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CHAPTER THIRTEEN  
FRANCHISES

ARTICLE 1 – Grant of Franchises

13.0101 Power to Grant

The City Council may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article. (Source: North Dakota Century Code Section 40-05-01- (57))

13.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation, as the City shall be resolution or ordinance provide.

13.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

13.0104 Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars (\$250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars (\$500,000.00) for any one accident resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota. (Source: North Dakota Century Code Section 32-12.1-03)

ARTICLE 2 – Northwestern Bell Telephone Company

13.0201 Grant of Authority

That Northwestern Bell Telephone Company, a corporation, its successors and assigns, is hereby granted the right to use and occupy the streets, alleys and other public places of the City of Ellendale, North Dakota, for a term of twenty (20) years from the effective date hereof (December 3, 1990), for the purpose of constructing, maintaining and operating a general telephone and telegraph system within said City.

13.0202 Compliance with Applicable Laws and Ordinances

That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said City.

13.0203 Binding Contract

That this section shall be in full force and effect, and shall constitute a binding contract between the City of Ellendale and Northwestern Bell Telephone Company when it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by said Northwestern Bell Telephone Company and such acceptance filed with the City Auditor.

13.0204            Conditions of Street Occupancy

During the construction, maintenance or enlargement of any part of said telecommunication 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 conditions upon the completion of said work.

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.

13.0205            Restoration

In the case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in 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.

ARTICLE 3 – Cable Services, Inc.            **EXPIRED, not Renewed**

ARTICLE 4 – Montana-Dakota Utilities Co.

13.0401            Definitions

For convenience herein, said municipal corporation is designed 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.

13.0402            Grant of Authority

There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy 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, an electric distribution system for transmitting an distributing electric energy for public and private use.

13.0403            Rates

Grantee shall maintain an efficient distribution for furnishing electric energy for public and private use at such reasonable rates as may be approved by the Public Service Commission of

the state wherein said Municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

13.0404 Non-Exclusive Grant

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.

13.0405 Compliance of Applicable Laws and Ordinances

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 of the Municipality.

13.0406 Company Liability – 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.

13.0407 Right to Assign

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.

13.0408 Acceptance Filed with Municipality

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.

13.0409 Term

This franchise shall continue and remain in full force and effect for a period of twenty (20) years from December 4<sup>th</sup>, 2006.

ARTICLE 5 – Dickey Rural Services, Inc.

13.0501 Short Title

This ordinance shall be known and may be cited as the “Cable TV Franchise Ordinance”.

13.0502 Definitions

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not consistent 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. “City” is the City of Ellendale, North Dakota.

2. "Company" is Dickey Rural Services, Inc., its successors and assigns.
3. "Council" is the City Council (Commission or other body in which the legislative power vests) of the city of Ellendale, North Dakota
4. "Person" is any person, organization, firm, partnership, association, corporation or company of any kind
5. "System" means a Cable TV system of cables, wires, and other equipment used to be used to receive television, radio, or other signals and transmit them to subscribers for a fee.

13.0503 Grant of Authority

There is hereby granted by the City to the Company the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, new plats annexed, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the reception, sale, and distribution of cable television signals.

1. Non-exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, under the same terms and conditions to any person for the purposes herein set forth at any time during the period of this franchise.

13.0504 Compliance with Applicable Laws and Ordinances

The Company shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City.

13.0505 Company Liability – Indemnification

It is expressly understood and agreed by and between the Company and the City that the Company shall hold the City harmless from all loss sustained by the City on account of any valid and lawful suit, judgment, execution claim, or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation or maintenance of its television system in the City. The City shall notify the Company with five (5) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any alleged negligence on the part of the Company.

13.0506 Service Standards

The Company 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 be preceded by notice. The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are set forth by this ordinance or

by the Federal Communications Commission.

13.0507 Safety Requirements

1. The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. The Company shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Underwriters, and in such manner that they will not interfere with any existing installation of the City or of any public utility serving the City.
3. All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained by the Company in a safe and suitable condition, and in good repair.

13.0508 Company Rules

The Company shall have the authority to promulgate such rules, regulations, terms and conditions necessary to enable the Company to exercise its right and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of the laws of the State of North Dakota.

13.509 Conditions on Street Occupancy

1. Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimal interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alley or other public ways and places.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or of any street or alley disturbed in the same condition as existed prior to the disturbance.
3. Relocation. In the event the City shall deem it necessary, for its own purpose, to utilize any portion of its streets, alley or other public places occupied by the Company by virtue of this agreement, the said Company, at the request of the City and upon reasonable advance notice (not less than thirty (30) days), shall remove its systems, at its own expense, to a suitable location approved by the City.

4. Placement of Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any existing gas, electric or telephone fixture, water hydrant or main, and all such poles and fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in the alley shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to unreasonably interfere with the usual travel on said streets, alleys and public ways.
5. Temporary Removal of Wire. The Company shall, on the request of any person holding a building moving permit issued by the City or other reasonable request, temporarily raise or lower its wires to permit the moving of buildings, tree removal, demolition of structures, or other work. The expense of such removal, raising or lowering of wires, shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
6. Tree Trimming. The Company shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of trees from coming in contact with the wires and cables of the Company. All trimming to be done at the expense of the Company.

13.0510 Territorial Area Involved

This franchise is related to the present territorial limits of the City and to any area annexed by the City during the term of this franchise. The Company shall provide service to any permanent structure receiving City sewer and water service upon request and agreement with owner of said structure.

13.0511 Preferential or Discriminatory Practices Prohibited

The Company shall not, as to rates, charges, service, facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer within such classification would be entitled.

13.0512 City Rights in Franchise

1. City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herewith granted, and shall not be in conflict with the laws of the State of North Dakota, the United State of America, and or the rules and regulations of the Federal Communications Commission.

2. Inspection. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this ordinance as it shall find necessary to insure compliance with governing ordinances.



3. Emergency Use of Facilities. In the case of any City-wide emergency or disaster, the grantee shall make its facilities available to the City for emergency use.

13.0513 Rates

Rates charged by the Company for service hereunder shall be fair and reasonable and set in accordance with the Cable Communications Policy Act of 1984, the Telecommunications Act of 1996, and the Federal Communications Commission, and any amendments thereto.

13.0514 Publication Costs

The Company shall assume the entire cost of publication of this franchise if such publication is required by law. Such amount is payable upon the grantee's filing of acceptance of this franchise.

13.0515 Term of Franchise

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. Date of approval was May 3, 2004

13.0516 Separability

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, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

13.0517 Effective Date of Franchise

This ordinance and franchise granted herein shall become effective upon approval of the City Council. Date of approval was May 3, 2004

13.0518 Ordinances Repealed

All ordinance or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.