

TITLE XIV.

FRANCHISES

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CHAPTER 14-01.

CABLE TELEVISION FRANCHISE.

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14-0101. **TITLE.** This Ordinance shall be known and may be cited as the "Community Antenna Television Ordinance."

14-0102. **DEFINITIONS.** For the purposes 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 word "shall" is always mandatory and not merely directory.

1. "Basic Cable Service" means the service tier which includes the retransmission of local broadcast signals.
2. "City" is the City of Kindred, North Dakota.
3. "Council" is the City Council of the City of Kindred, North Dakota.

4. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
5. "Cable Television Reception Service" means the delivery by the Grantee to television receivers (or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over said system.
6. "FCC" shall mean Federal Communications Commission.
7. "Person" is any person, firm partnership, association, corporation or organization of any kind and any other legally recognized entity.
8. "Grantee" is the cable service provider selected by resolution by the City Council.
9. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Grantee.

14-0103. **GRANT OF NON-EXCLUSIVE AUTHORITY.**

1. There is hereby granted by the City to the Grantee, and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across, and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Kindred, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of Kindred a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public by what is commonly called a Community Antenna Television System, for a period ending October 15, 2011, commencing from and after the effective date of this Ordinance.
2. The right to use and occupy said streets, alleys, public ways and places for the purpose herein set forth shall not be exclusive.

14-0104. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.** The Grantee shall, during the term hereof, except in those area which have been preempted by the Cable Communications Policy Act of 1984

or which are regulated by the Federal Communications Commission, be subject to all lawful exercise of the regulating and police powers of the City.

14-0105. **TERRITORIAL AREA INVOLVED.** This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City or areas within the City limits that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such residents. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

14-0106. **LIABILITY AND INDEMNIFICATION.** Grantee shall, at all times, keep in effect the following types of insurance coverage:

1. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Kindred, North Dakota.
2. Property Damage Liability insurance to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and personal injury liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess bodily injury and property damage of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile bodily injury and property damage liability combined One Million Dollars (\$1,000,000.00) each occurrence.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of their reaction maintenance, use or removal of said attachments of poles within the City, or by any other act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation laws in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect

form the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

14-0107. **GENERAL SYSTEM SPECIFICATIONS.** The facilities used by the Grantee shall have a minimum capacity of 35 channels. The facilities shall also be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

14-0108. **TECHNICAL STANDARDS.** Grantee shall be governed by technical standards established by the FCC.

14-0109. **OPERATION AND MAINTENANCE OF SYSTEM.**

1. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
2. All service requests and complaints should be responded to within 24 hours of receipt.

14-0110. **SERVICE TO SCHOOLS AND CITY.** The Grantee shall, subject to the line extension provisions of Section 14-0105, provide basic cable service at no cost to public and parochial elementary and secondary schools within the City, at one terminal junction for educational purposes upon request of the school system.

Grantee shall, subject to the line extension provisions of Section 14-0105, also provide to the City without charge, at one City owned building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council of Kindred, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the

channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

14-0111. **EMERGENCY USE OF FACILITIES.** In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

14-0112. **SAFETY REQUIREMENTS.** The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

14-0113. **LIMITATIONS ON RIGHTS GRANTED.**

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Public Works Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City of Kindred, North Dakota.
2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the City of Kindred, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future ordinances.
3. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or

paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

4. If at any time during the period of this Ordinance the City shall lawfully elect to alter, or change the grade of any street, sidewalk, alley, or other public way, the Grantee upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and telephone or other fixtures at its own expense.
5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
6. The Grantee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
7. Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, waterpipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.
8. In all sections of the City where the City designates an area where all presently above ground services are to be

placed underground, the Grantee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providers of other above ground services in the designated areas.

9. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section 14-0118, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
10. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

14-0114. **OWNERSHIP AND REMOVAL OF FACILITIES.** All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above-ground facilities and equipment from the premises of such subscriber upon his request.

14-0115. **ASSIGNMENT OF ORDINANCE.** The Grantee shall not assign this ordinance to any other person without prior approval of the City Council, which approval shall not be unreasonably withheld.

14-0116. **PAYMENT TO THE CITY.** After five (5) years from start-up, the City and Grantee shall negotiate a franchise payment to be made to the City by the Grantee, not to exceed three percent (3%) of the monthly basic service charge, such payments to be made semi-annually, with the first such payment to be made within thirty (30) days after the conclusion of the first six month period following date of commencement of customer service and continuing each six months thereafter. Gross basic service revenues shall not include revenues received from premium pay services or as installation charges, and fees for reconnections, inspections,

repairs or modifications of any installation, and all State and Federal Taxes relating thereto.

The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax or franchise fee.

Notwithstanding the annual gross revenue fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

14-0117. **DURATION AND RENEWAL OF ORDINANCE.** The rights granted to Grantee herein shall, except as provided in this Section, terminate on July 31, 2028; however, this Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the ordinance shall remain in effect even if the original term has expired. If this ordinance is not renewed or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

Source: Ord. 2013-48, Sec. 1 (2013)

14-0118. **ERECTION, REMOVAL AND COMMON USE OF POLES.**

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

2. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

14-0119. **RATES.**

1. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

2. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

a. Before making any changes in the rates and charges to subscribers for basic cable service, Grantee shall file in writing with the City Auditor a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

b. If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by Grantee. Following the hearing, the Council shall take final action on the proposed increase within thirty (30) days.

3. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Grantee by an amount not to exceed five percent (5%) per calendar year. In addition, Grantee shall have the right to pass along to subscribers state and local sales taxes, vendor's programming cost increases and copyright fee increases.

4. The monthly rate set forth in subsection 1 above shall be payable in advance.

5. The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by

the Cable Communications Policy Act of 1984 and Federal Communications Commission regulations.

Section 14-0120. **MISCELLANEOUS.**

1. Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested parties.

2. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Auditor for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Auditor shall attempt to resolve the complaints and, if this cannot be achieved, he or she shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

14-0121. **MODIFICATION OF OBLIGATIONS.** In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

14-0122. **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

14-0123. **EFFECTIVE DATE AND ORDINANCE REPEALED.** Upon the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed, including the prior ordinance and any amendments thereto granting a cable television franchise to Cable Communications, Inc.

CHAPTER 14-02

OTTER TAIL POWER COMPANY - ELECTRICAL

SECTIONS:

- 14-0201. Grant of Authority.
- 14-0202. Compliance with Applicable Regulations.
- 14-0203. Obstruction of Roadways to be Minimized.
- 14-0204. Construction of Facilities.
- 14-0205. Rights to Trim Trees.
- 14-0206. Limitation of Liability.
- 14-0207. Deposits.
- 14-0208. Rates.
- 14-0209. Contracts Subject to Applicable Regulations.
- 14-0210. Prior Franchise Ineffective.
- 14-0211. Grantee Subject to Police Power Regulations.
- 14-0212. Effective Date.

14-0201. **GRANT OF AUTHORITY.** There is hereby granted to Otter Tail Power Company, a Minnesota corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants for said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

14-0202. **COMPLIANCE WITH APPLICABLE REGULATIONS.** Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any sidewalk, street, curb, gutter or park improvements that

the city may deem proper to make along the lines of said avenues, streets and public places.

14-0203. **OBSTRUCTION OF ROADWAYS TO BE MINIMIZED.** all conduits, poles, wires and pipes installed by virtue of this ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor under the supervision of the City Council of said City.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any waterpipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

14-0204. **CONSTRUCTION OF FACILITIES.** During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

Whenever the said Grantee is erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on any of the avenues, streets and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said

City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

14-0205. **RIGHTS TO TRIM TREES.** There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this ordinance, provided, that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this ordinance.

14-0206. **LIMITATION OF LIABILITY.** The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

14-0207. **DEPOSITS.** The Grantee shall have the right to require any person to whom electric service is furnished to make a deposit to insure the payment of bills for service to be rendered. The Company shall issue a receipt for such deposit and shall return same whenever the customer shall discontinue the use of electric service, provided all bills are then paid. The Grantee may apply all or any portion of the deposit to any unpaid bills and shall thereupon mail to the customer a receipt for such amount.

14-0208. **CONTRACTS SUBJECT TO APPLICABLE REGULATIONS.** The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

14-0209. **PRIOR FRANCHISE INEFFECTIVE.** The contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

14-0210. **PRIOR FRANCHISE INEFFECTIVE.** It is further expressly and specifically provided that all permits, licenses and franchises heretofore granted by the City giving or purporting to give permission to any person, persons or corporation to construct, install or maintain an electrical line or system in, upon or through the streets, alleys or public grounds of the City for the purpose of furnishing light, heat and power to the City or its inhabitants, be, and the same hereby are in all respects revoked, canceled and annulled.

14-0211. **GRANTEE SUBJECT TO POLICE POWER REGULATIONS.** The City reserves the right to make and adopt, and the rights and privileges hereby granted shall 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 Grantee carrying on its business in accordance with the franchise hereby granted.

14-0212. **EFFECTIVE DATE.** This ordinance shall take effect and be in full force from and after its passage and approval by the City Council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this ordinance be binding on said Grantee until the filing of such acceptance.

CHAPTER 14-03

MONTANA-DAKOTA UTILITIES CO. - GAS

(Source: Ord. 2021-91, Sec. 1)

SECTIONS:

- 14-0301. Parties.
- 14-0302. Grant of Franchise.
- 14-0303. Distribution System.
- 14-0304. Non-Exclusive Franchise.
- 14-0305. Rights Reserved.
- 14-0306. Right to Trim Trees.
- 14-0307. Indemnification.
- 14-0308. Assignment of Franchise.
- 14-0309. Written Acceptance.
- 14-0310. Term.

14-0301. **PARTIES.** For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

14-0302. **GRANT OF FRANCHISE.** There is hereby granted to Montana-Dakota Utilities Co., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

14-0303. **DISTRIBUTION SYSTEM.** Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

14-0304. **NON-EXCLUSIVE FRANCHISE.** This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

14-0305. **RIGHTS RESERVED.** The Municipality reserves any right it may have, under its police power, or otherwise, to control or

regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's gas distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its gas distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any gas distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

14-0306. **RIGHT TO TRIM TREES.** Unless otherwise provided in any permit or regulation of the Municipality under separate ordinance, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the gas distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

14-0307. **INDEMNIFICATION.** Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

14-0308. **ASSIGNMENT OF FRANCHISE.** Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns. Grantee must provide written notice of assignment to the Municipality.

14-0309. **WRITTEN ACCEPTANCE.** Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

14-0310. **TERM.** This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

CHAPTER 14-04.

CASS COUNTY ELECTRIC - ELECTRICAL

(Source: Ord. 2022-95, Sec. 1)

SECTIONS:

- 14-0401. Grant of Franchise.
- 14-0402. Franchise Fee.
- 14-0403. Eminent Domain.
- 14-0404. Municipal Electric Distribution System.
- 14-0405. Right to Trim Trees.
- 14-0406. Vacation of Public Way.
- 14-0407. Public Right of Way.
- 14-0408. Nonexclusive Franchise.
- 14-0409. Assignment.
- 14-0410. Written Acceptance.
- 14-0411. Governing Law.
- 14-0412. Default.
- 14-0413. Prior Franchise Ineffective.

14-0401. **GRANT OF FRANCHISE.** There is hereby 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 July 1, 2022, 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 Kindred.

14-0402. **FRANCHISE FEE.** During the term of the franchise hereby granted, and in lieu of any permit or other fees or any tax being imposed on the Company, the City may impose on the Company a franchise fee. 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 the Company by certified mail. The fee shall not become effective until at least 90 days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail. No action by the City to implement a separate ordinance will commence until this ordinance is effective. A separate ordinance which does not impose a uniform franchise fee on all revenues within the definition of gross revenues shall not be effective against the Company.

The term "gross revenues" means all sums, excluding any surcharge or similar addition to the Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of electricity to its retail customers within the corporate limits of the City.

The franchise fee shall be payable based on the gross revenues of the Company during complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. Such fee shall not exceed any amount which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. The Company shall pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectables or customer refunds. The Company agrees to make its gross revenues records available for inspection by the City at reasonable times.

The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes and the City annually or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other electric supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.

The franchise fee referred to herein shall be based on the Company's gross revenues as hereinafter defined and shall be not more than two percent thereof, or such other amount which may be in excess of two percent which has been imposed in other North Dakota communities with which the Company has franchises authorizing the fees imposed.

14-0403. **EMINENT DOMAIN.** The granting of this franchise by the City of Kindred, 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.

14-0404. **MUNICIPAL ELECTRIC DISTRIBUTION SYSTEM.** The granting of this franchise by the City of Kindred 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.

14-0405. **RIGHT TO TRIM TREES.** 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.

14-0406. **VACATION OF PUBLIC WAY.** 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.

14-0407. **PUBLIC RIGHT OF WAY.** 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.

14-0408. **NONEXCLUSIVE FRANCHISE.** 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 Kindred.

14-0409. **ASSIGNMENT.** 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.

14-0410. **WRITTEN ACCEPTANCE.** 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 90 days from the final passage of this Ordinance.

14-0411. **GOVERNING LAW.** The rights and privileges hereby granted shall at all times be subject to and exercised solely according to the provisions of the present and future laws of the State of North Dakota.

14-0412. **DEFAULT.** 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. If the dispute is not resolved within thirty (30) days of the written notice, 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.

14-0413. **PRIOR FRANCHISE INEFFECTIVE.** All ordinances and parts of ordinances in conflict herewith are hereby repealed.