City authority. This provision shall not apply to existing poles or to underground cable construction which utilizes existing municipal or utility easements.
4. The Operator shall construct and maintain the System so as not to interfere with other uses of streets. Absent specific approval from the City to do otherwise, the Operator shall make use of existing poles and other facilities available to the Operator. The Operator shall individually notify in writing all residents whose property or property access shall be directly affected by proposed underground work not less than forty-eight (48) hours prior to commencement of that work. Such notice shall include the Operator's telephone number and the responsible employee of the Operator.
5. Notwithstanding the above grant to use the streets, no street shall be used by the Operator if the City's Public Works Director, in the City's sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used. In addition, the City's Public Works Director may designate a reasonable alternate location or route in a street to be used by the Operator so as

not to interfere with existing or future utilities in the street.

- B. Nature of Ordinance. This Ordinance and any franchise granted hereunder shall authorize an Operator to provide only Cable Services on the System. This Ordinance and any franchise granted hereunder do not authorize an Operator to provide any Noncable Services (including telecommunications or other voice or data information) on the System, provided, however, that an Operator may petition the City for any necessary authority to provide non-cable services on the system.
- C. City's Rights Reserved. The City expressly reserves the following rights which shall not be deemed to be waived or aberrated by this Ordinance: (1) to exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City; (2) to adopt, in addition to the provisions contained in this Ordinance, or any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; and (3) to modify this Ordinance upon mutual agreement of the City and Operator so as to require additional or greater standards of construction, operation, maintenance or otherwise, on the part of Operator to reflect technical, economic or jurisdictional changes occurring during the franchise term and to enable the City and the Operator to take advantage of new developments in the cable television industry so as to more effectively, efficiently and economically serve the public.
- D. Use of the Operator Facilities. The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the Operator, any wires and fixtures desired by the City of noncompetitive services to the extent that such installation and maintenance does not interfere with existing and future operations of the Operator. City shall indemnify and hold harmless Operator for any losses or causes of action resulting from City's negligent use of Operator's facilities.

Section 14-0406. DESIGN PROVISIONS.

A. System Design.

- 1. The operator shall, within an agreed upon time period as more specifically defined in any franchise granted pursuant to this Ordinance, immediately undertake all necessary steps to

construct and thereafter operate and maintain the System to a minimum of 550 MHZ having the capability of delivering at least 70 downstream channels and 25 MHZ of upstream capacity with a minimum of fifty (50) downstream channels initially activated.

2. The Operator shall provide the City a full description of the System proposed for construction and shall, upon completion of the System upgrade, submit to the City, in computer form, "as-built" maps for the entire System, as upgraded, to the extent such maps have not been previously provided to the City.

B. Construction Terms.

1. The Operator shall comply with all applicable federal, state, and City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not unreasonably interfere with the operation of any existing MATV, SMATV, MDS, MMDS, DBS, Cable Television or other distribution System in said structure, including any conduit used in connection with such other System. Operators of MATV, SMATV, MDS, MMDS, DBS, Cable Television or other distribution Systems shall install their equipment so as not to unreasonably interfere with the operations of any Cable Television System.
3. The Operator must comply with, and shall ensure that its subcontractors comply with, all rules, regulations, and standards of the City. If the installation, construction, or operation of the System does not comply with such rules, regulations, and standards, the operator must, at its sole cost, remove and reinstall such cables, wires, or other component parts of the System to ensure compliance with such rules, regulations, and standards.
4. The Operator shall use its best efforts to minimize Cable Service interruptions during any rebuild period.

C. Construction of System or System Upgrade.

1. Any Operator planning construction or upgrade of a Cable Television System in the City must, submit to

the City a construction schedule and specific construction sequencing plans for the construction or System Upgrade accompanied by a separate map showing: (a) the location of the master headend, all subheadends/hubs, headend to hub interconnect network, fiber backbone, and all studio facilities within the System; and (b) the proposed distribution of all principal trunk lines throughout the System (including termination points of all lines). All such construction schedules shall be fully justified on the basis of factors which will affect construction in the City, and the Operator should set out any factors which may adversely affect its ability to meet the schedules. The Operator must submit an updated construction schedule to the director on a quarterly basis until the completion of the construction or System Upgrade.

2. Subject to written request of the City, no less than thirty (30) days prior to completion of System construction or upgrade, the Operator shall notify the City that construction or System Upgrade is substantially complete. The City and the Operator shall arrange for such inspections, as the City shall deem appropriate, to enable the City to ascertain whether the construction or System Upgrade has been completed as scheduled. The City shall accept the completion of the construction or System Upgrade upon the City's satisfaction that the obligations of the Operator to complete the construction or System Upgrade have been fulfilled in all respects.

D. Two-Way System. The Operator shall provide a Cable Television System capable of (including, but not limited to, return amplifier housings) non-voice return communications. The City and the Operator will continue to review, during the term of any franchise granted pursuant to this Ordinance, the need and economic feasibility for implementation of a two-way operational System.

E. Interconnection. Whenever it is technically and practically feasible, an Operator may so construct, operate and modify its System so as to tie the same into all other Cable Systems within and adjacent to the City.

F. Provision of Service. (Source: Ord. 1038, Sec. 1 [2015])

1. After Cable Service has been established by activating trunk and distribution cable for any

area, the Operator shall provide Cable Service to any requesting person, subject to lawful installation policies of the Operator, 95% of the time within that area seven (7) days from the date of request, provided the installation request is 150 feet or less from the feeder cable.

2. The Operator shall install and provide its most complete (highest) Cable Service, excluding Pay Television and Digital, to all non-residential public buildings designated by the City at no charge for either the initial installation or for monthly Cable Service provided at each location. Each of these installations should include a single drop, one outlet, and a converter if necessary to receive such services. The public buildings to be provided this service shall include the following:
  - a. All public and parochial schools;
  - b. The city fire stations;
  - c. The City Hall complex;
  - d. All public library locations within the city limits;
  - e. The city police stations;
  - f. Public Works Facility; and
  - g. Any new or relocated non-residential public building located along existing cable plant.
3. There shall be no limit on the number of television receivers an institution may operate from the connection referenced in paragraph 2 above, unless otherwise agreed upon by the Operator and the City. The expenses of installing and maintaining an internal distribution System shall be the responsibility of the institution.
4. Any internal distribution System installed by an institution listed in this section shall conform to all applicable federal, state, and city rules, regulations, and ordinances and shall be operated in such a manner so as not to interfere with the Operator's System if such free Cable Service is to be maintained.

G. Technical Standards. The System shall be designed, constructed and operated so as to meet those technical

standards promulgated by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations relating to cable communications Systems and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, as amended, or as may, from time to time, be amended. The results of tests required by the FCC must be filed with the City within ten (10) days of the receipt of a request for such results. The City shall also have the right to request a written list of FCC test result reports prepared by Operator.

H. Special Testing.

1. At any time after commencement of Cable Service to Subscribers, the City may require Operator to perform additional tests, full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's Drop. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. Operator shall bear the expense for such special testing.
2. The City shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the Operator or to the Subscriber.

I. Semi-Annual Testing. The Operator shall conduct semi-annual technical performance tests and provide, upon request, copies of the test results to the City. These tests shall be conducted at six (6) widely scattered System extremity test points and shall include: summation sweep response across the entire band; signal-to-noise ratio measurements on at least two (2) channels; hum-to-carrier level measurements on one (1) channel; and subjective picture quality evaluations on all active channels. (Source: Ord. 1038, Sec. 2 [2015])

J. Operational Status Reports. Upon request, the Operator shall provide to the City the following statistical information: 1) number of repair service requests; 2) breakdown by type of complaints received; 3) breakdown by cause of problems, experienced on the System; 4) resolution of complaints received or problems experienced with the System.

K. Test and Compliance Procedures.

1. Operator shall perform all tests required by the FCC to verify compliance with all applicable technical standards.

2. The tests may, upon request of the City, be witnessed by representatives of the City.
3. If one or more of the locations tested fail to meet the performance standards, the Operator shall immediately, normally no longer than seven (7) days from the date of testing, complete corrective measures and report, if requested, to the City the corrective measures so taken. The entire test shall then be repeated for all locations which failed initial testing. The Operator shall bear the expense of all such testing.

L. Construction Timetable.

1. The Operator shall give notice to the City at least thirty (30) days prior to the anticipated completion date of System construction or upgrade and again at such time as the Operator has, in fact, completed all construction.
2. Upon receipt of notice that all construction has been completed, the City shall have sixty (60) days to obtain a written report from an independent engineer confirming the completion of construction; provided, however, that if the City fails to obtain such a written report within said sixty (60) days, the construction shall be deemed completed, unless the failure to obtain such a report is due to unforeseen events, acts of God, or events beyond the reasonable control of the City.
3. Notwithstanding anything contained herein to the contrary, the City may condition completion of construction upon receipt of a written report from an independent engineer, which report confirms the following:
  - a. That all construction has been completed or otherwise satisfactorily resolved.
  - b. Satisfactory test results using the technical standards set forth within this Ordinance at up to ten (10) widely separated Subscriber Drops selected by the independent engineer and using the following tests:
    - (1) Signal level
    - (2) Hum
    - (3) Bandpass response of System
    - (4) Carrier to noise

- c. Compliance with all applicable codes and standards.
  - d. Installation and the proper working of the emergency alert System.
  - e. Carriage of the Basic Service.
- M. Construction Delay. The Operator shall notify the City of any delay in the construction. Any and all modifications or delays in the construction schedule shall be subject to approval of the City.
- N. Construction Standards.
1. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all state and local codes where applicable.
  2. All installation of electronic equipment shall be of a nature consistent with industry practices, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and the ordinances and regulations of the FCC, State of North Dakota, and the City that are in effect now or in the future.
  3. Antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes and regulations.
  4. All of the Operator's plant and equipment, including, but not limited to, the antenna site, headend and distribution System, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with known and contemplated improvements the City may deem appropriate to make or to interfere in any manner with the legal rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.



5. The Operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

O. Construction Codes and Permits.

1. The Operator shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the City. The Operator shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.

2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Ordinance and to make such tests as it shall find necessary to ensure compliance with the terms of the Ordinance and applicable provisions of local, state and federal law.

3. Nothing contained in this Ordinance shall be construed to give the Operator the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner, except in accordance with 77 USCA § 541(a) (2).

P. Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by the Operator, at its expense, to a condition as good as that prevailing prior to the Operator's construction And in a manner consistent with the provisions of the excavation ordinance of the City.

Q. Undergrounding of Cable.

1. Cable shall be installed underground at the Operator's expense where both the existing telephone and electrical utilities are already underground. The Operator shall place cable underground in newly platted areas within sixty (60) days of installation of all utilities (water, sewer, telephone and electrical), unless this requirement is waived by the City.

2. In the event an underground installation is required and the ground is frozen, saturated, or otherwise unable to immediately facilitate underground installation, such installation may be performed on a temporary basis in compliance with all state and federal rules, regulations, codes, or other generally applicable standards. As soon as conditions change to permit proper underground installation of the cable, the Operator shall immediately, and in no event later than thirty (30) days after such conditions have changed to allow underground installation, undertake all necessary steps to install the cable underground pursuant to the terms and conditions of this Ordinance.

R. Reservation of Street Rights.

1. Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Operator.
3. If any such property of the Operator shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, water main, street, or any other public improvement, thirty (30) days' notice shall be given to the Operator by the City, and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by the Operator so that the same shall not interfere with the said public work of the City, as determined by the City, and such expense for removal or replacement shall be borne by the City only if the City bears the expense of relocating equipment of any utility using said property.
4. Nothing contained in this Ordinance shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid

injuring the Operator's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water System.

S. Trimming of Trees. The Operator shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Operator. Operator shall be solely responsible for its actions pursuant to this section.

T. Vacation of Streets and Abandoned Facilities. If the City vacates a right-of-way that contains the facilities of the Operator, and the right-of-way vacation does not require the relocation of the Operator's facilities, the City shall, except when it would not be in the public interest, reserve to and for itself and all right-of-way users having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way, and to enter upon the right-of-way at any time to reconstruct, inspect, maintain, or repair the facilities.

If the City vacates a right-of-way that contains the facilities of the Operator, and the right-of-way vacation requires the relocation of Operator's facilities, payment of the relocation costs must be determined as follows: (1) if vacation proceedings are initiated by the Operator, the Operator must pay the relocation costs; (2) if the vacation proceedings are initiated by the City for a public project, the Operator must pay the relocation costs, unless otherwise agrees to by the City and the Operator; or (3) if the vacation proceedings are initiated for the purpose of benefitting a person other than the Operator, the benefitted person must pay the relocation costs.

Operator shall notify the local government unit when facilities are to be abandoned. The Operator shall remove them from the right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

U. Movement of Facilities. In the event it is necessary temporarily to move or remove any of the Operator's wires, cables, poles, or other facilities placed pursuant to this Ordinance, in order to lawfully move

a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks notice by the City to the Operator, the Operator shall, at the expense of the person requesting the temporary removal of such facilities, comply with City's request. Any service disruption provisions of this Ordinance shall not apply in the event that the removal of the Operator's wires, cables, poles or other facilities results in temporary service disruptions.

V. Enlargement of Franchise Area.

1. In the event any new territory shall become annexed to the City, such new territory shall become, by operation of law, a part of said franchise area immediately upon the date such annexation becomes final, and said franchise area shall thereafter be deemed enlarged to include the addition of such new territory.
2. The Operator shall make Cable Service available to any new territory within a reasonable time, as determined by the City after the annexation thereof becomes final.

Section 14-0407. SERVICE PROVISIONS.

A. Franchises to Operate Cable Communications Systems in the City.

1. No Operator shall offer Cable Service to Subscribers by means of a Cable Television System within the City unless it holds a franchise granted by ordinance authorizing such a System within the City and in, under, and over the streets, highways, and other public grounds of the City, as provided in this Article.
2. Any Operator holding a franchise shall provide Cable Service to all residents within the city limits where a density equivalent of 80 or more residential dwelling units per cable mile exists.
3. Except upon approval of the City Commission, all franchises or renewal of franchises granted by ordinance pursuant to this section shall be non-exclusive; the City Commission reserves the right to issue as many such franchises as it deems advisable in the public interest, and shall not unreasonably refuse to award an additional competitive franchise.

4. Any franchise granted pursuant to this Ordinance shall not authorize an additional Operator to operate within the franchise area of an existing Operator on terms or conditions more favorable or less burdensome to such new Operator than those applied to any existing Operator.
5. The term of each franchise shall be for a period of no more than fifteen (15) years, the effective date to be pursuant to any franchise granted hereunder, with the right of renewal, consistent with state and federal law (in particular, Section 626 of the Cable Act), at the option of the City Commission, for a term of no more than fifteen (15) years. To the extent Section 626 of the Cable Act is no longer applicable to franchise renewals, the City and Operator shall conduct the franchise renewal process pursuant to the terms and provisions of Section 626 of the Cable Act as it existed at the time the franchise was granted or last renewed.

Source: Ord. 1038, Sec. 3 (2015)

- B. Applications for Franchise. All applications to construct, operate or maintain any cable television System in the City or to traverse any portion of the City for transmitting or conveying of such service elsewhere, shall be filed with the City Auditor, and each such application shall be set forth, contain, or be accompanied by the following:
1. The name, address and telephone number of the applicant.
  2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
    - a. The names, residence addresses and business addresses of all officers, directors and associates of the applicant.
    - b. The names, residence addresses and business addresses of all persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant, and the respective ownership share of each such person or entity.
    - c. The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole

or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all Cable Systems or similar Systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby.

- d. A detailed description of all previous experience of the applicant in providing Cable Service or related or similar services.
  - e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City, setting forth the basis for a study performed by such lending institution or funding source, and its clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed System in the City, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed System in the City.
  - f. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such System(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.
3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:
- a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to

become operational throughout the entire area to be served.

- b. A statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges as to each of any said classifications, including installation charges, service charges, and special, extraordinary, or other charges. The purchase price, terms, and nature of any optional or required equipment, device, or other item to be offered for sale to any Subscriber shall be described and explained in detail.
  - c. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in Title 47, Subpart K (Sections 76.601 et seq.) Rules and Regulations, Federal Communications Commission, as the same may be amended from time to time.
4. A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any Subscriber.
  5. A copy of any agreement covering the franchise area, if existing, between the applicant and any public utility providing for the use of any facilities of any public utility, including, but not limited to, poles, lines, or conduits.
  6. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City.
  7. The application fee in a sum established by the City which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part; provided that any applicant who shall deliver to the City Auditor a written withdrawal of or cancellation of any application hereunder, not later than the seventh day next following the day such application is

received by the City Auditor, shall be entitled to have returned and refunded an applicable portion of the application fee.

C. Application Procedure.

1. The City may, by advertisement or any other means, solicit and call for applications for Cable System franchises, and may determine and fix any date upon or after which the same shall be received by the City or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such offers and applications; provided, that the City shall not be required to solicit or call for such offers or applications and may receive or refuse to receive any of the same, solicited, called for, or otherwise, as the City may elect.
2. Upon receipt of any application for a franchise, the City Auditor or such individual or committee as may be designated by the City, shall cause such application to be investigated, shall prepare a report of such investigation, shall make recommendations respecting such application, and shall cause said report and recommendations to be placed upon the agenda of the regular session of the City next following the completion thereof, or as otherwise directed by the City. A copy of such report and recommendations and notice of the date it will be presented to the City shall be mailed to the applicant at the address listed in the application. Any existing Operator may provide the City a written request to receive a copy of said report and City shall provide a copy of said report as soon as reasonably possible.
3. The City shall receive such report and recommendations of the City Auditor or such individual or committee as may be designated by the City; shall consider the same together with such application; and shall make its determination either that such application should be accepted upon such terms and conditions as the City shall determine, and as herein provided, or that such application should be rejected. In making any determination hereunder as to any application, the City shall give due consideration to the quality of the service proposed; rates to Subscribers; income



to the City; experience, character background, and financial responsibility of the applicant and its management and owners; the technical and performance quality of the equipment to be used; the willingness and ability of the applicant to meet construction and physical requirements, policy conditions, permit limitations, and requirements imposed by this article or pursuant hereto; and any other considerations deemed pertinent by the City for safeguarding the interest of the City and the public. The City may determine that the award of any franchise shall be made on the basis of such considerations with or without competitive bidding, or otherwise in its discretion.

4. If the City shall determine that such application should be rejected, such determination shall be final and conclusive, and the same shall be deemed rejected. If the City shall determine such application should be accepted, the following shall be done and caused to be done:
  - a. The City shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.
  - b. The City shall pass its resolution of intention to grant such franchise, stating the name of the proposed operator, the character of franchise, the terms and conditions upon which such franchise is proposed to be granted, fixing and setting forth the date, hour and place certain when and where any persons having any interest therein or objection to the granting thereof may appear before the City and be heard, and directing the City Auditor to publish said resolution at least once, within fifteen days of the passage thereof; such publication shall also specify a time and date for a hearing on said resolution. Such hearing shall be not less than ten days nor more than thirty days after the date of publication.
5. At the time set for such hearing, or at any adjournment thereof, the City shall proceed to hearing and pass upon all protests, and its decision thereon shall be final and conclusive. Thereafter, the City shall make one of the following determinations:
  - a. That such franchise be denied; or,

- b. That such franchise be granted upon the terms and conditions as specified in the resolution of intention to grant the same; or,
  - c. That such franchise be granted, but upon the terms and conditions different from those specified in the resolution of intention to grant the same.
6. If the City shall determine that such franchise be denied, such determination shall be by resolution and shall be final and conclusive. If the City shall determine that such franchise be granted, such determination shall be by ordinance, granting such franchise upon such terms and conditions as specified therein.

D. Acceptance of Franchise.

- 1. No franchise granted hereunder shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Auditor; and such written acceptance shall be in form and substance as shall be prescribed and approved by the City Attorney and shall be and operate as an acceptance of each and every term and condition and limitation contained in this article, in such franchise, or otherwise specified.
- 2. Such written acceptance shall be filed by Operator no later than 11:59 p.m. of the 120th day next following the City approving the Franchise Agreement, and in default of the filing of such written acceptance as herein required, Operator shall be deemed to have rejected and repudiated the same; and thereafter, the acceptance of any such Operator shall not be received nor filed by the City Auditor, and such Operator shall have no rights, remedies or redress in the premises unless and until the City shall determine that such acceptance be received or filed, and then upon such terms and conditions as the City may impose.

E. Programming. The Operator shall initially provide programming, consisting of the services identified in its Franchise Agreement. If an Operator provides a premium channel without charge to Subscribers who do not subscribe to such premium channel, the Operator shall endeavor to provide reasonable advance notice to all such Subscribers.

- F. Programming Decisions. All programming decisions shall be at the sole discretion of the Operator; provided, however, the City reserves all of its rights pursuant to Section 625 of the Cable Act regarding any change in the mix, quality, or level of service and any other rights pursuant to Section 625 of the Cable Act.
- G. Emergency Alert System. The Operator shall install and thereafter maintain for use by the City an Emergency Alert System (EAS). The EAS system will operate pursuant to standards set forth by the FCC EAS rules and regulations.
- H. Access Channels. The Operator shall:
1. Upon request of the City, provide up to two (2) dedicated channels, without charge, for public, educational and governmental use, and shall provide, without charge, such studio facilities, equipment and technical services as specified in any franchise granted pursuant to this Ordinance, necessary for the effective use of such channels.
  2. Be subject to rules governing the use of any access channels to be enacted by the City and approved by the Operator as required by Section 611(d) of the Cable Act. Such rules shall provide, inter alia, a mechanism for adjustment of the total number of access channels provided or pursuant to subsection H(1) after consideration of subscriber preferences and the legitimate needs of access users. In no event, however, shall the total number of access channels required by any operator be more than three (3).
  3. Not charge for channel time or playback of pre-recorded programming of one hour or less on the specially designated channels referenced in this Section 14-0406. Charges for playback of pre-recorded programs of more than one hour shall not exceed an operator's direct labor costs.

Section 14-0408. OPERATION AND REPORTING PROVISIONS.

- A. Open Books and Records. The City shall have the right to inspect, upon twenty-four (24) hours written notice, at any time during normal business hours at the Operator's local office all books, records, maps, plans, financial statements, Service complaint logs, performance test results, record of requests for service and other like materials of the Operator maintained locally which are reasonably necessary to monitor compliance with the terms of this Ordinance.

- B. Communications with Regulatory Agencies. Copies of all petitions, applications, communications and reports submitted by the Operator or on behalf of or relating to the Operator to the FCC or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the System authorized pursuant to this Ordinance shall also, upon request, be provided to the City. Copies of responses from the regulatory agencies to the Operator shall, upon request, likewise be provided to the City within fifteen (15) days of receipt of the response.
- C. Annual Report. On or before April 1 of each year, the Operator shall, upon request, file with the City a copy of any of the following reports regarding the System:
1. A description of the Basic Service then being offered at the end of the fiscal year together with a description of any changes made in the Basic Service during the reported year.
  2. A compilation setting forth the results of any Subscriber survey.
  3. A current copy of the Subscriber service information required in accordance with Section 14-0408H of this Ordinance.
  4. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of the Operator).
  5. A compilation summarizing the complaints received during the reported year, by category, and a discussion of any unresolved complaints.
  6. A description of how pay-per-view programming is made available.
  7. Reasons why certain areas within the City are not served and plans to extend Cable Service to these areas.
- D. Additional Reports. The Operator shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, which are

reasonably necessary for the administration and enforcement of this Ordinance.

- E. Maps. The Operator shall provide City, upon request, a current map or set of maps drawn to scale showing: the System and all equipment installed or in place in streets and other public places, the areas where the Operator's Cable System is now available to Subscribers, and the areas where the System is not available.
- F. Audit. The City and its agents and representatives shall have the authority, during normal business hours, to arrange for and conduct an audit of the books and records of the Operator and its equipment for the purpose of checking compliance with the franchise fee calculations. The Operator shall first be given seven (7) days advance written notice of the audit request, a description of and purpose for the audit and description, to the best of the City's ability, of the books, records, documents and equipment it wishes to inspect. The Operator shall have the right to make its applicable books and records available at its headquarters or its local office in the Fargo area, to the extent necessary, but shall be solely responsible for all costs and expenses necessary for a City representative to travel to said headquarters for the conduct of an audit.
- G. Periodic Evaluation and Renegotiation Sessions. The City recognizes that the field of cable communications is a relatively new and rapidly changing industry which may undergo many regulatory, technical, financial, marketing and legal changes over the next decade. Therefore, in order to provide for a maximum degree of flexibility in this Ordinance, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:
1. The City may require, at its sole discretion, evaluation sessions at any time during the term of this Ordinance; provided, however, there shall not be more than one evaluation session during any twelve (12) month period.
  2. Topics which may be discussed at any evaluation and session include, but are not limited to rates, channel capacity, System performance, programming, access, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings, franchise fee adjustment in light of competition utilizing right of way at a lesser fee and any other topics the City or the Operator deem relevant.

3. During an evaluation session, the Operator shall fully cooperate with the City and shall provide without cost such information and documents as the City may reasonably request to perform the evaluation.
4. If at any time during its evaluation, the City determines that reasonable evidence exists of inadequate System performance, the City may require the Operator to perform tests and analysis directed toward such suspected inadequacies at the Operator's expense. The Operator shall fully cooperate with the City in performing such testing and any report prepared by the Operator shall include at least:
  - a. A description of the problem which precipitated the special tests.
  - b. The System component tested.
  - c. The equipment used and procedures employed in testing.
  - d. The method, if any, by which the problem was resolved.
  - e. Any other information pertinent to said tests and analysis which may be required by the City, or determined when the test is performed.
5. If after receiving the Operator's report the City determines that reasonable evidence still exists of inadequate System performance, the City may enlist an independent engineer, to perform tests and analysis directed toward such suspected inadequacies. The City will work with the Operator to select an independent engineer acceptable to both parties. If the engineer determines that System is performing inadequately, the Operator shall bear all costs and expenses associated with the services of the engineer. If the engineer determines that the System is performing adequately, the City shall bear all costs and expenses associated with the services of the engineer.
6. As a result of an evaluation and renegotiation session, the City and the Operator may determine that changes in the terms and provision of a franchisee may be required, that the System,

Ordinance requirements, or franchise should be updated, changed, revised, or that additional services should be provided. If the changes are consistent with the terms of this Ordinance and the needs of the City and implementation of such changes would not unreasonably add to the cost of providing Cable Service, the Operator and the City will, in good faith, negotiate the terms of any changes to which the parties agree.

Section 14-0409. CONSUMER PROTECTION PROVISIONS.

- A. Approval of Changes. The initial rates and charges for programming services shall be set forth within each franchise granted. The City reserves the right to regulate rates for Basic Service and any other services offered over the System, pursuant to federal or state law. The Operator shall maintain on file with the City at all times a current schedule of all rates and charges. The Operator shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission at 47 C.F.R., Part 76, Subpart N. The City shall follow all applicable rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N.
- B. Notification. Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition set forth in a franchise or permit (or such shorter period as may, upon a showing of good cause, be approved by the City), the Operator shall (i) submit a revised schedule of rates and charges to the City, and (ii) provide notice of the proposed change to each affected Subscriber. The Operator shall provide written notice to affected Subscribers prior to the imposition of a rate or fee change. The Operator shall not make any change in any rate unless it has provided the notice required in this Section.
- C. Consumer Protection and Customer Service. The City expressly reserves the right to enforce FCC rules and regulations promulgated pursuant to Section 632 of the Cable Act or any other applicable section of the Cable Act. The City also reserves the right to establish and enforce any law or regulation concerning customer service that may impose requirements exceeding standards set by the FCC pursuant to applicable sections of the Cable Act, or which would address matters not addressed by the standards set by the FCC pursuant to the Cable Act.

- D. Charges for Disconnection or Downgrading of Service.
1. The Operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no separate charge may be imposed when:
    - a. A Subscriber requests total disconnection from the System; or
    - b. A Subscriber requests the downgrade within a thirty (30) day period following any rate increase relative to the service in question.
  2. If a Subscriber requests disconnection from Cable Service prior to the effective date of an increase in rates, the Subscriber shall not be charged the increased rate if the Operator fails to disconnect Cable Service prior to the effective date. Any Subscriber who has paid in advance for the next billing period and who requests disconnection from Cable Service shall receive a prorated refund of any amounts paid in advance.
- E. Preferential Treatment Prohibited. The Operator shall not, as to rates, charges, service, service facilities, repairs, maintenance, rules, regulations, or in any other respect, make or grant undue preference or advantage to any person or business, nor subject any person or business to any prejudice or disfavor. This section shall not preclude the Operator from establishing and implementing bulk Subscriber rates or discounts or rate classifications based upon reasonable criteria.
- F. Subscriber Complaint Practices. (Source: Ord. 1038, Sec. 4 [2015])
1. The Operator shall have a publicly-listed toll-free telephone number and be so operated as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. At a minimum, the Operator shall endeavor to connect a telephone caller to a live service representative within thirty (30) seconds, seven (7) days per week, at least during the hours of 7:00 a.m. to 11:00 p.m. The Operator shall maintain written or computer-generated records demonstrating, to the satisfaction of the City, its ability to meet these standards. A written or computer-generated log available for City inspection shall be maintained listing all complaints and their dispositions.
  2. The Operator shall render efficient service, make repairs promptly and interrupt service only for



good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum use of the System. A written log available for City inspection shall be maintained for all service interruptions.

3. Subscriber requests for maintenance or repairs received prior to 2:00 p.m., Monday through Friday, shall, whenever possible, be performed the same day.
4. Subscriber requests for maintenance or repairs received after 2:00 p.m., Monday through Friday, shall, whenever possible be performed within twenty-four (24) hours of the request, but not later than the next business day.
5. Subscriber requests for repairs received on Saturdays or Sundays shall, whenever possible, be performed within twenty-four (24) hours of the request, but not later than the next business day.
6. The Operator shall respond within two (2) hours to all outage reports affecting at least one (1) channel for five percent (5%) or more of the System's Subscribers.
7. If the Operator fails to correct a System outage (i.e. 10% or more of the channels provided to a Subscriber are not able to be received) problem within twenty-four (24) hours, the Operator shall, upon request from a Subscriber, credit one thirtieth (1/30) of the monthly charge to the Subscriber for each twenty-four (24) hours or fraction thereof after the first twenty-four (24) hours during which a Subscriber is with reduced service.
8. All money owed to a Subscriber, or potential Subscriber, shall be refunded within twenty (20) working days of the Operator's knowledge of the obligation. Credit may be issued to the Subscriber's account by mutual agreement.
9. The Operator shall provide the City with the name of its chief management employee for the referral of complaints made to the City.

- G. Installation. Subscribers who request installation or repairs shall be given the schedule option of morning, afternoon or evening appointments. Persons requesting installation of Cable Service shall be afforded a right

of rescission between the time Cable Service is requested and the time Cable Service is actually installed. When possible, all new installations, reconnects, service upgrades or downgrades shall be performed within seven (7) working days of the date the order was placed by the Subscriber.

H. Subscriber Information. Upon installation, the Operator shall provide to all Subscribers (and Operator shall initially provide to the City) written Subscriber service information which shall include, but not be limited to, the following:

1. The procedure for investigation and resolution of Subscriber service complaints, including the telephone number and contact person at the City who may assist in the resolution of complaints;
2. Programming services, rates, and charges for all services, including public access related charges;
3. Billing practices as required by Section 14-0409I;
4. Service termination procedures;
5. Change in service procedures;
6. Refund policy;
7. Office hours; and
8. Converter/VCR hookup information and use instructions. Operator will, within a reasonable period of time, notify all Subscribers and the City of any material changes in the above-referenced Subscriber service information.

I. Subscriber Billing Practices.

1. The Operator shall notify each of its Subscribers, through the written service information, of its billing practices. The service information shall describe the Operator's billing practices including, but not limited to, the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments or returned checks, payments necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a Subscriber must give to avoid liability

for such services and procedures to be followed in the event of a billing dispute.

2. The Operator shall notify all affected Subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.
  3. The Subscriber bill shall contain the following information presented in plain language and format:
    - a. Name and address of the Operator;
    - b. The period of time over which each chargeable service is billed including prorated periods as a result of the establishment and termination of Cable Service;
    - c. Each rate or charge levied;
    - d. The amount of the bill for the current billing period, separate from any balance;
    - e. The Operator's telephone number.
    - f. The date on which payment is due from the Subscriber.
- J. Parental Control Option. The Operator shall, for a lawful fee, furnish parental control devices to all Subscribers who wish to be able to black out any objectionable programming from the Cable Service entering the Subscriber's home.
- K. Periodic Subscriber Survey. Operator will notify City of Subscriber surveys being conducted and shall allow the City, upon request, the opportunity to review all survey results at the office of the Operator.

Section 14-0410. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

- A. Payment to City. (Source: Ord. 1038, Sec. 5 [2015])
1. The Operator shall pay to the City, an annual amount not to exceed five percent (5%) of its Gross Revenues. The foregoing payment shall be compensation for use of streets and other public property, as well as payment for the right to operate a Cable Television System in the City. The exact fee shall be set forth in the franchise agreement.

2. Payments due the City under this provision shall be known as "franchise fees," shall be computed monthly and shall be paid on or before the thirtieth calendar day following the last day of the previous month to the City during regular business hours. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City.
  3. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Ordinance, or for the performance of any other obligation hereunder. All amounts paid shall be subject to audit and recomputation by the City.
  4. On or before April 1st of each year, the Operator shall provide the City with a certification of the Gross Revenues for the preceding year prepared by an independent certified public accountant in accordance with generally accepted auditing standards, and that fairly and accurately presents the gross revenues of the Operator for the year. The calculation of the fee shall be clearly shown as part of this certification in a form approved by the City. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by the Operator.
  5. All payments to the City shall be by check, made payable to the City of West Fargo, and delivered or sent by mail to the City Auditor, or by electronic means, if available.
  6. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate of 12%, or the maximum rate permitted under North Dakota law, but in no event greater than 12%.
- B. Future Costs. The Operator shall pay to the City an amount, not to exceed ten thousand dollars (\$10,000.00), equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any transfer, as more clearly referenced in Section 14-0412B hereof,

of any franchise granted pursuant to this Ordinance at such time and in such manner as the City shall specify. Payments of such costs and expenses shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments-in-kind" or any involuntary payments chargeable against the compensation to be paid to the City by the Operator pursuant to Section 14-0410A hereof, or (ii) part of the compensation to be paid to the City by the Operator pursuant to Section 14-0410A hereof.

C. Not Franchise Fees.

1. The Operator expressly acknowledges and agrees that except for the payments expressly required by Section 14-0410A hereof, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the Operator at the direction of the City or otherwise pursuant to this ordinance, or otherwise in connection with the construction, operation, maintenance, or upgrade of the System (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Ordinance and the exhibits hereto) are franchise fees chargeable against the compensation payments to be paid to the City by the Operator pursuant to Section 14-0410A hereof.
2. The Operator expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 14-0410A hereof, each of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided by the Operator, are within the exclusions from the term "franchise fee" set forth in Section 622(g) (2) of the Cable Act (47 U.S.C. §§ 542(g) (2)).
3. The Operator expressly acknowledges and agrees that the compensation payments due from the Operator to the City pursuant to Section 14-0410A hereof, shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by the Operator pursuant to this Ordinance and the compensation and other payments

to be made pursuant to this Section 14-0410A of this Ordinance shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Operator shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Operator.

4. The Operator shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance from or against any city or other governmental taxes of general applicability or other fees or charges, including permit fees for excavation, which the Operator is required to pay to the City or other governmental agencies.
5. The Operator shall not apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance as a deduction or other credit from or against any city or other government taxes of general applicability which shall be deemed to be separate and distinct obligations of the Operator.
6. The Operator shall not apply or seek to apply all or any part of the amount of any city or other governmental taxes or other fees or charge, including permit fees for excavation, of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Ordinance, each of which shall be deemed to be separate and distinct obligations of the Operator.
7. In the event the Operator applies or seeks to apply all or any part of the amount of said compensation payments as a deduction or other credit from or against such city or other governmental taxes of general applicability or other fees or charges, or in the event that the Operator applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against said compensation obligations, the City may terminate Operator's franchise for cause due to a material breach, pursuant to Section 14-0410K hereof, without any liability or compensation to the Operator.

D. Performance Bond.

1. The City may, in its sole reasonable discretion, require an Operator to furnish and file with the City a performance bond to ensure the faithful performance by Operator of all construction requirements contained in this Ordinance and any franchise granted hereunder. The bond shall run to the City in the penal sum of at least One Hundred Thousand and 00/100 Dollars (\$100,000.00). The rights reserved to the City with respect to the bond are in addition to all other rights the City may have under the Ordinance or any other law. The company providing such bond must be licensed to do business in the State of North Dakota.
2. Following the completion of any construction as determined by the City in accordance with Section 14-0406C hereof, the requirement to maintain said bond referred to above shall be eliminated.
3. The bond shall be subject to the approval of the City and shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.

E. Security Fund. (Source: Ord. 1038, Sec. 6 [2015])

1. Within thirty (30) days after the effective date of the franchise agreement, Operator shall, upon request, establish a "security fund" by establishing with a financial institution, approved by the City, a letter of credit, escrow account or similar security in the amount of Five Thousand (\$5,000.00) Dollars. Any written instrument evidencing the security fund shall be subject to the approval of the City.
2. In the event the Operator fails to perform any material obligation under the Ordinance or any franchise granted hereunder, the City shall provide thirty (30) days written notice to the Operator of such failure. If, after such thirty (30) days the failure remains uncured, and the City has been compelled to pay any damages, costs or expenses, or

has not received a payment from the Operator as required by this ordinance, the City shall provide written notice of the amount of such payment to the Operator. If within ten (10) days after Operator's receipt of written notice of such payment, the Operator fails to reimburse the City, then the City may withdraw the amount of such payment from the security fund.

3. Within ten (10) days after such withdrawal, the City shall provide Operator with written notice of the date and amount of such withdrawal. Within ten (10) days from receipt of such notice that any amount has been withdrawn, the Operator shall deposit a sum of money sufficient to restore such security fund to the required amount.
4. At a minimum, the letter of credit or escrow account shall (1) provide that it shall not be canceled without the prior written consent of the City and (2) not require the consent of Operator prior to the collection by the City of any amounts covered by the said security fund. The security fund shall be maintained, at Operator's sole expense, through the term of the franchise.
5. Interest on the amount in the security fund shall accrue to the benefit of the Operator and may be withdrawn by Operator.
6. The City reserves the right, in its sole discretion, to reduce the required amount of the security fund. Upon any termination of the franchise, Operator shall be entitled to the return of the security fund, or portion thereof as remains on deposit at such termination. In the event Operator continues to operate the System following any termination, then Operator shall not be entitled to a return of the security fund until the end of such continued operation.

F. Damages and Defense.

1. As between the City and the Operator, the Operator shall be responsible for any liability of the City, including, without limitation, any officer, employee, or agent of the City, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of the System by the Operator or its subcontractors, or the distribution of any service over the System. The Operator shall, at its own cost and expense,



replace, repair, or restore any damaged property to its prior condition and shall pay appropriate compensation in the event of any wrongful injury to or death of any individual person occasioned by any negligent act or failure to act of the Operator, or any officer, employee, agent, or subcontractor thereof, in connection with the construction, operation, maintenance, repair, upgrade or removal of the System.

2. The City, its officers, employees, agents, attorneys, consultants and independent contractors, shall not be liable for any liability of the Operator, or any other person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade or removal of, or other action or event with respect to, the System, or the distribution of any service over the System.
3. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System, in which event the City shall not incur any liability to the Operator or any other person. When possible, the Operator shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances, or other parts of the System shall be borne by the Operator unless state law provides otherwise.
4. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the Operator or any other person for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Ordinance, or any franchise granted pursuant to this Ordinance or applicable law, including the rights of the City to grant, terminate, amend, or otherwise modify all or any part of this Ordinance, or any franchise granted pursuant to this Ordinance.
5. The Operator shall:
  - a. Defend, indemnify, and hold harmless the City, its officers, employees, agents, attorneys, consultants and independent contractors from and against all liabilities, special,

incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorneys' fees) arising out of or in connection with any and all negligent acts of the Operator in:

- (1) The award or renewal of a franchise;
  - (2) The construction, operation, maintenance, repair, upgrade or removal of the System;  
or
  - (3) The distribution of any service over the System.
- b. Cooperate with the City, by providing nonfinancial assistance in connection with any claim arising out of or in connection with the adoption of this Ordinance or the granting of a franchise.
6. As between the City and the Operator, the foregoing liability and indemnity obligations of the Operator pursuant to this Section shall not apply to:
- a. Any willful misconduct or gross negligence of any city officer, employee, agent, attorney, consultant or independent contractor;
  - b. Any liability arising out of the distribution of services over the governmental channels to the extent that the Operator has not performed or failed to perform any act forming the basis of such claim;
  - c. Any liability arising out of the distribution of services over public channels to the extent that the Operator has not performed or failed to perform any other act forming the basis of such claim; or
  - d. Any liability arising out of the City's use of the Emergency Alert System.

G. Liability Insurance.

1. The Operator shall, at its own cost and expense, obtain a liability insurance policy or policies, together with evidence in the form of a certificate of insurance, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished at or before the granting of a franchise. Such companies must carry a rating by Best of not less than "A." Such policy or

policies shall be issued by companies duly licensed to do business in the State of North Dakota. Such policy or policies shall insure the company and the City and its officers, boards, commissions, elected officials, agents, and employees (through appropriate endorsements if necessary) against each and every form of liability of the company referred to in Section 14-0410F hereof in the minimum combined amount of Two Million Dollars (\$2,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit the Operator from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents, and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Operator.

2. The liability insurance policies required by this Section shall be maintained by the Operator throughout the term of any franchise and such other period of time during which the Operator operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew."

Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Operator shall obtain and furnish to the City, replacement insurance policies.

3. The legal liability of the Operator to the City and any person for any of the matters which are the subject of the liability insurance policies required by this Section, including, without limitation, the Operator's indemnification obligation set forth in Section 14-0410F hereof, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Operator.

H. Limitation of Liability.

1. In any court proceeding involving any claim against the City or any official, member, employee, or agent of the City, arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a permit, any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.
2. The limitation contained in paragraph 1 above shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of an Operator's rights.
3. Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against the City or any official, member, employee, or agent of the City, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.
4. Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to Cable Service or the granting of a franchise by the City, or any official, member, employee, or agent of the City.

I. City's Right to Revoke. In addition to all other rights which the city has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel any franchise granted pursuant to this Ordinance, and all rights and privileges pertaining thereto, in the event that, through willful failure, refusal or neglect:

1. The Operator substantially violates any material provision of this Ordinance; or
2. The Operator attempts to evade any of the material provisions of the Ordinance and refuses to cure it; or
3. The Operator is found guilty of practicing any material fraud or deceit upon the City or any Subscriber; or

4. The Operator becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt; or
  5. The Operator knowingly misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, any franchise granted pursuant to this Ordinance.
- J. Enforcement of Franchise Provisions. In addition to any other remedies provided herein, the City may require Operator to appear before the City to address any alleged violations of the terms and conditions of this Ordinance, or any franchise granted hereunder. The City shall provide Operator thirty (30) days advance written notice of such a meeting, which notice shall include a detailed description of any alleged violation. Operator shall be prepared to explain the circumstances regarding such alleged violation, including any actions taken by Operator to cure such alleged violations or other relevant facts. If City is dissatisfied with the responses received from Operator, it may exercise any other rights available to it under the terms and provisions of this Ordinance, any franchise granted hereunder, or applicable local, state and federal law.
- K. Revocation Procedures. In the event that the City determines that the Operator has violated any material provision of the Ordinance, or any franchise granted pursuant to this Ordinance, the City may make a written demand on the Operator that it remedy such violation and that continued violation may be cause for revocation of said Operator's franchise. If the violation, breach, failure, refusal, or neglect is not remedied or commenced to be remedied to the reasonable satisfaction of the City within thirty (30) days following such demand, the City shall determine whether or not such violation, breach, failure, refusal or neglect by the Operator is due to acts of God or other causes which result from circumstances beyond the Operator's control.
1. A public hearing shall be held and the Operator shall be provided with an opportunity to be heard upon thirty (30) days written notice to the Operator of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the City to support a revocation.
  2. If notice is given and, at the Operator's option, after a full public proceeding is held, the City

determines there is a material violation, breach, failure, refusal or neglect by the Operator, the City shall direct the Operator to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct.

3. If after a public hearing it is determined that the Operator's performance of any of the terms, conditions, obligations of the franchise or this Ordinance, or any requirements of law, was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the Operator has notified City in writing within a reasonable period of time of its discovery of the occurrence of such an event and the realization of the event's impact on franchise performance. Such causes beyond the Operator's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.
4. If, after notice is given and, at the Operator's option, a full public proceeding is held, the City determines there was a material violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the franchise revoked and canceled and of no further force and effect unless there is compliance within such period as City may fix, such period not to be less than thirty (30) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.
5. The issue of revocation shall automatically be placed upon the City Commission agenda at the expiration of the time set by it for compliance. The City then may terminate the Operator's franchise forthwith upon finding that the Operator has failed to achieve compliance or may further extend the period, in its discretion.
6. If the City, after notice is given and, at the Operator's option, a full public proceeding is held and appeal is exhausted, declares the franchise breached, the parties may pursue their remedies pursuant to this Ordinance or any other remedy, legal or equitable.
7. Within one hundred eighty (180) days after the City declares an Operator's franchise terminated, and

regardless of the exercise of any right of the City hereunder, the Operator may sell, remove or (by means divesting Operator of all right, title, and interest) transfer the entire System of Operator, subject to the provisions of Section 14-0412B, and upon any such sale or transfer in addition to any of the rights hereunder or otherwise, City shall have a lien (next in order of preference to any liens or encumbrances existing of record on the date of such termination) against any and all proceeds thereof, and against the System of Operator, in the full amount of any loss, cost, expense or other financial detriment incurred by the City in the exercise of any right hereunder, or by reason of such termination.

8. In the event Operator shall fail or refuse to sell, remove or transfer the entire System of Operator, as hereinabove provided, and regardless of the exercise of any other right of City hereunder, then by operation of law, all of the properties, facilities, records, files, rights, privileges, powers, authorities and immunities of Operator, which are part of the System of Operator, shall become the property of the City, subject to any and all valid liens or encumbrances of record, and the System shall belong to the City; and Operator shall cause to be executed, acknowledged and delivered to the City, upon demand therefor, such instruments as the City Attorney shall prescribe and approve, evidencing or affecting the ownership or control of any of the same in the City.
9. In the event the System shall become the property of the City, as herein provided, then City may solicit and call for offers to purchase such System, by bid process; providing that City may, in the manner provided in Section 14-0407C hereof, solicit and call for offers and applications for a franchise, and may specify, as a term and condition thereof, that any such offer and application shall include the purchase of such System from City.
10. Nothing herein shall be construed to obligate or require City to exercise any right of City hereunder, and City shall at no time be obligated or required to undertake or assume the ownership or operation of any System, or to provide any services.

Section 14-0411. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT.

- A. Foreclosure. Upon the foreclosure or other judicial sale of the System, the Operator shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Operator has taken place, and the provisions of this Ordinance governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.
- B. Receivership. The City shall have the right to cancel any franchise granted pursuant to this Ordinance subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Operator, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
  2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance.
- C. Abandonment. The Operator may not abandon any portion of the System without having first given three (3) months written notice to the City. The Operator may not abandon any portion of the System without compensating the City for reasonable, actual damages resulting from the abandonment.

Section 14-0412. REMOVAL, TRANSFER AND PURCHASE.

- A. Removal After Revocation, Expiration, or Non-Renewal.
1. If an Operator's request for renewal is denied or at the expiration of the term for which any franchise is granted, or upon its revocation, as provided for in Section 14-0410K hereof, the City shall have the right to require the Operator to remove, at the Operator's expense, all or any



portion of the System from all streets and public property within the City. In so removing the System, the Operator shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to the Operator's removal of the System. In so removing the System, Operator shall use its best efforts not to affect, alter or disturb in any way electric, telephone or utility cables, wires or attachments. Operator shall be responsible for any damage which occurs during said removal. The City, or its designee, shall have the right to inspect and approve the condition of such streets and public property after removal. The security fund, insurance, indemnity and penalty provisions of the Ordinance shall remain in full force and effect during the entire term of removal.

2. If, in the sole discretion of the City, the Operator has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if the Operator has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:
  - a. Declare all right, title and interest to the System to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or
  - b. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the Operator.

B. Sale or Transfer. (Source: Ord. 1038, Sec. 7 [2015])

1. The right of an Operator under this Ordinance or any franchise granted pursuant to this Ordinance, shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without full

compliance with the procedure set forth in this Section.

2. The provisions of this Section shall apply to the sale or transfer of all or a majority of the Operator's assets, merger (excluding any parent or subsidiary corporation), consolidation, creation of a subsidiary corporation or sale or transfer of stock in the Operator so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
  - a. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. The written request shall include or be accompanied by all information required by the City or required in accordance with FCC rules and regulations.
  - b. The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the Operator's Subscribers.
  - c. If a public hearing is deemed necessary, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.
  - d. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request.
  - e. Within thirty (30) days of any transfer, the Operator shall file with the City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Operator. The Operator may label documents proprietary and confidential when necessary and legally appropriate.

3. In reviewing a request for sale or transfer pursuant to this Section, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and the Operator shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signator to the franchise. In no event shall the City exceed 60 days in approving or denying an Operator's written request, or such request shall be deemed granted unless there is a mutual agreement for extension of time.

C. Purchase By City Upon Revocation or Non-Renewal.

1. Upon non-renewal of a franchise, the City may, in lawful manner and upon the payment of fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the franchise itself, lawfully acquire the System or effect a transfer consistent with the provisions of this Ordinance.
2. Upon the revocation of a franchise for cause, the City may, in lawful manner and upon the payment of an equitable price, lawfully acquire the System or effect a transfer of ownership of System to another person.

Section 14-0413. RIGHTS OF INDIVIDUALS PROTECTED.

- A. Discriminatory Practices Prohibited. The Operator shall not deny service, deny access, or otherwise discriminate against Subscribers, or general citizens on the basis of race, color, religion, national origin, sex, or age. The Operator shall comply at all times with all other applicable federal, state and city laws, and all executive and administrative orders relating to non-discrimination.
- B. Subscriber Privacy. The Operator, the City, and any other person or organization utilizing the Cable System, shall strictly observe and comply with the privacy provisions of the Cable Act and state and federal law.

Section 14-0414. MISCELLANEOUS PROVISIONS.

- A. Compliance with Laws. The Operator and the City shall conform to all state and federal laws and rules regarding Cable Television as they become effective, unless otherwise stated. The Operator shall also conform with all the city ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Ordinance.
- B. Continuity of Service Mandatory. Upon expiration or the termination of a franchise, the City may require the Operator to continue to operate the System for an extended period of time not to exceed six (6) months. The Operator shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Ordinance. In the event the Operator does not so operate the System, the City may take such steps as it, in its sole discretion, deems necessary to assure continued service to Subscribers.
- C. Work Performed by Others.
  - 1. The Operator shall, upon request, give notice to the City specifying the names and addresses of any other entity, other than the Operator, which performs services pursuant to this Ordinance, provided, however, that all provisions of this Ordinance shall remain the responsibility of the Operator, and the Operator shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by persons other than the Operator pursuant to Section 14-0410F.
  - 2. All provisions of this Ordinance shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Ordinance.
- D. Compliance with Federal, State and Local Laws.
  - 1. If any federal or state law or regulation requires or permits the Operator to perform any service or act or shall prohibit the Operator from performing any service or act which may be in conflict with the terms of this Ordinance, then as soon as possible following knowledge thereof, the Operator or City shall notify the other of the point of conflict believed to exist between such law or regulation. The Operator shall at all times comply

with all applicable laws and ordinances enacted by the City.

2. If any term, condition or provision of this Ordinance or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Ordinance and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the Operator and the City.

E. Nonenforcement by City. The Operator shall not be relieved of its obligation to comply with any of the provisions of this Ordinance by reason of any failure of the City to enforce prompt compliance.

F. Force Majeure. Whenever a period of time is provided for in this Ordinance for either the City or an Operator to do or perform any act or obligation, neither party shall be liable through causes beyond the control of such party, such as unavoidable delays in the issuance of utility company permits, licenses, authorizations and approvals; delays caused by utility company work required to be completed prior to activation; war; riot; insurrection; rebellion; strike; lockout; unavoidable casualty or damage to personnel, materials or equipment; fire; flood; storm; earthquake; tornado; orders of a court of competent jurisdiction; or any act of God, an upon the occurrence of any such event, that time period shall be extended for the amount of time said party is so delayed.

G. Miscellaneous Violations.

1. From and after the acceptance of the Ordinance, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any television signals or radio signals by means of a System using public right of ways unless a permit therefor has first

been obtained pursuant to the provisions of this Ordinance, and unless such permit is in full force and effect.

2. From and after the acceptance of the Ordinance, it shall be unlawful for any person to construct, install or maintain within any street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, or the City's official map or the City's major thoroughfare plan, any equipment or facilities for distributing any television signals or radio signals through a System, unless a permit authorizing such use of such street or property or areas has first been obtained.

- H. Emergency Use. In the case of any emergency or disaster, the Operator shall, upon request of the City, make available its System and related facilities to the City for emergency use during the emergency or disaster period.
- I. Controlling Law. This Ordinance shall be construed and enforced in accordance with the substantive laws of the State of North Dakota.
- J. Captions. The paragraph captions and headings in this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Ordinance.
- K. Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

CHAPTER 14-05

DICKEY RURAL SERVICES, INC. - FIBER OPTIC DATA FRANCHISE

Source: Ord. 1211, Sec. 1 (2022)

SECTIONS:

- 14-0501. Grant of Authority.
- 14-0502. Installation of Facilities.
- 14-0503. Obstruction of Roadways to be Minimized.
- 14-0504. Underground Installation.
- 14-0505. Relocating.
- 14-0506. Property Restoration.
- 14-0507. Removal of Abandoned Equipment.
- 14-0508. Rights to Trim Trees.
- 14-0509. Cooperative Subject to Police Power Regulations.
- 14-0510. Eminent Domain Authority.
- 14-0511. General Provisions.
- 14-0512. Limitation of Liability.
- 14-0513. Indemnification.
- 14-0514. Effective Date.

---

14-0501. **GRANT OF AUTHORITY.**

1. The City of West Fargo (the "City") hereby grants to Dickey Rural Services, Inc., its successors and assigns, including without limitation Dickey Rural Services, Inc., a North Dakota cooperative, (the "Cooperative"), a non exclusive franchise for a period of twenty (20) years from and after the passage and approval of this franchise ordinance, subject to the conditions and requirements hereinafter set forth, which authorizes the Cooperative to construct or acquire, either or both, and, thereafter, to operate and maintain fiber-optic data systems and communications systems and telephone facilities consisting of, without limitation, exchange, toll, and truck lines, conduits, cables, poles, wires, fibers, voice radio circuits, exchanges, switches, boards, and all fixtures and appurtenances necessary or desirable for the proper construction, operation and maintenance of said system within the limits of the City of West Fargo, State of North Dakota, for the purpose of supplying data and communications and telephone service for public and private use therein and for the transmission of data and telephone service through and beyond the City.
2. Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Cooperative, and its publication as required by law. The City by resolution may revoke this franchise agreement if

Cooperative does not file a written acceptance with the City within 90 days after publication.

3. Service and Rates. The service to be provided and the rates to be charged by Cooperative for fiber optic service in City are subject to the jurisdiction of the Commission.
4. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Cooperative.
5. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in Cass County District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

14-0502. **INSTALLATION OF FACILITIES.**

1. Cooperative is authorized to construct, reconstruct, maintain, and operate the data and telephone systems and lines with all necessary appurtenances, including, without limitation, exchanges, switches, poles, wires, fibers, anchors, anchor rods, conduits, cables, and all fixtures and appurtenances necessary or advisable for the operation of the data and telephone systems in, on, over, under, across, and through public streets, roads, alleys, or other public ways of the City. The data and telephone systems shall be constructed, operated, and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public.
2. The Cooperative will not open or disturb any public way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on the Cooperative must not be more burdensome than those imposed on other utilities for



similar facilities or work. The Cooperative may, however, open and disturb any public way without permission from the City where an emergency exists requiring the immediate repair of the Cooperative's facilities. In such event the Cooperative will notify the City Auditor by telephone as soon as practicable. Not later than the second working day thereafter, the Cooperative will obtain any required permits and pay any required fees.

3. Whenever the Cooperative is erecting, constructing, or maintaining poles, wires, fibers, anchors, anchor rods, or other appurtenances and disturbs any pavement, sidewalk, crossing, or curb on any street, alley, bridge, or public way in the City or makes any excavations thereon, such disturbed area or excavations must be refilled and the pavement, sidewalk, crossing, or curb replaced under the direction of the City. Any excavation must be properly lighted at night during construction, and in case of the failure to do so on the part of the Cooperative, then the City may do the same at the expense of the Cooperative and the Cooperative agrees to pay the City for the reasonable cost or value of the work. The Cooperative is liable for all loss or damage caused by the negligence of the Cooperative, which may result to persons or property within the City, caused by it, or its agents, servants, employees, or subcontractors in erecting, operating, and maintaining the fiber-optic data systems, communications systems, and telephone facilities.

14-0503. **OBSTRUCTION OF ROADWAYS TO BE MINIMIZED.** All exchanges, switches, poles, wires, fibers, anchors, anchor rods, conduits, cables, and all fixtures and appurtenances installed by virtue of this franchise ordinance must be erected in such places and in such a manner as not to unnecessarily encroach upon streets, alleys, bridges, or public ways of the City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof is subject to the reasonable supervision and direction of the City. Whenever practicable, all poles shall be set in alleys. Poles now in position upon or along streets, whenever practicable, will be removed and the location of said poles shall be located in alleys or underground.

Poles set in alleys must be set at or near the boundary line of the property and where set in streets must be located at such distances as directed by the City from the property line of the abutting owner and placed so as not to interfere with the construction or placing of any water pipes, sewers, drains, or the flow of water therefrom which has been or may be placed by authority of the City. In the event that the Cooperative makes any unnecessary obstructions of streets, alleys, bridges, public ways,

or places not designated by the City, the City may cause the removal of such obstructions and charge and collect from the Cooperative the actual cost of such removals.

14-0504. **UNDERGROUND INSTALLATION.**

1. All new wires, fibers, and new services, and any other equipment installed by the Cooperative must be buried underground in the following areas:
  - (a) Any new district zoned residential.
  - (b) Any new district zoned commercial.
2. In a district zoned residential and/or commercial, whenever the Cooperative undertakes any major replacement of any line, fiber, or other equipment, such replacement equipment will be buried underground. A major replacement is defined as five hundred feet (500') of line or fiber in an undeveloped property area or one (1) City block if in a developed property area.
3. Whenever the Cooperative relocates any of its existing equipment, such equipment capable of the same will be placed underground at the new location.
4. In districts zoned industrial, new lines and fiber do not have to be buried or placed underground.
5. The Cooperative may seek the permission of the City Auditor to waive the requirements contained in this section, or his/her designee who is granted the discretion to grant exceptions, upon good cause shown.

14-0505. **RELOCATING.**

1. Relocation of Fiber Optic Cables in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Cooperative to relocate its fiber optic cables located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in paragraph 3 below, Cooperative shall relocate its fiber optic cables at its own expense. The City shall give Cooperative reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same fiber optic cables, which was made

at Cooperative expense, the City shall reimburse Cooperative for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Cooperative may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Cooperative to relocate, remove, replace or reconstruct at its own expense its fiber optic cables where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

2. Relocation of Fiber Optic Cables in Public Ground. City may require Cooperative at Cooperative's expense to relocate or remove its fiber optic cables from Public Ground upon a finding by City that the fiber optic cables have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.
3. Projects with Federal Funding. Relocation, removal, or rearrangement of any Cooperative fiber optic cables made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of North Dakota Century Code, Chapter 24-01-41, as supplemented or amended. It is understood that the right herein granted to Cooperative is a valuable right. City shall not order Cooperative to remove or relocate its fiber optic cables when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Cooperative, but the City need not pay those portions of such for which reimbursement to it is not available.
4. No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Cooperative for installations within a Cooperative right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Cooperative's rights under state or county permit.
5. Failure to Relocate. Upon Cooperative's receipt of notice from City to relocate its fiber optic cables, Cooperative must respond to City regarding said notice within sixty (60) days and work with City on said

relocation. Failure by Cooperative to respond to the notice and work with City regarding relocation is punishable as an infraction. Each day following the sixty (60) day response requirement will constitute a separate violation.

14-0506. **PROPERTY RESTORATION.** After undertaking any work requiring the opening of any public way, the Cooperative must restore the same, including paving and its foundation, to as good a condition as formerly existed, and will maintain any paved surface in good condition for two (2) years thereafter. The work must be completed as promptly as weather permits, and if the Cooperative does not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material, and put the public way in the same condition as existed before the work was completed, the City has, after demand to the Cooperative to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of the Cooperative. The Cooperative must pay to the City the cost of such work done for or performed by the City. This remedy is in addition to any other remedy available to the City for noncompliance with this section, but the City hereby waives any requirement for the Cooperative to post a construction performance bond, certificate of insurance, letter of credit, or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace, or maintain facilities in a public way.

14-0507. **REMOVAL OF ABANDONED EQUIPMENT.** Whenever the Cooperative abandons any site or any equipment, including but not limited to its poles, wires, fibers, anchors, anchor rods, and other appurtenances; such equipment must be completely removed by the Cooperative and the site cleaned of any remaining or residual equipment or Cooperative property.

14-0508. **RIGHTS TO TRIM TREES.** There is granted to the Cooperative, its successors and assigns, during the term of this franchise ordinance, permission and authority to trim all trees in streets, alleys, bridges, and public ways of the City so as to remove all parts of the trees interfering with the proper erection, maintenance, and operation of poles, wires, fibers, anchors, anchor rods, and other appurtenances installed or to be installed pursuant to authority granted by this franchise ordinance.

14-0509. **COOPERATIVE SUBJECT TO POLICE POWER REGULATIONS.** The City reserves the right to make and adopt, and the rights and privileges hereby granted will at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Cooperative carrying on its

business in accordance with the franchise hereby granted by this franchise ordinance.

14-0510. **EMINENT DOMAIN AUTHORITY.** The granting of the franchise will in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0511. **GENERAL PROVISIONS.**

1. Severability. Every section, provision, or part of this franchise ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part is held invalid, it will not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this franchise ordinance, the provisions of this franchise ordinance prevail.
2. Limitation on Applicability. This franchise ordinance constitutes a franchise between the City and the Cooperative as the only parties and no provision of this franchise ordinance will in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one (1) or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
3. Force Majeure. The service rendered by the Cooperative shall be continuous except that the Cooperative shall not be held accountable for a failure of service which is caused by floods, Acts of God, strikes, weather, or other causes beyond the control of the Cooperative.
4. Amendments. The City or the Cooperative may at any time propose that this franchise ordinance be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate.
5. Publication Expense. The expense of publication of this franchise ordinance will be paid by the City and reimbursed to the City by the Cooperative.
6. Management Costs. Any management costs incurred by City related to this Franchise shall be paid by Cooperative, as allowed by N.D.C.C. § 49-21-26.
7. Change in Form of Government. Any change in the form of government of the City will not affect the validity of

this franchise ordinance. Any governmental unit succeeding the City shall, without the consent of the Cooperative, succeed to all of the rights and obligations of the City provided in this franchise ordinance.

14-0512. **LIMITATION OF LIABILITY.** The Cooperative will use due diligence and care in supplying data and communications and telephone service as herein provided but will not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this will not be construed to exempt the Cooperative from liability for negligence caused by it, or its agents, servants, employees, or subcontractors.

14-0513. **INDEMNIFICATION.** The Cooperative will indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, or operations of the Cooperative's data and communications and telephone service facilities located in, on, over, under, across, or through the public ways and public grounds of the City, unless such injury or damage results from the negligence of the City, its employees or agents. In the event a suit is brought against the City under circumstances where the above agreements to indemnify applies, the Cooperative at its sole cost and expense agrees to defend the City in such suit if written notice thereof is promptly given to the Cooperative within a period wherein the Cooperative is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, the Cooperative will have no duty to either indemnify or defend. If the Cooperative is required to indemnify and defend, it will thereafter have complete control of such litigation, but the Cooperative may not settle such litigation without the consent of the City, which consent will not be unreasonably withheld, conditioned, or delayed. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Cooperative; and every defense or immunity that the City could assert in its own behalf.

14-0514. **EFFECTIVE DATE.** This franchise ordinance takes effect and is in full force from and after its passage and approval by the Board of City Commissioners. The Cooperative must specify its acceptance of the franchise in writing, within ninety (90) days of Board approval of this franchise ordinance, to be filed with the City Auditor and in no event will this franchise ordinance be binding on the Cooperative until the filing of such acceptance.