

CHAPTER 24

FRANCHISES AND CONTRACTS

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ARTICLE 24-01

GRANTS AND PRIVILEGES TO PUBLIC UTILITIES COMPANIES

Section

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24-0101. Fargo and Southern Railroad Company.--

1. Franchise granted May 11, 1883.

There is hereby granted and conferred upon the Fargo and Southern Railroad Company, its successors and assigns, the right, permission, and authority to construct, maintain, and operate such railway tracks and switches as may be necessary for the use of said company; and to run and operate locomotive engines and cars upon said railway tracks and switches, upon and along said Second Avenue from the western end of said Second Avenue to Harwood Street, in the city of Fargo, and upon and over and across the several streets of said city intersecting said avenue between the said western end of Second Avenue and Harwood Street.

The city of Fargo reserves the right to enter upon all portions of said streets and avenues upon or over which said tracks and switches shall be constructed, and to make thereon such excavations, and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters,

water mains, gas pipes, or other works of a public character without being liable therefor, to any claim for damages. And said railroad company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and shall re-lay at their own expense, when such works are completed from time to time, and protect such railroad during such work.

This right is granted upon the express condition that said railroad company, its successors and assigns, shall construct and maintain good and sufficient sidewalks and street crossings wherever said several streets shall cross Second Avenue. Said railroad company is also granted like permission and authority to construct and maintain and operate its cars and locomotives upon and along said Second Avenue such additional tracks and switches as may be necessary and convenient for the purpose of doing business at its freight yard and depot grounds, and of reaching such depot, yards, warehouses, elevators, and other industries as may be created, erected, or operated along the line of said Second Avenue, and for the transaction of public business thereat.

2. Franchise granted November 26, 1883.

That subject to the conditions and agreements hereinafter contained, there is hereby granted and conferred upon the Fargo and Southern Railroad Company, its successors and assigns, permission and authority to construct, maintain and operate such railway tracks and switches as may be necessary for the use of such company in the proper conduct of its business, and to run and operate locomotive engines and cars on such railway tracks and switches, upon and along Second Avenue in the city of Fargo, from the western side of Harwood Street to the alley extending in a northerly and southerly direction through blocks numbered two (2) and three (3) in Roberts' Addition to said city of Fargo, and upon, over, and across the several streets of said city intersecting said Second Avenue between the limits above mentioned. Such tracks to be laid and maintained upon such grade of such avenue as is or may be established by the said city, and in such manner as least to interfere with the free use of such avenue as a public street.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes, or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railroad company by section one hereof is upon the express condition that said company will, whenever requested by the mayor or common council of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company at any street or avenue within the city limits, now or hereafter created, whenever such streets or avenues shall intersect or cross said Second Avenue, and will keep the same at all times open for public travel and suitable for public use.

Source: 1952 Rev. Ord. 24-0101.

24-0102. St. Paul, Minneapolis, and Manitoba Railroad Company.

1. Franchise granted July 15, 1882.

There is hereby conferred upon the St. Paul, Minneapolis, and Manitoba Railway Company, its successors and assigns, permission and authority, to maintain and operate the two railway tracks as now laid and in use by said company, upon and along Fourth Avenue from the west line of Chapin, Johnson, and Barrett's Addition to Fargo, to the east line of "F" Street in Keeney and Devitt's Addition to Fargo, and also to maintain and operate said tracks over and across the several streets of said city between the points last above named.

The city of Fargo reserves the right to enter upon all portions of said streets and avenues upon or over which said tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes, or other works of a public character, without being liable therefor to any claim for damages, and said railway company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and shall protect such railroad during such work, and re-lay at their own expense when such works are completed from time to time.

Said railroad company is also hereby granted like permission and authority to construct, maintain, and operate its cars and locomotives upon and along said Fourth Avenue, such additional tracks, sidetracks, and switches connecting with said two railway tracks now laid, as may be necessary and convenient, for the purpose of doing business at its freight yard and depot grounds in said city and of reaching such warehouses, elevators, and other industries as may be created, erected, or operated along the line of said Fourth Avenue and for the transaction of public business thereat.

The right-of-way conferred upon the said railway company by section one hereof, is upon the express condition that said railway company will, whenever requested by the mayor of said city so to do, reasonable time being given therefor, grade and construct sufficient street crossings over the tracks of said company at Sherman and Grant Streets and Sixth Avenue in said city, and will keep the same at all times open for public travel, as other streets of said city, across which the tracks of said company run.

2. Franchise granted March 6, 1884. (Repealed by Ord. No. 1053, 1959).

3. Franchise granted November 1, 1905.

There is hereby granted unto the St. Paul, Minneapolis, and Manitoba Railway Company, its successors and assigns, forever, the right to lay, maintain, and operate railway tracks, at grade, upon, along, and across the following streets and alleys in the city of Fargo, to-wit:

(A) A single track of standard gauge railway upon and along Twenty-Second Street North, in said city of Fargo, from a point of connection with the present railway of the St. Paul, Minneapolis, and Manitoba Railway Company at or about the intersection of Twelfth Avenue North, with said Twenty-Second Street North, in a southerly direction across Eleventh Avenue, Tenth Avenue, Eighth Avenue, Seventh Avenue, Fifth Avenue, and Third Avenue to a point of connection with the line of railway of the Northern Pacific Railway Company at or about the intersection of said Twenty-Second Street North with First Avenue North.

(B) A single track of standard gauge railway extending from a point of intersection with said first above-described track in said Twenty-Second Street North, at or near the intersection thereof with Tenth Avenue North, along said

Twenty-Second Street and over and across Tenth Avenue North, Twenty-First Street North and Twentieth Street North, to a point of connection with the present line of the St. Paul, Minneapolis, and Manitoba Railway Company at a point midway between said Twentieth Street North and Nineteenth Street North.

- (C) A single track of standard gauge railway extending from a point of connection with said first above-described track in said Twenty-Second Street North at or near the intersection thereof with Third Avenue North, along said Twenty-Second Street North and over and across First Avenue North and Twenty-Third Street North, to a point of connection with the line of railway of said Northern Pacific Railway Company, together with the right to cross with said track any intervening alleys.
- (D) A single track of standard gauge railway upon and along the alley through Blocks 8, 9, 16 of Keeney and Devitt's Addition, and Block 21 of Keeney and Devitt's Second Addition to the city of Fargo, and over and across Second, Third and Fourth Avenues to connect with said alley, and also over and, across Fourth and Fifth Streets between Blocks 21, 22 and 23, respectively, of Keeney and Devitt's said Second Addition, and also over and across the alley in said Block 22 of said Keeney and Devitt's Second Addition, said track so to be laid along the easterly side thereof.

There is also hereby granted unto the said St. Paul, Minneapolis, and Manitoba Railway Company, its successors and assigns, forever, the right to construct, maintain, and operate in and upon Fifth Avenue, between Fourth Street and Broadway, all necessary platforms and sidewalks leading to and connected with the depot now or hereafter located between said streets.

The grants hereby made to said grantee are conditioned upon the performance by said grantee, its successors and assigns, of the following conditions to-wit:

- (A) The track to be laid in said alley in Blocks 8, 9, and 16 in Keeney and Devitt's Addition and Block 21 of Keeney and Devitt's Second Addition, and over and across Second, Third, and Fourth Avenues and Fourth and Fifth Streets, and the alley in Block 22 of said Keeney and Devitt's Second Addition, shall be laid at the grade of said alleys and streets, and planking shall be placed and maintained fully between the rails of said track and on either side of said track to the extent of 12 inches, and when said alleys or streets shall be ordered paved by the city of Fargo, then the said railway company shall pave the same between the rails and to the extent of 18 inches on each side of said track, said paving to be done according to the plans and specifications laid down by the city engineer of the city of Fargo, the paving and planking herein referred to be laid and maintained at the sole cost and expense of the said railway company and to be laid in such a manner as to render the alley and streets suitable and convenient for public travel over the said railway track.
- (B) The said grantee, its successors and assigns, shall hold and save the city of Fargo harmless from any and all loss or damage to abutting property owners or others on account of the construction, maintenance and operation of said railway tracks in the streets and alleys hereinbefore described.
- (C) The city of Fargo hereby reserves the right at any and all times, at its own expense, to lay sewers and gas or water mains in any of said streets and alleys or across the same under the railway tracks hereby authorized to be laid

therein, but in the laying of such sewers and gas and water mains the city of Fargo shall not in any way injure or impair the said tracks or the usefulness thereof for the operation of trains and cars thereover, and shall support said tracks and restore the same to their former condition, all at the sole cost and expense of the said city of Fargo.

- (D) The said St. Paul, Minneapolis, and Manitoba Railway Company, its successors and assigns, shall use and enjoy the rights and franchises hereby granted in such manner as not to unnecessarily or unreasonably interfere with the use of said streets and alleys by the public. It being further understood that no cars shall be placed in said alleys unless ordered in for loading or unloading by parties owning or occupying property abutting said alley, and no cars shall be left in said alley, over a reasonable length of time and shall not be left on said street or avenue crossing at any time.
- (E) The city of Fargo hereby reserves the right at any and all times at its own expense to erect and maintain poles and wires along or across said alleys and streets for the operation of telegraph and telephone service, or other like use, provided, that the same be so placed that all poles be erected at the extreme east and west sides of the alley, and wires be strung at least 22 feet above the ground and provided further, that this franchise in no way confers the right to said railway company, its successors or assigns, to use the said alleys or streets for the purpose in this subdivision provided.
- (F) All the grants hereof shall become null and void unless the said the St. Paul, Minneapolis, and Manitoba Railway Company shall, within 30 days after the passage and approval hereof, file its written acceptance of said ordinance and all the conditions hereby imposed upon it.

Source: 1952 Rev. Ord. 24-0102, 1053 (1959).

24-0103. Northern Pacific Railroad Company.--

1. Franchise granted May 11, 1883.

There is hereby granted to the Northern Pacific Railroad Company the right and privilege of laying, constructing and maintaining water pipes along, upon, and under Northern Pacific Avenue through its entire length, and also to lay, construct, and maintain said water pipes across and under the several streets crossing and intersecting with the said Northern Pacific Avenue in the city of Fargo. The said railroad company shall have the right-of-way along, upon, and under the said Northern Pacific Avenue and the several other streets as aforesaid for the purpose of placing, operating, re-laying and repairing their said water pipes, and whenever the said Northern Pacific Avenue or said other streets shall be disturbed by said railroad they must be restored to their proper condition with the least delay practicable and at the cost of the said railroad company. And said railroad company shall properly protect streets whenever and wherever any excavations or openings are made to lay or repair said water pipes. Said water pipes are to be laid at a depth below the frost limit.

2. Franchise granted October 6, 1884.

That there is hereby granted to the Northern Pacific Railroad Company, its successors and assigns, permission, right, and authority to construct, maintain, and operate a spur track and such switches as may be necessary in connection therewith, in the proper conduct of its business, and to run and operate locomotive engines and cars on said track and switches, upon, through, and along First

Street to the lower end of Russell Street in Tyler's Addition to the city of Fargo, as follows:

Entering Dayton Street between Blocks 26 and 27; thence crossing Dayton Street, north of, and parallel to the Fargo and Southern Railroad, and at a distance of 16 feet, center to center; thence entering First Street on the North side of Block 27, and at a point 110 feet west of the southwest corner of Radcliffe and First Streets; thence along First Street, north of and parallel to the Fargo and Southern Railroad at a distance of 16 feet, center to center, to a point in Block 20, 37 feet west of the northwest corner of Russell and First Streets; thence entering Russell Street between Blocks 20 and 18, and crossing the same still north of and parallel to the Fargo and Southern Railroad to Block 18. The spur occupying a space 8 feet in width, 4 feet on each side of the above-described center line.

Such track to be laid and maintained upon such grade of said streets as is or may be established by said city, and in such manner as least to interfere with the use of said streets for public purposes.

The city of Fargo reserves the right to enter at any time upon any or all portions of said street or streets, upon or over which such track or tracks shall be constructed, and to make therein such excavations and do such other work as may be necessary for the construction or repairs of sewers, gutters, water mains, gas pipes, and other works of a public character, said work to be performed in a careful and workmanlike manner, so as to interfere as slightly as possible with said railroad track or tracks and operation over the same.

The privileges and rights granted to and conferred upon said railroad company by the foregoing sections, are upon condition that said railroad company will, whenever requested by the mayor or council so to do, reasonable time being given therefor, grade, construct, and maintain proper and sufficient street crossings over the track or tracks of said company, at any street or avenue, according to the recorded plat of said Tyler's Addition, whenever such street or avenue shall intersect or cross the street or streets occupied by the track or tracks hereinbefore designated, and will keep the same at all times open for the public travel and suitable for public use.

3. Franchise granted March 13, 1891.

That the Northern Pacific Railroad Company is hereby granted and given the right to operate and maintain a sidetrack across Northern Pacific Avenue, at a point about midway between the intersection of Eighth and Ninth Streets North with said Northern Pacific Avenue in the city of Fargo, as the same is now located, constructed, and operated across said avenue, to the lumberyard of the Beidler and Robinson Lumber Company in said city.

4. Franchise granted December 29, 1904.

That the Northern Pacific Railway Company is hereby granted and given the right to construct, maintain, and operate a spur track across the Northern Pacific Avenue in the city of Fargo, extending diagonally across said avenue from a point on the northern edge of the right-of-way of said company, opposite Lot "J" in Block 7 of Roberts Addition to Fargo, to a point on the south line of Lot "G" in Block 7, at and rear of the southwest corner of said Lot "G", said spur track to be in lieu of and instead of the present spur track as now laid and operated across said Northern Pacific Avenue, to connect with the main line of said railway company with the side of the Beidler and Robinson lumberyard, as heretofore conducted in said Block 7; this ordinance, and the permission hereby granted being upon the express condition that said last named spur track as now laid, shall be entirely taken up and removed from said Northern Pacific Avenue by, or before the track first herein named is put in operation; and the building and commencement of said new track shall be deemed an abandonment of the said now existing track, so far as the same is laid over and across said Northern Pacific Avenue, and provided further, that said Northern Pacific Railway Company shall within 20 days after the passage and approval of this ordinance, and before any work is done upon said proposed

new track, make and file with the city auditor its written acceptance of this ordinance, and of its terms as to abandonment and removal of said now existing track; and if said written acceptance be not so filed within said period, this ordinance shall be nonoperative, null, and void.

5. Franchise granted March 13, 1906.

That pursuant to an agreement heretofore entered into between the representatives of the Northern Pacific Railway Company and a committee appointed by the city council for that purpose, which agreement was ratified and confirmed by the city council of said city, the mayor and auditor of said city be, and they are hereby authorized, instructed, and directed to make and enter into a contract in writing on behalf of said city of Fargo with the Northern Pacific Railway Company, in form and substance as set forth in Exhibit "A" hereto attached.

That upon the making and delivery of the deeds mentioned in said contract by said railway company to the city of Fargo, the mayor be and he is hereby instructed to cause the same to be recorded and the plats and tracts of land over and along which an easement is thereby granted to said city for street purposes, shall thereupon become and be a part of the system of streets of said city of Fargo for all purposes.

That upon the completion of a viaduct across the right-of-way of said railway company at Thirteenth Street, mentioned in said contract, and the turning over of the same to the city of Fargo, said viaduct shall become a part of said street system of the said city of Fargo, and shall thereafter be maintained and kept in repair by said city.

There is hereby granted to said Northern Pacific Railway Company the right to construct, establish, and maintain a spur track extending in a southeasterly direction diagonally across Front Street and Thirteenth Street South, leading to the North Half of Block 12 in Original Townsite of said city of Fargo, and entering said half block near the northwest corner thereof, and spur to be used for the purpose of a lumberyard to be located upon the north half of said block.

(Exhibit "A" referred to in (5), first paragraph)

"Agreement, made this _____ day of _____, 1906, between the city of Fargo, North Dakota, hereinafter called the city, and the Northern Pacific Railway Company, hereinafter called the railway company,

Witnesseth:

"The main line of the railway company built under the Act of Congress of July 2nd, 1884, was constructed through what is at present the city of Fargo, in about the year 1871. At that time there was substantially no population, where the city now is, but at the present time the city has grown up on each side of the right of way and tracks of the railway company and comprises a population of about thirteen thousand. Various controversies exist and have for a long time existed between the city and the railway company as to the existence across and upon property of the railway company of various streets in the city, a controversy as to the existence across and upon the railway company's property of First Street, Fourth Street, Thirteenth Street, and Front Street, and a controversy as to the width of Broadway between Northern Pacific Avenue and Front Street, and one concerning the extent of Northern Pacific Avenue West of Eighth Street.

"The city lately brought suit against the railway company to compel the opening across the right of way of the railway company of Thirteenth Street, and the railway company defended the suit, claiming that the street did not exist across its right of way and that the public had no right to open a street at that location, and that there was no necessity for opening it, which controversy is still pending.

"Fargo is an important division terminal and important point for the gathering up and

distribution of traffic for main and branch lines. The railway company has extensive yards in the city which it needs for the accommodation of its business greatly to enlarge. It is essential before the railway company make this expenditure to so locate its yard extension that it will be forever free of grade street crossings, as railroad yards of this character cannot be safely or economically operated across the streets.

“The parties have reached an understanding that all their differences before stated shall be compromised and settled by this agreement.

“Now, therefore, in consideration of the facts and premises before stated and in consideration of the compromise and settlement between the parties of each and every of the controversies aforesaid, and to enable the railway company to so locate and construct its yard extensions and its operations in the city may be safe and economical, the said city of Fargo, and the Northern Pacific Railway Company hereby agree as follows:

“1. The railway company will grant to the city by good and sufficient deed an easement for street purposes in all the tracts of land colored red on the map hereto attached, the railway company reserving the right to maintain and operate the tracks now existing on said lands colored red, also the right to construct additional tracks and operate and maintain the same across said lands at First Street, Fourth Street, Broadway, and Eighth Street. This deed will be made promptly and as soon as the engineers of the respective parties are able to survey the said lands so as to make a correct description thereof.

“2. The railway company will not hereafter, while a grade crossing is maintained at Eighth Street, erect any buildings upon its property or allow any to be erected within ten feet of the West line of Eighth Street.

“3. The said suit involving the opening of Thirteenth Street across the railway company’s right of way will be dismissed. The railway company will construct at its own expense a viaduct across its right of way at Thirteenth Street, including the approaches thereto, and the city will indemnify the railway company against all claims for damages to property resulting from its construction. Said viaduct shall have roadway twenty (20) feet in width with a sidewalk on one side six (6) feet in width. The sidewalk however shall extend only from about the north line of Northern Pacific Avenue to about the south line of Front Street, terminating at a stairway on either end leading down to the street underneath. The viaduct will be a steel and concrete structure with wooden floor. The grade of the approaches will not exceed seven percent. Detail plans will be submitted to the city engineer for his approval before construction is commenced. When the viaduct has been completed by the railway company as above, it will be turned over to the city and the city will thereafter maintain it at its own expense, as a part of its street system.

“4. The railway company will have the right to construct, maintain and operate a track across Northern Pacific Avenue under the west approach to the city’s bridge on the street across the Red River; and the city will maintain the approach at its present height so as to permit the operation of said track. The city agrees that upon the execution of said conveyance by the railway company and the construction of said viaduct at Thirteenth Street, it will not at any time thereafter open or maintain, or operate, or seek to open or maintain or operate any street crossing at grade across the right of way of the railway company west of the grade crossing at Eighth Street.

“In Witness Whereof, this agreement is executed by the city of Fargo under the hands of its mayor and city auditor by authority of an ordinance of the city council and the railway company has executed this agreement under its corporate seal and the hands of its president and assistant secretary by authority of its board of directors.”

6. Franchise granted September 12, 1907.

That the Northern Pacific Railway Company be and it is hereby granted and given the right to construct, maintain, and operate an additional spur railway track over and across Northern Pacific Avenue in the city of Fargo, running parallel with and not to exceed 25 feet from and on the easterly side of its spur railway track now constructed and operated over and across the said avenue, from a point on the northern edge of the right-of-way of the said railway company, opposite Lot "J" in Block 7 of Robert's Addition to Fargo, to a point on the south line of Lot "F" in said Block 7 about 25 feet east of the said spur track now constructed and in operation.

This ordinance shall take effect and be in force from and after its passage, approval, and publication and the acceptance thereof by the Northern Pacific Railway Company, which acceptance shall be in writing and be filed in the office of the city auditor of the city of Fargo not later than 30 days from and after the publication of this ordinance.

Whereas, the city of Fargo has granted and given the Northern Pacific Railway Company the right to construct, maintain, and operate an additional spur railway track over and across Northern Pacific Avenue in the city of Fargo, running parallel with and not to exceed 25 feet from and on the easterly side of its spur railway track now constructed and operated over and across the said avenue, from point on the northern edge of the right-of-way of the said railway company, opposite Lot "J" in Block 7 of Robert's Addition to Fargo, to appoint on the south line of Lot "F" in said Block 7, about 25 feet east of the said spur track now constructed and in operation; such permissions being granted by ordinance approved September 12, 1907, and published September 13, 1907.

Now, therefore, the Northern Pacific Railway Company hereby accepts the said ordinance by this instrument, within 30 days from the date of publication of said ordinance, and the said Northern Pacific Railway Company consents to the terms and conditions of said ordinance and agrees to perform all acts and things required by said ordinance to be done by said Northern Pacific Railway Company and it requests the city auditor of Fargo to file this acceptance as in said ordinance provided.

Northern Pacific Railway Company,
By Thomas Cooper, Land Commissioner

Dated October 4th, 1907
(Acceptance filed October 5, 1907)

7. Franchise granted February 14, 1920.

The Northern Pacific Railway Company is hereby granted permission at its sole cost and expense to build and construct a subway in Tenth Street in the city of Fargo, to carry said street across its right-of-way and under its tracks.

The subway shall be constructed in accordance with the plans and specifications prepared by the railway company and approved and accepted by the city commission of the city of Fargo. That portion of the subway on the railway company's property shall be timber or other approved material with re-enforced concrete lining. That portion of the subway outside the limits of the railroad company shall be re-enforced concrete construction throughout. The subway shall provide a roadway of not less than 33 feet with two 8-foot sidewalks, one upon each side of the roadway, with supports in the center of the roadway and at each curb line. Clear head-room over the roadway shall be at least 12' 6" and over the sidewalks not less than 9 feet. The center of the roadway at the lowest point to be at an elevation 886.7 feet of the established datum of the railway company. The enclosed portion of the subway shall be sloped sufficiently to provide adequate drainage and from the ends of the enclosed portion to an intersection with the existing street grades, the approaches shall rise on a grade of 6 feet

in 100 feet.

The city will by proper proceedings, extend Tenth Street across the right-of-way of the railway company in the manner shown on the plans accepted by the city commission.

Upon completion of the subway, the city shall thereafter maintain all portions of the subway not on the right-of-way of the railway company and shall maintain the streets and sidewalks on Tenth Street, as opened across the railway company's right-of-way, in the same manner as all other streets in said city. The railway company shall maintain all of the subway located on its right-of-way at its own cost and expense.

Such lighting as may be ordered by the city to adequately illuminate the subway shall be provided by the railway company at its own expense.

The railway company shall install and maintain a motor-driven pump below the level of the subway in order to remove water therefrom, and to deliver the same into the city sewer.

The railway company is hereby permitted and authorized to enter upon the streets, avenues, and alleys and make such excavations and do such work as may be necessary to construct said subway, also to obstruct or close temporarily any streets, avenues, or alleys to such extent and for such length of time as may be reasonably necessary, also to construct and maintain temporarily structures and false work in the streets, avenues, and alleys subject to the approval of the city engineer.

All water pipes, sewers, and other utilities owned by the city, including all service connections necessary to the abutting property, shall be moved to the position made necessary by the change of grade in streets, avenues, and alleys under this ordinance by the railway company under the supervision of the city, it being understood that the cost and expense of such changes in the position of utilities by the city made necessary by this work shall be borne by the railway company.

The city of Fargo shall, by necessary proceedings, establish the changes in the grades of streets and avenues required by this work.

The railway company shall signify in writing its acceptance of this ordinance and all the terms thereof within 30 days after its passage, and the Northern Pacific Railway Company shall thereupon commence the work of constructing said subway within three months thereafter and shall diligently pursue and continue the same until it is completed.

8. Franchise granted May 19, 1920.

That the Northern Pacific Railway Company is hereby granted and given the right to construct, maintain, and operate a spur track across Northern Pacific Avenue, beginning at a point on the south line of Northern Pacific Avenue in the city of Fargo, North Dakota, 130 feet east from the produced easterly line of Ninth Street North, thence northerly along a curve to the left across said Northern Pacific Avenue to the northerly line thereof at a point therein 145 feet easterly from the easterly line of said Ninth Street North.

Also beginning at a point on the south line of Northern Pacific Avenue in said city 135 feet east from the produced easterly line of said Ninth Street North, thence northerly along a curb to the left across said Northern Pacific Avenue to the northerly line thereof at a point therein 158 feet easterly from the easterly line of said Ninth Street North, conditioned that said spur tracks are to be in lieu of the present spur tracks as now laid and operated across said Northern Pacific Avenue in said city between Eighth and Ninth Streets North.

This ordinance and permission hereby granted the Northern Pacific Railway Company by said city is made necessary by reason of the construction of the subway crossing the Northern Pacific Railway Company's right-of-way on Tenth Street in said city.

9. Franchise granted March 29, 1944.

The Northern Pacific Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate railroad tracks and crossings over and across Twenty-Third Street North in the city of Fargo, Cass County, North Dakota, at a point approximately 18 feet south of the existing southerly main line tracks of the said Northern Pacific Railway Company, which tracks now cross the said Twenty-Third Street North, said tracks and crossing to be approximately parallel with the existing tracks and crossing of the said Northern Pacific Railway Company over and across said Twenty-Third Street, and in accordance with and as shown by the red line on the attached blue print.

The said Northern Pacific Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

10. Franchise granted February 1, 1949.

The Northern Pacific Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate a railroad track over and along Ridgley Street (original plat) and now known as Twenty-Fifth Street from a point south of First Avenue North and to Third Avenue North, in approximate accordance with the solid red line on the attached plat.

The said Northern Pacific Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The grantee named herein shall, within 10 days after the passage and approval hereof file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

11. Franchise granted September 18, 1956.

The Northern Pacific Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate a railroad industrial track over and across First Avenue North between Fifteen and One-half and Sixteenth Streets North, and extending through the alley as now located in Block "A" of Stern's Subdivision of Block 17, of Reeve's Addition to the city of Fargo, in approximate accordance with the red line markings on plat attached hereto, said track to be an extension of the Northern Pacific spur track presently running through the alley in Block 25 of Reeve's Addition to the city of Fargo and presently terminating at the south side of First Avenue North.

The said Northern Pacific Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing

connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

Source: 1952 Rev. Ord. 24-0103, (Subdiv. (11) added by Ord. No. 979, 1956.)

24-0104. Great Northern Railway Company.--

1. Franchise granted June 17, 1910.

There shall be, and hereby is granted to the Great Northern Railway Company, a corporation, authority to build, erect, construct, and maintain one or more railway tracks over and across the following streets, avenues, and alleys, and through Beardsley's Addition to said city of Fargo, to-wit:

Seventeenth Street North, Eighteenth Street North, Nineteenth Street North, Twentieth Street North, Twenty-First Street North, Twenty-Second Street North, Twenty-Third Street North, and Twenty-Fourth Street North; Eighth Avenue North, Ninth Avenue North, Tenth Avenue North, and Eleventh Avenue North, Alley in Blocks 9, 10, 13, 14, 15, 25, 22, 23, and 24, said Beardsley's Addition.

The particular points at which said tracks may be constructed across said streets, alleys, and avenues being at the points where the line of railway of the said Great Northern Railway Company heretofore surveyed, laid out, located, and established through said addition, known as the Fargo-Surrey branch or line of railway, and which connects with the main line of the Great Northern Railway Company, extending through said city, intersects the various streets, avenues, and alleys, above referred to; the course of said line of railway across said streets, avenues, and alleys being designated as near as may be as follows:

The located center line of the Fargo-Surrey line of the Great Northern Railway Company enters Beardsley's Addition, at a point 94.1 feet north, 20E and 30' east of the northeast corner of Lot Five (5) of the Southwest Quarter (SW¹/₄) of the Northeast Quarter (NE¹/₄) of Section One (1), Township One Hundred Thirty-Nine (139) North, of Range Forty-Nine (49) West, being Lot Five (5) of Auditor's Plats of Miscellaneous Tracts; thence in a northwesterly direction to a point 74.3 feet north of the southwest corner of the east half of Block 22, at which point said center line crosses the east line of the alley in Block 22; thence in a northwesterly direction to a point 159.4 feet north of the southwest corner of Block 22, at which point said center line crosses the east line of Seventeenth Street North; thence northwesterly to a point 276.3 feet north of the southwest corner of the East Half of Block 23, at which point said center line crosses the east line of the alley in Block 23; thence northwesterly to a point 361.3 feet north of the southwest corner of Block 23 at which point said center line crosses the east line of Eighteenth Street North; thence northwesterly to a point 478.2 feet north of the southwest corner of the east half of Block 24, at which point said center line crosses the east line of the alley in said Block 24; thence northwesterly to a point 650.8 feet north of the northwest corner of Lot One (1), of the Southeast Quarter (SE¹/₄) of the Northwest Quarter (NW¹/₄) of Section One (1), Township One Hundred Thirty-Nine (139) North, of Range Forty-Nine (49) West, being Lot One (1), of Auditor's Plats of Miscellaneous Tracts, at which point said center line crosses the east line of Nineteenth Street North; thence northwesterly to a point 7.5 feet south of

the northwest corner of the East Half of Block 25, at which point said center line crosses the east line of the alleys in said Block 25; thence northwesterly to a point 149.5 feet east of the northwest corner of Block 25, at which point said center line crosses the south line of Tenth Avenue North; thence northwesterly to a point 77.5 feet north of the northwest corner of Block 25, at which point said center line crosses the east line of Twentieth Street North; thence northwesterly to a point 114.3 feet north of the southwest corner of the East Half of Block 15, at which point said center line crosses the east line of the alley in said Block 15; thence northwesterly to a point 199.4 feet north of the southwest corner of Block 15, at which point said center line crosses the east line of Twenty-First Street North; thence northwesterly to a point 310.7 feet north of the southwest corner of the East Half of Block 14, at which point said center line crosses the east line of the alley in said Block 14; thence northwesterly to a point 395.7 feet north of the southwest corner of Block 14, at which point said center line crosses the east line of Twenty-Second Street North; thence northwesterly to a point 507.5 feet north of the southwest corner of the East Half of Block 13, at which point said center line crosses the east line of the alley in said Block 13; thence northwesterly to a point 14.5 feet east of the northwest corner of Block 13, at which point said center line crosses the south line of Eleventh Avenue North; thence northwesterly to a point 12.3 feet north of the northwest corner of Block 13, at which point said center line crosses the east line of Twenty-Third Street North; thence northwesterly to a point 40.7 feet north of the southwest corner of the East Half of Block 9, at which point said center line crosses the east line of the alley in said Block 9; thence northwesterly to a point 126.7 feet north of the southwest corner of Block 9, at which point said center line crosses the east line of Twenty-Fourth Street North; thence northwesterly to a point 233 feet north of the southwest corner of the East Half of Block 10, at which point said center line crosses the east line of the alley in said Block 10; thence northwesterly to a point 345.5 feet north of the southwest corner of Block 10; thence northwesterly to a point 250.3 feet south of the northwest corner of Section One (1), Township One Hundred Thirty-Nine (139) North, of Range Forty-Nine (49) West, at which point the said center line leaves said Beardsley's Addition.

Tracks shall be built in such a manner as not to obstruct said street, avenue, or alleys, or interfere with the travel thereon or the ordinary use of the same.

That the said tracks or line of railway shall be so constructed where the same intersect with the streets, avenues, and alleys aforesaid as to permit ordinary traffic and use thereof, and not to impair or interfere with the same.

2. Franchise granted November 22, 1944.

There is hereby granted and conferred upon the Great Northern Railway Company, its successors and assigns, permission and authority to construct, maintain and operate such railway tracks and switches as may be necessary for the use of such company in the proper conduct of its business, and to run and operate locomotive engines and cars on such railway tracks and switches, such sidetracks or spur tracks to extend from a connection with the main tracks of said railway company in a southeasterly direction across Seventh Avenue North, the center line of said track intersecting the center line of Seventh Avenue North at a point approximately 115 feet west of the west line of Fifteenth Street North, extended, and continuing southeasterly across Sixth Avenue North, the center line of said tracks intersecting the center line of Sixth Avenue North at a point

approximately 30 feet west of the west line of Fifteenth Street North, and continuing southeasterly across Fifteenth Street North, the center line of said track intersecting the center line of Fifteenth Street North at a point approximately 32 feet south of the south line of Sixth Avenue North, extending thence southeasterly across the northwest corner of Block 5 of Reeve's Addition to Fargo to the alley, as platted but not now in use, (extending east and west through the center of said block), thence eastward along said alley to the west line of Fourteenth Street North. Such tracks shall be laid and maintained upon such grade as is or may be established by the said city, and in such manner as least to interfere with the free use of such avenues and streets as public streets and avenues.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railway company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said tracks with such streets or avenues.

3. Franchise granted December 5, 1945.

Authority is hereby granted to the Great Northern Railway Company, its successors and assigns, to construct, maintain and operate a railroad track across Fourteenth Street between Fifth Avenue North and Sixth Avenue North and within and along the alley in Block 6 of Reeve's Addition to the city of Fargo, said track extending from connection with an existing railroad track of said Great Northern Railway Company in the alley of Block 5, Reeve's Addition, at or near the west boundary of said Fourteenth Street North, easterly across Fourteenth Street and along and within the alley in Block 6 of Reeve's Addition for a distance of 250 feet in said alley.

The said track shall be constructed and maintained flush with the surface of Fourteenth Street and alley at the established grade thereof, so as to cause the minimum of interference with travel thereover. The railway company shall maintain the traveled portion of said street with plank or other suitable material between the rails and for two feet on each side thereof. Whenever the city shall pave any part of the street included in this franchise the railway company shall pay for and maintain in good condition the pavement between the rails and for two feet on each side thereof. All of the work shall be done to the satisfaction of the city council.

The city of Fargo reserves the right at any time to enter upon any or all portions of said Fourteenth Street or the alley in said Block 5 upon or over which said track shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefore to any damages or claims of damages; and said railway company, its successors or assigns, shall afford all reasonable aid and facilities to said city of Fargo in

doing such work, and re-lay its said tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are being made, all of which said railway company, by acceptance of the privileges granted hereby, agrees to do.

The railway company, its successors or assigns, shall hold the city of Fargo harmless from every liability and damage from the construction, maintenance and operation of said track across said street and within and along said alley.

All of the rights and privileges herein granted are subject to the provisions of the Charter of the city of Fargo relating to franchises of this character, to the same extent and as fully as if set forth herein.

4. Franchise granted October 15, 1946.

The Great Northern Railway Company is hereby authorized and empowered to build, construct, maintain and operate the following described sidetracks, across the following avenues, streets and alleys in the city of Fargo, North Dakota:

A spur track extending in a northerly and southerly direction and crossing Sixth Avenue North and the alley in Block 4 of Reeve's Addition, the center line of said spur track intersects the center line of Sixth Avenue North approximately 95 feet west of the west line of Fifteenth Street North and intersects the center line of the alley in said Block 4 approximately 80 feet west of the west line of Fifteenth Street North.

A second spur track extending from a connection with the track above described at a point in Sixth Avenue North in a southeasterly direction and crossing Sixth Avenue North and Fifteenth Street North, the center line of said spur track intersects the south line of Sixth Avenue North approximately 36 feet west of the west line of Fifteenth Street North and intersects the west line of Fifteenth Street North approximately 110 feet south of the south line of Sixth Avenue North and intersects the east line of Fifteenth Street North approximately 145 feet south of the south line of Sixth Avenue North.

A third spur track extending from a connection with the existing spur track of said railway company at a point near the south line of Seventh Avenue North in a southeasterly direction and crossing Sixth Avenue North and Fifteenth Street North, the center line of said spur track intersects the north line of Sixth Avenue North approximately 70 feet west of the west line of Fifteenth Street North, and intersects the east line of Fifteenth Street North approximately 25 feet south of the south line of Sixth Avenue North.

A fourth spur track extending from a connection with the spur track last above referred to at a point approximately 45 feet north of the north line of Sixth Avenue North in a southeasterly direction and crossing Sixth Avenue North and Fifteenth Street North, the center line of said spur track intersects the north line of Sixth Avenue North approximately 65 feet west of the west line of Fifteenth Street North, and intersecting the east line of Fifteenth Street North approximately 10 feet south of the south line of Sixth Avenue North.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. Franchise granted December 7, 1948.

There is hereby granted and conferred upon the Great Northern Railway Company, a corporation, its successors and assigns, authority to construct, maintain and operate a railway spur

track extending from a point on the existing track of the Great Northern Railway Company on Twenty-Second Street North upon a portion of said Twenty-Second Street described as follows:

Beginning at a point in the center line of said railway company's interchange track as now established in Twenty-Second Street North, distant 280 feet south of the south line of Tenth Avenue North; thence easterly at right angles thereto 8.9 feet; thence southwesterly along a curve to the right having a radius of 773.49 feet, 98 feet; thence southwesterly tangent to said curve 97.2 feet; thence southwesterly along a curve to the right having a radius of 379.78 feet, 88 feet, more or less, to a point in the west line of said Twenty-Second Street North distant 552.8 feet south of the south line of Tenth Avenue North; thence northerly along said west line of Twenty-Second Avenue North, 62 feet; thence northeasterly along a curve to the left having a radius of 361.78 feet, 26.2 feet to a point 9 feet northwesterly measured at right angles from the center line of said spur track; thence northeasterly tangent to last described curve 97.2 feet; thence northeasterly, along a curve to the left having a radius of 755.49 feet, 95.7 feet; thence easterly at right angles to the center line of said interchange track 9.1 feet to the point of beginning. The said center line of said proposed spur track is described as follows:

Beginning at a point in the center line of said interchange track in Twenty-Second Street North, 267.9 feet distant south of the south line of Tenth Avenue North; thence southwesterly along a $7^{\circ}30'$ curve to the right having a radius of 764.49 feet, a distance of 12.1 feet to the northerly limits of the above-described 18 foot strip in Twenty-Second Street North; thence continuing southwesterly along said $7^{\circ}30'$ curve 96.8 feet; thence southwesterly tangent to said $7^{\circ}30'$ curve 97.2 feet; thence southwesterly along a $15^{\circ}30'$ curve to the right having a radius of 370.78 feet, 227.6 feet; thence southwesterly tangent to said $15^{\circ}30'$ curve 482.4 feet to the end of said spur track, said end of spur track being 252.92 feet distant northerly from the center line of Seventh Avenue North; measured at right angles thereto from a point therein 452.17 feet distant westerly from the center line of Twenty-Second Street North.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages, and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

All of the rights and privileges herein granted are subject to the provisions of the charter of the city of Fargo relating to franchises of this character, to the same extent, and as fully as if set forth

herein.

6. Franchise granted December 20, 1949.

The Great Northern Railway Company, a corporation, its successors and assigns, is hereby granted the right to construct, maintain and operate an interchange and industrial railway track extending from a point of connection with the existing track of said Great Northern Railway Company described in section one, paragraph (A) of ordinance passed October 30, 1905, entitled "An Ordinance Granting to the St. Paul, Minneapolis and Manitoba Railway Company the Right to Lay, Maintain and Operate Railway Tracks in, upon and across Certain Streets and Alleys in the City of Fargo, North Dakota" at a point opposite a point approximately midway between the north and south lines of Lot 7, Block 6, Tyler's Addition to a point on the north line of Lot 11, Block 22, Tyler's Addition, said track to be located and constructed to the west of and with center line generally 14 feet distant from the center line of the track covered by said ordinance, passed October 30, 1905.

There is also hereby granted to Great Northern Railway Company, its successors and assigns, the right to construct, maintain and operate a crossover track extending from a connection with the existing track of the Great Northern Railway Company constructed pursuant to said ordinance passed October 30, 1905, at a point opposite a point approximately midway between the north and south lines of Lot 5, Block 6, Tyler's Addition to a connection with the track of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company authorized by Ordinance No. 825, passed June 7, 1949, at a point approximately 115 feet north of the north line of Fifth Avenue North; also a connecting track in Twenty-Second Street North, opposite the south line of Lot 1, Block 11, Tyler's Addition, and leading from a connection with said interchange track described in section one hereof southwesterly to a connection with the track serving the Dakota Transfer and Storage Terminal.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from, or growing out of, any action, or proceeding, brought by any person, firm or corporation on account of any matter, or thing, connected with the construction, maintenance and operation of the railroad trackage, authorized by this ordinance.

Said Great Northern Railway Company shall within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

7. Franchise granted January 10, 1950.

The Great Northern Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate a railroad spur track from a point in Block 3 of Reeve's Addition to the city of Fargo, Cass County, North Dakota, southerly across Sixth Avenue North, across the alley in Block 4 of Reeve's Addition, across Fifth Avenue North, easterly across Fifteenth Street North and over and along the alley in Block 8 of Reeve's Addition, all in accordance with the red track markings as shown on the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damage, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of

sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railway company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said tracks with such streets or avenues.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

8. Franchise granted August 1, 1950.

The Great Northern Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate a railroad spur track at street grade level extending in an easterly and westerly direction in the alley in Block 7, Reeve's Addition, and crossing Fourteenth Street North; the center line of said spur track being parallel with and distant 8.6 feet, more or less, southerly from the north line of said alley and extending from a point approximately 10 feet east of the west line of Lot 4, produced, in said Block 7, westerly to a connection with the existing spur track of said Great Northern Railway Company near the west line of Fourteenth Street North, all in accordance with the red track markings as shown on the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damage, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claims of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railroad company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this

ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said tracks with such streets or avenues.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

9. Franchise granted August 29, 1950.

The Great Northern Railway Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate a railroad spur track at street grade level, in the city of Fargo, North Dakota, extending across Seventh Avenue North from a point in the northerly line thereof distant 120 feet west of the west line of Fifteenth Street North, extended, southerly to a point in the south line of said Seventh Avenue North distant 95 feet west of said west line of Fifteenth Street North, all in accordance with the red track markings as shown on the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damage, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said railroad tracks and crossing.

The city of Fargo reserves the right at any time to enter upon any, or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claims of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railway company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said tracks with such streets or avenues.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

10. Franchise granted May 22, 1962.

The Great Northern Railway Company, a Minnesota corporation, its successors and assigns, be and hereby is granted the right, authority and permission, without charge therefor, to locate, maintain and operate one track in Twenty-Second Street North, Fifth Avenue North, across the alley

in Block 6 of Tyler's Addition, and across Twenty-Third Street North, Twenty-Fourth Street North, Twenty-Fifth Street North, and Twenty-Seventh Street North in the city of Fargo, North Dakota, the center line of said spur track being described as follows:

Beginning at a point in the center line of the existing Great Northern Railway Company track in Twenty-Second Street North, approximately 228 feet south and 58 feet east from the northeast corner of said Block 6, said point being at Railway Company survey station 31+27.2; thence southwesterly along a No. 7 turnout curve to the right, 61 feet; thence southwesterly tangent to said turnout curve, 7 feet; thence southwesterly along a 21°40' curve to the right, 377.7 feet; thence westerly, tangent to last described curve, 270 feet; thence northwesterly along a 12°30' curve to the right, 89.6 feet; thence westerly along a 12°30' curve to the left, 89.6 feet; thence westerly, tangent to last described curve 1043.1 feet; thence southwesterly along a 12°30' curve to the left, 56.5 feet; thence southwesterly along a 12°30' curve to the right 27 feet, more or less, to the west line of said Twenty-Seventh Street North and the end of center line being described. Also, a franchise for an additional spur track, beginning at a point in the above-described center line 18 feet east from the east line of Twenty-Fifth Street North; thence southwesterly along a reverse turnout curve to the left and right across said Twenty-Fifth Street North to a point distance 14 feet south of said above-described center line; thence westerly parallel with said above-described center line and center line extended to the west line of Twenty-Seventh Street North.

The location of said track shall be as is shown by the area colored red upon the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said location, maintenance and operating of the said tracks.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks as shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its track and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railroad company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said track with all of the streets, alleys and avenues involved.

The grantee named herein shall, within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

11. Franchise granted June 5, 1962.

The Great Northern Railway Company, a Minnesota corporation, its successors and assigns, be and hereby is granted the right, authority and permission, without charge therefor, to locate, maintain and operate one track on Twenty-Second Street North and across a portion of Fifth Avenue North in Block 6 of Tyler’s Addition to the city of Fargo, Cass County, North Dakota, the center line of said spur track being described as follows:

Beginning at a point in the existing Great Northern Railway Company track, approximately 15 feet south and 42 feet east from the southeast corner of said Block 6, said point being at Railway Survey Station 34+34; thence northwesterly through a No. 9 turnout and along a 7°30’ curve to the left 149.2 feet; thence northwesterly along a 7°30’ curve to the right, 161.1 feet; thence northerly, tangent to last described curve, 216.2 feet to the end of center line being described.

The location of said track shall be as is shown by the area colored red upon the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said location, maintenance and operating of the said tracks.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which said tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its track and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railroad company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said track with all of the streets, alleys and avenues involved.

The grantee named herein shall, within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

12. Franchise granted October 6, 1967.

Section 1. The Great Northern Railway Company, a Minnesota corporation, its successors and assigns, be and hereby is granted the right, authority and permission, without charge therefor, to locate, maintain and operate one spur track over and across the intersection of Eighth Avenue North, Eighteenth Street North and Great Northern Drive in Fargo, North Dakota, the center line of said spur track being described as follows:

Beginning at a point in the north line of Eighth Avenue North in the city of Fargo, North Dakota, which is also a point in the south line of Lot 15, Block 23, Beardsley's Addition to Fargo, distant 25.15 feet east, measured along said north line, from the north-south quarter section line of Section 1, Township 139 North, Range 49 West, 5th Principal Meridian; thence southwesterly along a 16°00' curve to the left, the tangent of which makes a northeasterly angle of 37°53' with said north line of Eighth Avenue North and bears north 41°07' east, through a point in the southerly line of Great Northern Drive in said city, which is also the northeasterly line of Lot 1, Block 1, Bower's Addition to Fargo, distant 21.03 feet northwesterly, measured along said southerly line of Great Northern Drive, from a monument at the intersection of said southerly line of Great Northern Drive with the west line of Eighteenth Street in said city, which is also the east line of said Block 1, Bower's Addition. The 16°00' curve at its point of intersection with said southerly line of Great Northern Drive makes a southwesterly angle of 91°13' with said southerly line of Great Northern Drive and bears south 17°17' west.

The location of said track shall be as is shown by the area colored red upon the attached plat.

The said Great Northern Railway Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said location, maintenance and operating of the said tracks.

Section 2. The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which said tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its track and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

Section 3. The privileges and rights conferred upon said railroad company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said track with all of the streets, alleys and avenues involved.

The grantee named herein shall, within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

Source: 1951 Rev. Ord. 24-0104 (Subdiv. (10), added by Ord. No. 1127, 1962, Subdiv. (11), added by Ord. No. 1128, 1962), 1965 Rev. Ord. 24-0104 (Subdiv. (12), added by Ord. No. 1259, 1 to 3, 1967.)

24-0105. Chicago, Milwaukee, St. Paul and Pacific Railroad Company.--

1. Franchise granted June 7, 1949.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation, its successors and assigns, is hereby granted the right, authority and permission to establish, construct, maintain and operate an interchange and industrial railroad track extending from a point in the south line of First Avenue North, approximately 140 feet east of the east line of Twenty-Third Street, northerly across First Avenue North, thence across Lots 10 to 13 inclusive, in Block 22, Tyler's Addition to Fargo, and thence in Twenty-Second Street North to the south line of Seventh Avenue North, with the center line of said track between the south line of Seventh Avenue North, and a point opposite Lot 26, in Block 21, of said Tyler's Addition to Fargo, being 8½ feet westerly of the east line of Twenty-Second Street North, and also to establish, construct, maintain and operate a crossover track extending from a point in said interchange and industrial track which is distant approximately 115 feet north of the north line of Fifth Avenue North, to a connection with the existing track of the Great Northern Railway Company, located in the westerly half of Twenty-Second Street North. The location of said interchange and industrial railroad track and of said crossover track shall be in approximate accordance with the location shown by solid red line on the attached plat.

The said Chicago, Milwaukee, St. Paul and Pacific Railroad Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said construction, maintenance and operation of the said interchange and industrial railroad track and the said crossover track.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

2. Franchise granted May 16, 1950.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, its successors and assigns, be and hereby is granted the right, authority and permission, without charge therefor, to relocate, maintain and operate its main track and pole line and round house track in, along and across sundry streets and alleys in said city of Fargo. The alignment of said tracks, the location of which is shown by solid red lines on the attached plat, is as follows:

RELOCATED MAIN TRACK--From a point in Second Avenue North approximately 165 feet easterly from the east line of Sixteenth Street, which point is the easterly extremity of the relocated main track and the point of beginning of a 2E curve to the left, run westerly along said 2° curve 183.7 feet to a point in Sixteenth Street and the end of said 2° curve; thence westerly along a tangent to said curve 1831.1 feet to the beginning of an 8° curve to the left; thence westerly and southwesterly along said curve 339.8 feet to the end thereof; thence westerly on the tangent to said curve 536 feet to a point in Twenty-Third Street approximately 15 feet easterly of the southeasterly corner of Block 26, Tyler's Addition to Fargo and the end of the relocated main track.

RELOCATED ROUND HOUSE TRACK--Start at a point in the center of said relocated main track approximately 105 feet easterly of the west line of Twentieth Street and 85 feet westerly of the east line of Nineteenth Street; thence westerly through the alignment of a number 10 turnout 85 feet; thence easterly and northerly along 10° curve to the left 565.1 feet to a point in Lot 3 in Block 17, Tyler's Addition to Fargo and the end of the relocated round house track.

The said Chicago, Milwaukee, St. Paul and Pacific Railroad Company shall keep harmless the

city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any persons, firm or corporation on account of any matter or thing connected with the said relocation, maintenance and operation of the said main railroad track and pole line and the said round house track.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its tracks and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railway company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use.

The grantee named herein shall, within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

3. Franchise granted January 3, 1956.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, its successors and assigns, be and hereby is granted the right, authority and permission, without charge therefor, to locate, maintain and operate one track across Twenty-Second Street in the city of Fargo, beginning at a point in the east line of Twenty-Second Street, 95 feet north of the southwest corner of Block 21, Reeve's Addition to the city of Fargo, North Dakota, said point being on the center line of the track serving the Cass-Clay Creamery, thence southwesterly along the center line of the track which is on a 16° curve to the right to the heel of frog for the turnout from the main track of said track, thence through a #7 1/7 turnout to a point in the west line of Twenty-Second Street 25 feet north of the southeast corner of Block 22, Reeve's Addition to the city of Fargo.

The location of said track shall be as is shown by the area colored yellow upon the attached plat.

The said Chicago, Milwaukee, St. Paul and Pacific Railroad Company shall keep harmless the city of Fargo, North Dakota, from any and all damages, costs or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm or corporation on account of any matter or thing connected with the said location, maintenance and operating of the said track.

The city of Fargo reserves the right at any time to enter upon any or all portions of such streets or avenues, upon or over which such tracks shall be constructed, and to make thereon such excavations and do such other work thereon as may be necessary in the construction and repairs of sewers, gutters, water mains, gas pipes or other works of a public character, without being liable therefor to any damages or claim of damages; and such company, its successors and assigns, shall afford all reasonable aid and facilities to said city in doing such work, and re-lay its track and properly restore its roadbed and ties at its own expense from time to time as such work or repairs are completed, all of which such company by acceptance of the privileges granted by this ordinance agrees to do.

The privileges and rights conferred upon the said railroad company by section one hereof is upon the express condition that the said company will, whenever requested by the board of city commissioners of said city so to do, reasonable time being given therefor, grade and construct and maintain proper and sufficient street crossings over the tracks of said company, covered by this ordinance, and will keep the same open at all times for public travel and suitable for public use; that it will also afford any reasonable protection required by the board of city commissioners for the protection of the traveling public at the points of intersection of said track with Twenty-Second Street.

The grantee named herein shall, within 20 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, North Dakota, whereupon it shall become a compact between the parties hereto.

Source: 1952 Rev. Ord. 24-0105, (Subdiv. (3) added by Ord. No. 956, 1956.)

24-0106. Courtesy benches.-- Repealed by Ord. No. 2804 (1996).

24-0107. Western Union.--Permission is hereby granted to the Western Union Telegraph Company to erect, maintain, operate and repair a telegraph line, including the erection of poles or posts to support the wires of said line through and along the following streets: Commencing at a point where the east line of Roberts Street intersects with the Manitoba track, running thence south on the east line of said street (Roberts) to Northern Pacific Avenue, thence across Northern Pacific Avenue to Northern Pacific right-of-way; said poles to be set on the outer edge of the sidewalk along the line of said street, and no poles to be set further than 10 feet from the north or south line of Northern Pacific Avenue, and in all cases to be set so as not to interfere with crosswalks or sidewalks, nor with the fronts of buildings, gateways, or doors. In consideration of this permit the Western Union Telegraph Company agrees to be responsible for any and all damage that may be done to the city of Fargo, or any of its citizens, by reason of the excavations for said poles or the erection thereof, or that may arise in any manner in the erection or repairing of said line, and further agree for the same consideration that the city of Fargo may, at any time, by resolution of the council, revoke this permit, and the said Western Union Telegraph Company expressly binds themselves by the acceptance of this permit not to ask or claim any damage whatever from the city of Fargo in case they are required to remove any or all of said poles and lines but to hold themselves in readiness to move any or all of said poles under the direction of the city council.

Upon the acceptance of this ordinance by said company in writing, within 10 days from the date of its passage, it shall constitute a contract between the city of Fargo and the said Western Union Telegraph Company, subject, however, to revocation or modification as above expressed.

Source: 1952 Rev. Ord. 24-0107.

24-0108. Erie Telegraph and Telephone Company.--

1. Franchise granted November 26, 1887.

That the Erie Telegraph and Telephone Company is hereby authorized to erect, establish, and maintain within the limits of the city of Fargo, telegraph poles, and to stretch and maintain thereon the necessary wires for a telephone exchange system, according to the conditions hereinafter stated.

That said company shall file in the office of the city engineer, a statement of the streets and alleys of the said city which it has already occupied.

That said company shall file with the city engineer written application for all streets and alleys it may hereafter wish to occupy with its poles and wires, and when it may desire to occupy the same; and if such application shall be approved by the city engineer, such approval shall be deemed a

permission of the city to so occupy said streets and alleys for the purpose above stated.

In case of a change of grade of any street or pavement so occupied by said company, it shall reset poles at its own cost so as to conform to the grade of such street or pavement so changed, and in such manner as the city engineer shall direct.

All the proceedings of said Erie Telegraph and Telephone Company, under this ordinance, shall be subject to any ordinance relative to the same which may hereinafter be passed by the city council of Fargo.

2. Franchise granted April 8, 1895.

That the right heretofore given by the city council to the Erie Telegraph and Telephone Company to erect, operate, and maintain telephone poles and wires in said city, is hereby continued for the period of 30 years from the date of the adoption hereof; and the right is hereby granted to the Northwestern Telephone Exchange Company, its successors and assigns, to erect, maintain, and operate in, through, over and across any and all streets, alleys, highways, bridges, approaches, and public places of the city of Fargo, a system of poles, posts, conduits, and wires, and all other useful and necessary appliances for the construction and transmission of sound applicable to and with a telephone and messenger service and general telephone system or exchange, whether for the use of said city of Fargo, or any or all the inhabitants thereof or for any and all companies, corporations, and persons in said city of Fargo, or the suburbs thereof, and such grant is hereby made to extend to all streets, alleys, highways, bridges, approaches, and public places in and of said city of Fargo, now owned and controlled by it, and in which it has any interest whatever, and as well also to any and all such as said city may hereafter acquire during the period herein limited, whether within its corporate limits as now existing, or as the same may at any time hereafter be extended or enlarged. Provided, that such permission is granted solely upon the conditions, restrictions, and limitations hereinafter set forth, and not otherwise.

In case of any change of grade, street, or curb line of any street or pavement, in said city, wherein or upon which any poles, posts, or any other appliances of said parties, or of said corporation, their successors or assigns are set, or placed, said parties or successors shall do any necessary resetting or replacing of such poles or appliances at their sole cost and expense so as to conform to such new grade, street, or curb line. And in the event that at any time in the future such system of wiring be made by adoption of the conduit system, all such conduits constructed therefor shall be subject to such rules, regulations, and ordinances of said city of Fargo, as may then be in force and applicable thereto, and whenever in said behalf, any of said streets, alleys, bridges, approaches, or public places shall be disturbed by said parties or their successors in, about, or in connection with the doing of any of the things herein and hereby permitted in that regard, they shall be restored to their proper condition with the least possible delay, or should it become necessary, in default of such matter, the said city of Fargo shall have the right to do any needful work to restore such streets, alleys, highways, bridges, approaches, or public places to their proper condition and thereupon recover from said parties or their successors, the cost of any work done or material furnished therefor. And said parties and their successors and assigns, shall at any and all times save and keep said city of Fargo harmless from all damages, cost, or expense, in any way arising or to arise from, or growing out of any action or proceeding, brought by any person, firm, company, or corporation on account of any matter or thing connected with such proposed system.

All posts, poles, and appliances set or placed by said Northwestern Telephone Exchange Company, and their said successors and assigns, under conditions hereof in any of their streets, alleys, highways, bridges, or approaches of the said city of Fargo, shall be set and placed in conformity with the provisions of any and all ordinances, rules, and regulations of said city in force at the time thereof,

whether now enacted or hereafter to be enacted, and all work done in that behalf, shall be done to the satisfaction of the proper authorities of said city of Fargo, with regard to public convenience and safety. And should the authorities of said city at any time, by proper enactment, in that behalf, require the placing of all wires of other companies as well as the party of the privileges herein granted, to be placed underground, and in conduit system, to meet the then requirement of the public needs of said city, said Northwestern Telephone Exchange Company, its successors or assigns, shall be subject to all such requirements, provided all of the companies and persons having similar systems for the same or other purposes are likewise required to conform to the said regulation and enactment, and neglect or refusal to comply therewith shall forfeit all privileges herein contained.

The right of use herein given shall not be exclusive, and the council reserves the power to grant like right of use to others for similar uses; the same, however, not to interfere with the proper exercise of the privileges herein granted.

In consideration whereof said Northwestern Telephone Exchange Company shall agree to allow the city to attach at any time, to any of said poles, on the upper arm, the city's fire alarm or police wires, and said poles are made a municipal instrumentality for that purpose. Provided, said attachments, and said city's use, shall not be so made or permitted as to interfere with said company's use, and said attachments shall be made and maintained under the direction of said company's manager in said city.

The said company is to furnish for the city's business and without charge, and with exchange service, so long as an exchange is maintained hereunder, two telephones at locations to be fixed by the council of said city of Fargo, also such other telephones at locations for the city's business as the council may hereafter by a resolution require, at 50% discount from the regular rates from time to time for business purposes. Provided, that for each of said telephones separate contracts be previously signed containing the usual provisions of said contracts, or having endorsed thereon the terms of payment herein provided for.

Source: 1952 Rev. Ord. 24-0108.

24-0109. Northwestern Telephone Exchange.--

1. Franchise granted April 8, 1895. See section 24-0108, subdiv. (2).
2. Franchise granted June 9, 1902.

The right and permission is hereby granted to the Northwestern Telephone Exchange Company, its successors and assigns, to construct, maintain, operate, and repair electrical wires, conduits, or subways, with necessary manholes and service pipes, and distributing its wires upon and through the streets and alleys of the city of Fargo; such rights and permission to be exercised by said company in the manner and form as hereinafter provided, subject to the regulations and requirements of this ordinance and otherwise.

The main conduits or subways herein authorized shall be laid in the streets and avenues on a line parallel with the curb line thereof, and at such distance from the curb as not to interfere with water, gas or sewer pipes already in said streets and avenues. And all such conduits or subways shall be constructed under the supervision of the city engineer of the city of Fargo, or such other officer as may be designated by the common council for that purpose. And whenever and as fast as the conduits are completed and the cables and wires laid therein it shall be unlawful for any person, firm, or corporation to maintain poles for telephone wires within the territory supplied by said underground cables, except such poles as may be necessary for the distribution of said underground cables and wires; and said distributing poles shall be placed as far as may be practicable in the alleys of the said

city.

At least three days before opening any street, avenue, or alley, or any public place, the grantees herein named, their successors or assigns, shall notify the proper officer of said city, in writing, of their intention to lay such conduit or subway, stating the place where and the distance the same shall run, and shall file with the city engineer of the city of Fargo a map or plan showing the location of said conduit and manholes; which plan shall be approved by the city engineer and committee on public improvements of the city council before the opening of any street or alley. And in the opening and refilling of all the openings made as aforesaid, and in the re-laying of the pavements, and all the work necessary to complete the restoration of the street pavements, sidewalks, and grounds to an equally good condition, as when disturbed, the said grantees herein, their successors or assigns, or their contractor, servant, or employees, shall be under the supervision of the city engineer of the city of Fargo, or such other officer as may be designated for that purpose, and shall promptly comply with any order of his in reference thereto, and in case they fail to comply with such order, the city may perform the work ordered and the grantees shall pay therefor, and all of said work shall be done at the cost of said grantees. Nor shall any street, avenue, or alley, or public place be allowed to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same has been opened. Such period in no case to exceed 15 days. And in all cases where the work required the exercise of skill, as in the laying or re-laying of pavements or sidewalks, the said grantees, their successors or assigns, shall employ none but skilled workmen, familiar with the execution of such work.

Nothing in this ordinance shall be construed as to absolve said grantees, their successors or assigns, from any legal liability or proceeding for injury to person or property resulting from the negligence of the grantees herein, their successors or assigns, or their contractor, servant, or employees in constructing or operating said conduits or subways, nor to render the said city of Fargo liable to any person or corporation for the damage caused by the construction or operation of said subways or conduits by the grantees herein, their successors or assigns, and said grantees, their successors or assigns, shall protect and save the city of Fargo harmless from any suit or claim for injuries or damage arising from their negligence, or that of their contractor, or servant, or employees in the construction or operation of said conduits or subways.

The grantees herein, their successors or assigns, shall be at all times subject to and comply with all lawful ordinances or police regulations of the city of Fargo now in force, or that may hereafter be passed relating to the use and occupancy of the streets of said city.

The said grantees herein named, their successors or assigns, in consideration of the privileges herein granted to them shall, without cost to the city of Fargo, provide and furnish sufficient space in their conduits in all streets and parts of streets they occupy or use hereunder at the time and ever after they commence to use any thereof, and furnish and maintain in working order in such conduits, all wires and conductors used or needed on or along such streets or parts of streets by the city of Fargo for the fire alarm and police purposes.

The said grantees, their successors or assigns, shall within 30 days from the passage and approval of this ordinance file with the city auditor an acceptance in writing of the terms and conditions herein named, and this ordinance shall have no effect until such acceptance is filed with the city auditor as aforesaid. Provided, however, that the work of laying such conduits or subways shall be commenced within 60 days from the passage and approval of this ordinance; and that such work, when commenced, shall be prosecuted continuously and with all reasonable dispatch until completed.

That said grantees, their successors or assigns, shall file with the city engineer for his approval, a complete set of the detail plans and specifications for the construction of said underground system prior to the commencement of construction.

Source: 1952 Rev. Ord. 24-0109.

24-0110. North Dakota Independent Telephone Company.--

1. Franchise granted March 7, 1907.

The North Dakota Independent Telephone Company is hereby authorized, permitted, and empowered to erect, establish, and maintain within the city of Fargo telephone poles and the necessary attachments and appliances thereto, together with such wires and conduits as may be necessary for the operation and maintenance of a long distance toll telephone exchange only, and such toll station or stations within the city of Fargo as the business of the said company may require, according to the conditions hereinafter mentioned and set forth. Provided, however, that should any charge or rental of telephones be made or exacted from patrons of the North Dakota Independent Telephone Company, its successors, assigns, or lessees, within the limits of the city of Fargo, or any local business be transacted over or messages be transmitted between any of its stations by patrons of the company, its successors, assigns, or lessees for rent, hire, pay or revenue within the limits of the city of Fargo, then this franchise shall be forfeited.

That the North Dakota Independent Telephone Company shall, in consideration of the granting of this franchise, pay to the city of Fargo a sum of money equal to 2½% of its gross receipts upon all business originating in the city of Fargo, such payments to be made to the city of Fargo, beginning at the close of the first year after the granting of this franchise and annually thereafter during the life of this franchise; and it is stipulated and agreed on the part of the North Dakota Independent Telephone Company, that the proper officers of the city of Fargo shall have the right to examine the books, records, and accounts of the North Dakota Independent Telephone Company at any time touching and as to the gross receipts on its business originating in the city of Fargo, in any or all of the said years.

That all rights, duties, and privileges authorized, permitted, or granted by the terms of this ordinance, shall be in full force and effect and shall continue for a period of 20 years from and after the date of the passage and approval of this ordinance.

The said North Dakota Independent Telephone Company, whenever any change or alteration shall be made in the grade or construction of any of the streets or alleys within the city of Fargo, by authority of the city council, shall at its own expense, whenever necessary, replace, reconstruct, or re-set any or all of the poles or other attachments or appliances belonging to it, which shall be present upon or adjacent to such street or alley, so changed or altered, to conform to the altered or changed grade or condition thereof.

The North Dakota Independent Telephone Company shall, upon demand of the city council of the city of Fargo, install and adopt such methods in relation to the maintenance and operation of such long distance toll exchange as shall be demanded by the city council of the city of Fargo; provided, that such methods shall also be demanded from any other person or company operating and maintaining a long distance telephone exchange of the same kind, in the city of Fargo. Provided, that all wires used in the business portion of the city of Fargo shall be underground, and in such other parts or portions of the said city, poles shall be erected in the alleys, as far as practicable. And provided further that during the life of this franchise no wires shall be laid along or under any street which is paved with cement or other solid base.

In case of the disturbance of any street or alley of the city of Fargo, or traffic thereon, by the said North Dakota Independent Telephone Company, in the erection, operation, and maintenance of its long distance toll telephone system, or necessary acts in connection therewith, the said company shall restore such street or alley to its proper condition with the least possible delay, and in the event

of the failure of the said company so to do, the city of Fargo shall have the right, upon notice, to so restore said street or alley to its proper condition, and thereupon recover from the said North Dakota Independent Telephone Company any and all expense made necessary by such acts on the part of the city of Fargo, because of said company's failure to act.

The North Dakota Independent Telephone Company shall save and keep the city of Fargo at any and all times harmless and exempt from all damages arising or growing out of any action or proceeding, however, brought on account of any condition or fact by reason of the erection, operation, and maintenance of the long distance toll telephone system of the said company.

That the erection, operation, and maintenance of said long distance toll telephone exchange shall be subject to and governed by the ordinances, rules, and regulations of the city of Fargo, provided that the said ordinances, rules, and regulations shall apply equally to all telephone exchanges or systems in the city of Fargo.

The city of Fargo shall at all times have the right to attach to the poles of the company, whatever appliances shall be necessary for the maintenance and operation of the fire alarm system and police telephone system in use in said city, insofar as such use does not interfere with the operation and maintenance of the system of the said company.

The North Dakota Independent Telephone Company shall furnish to the city of Fargo, free of charge, as long as its said long distance toll telephone system is operated and maintained, at least two stations for long distance service, and shall collect no fees or charges from the city of Fargo for any services or messages when same are for city purposes.

The rights, powers, and privileges granted by this ordinance to the North Dakota Independent Telephone Company shall not be exclusive, and the city council hereby reserves the power to extend to others for similar uses, the same powers and privileges herein granted.

The North Dakota Independent Telephone Company is hereby granted the right and power to extend its long distance toll telephone exchange throughout the city of Fargo, and to locate and establish such toll stations in the city of Fargo as the business of the company may require.

Source: 1952 Rev. Ord. 24-0110.

24-0111. Fargo Gas, Light and Fuel Company.--

1. Franchise granted October 31, 1881.

Subject to the terms and conditions of this ordinance, there is hereby granted to the Fargo Gas, Light, and Fuel Company the right of constructing, maintaining, and operating gas works within the city of Fargo, together with the right-of-way along, upon, and under all the streets and alleys of the said city, whether now laid out or hereafter to be laid out, and through, upon and under all the parks and public places of the said city, for the purpose of placing, operating, re-laying, and repairing one or more lines of gas mains and pipes and all appurtenances thereto for lighting and fuel purposes.

The said company shall commence the erection of gas works, under this grant by or before the first day of June, 1882, and shall have laid not less than two miles of gas mains and commence the manufacture of gas by or before December 1, 1882, and shall thereafter extend its mains as rapidly, and in and to such parts of the city of Fargo as the needs of the public and the patronage of said company shall justify.

The gas mains of said company shall be laid at a depth below the established grade of all streets and alleys of not less than five feet; and whenever said company shall desire to lay mains in any street or alley of said city, the grade whereof shall not then be established, the said city by its proper authorities shall, and will, upon 30 days' notice of such desire on the part of said company, proceed forthwith to establish the grade of such street or alley, provided, that if the grade of any street

or alley in which such gas mains are already laid, is thereafter cut down so as to expose such mains to action of frost or other damaging influences, such mains shall be re-laid and re-set at the expense of said city of Fargo.

Said company shall, at any time when required so to do by the authorities of said city of Fargo, procure, set up, and maintain in good order and repair street lamps and posts, in such number and at such points on the line of any of its mains as may from time to time or at any time be designated by said authorities, without any charge to the city whatever for such lamps or posts; and whenever such posts and lamps are so put in place in any of the streets, alleys, or public places of said city, the company shall thereafter furnish gas for supplying and lighting the same at such hours of the night as may be designated and required by said authorities, and continue such supply or discontinue the same at the order or request of such authorities, and furnish attendance to light and care of such lamps at a cost not exceeding \$3 per month for each such lamp, and all gas to be manufactured or sold by said company for illuminating purposes shall be of not less than 15 candle power. Provided, that after any lamps and posts shall have been placed by said company, at the request or order of said city or its proper authorities, no discontinuance of the use thereof shall be ordered by the city or its officers within one year; nor after the expiration of such year, except upon three months' notice thereof to such company.

The said company shall lay and keep in repair at its own cost supply pipes connecting its mains with any building situated upon any line of said mains, whose owner or occupant shall desire such connection made.

Provided, that such supply pipe or pipes need only be laid and maintained at the expense of the company, from such main to a point not exceeding six feet inside the inner line of the sidewalk of the street or alley in which such main is located, and in no case further than the foundation wall of such building. And provided further, that whenever in making such connection it shall be necessary to penetrate any curbing wall or other wall of brick, stone, or concrete or other material outside of the foundation wall of such building, the cost of penetrating such wall shall be borne by the party desiring such connection made. And provided, further, that the making of such connection at the expense of said company shall in all cases be subject to its rules and regulations as to contracts for consumption of gas, etc.

The said company shall not charge to or receive from any consumer of gas who shall pay his or their bill on or before the tenth day of the month following that for which said bill is or may be rendered, any more than \$3.50 per 1,000 cubic feet.

Nothing in this ordinance shall be construed as the grant of any exclusive privilege to said company, and it is hereby, as explanatory of part of section one hereof, expressly declared that no right-of-way is granted to said company through, upon, or under any of the parks or public places of said city, excepting streets and alleys, save for the sole purpose of lighting such parks and public places or for heating public buildings therein or lighting the same, and then only upon the express request thereto of said city or its proper officers.

The said company by written acceptance, to be signed by its president and secretary, shall within 10 days from the passage of this ordinance expressly accept the grant herein contained, with all its conditions and obligations, and file such written acceptance with the city clerk; and the passage of this ordinance, and the filing of said acceptance shall constitute and be a contract between said company and said city of Fargo, which shall not be altered or amended without the consent of both parties.

The failure of said company to comply with the requirements of section 2 hereof or to file the written acceptance mentioned in section 8 within the time therein designated shall operate to work an absolute forfeiture of all its grants, rights, and privileges hereunder.

The city council of the said city of Fargo will hereafter pass all ordinances that may be needful to enable the said company to enjoy all the rights intended to be conferred upon it by this ordinance, and for more fully protecting said company in all its rights.

Whenever any of said streets, alleys, or public places of said city of Fargo shall be disturbed by the said company in the laying, re-laying, altering, or repairing of any of its said mains, pipes, or appurtenances, they shall be restored to their proper condition with the least possible delay, and should default in such matter be at any time made by said company, said city of Fargo shall have the right to do any needful work to restore such streets, alleys, and public places to their proper condition and thereupon recover from said company the cost of any work done or material furnished therefor. And the said company shall save and keep harmless the said city of Fargo from any and all damages, costs, or expenses in any way arising from or growing out of any action or proceedings brought by any person, firm, company or corporation on account of any matter or thing connected with said company or the laying, re-laying, maintaining, or repairing of its said mains, pipes or appurtenances.

Source: 1952 Rev. Ord. 24-0111.

24-0112. Fargo Gas and Electric Light Company.--Certain rights, privileges, and franchises having been heretofore duly granted by the mayor and city council of the city of Fargo to the Fargo Gas, Light, and Fuel Company and the Fargo Electric Light and Power Company, all of which were subsequently purchased by and transferred to the Fargo Gas, Light, and Coke Company, the successors of both such corporations, and which has since been in the possession and exercise of all their rights.

And similar rights, franchises, and privileges having been also heretofore duly granted by the said mayor and city council to the Fargo Incandescent Light Company.

And the Fargo Gas and Electric Company having now purchased and become the owner and in control of all the powers, rights, privileges, and franchises heretofore so granted to either of said other corporations,

Now, be it resolved, by the mayor and city council of the city of Fargo, that said city does hereby consent to the several transfers hereinbefore described and consents that said Fargo Gas and Electric Company may and shall possess, enjoy, and exercise all the powers, rights, privileges, and franchises heretofore granted by the said city, to either of said companies.

Source: 1952 Rev. Ord. 24-0112.

24-0113. Alexander and Edmund Hughes (Gas and Electric Company).--

1. Franchise granted July 19, 1898.

Be it resolved by the common council of the city of Fargo that permission is hereby granted to Alexander Hughes and Edmund A. Hughes and to any corporation which may be organized as the successors or assigns of said parties in that behalf, to enter upon, construct, and maintain, and operate in, through, over, and across all of the streets, alleys, highways, bridges, approaches, and public places of said city of Fargo, a system of poles, posts, conduits, and wires, and all other necessary and useful appliances for the manufacture, production, use and transmission of electricity and for furnishing the same to consumers, for the purpose of lighting, heating, motive power, cooking, and for any and all other purposes for which electricity produced by means of human agency is now or hereafter may be used, whether for the use of said city or any or all of the inhabitants thereof, or for any and all companies, corporations, and persons in said city of Fargo or the suburbs thereof. And such permission is hereby made to extend to all streets, alleys, highways, bridges, approaches, and public places in and of said city, now owned or controlled by it and in which it has any interest whatever, and

as well also to any and all such as said city may hereafter acquire during the period herein limited, whether within its corporate limits as now existing, or as the same may at any time hereinafter be extended or enlarged; provided that such permission is granted solely upon the conditions, restrictions, and limitations hereinafter set forth, and not otherwise.

In case of any change of grade of any street or pavement in said city wherein or upon which any poles, posts, or other appliances of said parties or of said corporation, their successors or assigns, are set or placed, said parties and corporation, their successors or assigns, shall do any necessary re-setting or replacing of such poles, posts, or appliances at their or its sole cost and expense, and so as to conform to such new grade; and in the event that, at any time in the future such system or wiring be made by adoption of the conduit system, all such conduits constructed therefor shall be subject to such rules, regulations, and ordinances of said city of Fargo as may then be enforced and applicable thereto; and whenever in that behalf any of said streets, alleys, highways, bridges, and approaches, or public places shall be disturbed by said parties or by said corporation, their successors or assigns, in, about, or in connection with the doing of any of the things herein and hereby permitted, or hereafter to be permitted in that regard, they shall be restored to their proper condition with the least possible delay; and should any default in such matters be at any time made by said parties, or their successors or assigns, said city of Fargo shall have the right to do any needful work to restore such streets, alleys, highways, bridges, approaches, or public places to their proper condition, and thereupon recover from said parties, their successors or assigns, the cost of any work done or materials furnished therefor. And said parties, and their successors or assigns, shall at any and all times save and keep the city of Fargo harmless from any and all damages, cost, or expense in any way arising or to arise from or growing out of any action or proceeding brought by any person, firm, company, or corporation on account of any matter or thing connected with such proposed system.

Said parties, and their successors or assigns, shall at any and all times after their plant is placed and in operation furnish to said city of Fargo for use in lighting its streets and for lighting any and all of their buildings and public places, electric lights, either arc or incandescent, in such numbers and at such points and places as said city may, from time to time, require and need, and at prices not to exceed those hereinafter named, though this shall not be construed as requiring said city at any time to take, use, or have any lights from said persons, their said successors or assigns, unless the said city shall so elect; and whenever said city shall desire or elect to have any lights furnished by said persons, their successors or assigns, the connections from street wires into the buildings and places so to be lighted shall be made, including the furnishing of materials therefor, by said persons, their said successors or assigns, at the sole cost and expense of the latter, and without any expense in that behalf to said city.

Said parties, their successors or assigns, shall within 10 days after the final passage hereof, signify their acceptance of this resolution by writing to that effect, to be filed with the city auditor, and after the filing of such acceptance, this resolution shall be and constitute a contract between said parties, and their successors or assigns, and said city of Fargo, and the duration thereof and of the privileges and franchises hereby granted shall be the term of 20 years, subject, however, to all limitations before or hereafter set out.

All posts, poles, and appliances set or placed by said persons, and their successors and assigns, under provisions hereof in any of the streets, alleys, and public places of said city of Fargo, shall be set and placed in conformity with the provisions of any and all ordinances, rules, and regulations of said city in force at the time thereof, whether now enacted or hereafter to be enacted, and all work done in that behalf shall be done to the satisfaction of the proper authorities of said city with regard to the public convenience and safety. And should the authorities of said city, at any time, by proper enactment in that behalf, require the placing of all wires of other companies as well as of the grantees

of the privileges herein, to be placed underground, and in conduit system, to meet the then requirements of the public needs of said city, said persons, their successors or assigns, shall be subject to all such requirements, and negligent refusal to comply therewith shall forfeit all privileges herein contained; provided, in that behalf, that the grantees of these privileges shall not be so required to do unless all other companies and persons having similar systems for the same or other purposes are likewise required to conform to the same regulation and enactments.

Said parties and their successors or assigns shall commence work in and about the erection and construction of such plant within 60 days from and after the passage and acceptance hereof, and within four months thereafter shall have such plant in actual operation, or this resolution and all herein contained shall be null and void at the election and option of said city of Fargo, and said parties, and their successors or assigns, shall extend its system of electric lighting as rapidly and in and to such parts of the said city as the needs of the public and the patronage of said company shall justify.

Nothing herein contained shall be construed as the granting or attempting to grant of any exclusive privilege to said persons, their successors or assigns, or as binding said city at any time to be a patron of said persons, or their successors or assigns, either in the way of taking lights, or otherwise.

The maximum rates to be charged by said persons, their successors or assigns, for lights furnished consumers, either public or private, shall never during the life of this privilege exceed 20 cents per 1,000 watts.

Source: 1952 Rev. Ord. 24-0113.

24-0114. Union Light, Heat, and Power Company.--

1. Franchise granted, February 17, 1902.

Whereas the Union Light, Heat, and Power Company of Fargo, North Dakota, has purchased and duly acquired by proper assignment all the rights, licenses, privileges, and franchises heretofore granted by the city of Fargo, North Dakota, to various corporations and persons, as follows, to-wit:

- A. By Ordinance Number 4, giving and granting to the Fargo Gas, Light, and Fuel Company the right to construct, maintain and operate gas works in the city of Fargo, together with the right-of-way along, upon, and under all the streets and alleys of said city, for the purpose of placing, operating, re-laying, and repairing one or more of gas mains and pipes and all appurtenances thereto for lighting and fuel purposes, which ordinance was passed October 31, 1881.
- B. By Ordinance Number 5, passed November 7, 1881, giving and granting to the Fargo Electric Light and Power Company the exclusive privileges to furnish electric lights and to maintain poles, lines, and works for that purpose in the streets and alleys in the city of Fargo.
- C. By resolution or ordinance dated May 1, 1888, giving and granting to the Fargo Incandescent Light Company the right to supply electric light and power and to maintain poles, lines, and works in the city of Fargo for 20 years from said last named date.
- D. By resolution or ordinance entitled Ordinance Number 227, passed July 5, 1898, giving and granting to Alexander Hughes and Edmund A. Hughes, and to any corporation which may be organized as the successors or assigns of said parties in that behalf, the right to construct, maintain, and operate in all streets and alleys of said city of Fargo a system of poles and lines to conduct

electricity for lighting, heating, power, cooking, and all other purposes for 20 years, that is to say, to July 5, 1918.

And whereas the said Union Light, Heat, and Power Company is in the full possession of the works and business established under and by virtue of said ordinances, resolutions, and franchises, and is operating the same; and

Whereas, by a resolution duly passed on the 14th day of August, 1902, the city council of the city of Fargo did consent to and approve of the said various assignments and the purchase and operation by the said Union Light, Heat, and Power Company of the said works and franchises; and

Whereas, it is deemed desirable to confirm in said Union Light, Heat and Power Company the rights, privileges, licenses, and franchises as heretofore granted; now, therefore,

Be it ordained by the city council of the city of Fargo,

That the said city does hereby consent to the several transfers hereinbefore described, and consents that the said Union Light, Heat, and Power Company may and shall possess, enjoy, and exercise all the powers, rights, privileges, and franchises heretofore granted by the said city to the said Fargo Gas, Light, and Fuel Company, the Fargo Electric Light and Power Company, the Fargo Incandescent Light and Power Company, and Alexander Hughes and Edmund A. Hughes, and each of them, to the same extent and with the same rights, privileges, and benefits as if said powers, rights, privileges, and franchises had been originally granted to the said Union Light, Heat, and Power Company.

2. Franchise granted August 29, 1903.

Right, authority, and permission are hereby granted to the Union Light, Heat, and Power Company of Fargo, North Dakota, a corporation duly incorporated under the laws of the state of North Dakota, its successors and assigns, to establish, construct, maintain, and operate a system of mains, pipes, and conduits within the city of Fargo, together with the right-of-way along, upon, and under all of the streets, alleys, and public places of said city, whether now laid out or hereafter to be laid out, for the purpose of placing, maintaining, operating, re-laying, altering, and repairing one or more lines of mains, pipes, conduits, and all appurtenances thereto, for heating or power purposes, and also the rights and privileges of vending hot water and steam to the city of Fargo and the inhabitants of said city.

When any street or alley is to be opened or constructed for any of the purposes mentioned in this ordinance, application shall be made to the city engineer, who shall make an estimate of the cost of refilling and properly tamping that portion of any street or alley which is intended to be opened, and also the cost of properly replacing the paving, all of which refilling, tamping, and repaving shall be done by the city of Fargo, through its street commissioner. The said Union Light, Heat, and Power Company shall thereupon pay to the city auditor the amount of the estimated cost as above provided; whereupon the city engineer shall issue the necessary permit for the opening of such street or alley.

The rate and price to be charged for heating, during any one heating season, shall not exceed 40 cents per square foot of radiation, which may be computed in the usual manner or by a system of meters based on this rate per square foot of radiation.

The said company shall save and keep harmless the said city of Fargo, from any and all damages, costs, or expenses in any way arising from or growing out of any action or proceedings brought by any person, firm, company, or corporation, on account of any matter or thing connected with said company in the laying, re-laying, maintaining, altering, or repairing of the said mains, pipes, conduits, or appurtenances.

The grantee herein named shall, within 10 days after the passage and approval hereof, file a

written acceptance of this franchise with the city auditor of the city of Fargo, whereupon it shall become a compact between the parties hereto.

No new extensions shall be made under this ordinance after streets now unpaved shall have been paved, or when streets now paved shall be repaved.

3. Franchise granted October 4, 1910.

That Union Light, Heat, and Power Company, and its successors and assigns may, for the purpose of conducting steam for heating purposes to buildings in the city of Fargo, extend the pipes, mains, and conduits now laid or hereafter to be laid, and lay new mains, pipes, and conduits for such purposes in or through the streets and alleys that are now paved or that may hereafter be paved on compliance with the conditions, requirements, and regulations in this ordinance contained and not otherwise.

That at least one week before laying any such pipes, mains, or conduits, or extension thereof, in or through any paved street or alley said company shall apply to the city engineer for permission to do so, and shall with such application for a permit present to and file with the city engineer a written description of the location and size of the pipes, mains, and conduits proposed to be laid; and the same shall be so located in the street as to require the least practicable excavation in the street consistent with the proper use of such main, pipes, and conduits.

Upon receiving such application the city engineer shall examine the same and if the proposed location of the pipes, mains, and conduits to be laid conformed to the requirements of the foregoing section and to the provisions of the laws and ordinances in force in the city of Fargo, including such laws and ordinances as may have been theretofore passed and such laws and ordinances as may hereafter be enacted, and if the said Union Light, Heat, and Power Company shall thereupon deposit with the city auditor of the city of Fargo the cost of refilling and properly tamping that portion of any street or alley which is intended to be opened, and also the cost of properly replacing the paving thereon, if any, all as estimated by the city engineer, as security for refilling and properly tamping that portion of any street or alley which is intended to be opened and for replacing such paving in as good condition as the same was at the time such application was made, and if the said Union Light, Heat, and Power Company shall at the time of making such application have complied with and obeyed all the said laws and ordinances the city engineer shall thereupon grant to such company a permit, subject, however, to the approval of the mayor and city council of said city of Fargo, to lay the said pipes, mains, and conduits under the direction and supervision of the city engineer, provided, however, that the city engineer may, before granting such permit, require the company to change the location of such proposed pipes, mains, and conduits so as better to conform to the convenience and best interests of the city of Fargo and to the requirements of the laws and ordinances aforesaid.

That before any permit shall be granted, said company shall execute, deliver to and file with the city auditor a bond payable to the city of Fargo in the penal sum of \$5,000, with sureties to be approved by the city auditor and the city attorney conditioned that said company shall complete the work of laying such pipes, mains, or conduits in said street or alley with reasonable dispatch and immediately replace the paving taken up in such work, and restore the street or alley where said work shall have been done to as good a condition as it was before the work was done, and promptly repair any break, cave-in, or defect in said street or alley resulting from such work within a period of five years after the completion of such work; and further that said company shall save and keep the city of Fargo harmless from all expenses, charges, and damages paid out, incurred, or for which the city of Fargo shall become liable, whether resulting from accident or otherwise, by reason of such work upon or excavation in the street or alley, or the tearing up or removal of the paving; all such replacing of paving and restoring of the street or alley to good condition and subsequent repair thereof to be done

to the satisfaction of the city engineer.

The Union Light, Heat, and Power Company, its successors and assigns, shall pay to the city treasurer of the city of Fargo annually on the 1st day of December of each year hereafter the sum of \$25 by way of compensation to the city of Fargo for all the rights and franchises heretofore or hereafter acquired or now owned by the Union Light, Heat, and Power Company for the use or enjoyment of any of the streets, alleys, or public property belonging to said city by the said company, and the amount of such annual payment for compensation to the city of Fargo as aforesaid may be from time to time readjusted and fixed by the city council of the city of Fargo at a sum which is just and reasonable.

The rate and price to be charged for heating, during any one heating season, shall not exceed 40 cents per square foot of radiation, which may be computed in the usual manner, or by a system of meters based on this rate per square foot of radiation.

Source: 1952 Rev. Ord. 24-0114.

24-0115. Northern States Power Company.--

1. Assignment and transfer of Union Light, Heat, and Power Company's franchises to Northern States Power Company, December 7, 1936.

A. Whereas, the Union Light, Heat, and Power Company of Fargo, North Dakota, heretofore purchased and duly acquired by proper assignment all the rights, licenses, privileges, and franchises heretofore granted by the city of Fargo, North Dakota, to various corporations and persons, as follows, to-wit:

1. By Ordinance Number 4, giving and granting to the Fargo Gas, Light, and Fuel Company the right to construct, maintain, and operate gas works in the city of Fargo, together with the right-of-way along, upon, and under all of the streets and alleys of said city, for the purpose of placing, operating, re-laying, and repairing one or more of gas mains and pipes and all appurtenances thereto for lighting and fuel purposes, which ordinance was passed October 31, 1881.
2. By Ordinance Number 5, passed November 7, 1881, giving and granting to the Fargo Electric Light and Power Company the exclusive privilege to furnish electric light and to maintain poles, lines, and works for that purpose in the streets and alleys of the city of Fargo.
3. By resolution or ordinance dated May 1, 1888, giving and granting to the Fargo Incandescent Light Company the right to supply electric light and power, to maintain poles, lines, and works in the city of Fargo for 20 years from said last named date.
4. By resolution or ordinance entitled Ordinance Number 227, passed July 5, 1898, giving and granting to Alexander Hughes and Edmund A. Hughes, and to any corporation which may be organized as the successors or assigns of said parties in that behalf, the right to construct, maintain, and operate in all streets and alleys of said city of Fargo a system of poles and lines to conduct electricity for lighting, heating, power,

cooking, and all other purposes, for 20 years, that is to say to July 5, 1918.

- B. And whereas, by Ordinance Number 278 approved February 17, 1903, the city council of the city of Fargo did confirm in said Union Light, Heat, and Power Company the rights, privileges, licenses, and franchises as heretofore granted by the city of Fargo and as assigned to the Union Light, Heat, and Power Company,
- C. And whereas, the said Northern States Power Company has been and is the owner, in fee simple title of the electric, gas, and steam heat work, and business established under and by virtue of said ordinances, resolutions, and franchises, and is desirous of henceforth operating the same under and by virtue of said ordinances, resolutions, and franchises,
- D. And whereas, it is deemed desirable to confirm in said Northern States Power Company the rights, privileges, licenses, and franchises as heretofore granted by the city of Fargo,
- E. Now, therefore, the said city of Fargo, North Dakota, does hereby consent to the transfer and assignment of the Union Light, Heat, and Power Company to the Northern States Power Company (Minnesota) of the franchises and privileges hereinbefore described and consents that the said Northern States Power Company, a Minnesota corporation, may and shall possess, enjoy, and exercise all the powers, rights, privileges, and franchises, heretofore granted by the said city to the said Fargo Gas, Light, and Fuel Company, the Fargo Electric Light and Power Company, the Union Light, Heat, and Power Company, and to the extent that the same may now be existing, any and all rights and privileges heretofore conferred upon the Fargo Incandescent Light and Power Company, and Alexander Hughes and Edmund A. Hughes, and each of them, to the same extent and with the same rights, privileges, and benefits as if said powers, rights, privileges, and franchises had been originally granted to the said Northern States Power Company, upon the condition however, that the said Northern States Power Company shall within 60 days after the passage, approval, and publication hereof, file in writing with the city of Fargo its acceptance of all the terms and conditions hereof, and its agreement to comply with and fully perform on its part all the terms and conditions of that certain agreement between the city of Fargo and the Union Light, Heat, and Power Company dated December 9, 1911, providing for the payment of a gross earnings tax from the sale of electricity, gas, and steam within the city of Fargo, except collections from electric, gas, and steam service furnished to the city of Fargo and to the North Dakota Agricultural College, as clarified by resolution of the board of commissioners of the city of Fargo on March 2, A. D. 1936, and as agreed to by the said Union Light, Heat, and Power Company on March 9, A. D. 1936.

Source: 1952 Rev. Ord. 24-0115.

24-0116. George Nichols, for laying, constructing, and maintaining water main (heating main).--

1. Franchise granted January 4, 1910.

Right, authority, and permission are hereby granted to George E. Nichols, his heirs and assigns, to establish, construct, maintain, and operate a heating main along, on, and under the full length of that certain alley running east and west, from the center line of Seventh Street South to Eighth Street South, through Block 7 of the Original Townsite of the city of Fargo, as shown by the recorded plat thereof, together with the right-of-way along, upon and under said alley for the purpose of placing, maintaining, operating, re-laying, altering, and repairing a main for heating purposes.

When said alley is to be opened or obstructed for any of the purposes mentioned in this ordinance, application shall be made to the city engineer, who shall make an estimate of the cost of refilling and properly tamping that portion of said alley which is intended to be opened, and also the cost of properly replacing the paving, if any, all of which refilling, tamping and repaving shall be done by the city of Fargo, through its street commissioner. The said George E. Nichols shall thereupon pay to the city auditor the amount of the estimated cost as above provided; whereupon the city engineer shall issue the necessary permit for the opening of said alley.

The said George E. Nichols shall keep harmless the said city of Fargo from any and all damages, costs, or expenses in any way arising from or growing out of any action or proceeding brought by any person, firm, company or corporation on account of any matter or thing connected with said George E. Nichols in the re-laying, maintaining, altering, or repairing of the said heating main.

The grantee named herein shall, within 10 days after the passage and approval hereof, file a written acceptance of this franchise with the city auditor of the city of Fargo, whereupon it shall become a compact between the parties hereto.

Source: 1952 Rev. Ord. 24-0116.

24-0117. Burlington Northern Railway, for the operation and maintenance of a cable.--The Burlington Northern, Inc., its successors and assigns, is hereby granted the right, privilege, and franchise to install, operate and maintain, at its own expense, an underground cable between the former Northern Pacific Railway Company Depot and the former Great Northern Railway Company Depot in the city of Fargo, North Dakota, said cable to be located as follows:

Commencing at the former Great Northern Depot; thence southerly along the west side of Fifth Street to the former Northern Pacific right-of-way; thence westerly along said right-of-way to the former Northern Pacific Depot. Also including branches from said cable into the Western Union building on the east side of Fifth Street between Third and Fourth Avenues North and westerly into the alley between First Avenue North and Northern Pacific Avenue in accordance with the map attached hereto.

In consideration of this franchise, Burlington Northern, Inc. agrees to be responsible for any and all damage that may be done to the city of Fargo, or any of its citizens, by reason of the said cable or the operation and maintenance thereof, or that may arise in any manner in the operation and maintenance of said cable.

It is further understood and agreed that the city of Fargo may, by resolution of the city commission and upon six months' notice to the Burlington Northern, Inc. revoke this franchise and the said Burlington Northern, Inc. binds itself by the acceptance of this franchise not to ask or claim any damage whatsoever from the city of Fargo in the event they are required to remove any or all of said underground cable, but hereby agrees to remove such cable upon the direction of the city commission.

Upon the acceptance of this ordinance by said company in writing, within 10 days from the date of its passage, it shall constitute a contract between the city of Fargo and said Burlington

Northern, Inc., subject, to revocation or rescission as above expressed.

Source: 1965 Rev. Ord. 24-0117, 1415 (1972).

24-0118. Cablecom of Fargo.--Cablecom of Fargo is hereby granted a nonexclusive franchise to install, construct, operate and maintain a cable television system within the corporate limits of the city of Fargo. Said franchise shall be for a period of 10 years, provided, that the grant of this franchise and the commencement thereof shall be conditioned upon the filing of a written acceptance by Cablecom of Fargo not later than 12:01 p.m. on the 10th day next following the final adoption of the ordinance granting such franchise. Written acceptance of said franchise by Cablecom of Fargo, Inc. shall constitute a contract between it and the city of Fargo.

(Note: Second reading and final adoption of this ordinance occurred on August 29, 1994, which is also the commencement date of the Franchise of Cablecom of Fargo, having filed its written acceptance within 10 days).

Source: 1965 Rev. Ord. 24-0118, 1921 (1979), 2705 (1994).

ARTICLE 24-02

CABLE TELEVISION

Section

24-0201	General provisions.
24-0202	Definitions.
24-0203	Franchise requirements.
24-0204	Terms and termination.
24-0205	Required provisions.
24-0206	Franchise fees.
24-0207	Customer services standards.
24-0208	General.
24-0209	Severability.
24-0210	Receivership and foreclosure.
24-0211	Administration of franchise.
24-0212	Effective date, publication, acceptance and governing law.

24-0201. General Provisions.--

- A. Title. This ordinance shall be referred to and cited as the “Cable Services Code” or herein as the “Ordinance”.
- B. Applicability. The requirements of this ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this ordinance shall be disregarded pursuant to this subsection except on express application to and determination by the city to such effect based on the specific factual circumstances demonstrated. The provisions of this ordinance shall be deemed incorporated in each franchise granted. Nothing in this ordinance or amendments thereto shall be interpreted to unilaterally deprive any person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this ordinance, and shall impose obligations on any such person additional to those included in such franchise or contract only to the extent permitted by law and to the extent not inconsistent with such franchise or contract; provided that the failure of the city to enforce any provision herein or the failure of any person to comply with any provision herein shall not be a waiver of the city’s right to enforce such provisions nor shall it in any way constitute evidence or agreement by the city that such person has a valid existing franchise. The provisions of this ordinance shall apply irrespective of whether a grantee is determined to be operating pursuant to a valid franchise.
- C. Preservation of Police Power Authority. To the extent not inconsistent with § 24-0205(A)(2), any rights granted pursuant to this ordinance and pursuant to any franchise authorized hereunder are subject to the authority of the city to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantees shall be subject to and comply with all applicable laws enacted by the city pursuant to its home rule powers, to the extent not in

conflict with North Dakota or federal law. Nothing in this ordinance shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to any provisions of the ordinance or as to actions of the parties under applicable federal law, including 47 U.S.C. 555A, as well as applicable, state, or local law currently in effect or as may hereinafter be amended.

- D. Public Inspection of Records. Certain information required to be filed with the city pursuant to this ordinance is subject to inspection and copying by the public pursuant to North Dakota law concerning public and non-public information, N.D.C.C. §§ 44-04-17.1 through 44-04-31. The city shall provide a grantee with notice of any request by a third party for information designated as proprietary. Nothing in this ordinance or franchise shall be construed as a waiver of the provisions of North Dakota law applicable to public and non-public information. City shall not make information designated as proprietary open for public inspection except when ordered to do so by authorized legal authority.
- E. No Cause of Action for Damages. The grantee shall have no cause of action whatsoever against the city for damages of any kind arising from any of the provisions or requirements of a franchise, or because of the enforcement thereof by said city, for reasonable cause. By acceptance of a franchise a grantee acknowledges that it accepted the rights and obligations therein granted and the terms of this ordinance in reliance upon its independent and personal investigation and understanding of the power of authority of said city to enter into the franchise authorized therein with grantee; provided further that a grantee acknowledges by its acceptance of said franchise that it has not been induced to enter into a franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said city, or by any other person concerning any term or condition of a franchise not expressed therein.
- F. Enforcement. The city shall be entitled to enforce this ordinance and any franchise through all remedies lawfully available.
- G. Relationship of the Parties. Under no circumstances shall any franchise authorized by this ordinance be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

Source: 1965 Rev. Ord. 24-0201, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0202. Definitions.--For the purposes of this ordinance, the following terms, phrases, words, and their derivations will have the meaning given herein. 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. All capitalized terms used in the definition of any other term will have their meaning as otherwise defined in this section. The words “will” and “shall” are mandatory and “may” is permissive. Words not defined will be given their common and ordinary meaning.

1. “Access Channels” means channel capacity designated for educational or governmental access use, as well as the facilities and equipment required for the use of such channel capacity.

2. “Affiliate” means each person, directly or indirectly, controlling, controlled by, or under common control with the grantee; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such grantee, or any creditor of such grantee solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such grantee.

3. “Basic Cable Service” means any service tier, which includes the lawful retransmission of local television broadcast signals and access channels required by this ordinance to be carried on the basic tier. This definition will be consistent with and deemed to change pursuant to any changes in applicable federal law or FCC rules.

4. “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, and the Telecommunications Act of 1996, Pub. L. No. 104-104, as may, from time to time, be amended.

5. “Cable Service” means (a) the one-way transmission to subscribers of (i) Video programming or (ii) other programming service; (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

6. “Cable Television System”, “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 the franchise area. Such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility will be considered a cable system (other than for purposes of 47 U.S.C. § 541(C)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide on-demand services; or (d) any facilities of any electric utility used solely for operating its electric utility system.

7. “Capital Costs” means costs associated with the purchase of assets, products or other resources that will provide service for more than one (1) year, but shall not have any meaning inconsistent with generally accepted accounting principles.

8. “City” or “Grantor” means the city of Fargo, North Dakota, and all territory within its existing and future territorial corporate limits, or jurisdiction for purposes of this ordinance.

9. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the FCC.

10. “Collocation” means the shared use of facilities, including, but not limited to, the placement of conduit owned by more than one (1) rights-of-way user in the same trench or boring and the placement of equipment owned by more than one (1) user in the same or connected conduit. Collocation does not include interconnection of facilities or the sale or purchase of capacity (whether bundled or unbundled).

11. “Complaint” means any written or electronic inquiry, allegation, or assertion made by a person regarding cable service or cable system operations requiring subsequent corrective action to the system or any portion thereof.

12. “Converter” means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, through the use of an

appropriate channel selector, permits a cable subscriber to view all authorized cable subscriber signals delivered at designated converter dial locations.

13. “Direct Incremental Costs” means the costs actually incurred by a cable grantee in meeting an obligation under its franchise which the grantee would not otherwise have incurred in order to either operate and conduct the business of its cable system or meet another obligation of the franchise.

14. “Drop” means the cable or cables that connect the ground block on the cable subscriber’s property to the nearest feasible point on the cable system in order to receive cable service.

15. “Facilities” means any portion of a cable or OVS system located in, along, over, upon, under, or through the rights-of-way.

16. “FCC” means the Federal Communications Commission, its designee, or any successor thereof.

17. “Franchise” or “Franchise Agreement” means an initial authorization or renewal thereof issued by the city, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the cable system. It also means a contract entered into in accordance with this ordinance between the city and a grantee that sets forth, subject to this ordinance, the terms and conditions under which a franchise will be granted and exercised. Subject to applicable law, any franchise agreement shall define the services any grantee is so authorized to provide.

18. “Franchise Area”, unless otherwise specified in the applicable franchise, means the entire geographic area within the city as it is now constituted or may in the future be constituted.

19. “Franchise Fee” means any tax, fee, or assessment of any kind imposed by the city or other governmental entity on a grantee or its cable subscribers, or both, solely because of their status as such, pursuant to this ordinance. The term “franchise fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their cable services but not including a tax, fee, or assessment that is unduly discriminatory against grantees or cable subscribers); (ii) capital costs that are required by a franchise to be incurred by a grantee for public, educational or governmental access facilities; (iii) requirements or charges incidental to the award or enforcement of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

20. “Grantee” means and includes all persons having any rights, powers, privileges, duties, liabilities, or obligations under this ordinance and the franchise agreement and any lawful agent, employee, successor, transferee, or assignee of the original grantee.

21. “Gross Revenues” means all revenues or compensation received directly or indirectly by the grantee, arising from or in connection with the provision of cable services in the city and consistent with local, state, and federal law, including, but not limited to, subscriber revenues (including Pay TV), advertising income, home shopping programs, rentals of equipment, antenna, or signal space, and any and all other revenues received by the grantee from the provision of cable service in the city. Gross revenues include funds collected from subscribers by grantee to pay a franchise fee to the city. Gross revenues do not include revenues recorded as received but which are “bad debt,” but includes any recoveries of bad debt. Gross revenues also do not include any sales, excise, or other taxes collected by grantee on behalf of federal, state, county, city, or other governmental unit. Subject to a determination by the FCC, and other applicable law, internet modem and related services revenues may be part of gross revenues.

22. “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.

23. “Institutional Network” or “I-NET” means a communication network which is constructed or operated by grantee and which is generally available only to institutional users. The I-NET will consist of new fiber optic construction and includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, necessary for the use of the network as set out in the individual franchise. No entity other than local city government or public schools may use the I-NET.

24. “Institutional Network Services” means the provision of I-NET by a cable system operator to governmental, educational, and other institutional users pursuant to the terms of its franchise for non-commercial applications including, but not limited to, a closed path two-way dedicated, video, data channels connecting and interconnecting users facilities.

25. “Institutional Users” means governmental and state certified educational users.

26. “Lifeline Service” will include all access channels as well as all local broadcast channels.

27. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers.

28. “Normal Operating Conditions” means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

29. “Open Video Services” or “OVS” means any video programming services provided to any person by a grantee certified by the FCC to operate an open video system pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the facilities used.

30. “Pay TV” means the delivery over the system of per-channel or per-program programming to subscribers for a separate fee or charge from basic cable service.

31. “Person” means any natural person or any association, firm, individual, partnership, joint stock company, joint venture, corporation, or other legally recognized entity, public or private, whether for profit or not for profit.

32. “Public Building” means any building identified in the applicable franchise, which is owned or for the greater part occupied by the city or on behalf of the city by other governmental units performing traditional municipal governmental functions.

33. “Renewal” means a new franchise granted to an existing grantee in accordance with the renewal provisions of the federal Cable Act, 47 U.S.C. § 546 as amended.

34. “Rights-of-Way” means the surface and space on, above and below every municipal street, alley, road, highway, lane or city right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the city, or as otherwise provided by applicable Laws or pursuant to an agreement between the city and any such person or agency. “Rights-of-way” shall not include public property owned or leased by the city and not intended for right-of-way use, including, but not limited to, municipal office building property or public works facilities.

35. “Service Interruption” means the loss of picture or sound on one (1) or more cable channels for single or multiple subscribers.

36. “Standard Installation” means any service installation that can be completed using a

drop of one hundred twenty-five (125) feet or less.

37. "Subscriber" means any person who lawfully receives cable service provided by a grantee.

Source: 1965 Rev. Ord. 24-0202, 1823 (1977), 1848 (1978), 1923 (1979), 2453 (1989), 2705 (1994), 4421 (2004).

24-0203. Franchise requirements.--

- A. Franchise required. It shall be unlawful for any person to construct, operate or maintain a cable system or to provide cable service or other competing multichannel video services, including OVS, in the city without a franchise in the form of a franchise agreement authorizing the same, unless applicable federal or state law prohibits the city's enforcement of such a requirement. Such franchise agreement shall comply with all of the specifications of this ordinance.
- B. Nature of rights granted by franchise. Franchises shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, for the purposes of providing cable services and as may be further limited by the franchise. A separate franchise or other applicable authorization from the city may be required for non-cable service or use of rights-of-way for purposes other than for the provision of cable services, including, but not limited to, telephone or telecommunications not presently offered on a cable system. No franchise shall grant the right to use facilities owned or controlled by the city or a third-party, without the consent of such party, nor shall a franchise excuse grantee from obtaining appropriate access or attachment agreements before locating its facilities on the facilities owned or controlled by the city or a third-party. All franchises shall be deemed to incorporate and be limited by the provisions of this ordinance and shall create rights for the sole and exclusive use of grantee. Any franchise or other authorization for cable services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city, including the provision of communications services; (ii) any permit, agreement, or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.
- C. Franchise not exclusive. Any franchise granted by the city shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable system or any component thereof, to any other person including itself, as it deems appropriate, subject to this ordinance and applicable state and federal law.
- D. Franchise territory. Every franchise shall apply to the entire territorial area of the city, as it exists now or may later be configured.
- E. Selection of initial grantee. In selecting a grantee pursuant to this ordinance, the city will prepare a request for proposals to seek bids for a cable system to be established under a franchise by the city. This request for proposals will

contain information and instructions relating to the preparation and filing of proposals; conditions regarding the installation, operation, and maintenance of a cable system; and the criteria to be used in evaluating applicant proposals. Any person desiring an initial franchise for a cable system shall file an application with the city. A nonrefundable application fee as may be hereinafter be established by the city shall accompany the application, which shall not be considered or credited against the collection of applicable franchise fees. The provisions of this section will not be applicable to the renewal of any franchise.

Applicants may be evaluated according to the following criteria:

1. Installation plan. Consideration may be given to an Installation plan that would provide the flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the subscriber and the community immediately and in the future.
 2. Rate schedule. Consideration may be given to applicants with the most reasonable Installation and subscriber rate schedule.
 3. Financial soundness and capability. The evidence of financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire system within a maximum of three years from the date the franchise is granted. The city will also consider the applicant's ability to operate the system and provide the necessary services.
 4. Demonstrated experience in operating a cable system. Consideration may be given to evidence of the applicant's experience in operating a cable system, where such evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable service to the potential public and private users.
 5. Technical capability. The city may consider the quality of service offered, including signal quality, response to subscriber complaints, and billing practices.
 6. Future needs. Consideration may be given to the grantee's ability to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
 7. Additional considerations. The city may consider any additional information that it deems applicable.
- F. Application for franchise renewal. Franchise renewals will be according to applicable law including, but not necessarily limited to, the Cable Act, Section 546, as amended. The city and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

Source: 1965 Rev. Ord. 24-0203, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0204. Terms and Termination.--

- A. Term of franchise. The term of the franchise will be stated in the franchise agreement.
- B. Termination of franchise. In addition to all other rights and powers of the city by virtue of the franchise or this ordinance, the city may terminate and cancel the franchise and all rights and privileges of the franchise thereunder in the event that the grantee either:
 - 1. Substantially violates any provision of the franchise agreement or this ordinance;
 - 2. Attempts to evade any of the provisions of this ordinance or the franchise agreement, or practices any fraud or deceit upon the city.
- C. Procedure. If the city believes that grounds for termination exist or have existed, the city will notify the grantee, in writing, setting forth the nature and facts of such noncompliance. If, within the sixty (60) days following such written notification, the grantee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that alleged violations did not occur, or that the alleged violations were beyond the grantee's direct control, the city may, following notice of the grounds for termination, pursuant to this section and the holding of a public hearing with the city commission, revoke a franchise. Grantee will be afforded a fair opportunity for participation at the public hearing, including the right to introduce evidence and question witnesses. Grantee will have the right to appeal any such decision to a state or federal court.

Source: 1965 Rev. Ord. 24-0204, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0205. Required provisions.--

- A. Franchise provisions.
 - 1. All franchises granted pursuant to this ordinance will be subject to the following provisions:
 - (a) The continuing authority of city to impose such other regulations of general applicability through lawful exercises of its police powers as may be determined by the city commission to be conducive to the health, safety, and welfare of the public.
 - (b) The continuing authority of city to control and regulate the use of its streets.
 - (c) The authority of city to inspect all construction or installation work performed subject to the provisions of the franchise and this ordinance, and make such inspections as it

will find necessary to insure compliance with the terms of the franchise, this ordinance, and other pertinent provisions of law.

- (d) The authority of city to inspect the books, records, maps, plans, income tax returns, and other like materials of the grantee upon reasonable notice to insure compliance with the terms of the franchise, this ordinance, and other pertinent provisions of law.
- (e) At the expiration of the term for which this franchise is granted or upon the termination and cancellation as provided herein, the authority of the city to require the grantee to remove at its own expense any and all portions of the cable system from the rights-of-way within the city; provided, however, that this paragraph shall not be applicable if grantee is authorized to provide telecommunications service in city.

2. Federal, state, and city jurisdiction.

- (a) This ordinance and any franchise agreement will be construed in a manner consistent with all applicable federal and state laws.
- (b) In the event that the state or federal government will discontinue preemption in any area of cable television over which it currently exercises jurisdiction in such a manner as to expand rather than limit municipal regulatory authority, the city may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.
- (c) This ordinance will apply to all franchises granted or renewed from and after the effective date of this ordinance.
- (d) Grantee will not be relieved of its obligation to comply with any of the provisions of this ordinance or any franchise agreement granted pursuant to this ordinance by reason of any failure of the city to enforce prompt compliance.
- (e) In the event of a change in state or federal law which by its terms would require the city to amend this ordinance, the parties shall modify the existing franchise in a mutually agreed upon manner.

B. Franchise agreement.

1. The applicant awarded a franchise by the city will execute a franchise agreement, agreeing to the terms and provisions of the franchise and specifications of the franchise as may be incorporated into the franchise agreement in writing.
 2. In addition to those matters required elsewhere in this ordinance to be included in the franchise agreement, it must contain the following express representations by the grantee that:
 - (a) It accepts and agrees to all of the provisions of this ordinance, as to construction, operation, or maintenance of the system, subject to applicable state and federal law
 - (b) It has examined all of the provisions of this ordinance and agrees that the provisions thereof are valid, binding at this time, and enforceable as of the effective date of the franchise.
 - (c) It recognizes the right of the city to adopt such additional regulations of general applicability as it will find necessary in the exercise of its police power.
 3. No franchise will be exclusive.
 4. Every franchise will specifically delineate the territorial extent of the city in which the grantee is authorized to operate.
 5. The franchise agreement will contain such further conditions or provisions as may be negotiated between the city and the grantee. In case of such conflict or ambiguity between any terms or provisions of the franchise agreement and this ordinance, the franchise agreement will control, except where conflict arises from lawful exercise of city's police power.
- C. Design, services, and capabilities.
1. Cable system design. Every grantee shall offer cable service that meets the cable-related needs of the city. The franchise shall incorporate a description of the grantee's cable system including the general design and capabilities of the cable system to identify how the cable system will meet the current and future cable needs of the city.
 2. The cable system. Every cable system shall pass by every household within the city in accordance with line extension policies set forth in a franchise. Where rights-of-way provide access, cable service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise.
 3. Drops to public buildings.--
 - (a) Every grantee shall provide installation of at least one (1) cable drop and one (1) outlet, provide monthly basic cable service, and

maintenance of the same, without charge, to public buildings specified by the city in the applicable franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, secondary private schools with students receiving funding under Title I of the Education and Secondary School Act of 1965, public libraries, and each police and fire station shall receive one (1) cable drop, one (1) drop, basic cable service, and maintenance of the same at no charge, subject to the two hundred (200) foot limit. The location of such cable drops and outlets shall be determined in cooperation with the management of the public building to which the connection is to be made. Inside wiring will be installed by the requesting party and must meet FCC standards regarding signal leakage. Following the city's designation of additional public buildings to receive cable service, a grantee shall complete construction of the drop and the outlet within one hundred eighty (180) days of the request, weather permitting and subject to payment of the direct incremental costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one (1) free drop and outlet required by this section shall be provided by a grantee at grantee's actual cost, overhead, tax and freight charges. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and services to public buildings are subject to the applicable commercial rate.

- (b) All cable outlets provided for in this subsection shall not be utilized for commercial purposes. The city shall take reasonable precautions to prevent any use of a grantee's cable system in any inappropriate manner or that may result in loss or damage to the cable system. Users of such outlets shall hold the grantee harmless from any and all liability or claims arising out of their use of such outlets, other than those claims arising out of improper installation or

- faulty equipment.
- (c) In instances where the drop line from the feeder cable to the public building, school, or library exceeds two hundred (200) feet, the grantee may charge for its actual cost, overhead, tax and freight charges that are incurred in exceeding this length. A grantee may require advance payment of this cost.
4. School and library cable modems. As specified in a franchise, and upon activation and commercial offering of two-way cable modem service by a grantee, such grantee shall provide upon written request cable internet service to every state accredited K-12 public school, secondary private schools with students receiving funding under Title I of the Education and Secondary School Act of 1965, and public library in the franchise area, where the drop does not exceed two hundred (200) feet.
 5. Use of grantee's facilities. Subject to any applicable state or federal regulations and a franchise, the city may have the right to install and maintain, upon the poles and within the underground pipes and conduits of a grantee, any wires and fixtures desired by the city for public purposes. The specific terms and conditions of such access shall be set out in the individual franchise agreement. Provided, however, that (a) such use by grantor shall not interfere with the current or future use by grantee or any pre-existing user or lessor of grantee's facilities; (b) such use by Grantor is restricted to non-commercial public purposes; (c) grantor takes reasonable precautions to prevent and use of grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the cable system. For the purposes this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for city fire, police, traffic, utility, and/or signal systems, but not for commercial cable system purposes in competition with the grantee; (d) to the extent provided by state law, the city holds grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits; and (e) at the grantee's sole discretion, the city may be required either to pay a reasonable rental fee or otherwise reasonably compensate the grantee for the use of such conduit or other equipment provided, however, the grantee agrees that such compensation or charge will not exceed those paid by it to public utilities.
 6. Initial construction, rebuild and upgrade of the system. Every grantee shall construct, rebuild or upgrade its cable system as set forth in its respective franchise. Furthermore, the city may

amend this ordinance whenever necessary to enable the grantee to take advantage of any developments in the field of transmission of communication signals and upgrade the system which will afford it an opportunity to more effectively, efficiently, or economically serve its customers; provided that this section will not be construed to require the city to make any such amendment and further provided that the city may not impose any capital or operating expenditures on any grantee pursuant to this section without the grantee's consent.

7. Emergency alert capability. Every grantee shall at all times provide the system capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that if the FCC at some future date eliminates the Emergency Alert System regulations, the city and grantee may mutually agree upon a comparable local system.
8. Periodic review and evaluation. The city has determined that cable television technology, programs, and services are subject to continuing change. This includes change in law and regulations, as well as technological and service advancements. For this reason, it is essential that any franchise which is granted pursuant to this ordinance must include provisions for periodic review evaluation and/or independent technical review and modification, procedures and requirements relating to evaluation of the current technology and services deployed permitting the city and grantee to agree to changes based upon review and a demonstrated need and in accordance with the procedures outlined in the franchise agreement.
9. Close captioning and descriptive audio service. Every grantee will make audio descriptive services and closed captioning capabilities available to the extent required by state and federal law.
10. Standby power. Grantees shall provide standby power generating capacity capable of providing at least twelve (12) hours of emergency supply at the cable system headend. For nodes, two (2) hours with emergency power supply. Every grantee shall maintain standby power system supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.
11. Status monitoring. Every grantee shall provide an automatic status monitoring system, or a functionally equivalent, to provide prompt response to system malfunctions, when the cable system had been activated for interactive service, provided that such status monitoring is technically and economically feasible.

D. Institutional Network and Public, Educational, and Governmental Access or PEG Access.

1. Institutional Network, Access Channels.
 - (a) Every grantee shall, to the extent required in its franchise and subject to applicable law, provide or fund an Institutional Network or PEG access facilities or other public interest services, or some combination of the same, for use by institutional users. Such public interest requirements shall, at a minimum, satisfy the community need for such facilities and/or service as determined by the city or governing body for the period of the applicable franchise.
 - (b) Every grantee shall also provide channel capacity for Public, Educational, and Government Access Channels, as specified in their franchise. All such PEG access channels shall be provided as part of basic cable service. Oversight and administration of the PEG access channels shall be set forth in the franchise.
2. Proof of performance testing. To ensure high quality of service on the access channels, results of proof of performance testing as required by applicable federal law throughout the system and on all required channels will be made available to the city upon request to the extent required by the franchise. Every grantee will monitor the cable system to determine and ensure that the level of technical quality of the system's transmission of access channels is in conformance with the FCC Rules and is the same as on other channels transmitted on the cable system.

E. Construction standards and requirements.

1. Permit required. Grantee will not construct any cable system facilities until grantee has secured the necessary permits from the city or other cognizant public agencies.
2. Construction standards. All of the grantee's plant and equipment including, but not limited to, the antenna site, headend, and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures, and appurtenances will be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced pole line construction crews and so as not to endanger or interfere with the safety of any person or property, or to interfere with improvements the city may deem proper to make, or to interfere in any manner with the right of any property owner, or to unnecessarily hinder or obstruct

- pedestrian or vehicular traffic on city properties.
3. Compliance with city ordinances for work in rights-of-way. Any opening or obstruction in or disturbance of the rights-of-way or other municipal properties made by the grantee in the exercise of its rights under a franchise agreement will be done in compliance with city ordinances which regulate work in the public ways of the city, except that any bond requirements therein may be waived in cognizance of the bond requirements of this ordinance.
 4. Compliance with city ordinances for construction and building standards. The grantee will comply with the minimum standards provided for by the applicable ordinances of the city adopted from time to time containing construction or building standards of general applicability.
 5. Removal and relocation of facilities. The grantee will, at its expense, protect, support, temporarily disconnect, relocate in the same rights-of-way, or other right-of-way, or remove from the right-of-way, any property of grantee when required by the city or its designee by reason of traffic conditions, public safety, street excavation, freeway, and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other type of structures or improvements by public agencies. If the city compensates any utility for such work, the city must similarly compensate the grantee for such work.
 6. Movement of lines. The grantee will, on the request of any private party holding an appropriate permit issued by the city, temporarily raise or lower its lines to permit the moving of any building or other structure, and the actual expense of the same will be paid in advance by the party requesting the same. Any work concerning movement of lines shall comply with the regulations governing house moving as stated in Fargo Municipal Code § 25-2006.
 7. Tree trimming. The grantee will have the right, with the prior approval of the city, except in emergency circumstances, to remove, trim, cut, and keep clear of its poles, wires, or cables, the trees in and along the streets of the city, but in the exercise of such right, the grantee will not cut or otherwise injure said trees to any greater extent than is reasonably necessary for the continued integrity of its poles, wires, or cables.
 8. Responsible for restoration and costs. The grantee, in exercise of any right granted to it by the franchise, will reconstruct, replace, restore, or repair any street, and any sewer, gas, or water main, pipe, electric, fire alarm, or police communications, off or on city property, or right-of-way or traffic control facility of the city which may be damaged or destroyed by the exercise of any such right, to a condition as

good as that prevailing before said work to the reasonable satisfaction of the city. The city reserves the right to determine whether the grantee has properly complied with the provisions of this paragraph and in the event it is determined that the grantee has failed to do so, the city will have the right to, following notice to the grantee and reasonable opportunity for the grantee to cure, enforce such provisions, and the grantee will reimburse the city in full for all expenses incurred by the city in carrying out all or part of such provisions.

9. Failure to complete work. Upon failure of the grantee to commence, pursue, or complete any work required by law, a franchise or by the provisions of this ordinance to be done in any Rights-of-Way, within the time prescribed, and to the satisfaction of the city or its designee, the city or its designee may, unless there is an excusable delay, as determined by city. If it is determined there is not an excusable delay, following notice to the grantee and reasonable opportunity for the grantee to cure, at the option of the city, the city may cause such work to be completed. The grantee will pay to the city the cost thereof in the itemized amounts reported by the city or its designee to grantee within 30 days after receipt of such itemized report. A franchise shall include a provision of force majeure to describe conditions of excusable delay.

F. Technical Standards.--

1. Compliance with OSHA. All construction practices will be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable local, state, and federal laws and regulations.
2. Compliance with National Electrical Codes. All Installation of electronic equipment will be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.
3. Compliance with FAA Regulations. Antennae and their supporting structures (towers) will be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other local, state, and federal laws and regulations.
4. Test and compliance procedure. Tests for the cable system shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the city and written test results shall be made available to the city within thirty (30) days of a request. If any test locations fail to meet the performance standards, the grantee shall be required to indicate what corrective action measures have been taken and shall have the site retested.
5. Additional tests. At any time after commencement of service to subscribers, the city may require the grantee to perform

additional tests, full or partial repeat tests, or tests involving a specific subscriber's drop. Such additional tests may 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. The city will be able to designate a representative to be present during the testing. If a test indicates that the grantee is in compliance with FCC standards and requirements, the city will bear the expense of such test. If a test indicates that the grantee is not in compliance with FCC standards and requirements, the grantee will bear the expense of such test. The city will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to grantee or to the subscriber.

- G. Repair. Any damage caused to the property of building owners or users or any other person by the grantee's negligence will be repaired fully to a condition as good as that prevailing before said work by the grantee.
- H. Removal of facilities from subscriber's premises upon request. Upon termination of service to any subscriber, the grantee will promptly remove all its facilities and equipment from the premises of such subscriber upon his or her request.
- I. Transfer of ownership. --
 - 1. Grantee will not sell, transfer, lease, assign, sublet, or dispose of any franchise awarded under this ordinance or any of the rights or privileges granted by the franchise to any person other than an affiliate of grantee, without the prior consent of the city, which consent will not be unreasonably withheld and may be denied only upon a good faith finding by the city that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the cable system so as to perform its obligations under the franchise. This section shall not apply to sales or property or equipment in the normal course of business.

Further, any sale or transfer and the consent thereto, will comply with applicable legal requirements. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise and/or the cable system without the consent of the city except as otherwise provided herein will be null and void. The granting of a security interest in any of grantee's assets, or any mortgages or other hypothecation, will not be considered a transfer for the purposes of this section.
 - 2. Any change of control of grantee will be deemed to be a "sale" or "transfer" of the franchise. A "change of control" will include any sale by grantee of the majority of its stock to, or any merger or consolidation with, any person (or group of persons acting in concert) who is not an affiliate of grantee before such transaction. The sale, assignment, or other

transfer of all or a majority of a grantee's assets in the city shall also constitute a sale or transfer.

3. The grantee must comply with provisions of the Cable Act regarding transfers of ownership and any other state, federal, or local laws which are applicable.
4. The grantee will notify the city in writing of any foreclosure or any other judicial sale of all or a substantial part of the property of the grantee or upon the termination of any lease or interest covering all or a substantial part of said franchised property. Such notification will be considered by the city as notice that a change in control or ownership of the franchise has taken place and the provisions under this section governing the consent of the city to such change in control or ownership will apply.
5. For the purpose of determining whether it will consent to such a change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective transferee or controlling party, and the grantee will assist the city in any such inquiry. The transferee will be required to establish that it possesses the legal, technical, and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. After considering the legal, financial, and technical qualifications of the transferee and determining that they are satisfactory, the city may approve the transfer of rights and obligations of said franchise.
6. As a condition of transfer of ownership or control any proposed transferee shall execute an agreement, in such form as acceptable to the city attorney, that it will assume and be bound by all of the provisions, terms and conditions of this ordinance and any franchise granted pursuant to it.
7. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise will have the right to notify the city that it or its designee satisfactory to the city will take control of and operate the cable television system, in the event of a grantee default in its financial obligations. Said financial institution will also submit a plan for such operation within thirty (30) days of assuming such control that will assure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution will not exercise control over the system for a period exceeding one year unless extended by the city in its discretion and during said period of time it will have the right to petition the to transfer the franchise to another grantee.

8. Notwithstanding anything to the contrary contained herein, no such prior consent will be required for any transfer or assignment to any person controlling, controlled by, or under the same common control as the grantee.
9. The city reserves any legal right it has under applicable law to require a grantee to pay all costs and expenses incurred by the city in connection with the sale, assignment, or transfer of a franchise, including, but not limited to, the city's costs of reviewing the qualifications of any proposed transferees.
- J. Purchase by city. Subject to the Cable Act, if a franchise is revoked for cause, the city may acquire that portion of the cable system serving the city.
- K. Requests for cable service. A grantee will provide cable service to any requesting residential subscriber within the city within thirty (30) days from the date of request, weather permitting.
- L. Multiple franchises.--
 1. Grant of additional franchise. The city may grant one or more franchises for the city. The city may, in its sole discretion, limit the number of franchises granted based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations, such as:
 - (a) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits, and pipes of the utility systems, such as electrical, power, telephone, gas, and sewerage and the potential disruption of those rights-of-way and private property that may occur if one or more additional franchises are granted.
 - (b) The impact on the community of having multiple franchises.
 - (c) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and a disruption arising from numerous excavations of the rights-of-way.
 - (d) The legal, technical, and financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed system for the duration of the franchise term.
 - (e) The amount of time it will take the applicant to complete construction of the proposed cable system and activate cable service in the entire franchise area; and, whether the applicant can complete construction and activation of its cable system in a timely manner.
 - (f) The disruption on the availability of cable

- service within the city.
- (g) Such other information as the city may deem appropriate to be considered prior to granting any competing or overlapping franchise.
- 2. Permits for non-franchised entities. The city may issue a license to a person other than the grantee to permit that person to traverse any portion of a grantee's franchise area within the city in order to provide cable service outside, but not within the city. Such a license or easement, absent a grant of a franchise in accordance with this ordinance, shall not authorize nor permit said person to provide cable service of any type to any home or place of business within the city.
- M. Discriminatory or preferential practice.
- 1. Rates and charges. The grantee will not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and will not subject any such persons to any prejudice or disadvantage. The foregoing will not be deemed to prohibit or preclude promotional rates, bundled rates, bulk rates or charges.
 - 2. Access and employment. The grantee will not deny service, deny access, or otherwise discriminate against subscribers on the basis of race, creed, color, religion, national origin, or sex. The grantee will comply at all times with applicable equal employment opportunity requirements and all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.
 - 3. Build-Out. A grantee may not discriminate in the build-out of its cable system to a particular area of the city or provision of cable service to individual groups of residents on the basis of race, creed, color, religion, national origin, sex, or economic condition.
- N. Subscriber privacy. The franchise will comply with the subscriber privacy standards located in 47 U.S.C. § 551. In addition to complying with all obligations under Section 631 of the Federal Communications Act (47 U.S.C. § 551) and other applicable federal, state, and local law, a grantee and its affiliates shall comply with the requirements of this subsection. A grantee and its affiliates shall maintain and make available online a privacy policy outlining in clear, understandable terms their obligations and practices with regard to the collection, use, and sharing of subscriber information. A grantee and its affiliates shall annually mail to each subscriber a written statement of such policy, consistent with the requirements of 47 U.S.C § 551 (a)(1), and shall provide subscribers a copy of such statement at the time the grantee

enters into a franchise to provide cable service or other such service. The city may, as part of the franchise entered into with a grantee, reserve a right of review of such privacy policy, but in no case shall such review be unreasonably delayed. If the standards in 47 U.S.C. § 551 cease to exist, in addition to the requirements in this section and in a franchise, the city will have the right to implement the following:

No signal will be transmitted from a subscriber terminal to grantee for purposes of monitoring individual viewing patterns or practices unless the monitoring will only result in aggregate viewing information that does not identify individual subscribers. The grantee will be entitled to conduct system-wide or individually addressed “sweeps” for the purpose of verifying system integrity, controlling return transmission, or billing for services.

- O. Permits and authorizations. The grantee or applicant for franchise will diligently apply for all necessary permits and authorizations required in the conduct of its business, and will diligently pursue the acquisition thereof, including necessary pole attachment contracts, and necessary authorizations from the Federal Aviation Administration to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the FCC. After the grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been entered or easements obtained after a reasonable period of time, the grantee may submit the matter to the city and the city may thereupon provide assistance that may be necessary to arrive at a solution so that scheduled construction of the system will not be impaired.
- P. Annual reports.
 - 1. Contents. Each grantee will file an annual report. Such report will include:
 - (a) An ownership report, identifying all persons who at any time during the preceding year controlled or benefited from an interest in the grantee of five percent (5%) or more.
 - (b) A list of grantee’s officers, board members, and other principals and a current list of the addresses of each officer and director and other management personnel of the grantee.
 - (c) A revenue statement certified by a representative of the grantee showing the gross revenues of the grantee for the proceeding fiscal year.
 - (d) A statement of the grantee’s current billing practices and charges.
 - 2. Annual presentation to the city. At the time the grantee files its annual report, if requested by the city, it will make arrangements to make an oral presentation before the city’s governing body at the earliest meeting thereafter. The presentation may include a brief overview of the annual report and in addition, an overview of franchise operations, services

and changes, including plans for technical or service changes, changes in rates and trends in the industry. All city franchise holders to submit the same reports and presentations. As part of the presentation, a grantee shall furnish the city with written summaries of at least the following:

- (a) A summary of any customer surveys conducted pursuant to § 24-0205(B)(22), and as required by a franchise agreement.
- (b) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year.
- (c) As part of the annual report, grantee will provide to the city a written summary of the following statistical information:
 - (i) Statistics compiled on a quarterly basis recording service calls in which a technician or repairman is dispatched to a residence to correct a reception problem. Such records should be kept pursuant to § 24-0204(F).
 - (ii) Service interruption logs, in which service interruptions to multiple addresses are recorded.
 - (iii) Grantee's leakage log.
 - (iv) New services to be offered to residents of city or technology to be deployed in city within the next thirty (30) days.
 - (v) Records of policy concerns and complaints called or written into the system and kept in the ordinary course of business. Such records should be kept pursuant to the requirements of § 24-0207(F).

Upon request, grantee will allow the city administrator or his or her designee to review a detailed plan (map) of the system at its offices.

3. Service contract and subscriber information. --

- (a) A grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall

be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this ordinance and its franchise and to assure uninterrupted cable service to all of its subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this ordinance, federal, state, and or local law, or any applicable rules and regulations.

- (b) Upon request, a grantee shall submit to city any standard residential subscriber contract form that it utilizes. If no written form exists, a grantee shall file with the city a document completely and concisely stating the terms of the standard residential subscriber contract offered.

Q. Index of reports. Each grantee shall compile and maintain an index of reports, that shall list all reports, documents, and filings, that it has prepared with respect to the system over the course of the past two years as a result of the requirements of the FCC or this ordinance, including technical system testing, and proof of performance reports and customer service compliance measurements, and shall provide a copy of such index of reports to the grantor every six months, and upon request. Each grantee shall make a copy of any reports or documents listed in the index of reports available to the grantor upon request.

R. Indemnification, security funds, insurance.

- 1. Liability and indemnification. The grantee will indemnify, hold harmless, release, and defend the city, its officers, agents, and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability losses, expenses including reasonable attorneys' fees, and costs or liabilities of any nature that may be asserted by any person or entity from any cause whatsoever including another's concurring negligence arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the grantee, its officers, agents, or employees, by reason of its construction, operation, or maintenance of its system. However, unless otherwise provided in a franchise, a grantee may not be liable for the content of access channel public, educational, or governmental programming. Damages and penalties will include, but 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 system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise, except that a grantee will not be liable for payment of damages and penalties arising solely from any acts

or omissions by the city, its agents, or employees. If a lawsuit is filed against the city, either independently or jointly with the grantee to recover for any claim or damages, the grantee, upon notice to it by the city, will, at its sole cost and expense, defend and fully control the defense of the city against the action and, in the event of a final judgment being obtained against the city, either independently or jointly with the grantee solely by reason of the acts of the grantee, the grantee will pay said judgment and all costs and hold the city harmless therefrom. However, the grantee may not enter into any compromise, settlement, resolution, or disposition of a claim or proceeding that may create or impose liability for the city without obtaining the city's written consent thereto which shall not be unreasonably withheld. In order for the city to assert its rights to be indemnified and held harmless, the city must:

- (a) Notify grantee of any claim or legal proceeding which gives rise to such right;
- (b) Afford grantee the opportunity to participate in and fully control any compromise, settlement, resolution, or disposition of such claim or proceeding; and
- (c) Fully cooperate in the defense of such claim and make available to grantee all such information which it may lawfully furnish to grantee and relating to the claim.

2. Performance bond. The city may require the grantee to file with the city auditor, concurrently with its acceptance of the franchise and at grantee's sole expense a performance bond. Such bond will be in an amount specified in the franchise agreement, issued by a responsible company licensed to do business in North Dakota and conditioned upon the faithful performance of the grantee to meet its obligations under this ordinance and the franchise. The grantee shall be required to replenish any such bond within thirty (30) days after the city draws down upon it.

3. Insurance.

(a) During the course of the franchise, the grantee will be required to maintain liability insurance, to protect the city and the grantee from and against any and all claims, injury, or damage to persons or property, both real and personal, caused by the construction, erection, operation, or maintenance of any aspect of the system. The amount of insurance will be specified in the franchise agreement.

(b) The grantee will provide workers'

compensation insurance as required by state law.

- (c) All such insurance coverage will provide a thirty (30) day notice to the city administrator in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation will become effective.
- (d) Copies of all certificates evidencing insurance will be furnished to and filed with the city administrator prior to the commencement of operations or the expiration of prior policies, as the case may be.
- (e) It will be the obligation of grantee to promptly notify the city of any pending or threatened litigation that would be likely to affect the grantee's insurance coverage.

- 4. Non-Waiver. Neither the provisions of this section, nor any bonds accepted by the city pursuant thereto, nor any damages recovered by the city thereunder will be construed to excuse unfaithful performance by the grantee or limit the liability of the grantee under this ordinance or the franchise for damages, either to the full amount of the bond or otherwise.

S. Operational standards. The grantee will:

- 1. Limit failures to a minimum by locating and correcting malfunctions properly, but in no event later than twenty-four (24) business hours after notification.
- 2. When possible and with reasonable costs, notify subscribers affected twenty-four (24) hours prior to any planned service Interruption. Such notice may be made through the cable system itself.
- 3. Demonstrate to subscribers upon request, by instruments and otherwise, that a signal of adequate strength and quality is being delivered.

T. Continuity of service.

- 1. It will be the right of all subscribers to continue receiving cable services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the city gives notice of intent to terminate or fails to renew the franchise, the grantee will act so as to insure that all subscribers receive continuous, uninterrupted service, subject to compliance with federal and state laws.
- 2. In the event of a change of the grantee, or in the event a new operator acquires the system, the grantee will cooperate with the city's new grantee or operator in maintaining continuity of

cable service to all subscribers. During such period, grantee will be entitled to the revenues for any period during which it operates the system and will be entitled to reasonable cost for its services when it no longer operates the system.

U. Safety requirements.

1. The grantee will at all times employ ordinary care and will install, maintain, and 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 grantee will install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code of the Institute of Electrical and Electronic Engineers; the National Electrical Code of the National Fire Protection Association; the Bell System Code of Pole Line Construction; and applicable federal, state, and local regulations.
3. All structures and all lines, equipment, and connections in, over, under, and upon the rights-of-way of the city, wherever situated or located, will at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

V. Customer surveys and procedures.

1. In accordance with the terms of a franchise agreement, the city may require a grantee to conduct a statistically valid random survey of city subscribers. The city shall coordinate with and assist a grantee with the preparation and distribution of a survey. Each questionnaire will be prepared and conducted in good faith so as to provide reasonably reliable measures of subscriber satisfaction with:
 - (a) Audio and signal quality;
 - (b) Response to subscriber complaints;
 - (c) Billing practices;
 - (d) Programming services; and
 - (e) Installation practices.

Source: 1965 Rev. Ord. 24-0205, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0206. Franchise fees.--

- A. Five percent franchise fee. During the term of any franchise granted pursuant to this ordinance, the grantee will pay to the city for the use of its rights-of-way an annual franchise fee in an amount up to five percent (5%) of the annual gross revenues, but not to exceed the amount allowed by federal rules and regulations as compensation for the grant of a franchise and in consideration of permission to use the rights-of-way of the city for the construction, operation, maintenance, and reconstruction of a cable system, and to defray the costs of franchise obligations. This payment will be in addition to any other tax or payment owed to the city by the grantee and does not include

rental of poles or underground conduits. Further, every grantee that offers any “bundled” services shall fairly reflect as part of its calculation of applicable franchise fees an appropriate and reasonable division of services among the various services offered. The specific cost accounting for such revenue attribution shall be set out in the individual franchise or other agreement.

- B. Payment and audits. Payments due the city under the terms of this ordinance and a franchise will be computed monthly for the preceding month and will be paid by wire transfer as directed by the city auditor on or before the thirtieth (30th) calendar day from each said computation date to the city. The city will be furnished a worksheet, made part of a franchise, via e-mail with each payment, certified as correct by the grantee, reflecting the total amount of gross revenues applicable for franchise fee and computations for the payment period covered by the payment. Every three years, upon thirty (30) days prior written notice, the city will have the right to conduct an independent audit of grantee’s records, in accordance with generally accepted accounting principles and if such audit indicates a franchise fee underpayment of five percent (5%) or more, the grantee will assume all reasonable costs of the audit. Any additional amount due the city as a result of such audit will be paid within thirty (30) days following the final audit report and written notice by the city to the grantee, which notice will include a copy of the audit report.
- C. Acceptance of payment. No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this ordinance or the franchise agreement or for the performance of any other obligation hereunder.
- D. Failure to pay. Failure to pay any fees required by this section within ten (10) days of receipt of written notice of such failure from the city will be grounds for termination of the franchise and reinstatement thereof may be had only upon resolution by the city commission.
- E. Penalty for late payment. In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified above, grantee will pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the prime lending rate plus one and one-half percent (1.5%) during the period for which payment was due and unpaid.
- F. Quarterly report of gross revenues. Each grantee will file with the city quarterly reports of gross revenues certified as correct by the grantee and prepared in a form acceptable to the city.

Source: 1965 Rev. Ord. 24-0206, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0207. Customer service standards.--

- A. Compliance. Grantee shall comply with the customer service standards of the FCC and applicable industry standards.
- B. Cable system office hours and telephone availability.
 - 1. Grantee will maintain a local, toll-free, or collect call telephone access line which will be available to its subscribers twenty-four (24) hours per day, seven (7) days per week.

- (a) Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative, but no later than the next business day.
 2. Under normal operating conditions, telephone answer time by a customer representative or automated response unit, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met not less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
 3. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.
 4. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 5. Every grantee shall maintain a conveniently located customer service center, which shall include a place where subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the grantee and its services. Such service center shall be open at least during normal business hours.
- C. Installations, outages, and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
1. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.
 2. Excluding conditions beyond the control of grantee, grantee's representatives will be available to begin working on service interruptions within twenty-four (24) hours of request. Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
 3. The "appointment window" for installations, service calls, and other installation activities will be either at a specific time or, at a maximum, within a four (4) hour time block during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours

for the express convenience of the customer.)

4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
5. If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. A grantee shall keep a record to demonstrate its efforts to contact the customer. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

D. Communications between grantee and subscribers.

1. Notifications to subscribers.

(a) The grantee, when possible, will provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions programming carried on the system; and
- (vi) Billing and complaint procedures, including the address and telephone number of the city official who handles cable issues.

(b) Subscribers will be notified of any changes in rates, programming service deletions, or channel positions as soon as possible in writing or by media advertising notice or notice on the bill or cable channels. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the grantee, except for new service additions to the system.

In addition, the grantee will notify subscribers thirty (30) days in advance of any significant changes in the other information required by

the preceding subparagraph, except for new service additions. Notwithstanding any other provision, grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or franchise authority on the transaction between grantee and the subscriber.

2. Billing.

(a) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(b) In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within thirty (30) days.

3. Refunds. Refund checks will be issued promptly, but no later than either:

(a) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(b) The return of the equipment supplied by the grantee if service is terminated.

4. Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

5. Late charges. A grantee may impose a monthly fee for any delinquent balance owned by a subscriber, subject to the following:

(a) At least ten (10) days before the date the fee is imposed, the subscriber shall be given written notice, on the face of the bill or by separate notice of:

The date after which the fee will be imposed if the balance is not paid; and

The amount of the fee that will be imposed; and

(b) The fee for the delinquent payment shall not exceed the state statutory maximum as may be amended from time to time.

E. Parental control. Every grantee shall make available to any subscriber upon request a "lockout" device, which may be included within the converter, for

blocking both video and audio portions of any channel(s) of programming entering the subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A grantee may, however, require a reasonable security deposit for the use of such device.

- F. Complaint log. Subject to the privacy provisions of 47 U.S.C. § 521 et. seq., every grantee shall prepare as necessary and maintain written records of complaints made to them and the resolution of such complaints, including the date of such resolution. For the purposes of this requirement, all complaints or service calls that result in the dispatch of a service technician shall be individually logged and for all other complaints the grantee may satisfy this requirement by the creation of a periodic written summary of the type of complaint and, where appropriate, their resolution. Verbal complaints will not be required to be logged. Such complaint logs and summaries shall be on file at the office of the grantee for three (3) years, and available for inspection by the city upon request.

Source: 1965 Rev. Ord. 24-0207, 1823 (1977), 1848 (1978), 1923 (1979), 2193 (1985), 2705 (1994), 4421 (2004).

24-0208. General--

- A. Subscriber rates.
1. City may regulate rates as permitted by federal law.
- B. Records required and city's right to inspect.
1. Grantee will at all times maintain:
 - (a) A full and complete set of plans, records, and "as-built" maps showing the location of the cable television system installed or in use in the city, exclusive of subscriber service Drops and equipment provided in subscribers' homes.
 - (b) If requested by city, a summary of service calls, identifying the number, general nature, and disposition of such calls, on a monthly basis to the extent kept in the regular course of business.
 2. Upon five (5) days written notice and during normal business hours, grantee will permit examination by any duly authorized representative of the city, of all franchise property and facilities, together with any appurtenant property and facilities of grantee situated within or outside the city, and all records relating to the franchise, provided they are necessary to enable the city to ascertain the grantee's compliance with this ordinance and the franchise agreement. Such records include all books, records, maps, plans, engineering reports and related contracts, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of grantee. Grantee will have the right to

- be present at any such examination.
3. If any of the records described in the previous subsection are proprietary in nature or must be kept confidential under state, federal, or local law, upon proper request by grantee, such information obtained during such an inspection will be treated as confidential, making it available only to those persons who must have access to perform their duties on behalf of the city, including but not limited to the legal and financial and commission members. To the extent any state or federal requirement for privacy applies to the information to be submitted, said law will control. Grantee reserves the right to withhold confidential information which it reasonably believes does not meet the standard prescribed in paragraph (b) above.
 4. The city will have the right to request copies of any petitions, applications, communications, and reports submitted by grantee or on its behalf to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this ordinance and any franchise, as such documents relate to grantee's operation of its system under the franchise. Copies of responses from the regulatory agencies to grantee will likewise be furnished to the city upon request. If the city is specifically named in any such pleading or response, the city shall automatically be furnished a copy.
- C. Abandonment or removal of franchise property.
1. Abandonment. In the event that the use of any property of grantee within the franchise area or a portion thereof is discontinued for a continuous period of twelve (12) months, grantee will be deemed to have abandoned that franchise property.
 2. Removal. The city, upon such terms as city may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated, or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this ordinance, the grantee will remove all abandoned above-ground facilities and equipment upon receipt of written notice from city and will restore any affected street, alley, or public property to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures, and equipment, grantee will refill, at its own expense, any excavation that will be made by it and will leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires,

poles, or attachments. The city will have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, insurance, and performance bond provisions of this ordinance and a franchise agreement as provided herein will continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.

3. Transfer of abandoned property. Upon abandonment of any franchise property in place, the grantee, if required by the city, will submit to the city an instrument, satisfactory in form to the city, transferring to the city the ownership of the franchise property abandoned.
4. Above ground portion of system. At the expiration of the term for which the franchise is granted and a denial of any renewal, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension, or transfer, the city will have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all rights-of-way within the city within a reasonable period of time, but will not be less than one hundred eighty (180) days.
5. No material interference. Notwithstanding anything to the contrary set forth in this ordinance, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

D. Rights reserved to city.

1. In addition to any rights specifically reserved to the city by this ordinance, the city reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.
2. The city will have the right to waive any grantee obligation of the franchise, except those required by federal or state regulation, if the city determines:
 - (a) That it is in the public interest to do so; and
 - (b) That the enforcement of such provision will impose an undue hardship on the grantee or subscribers.

To be effective, such waiver will be evidenced by a statement in writing signed by a duly authorized representative of the city. Waiver of any provision in one instance will not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise

unless the statement so recites.

- E. Violators. All persons including officers of any grantee, causing, participating in, or permitting any violation of any provision of this ordinance will be severally or jointly liable therefore.
- F. Force majeure. Grantee's inability to perform. In the event grantee's performance of any of the terms, conditions, or obligations required by this ordinance or a franchise granted hereunder is prevented by a cause or event not within normal operating conditions or otherwise not within the grantee's control, such inability to perform will be deemed excused and no penalties or sanctions will be imposed as a result thereof.

For the purpose of this section, causes or events not within the control of grantee include but are not limited to: acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, inability to obtain equipment, and fires.

- G. Non-Enforcement not estoppel. The grantee will not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the city to enforce prompt compliance.
- H. Enforcement procedures. Every franchise granted by the city pursuant to this ordinance shall include provisions for enforcement.

Source: 1965 Rev. Ord. 24-0208, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0209. Severability.--If any provision of this ordinance is held by any court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule, or regulation, such provision will be considered a separate, distinct, and independent part of this ordinance, and such holding will not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule, or regulation, said provision will thereupon return to full force and effect and will thereafter be binding on city and grantee, provided that city will give grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for grantee to comply with such provision.

Source: 1965 Rev. Ord. 24-0209, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0210. Receivership and foreclosure.--

- A. Receivership. A franchise granted hereunder shall, at the option of city, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of grantee, whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership of trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 1. Such receivers or trustees have, within one hundred twenty

(120) days after their election or appointment, fully complied with all the terms and provisions of this section and the franchise granted pursuant hereto, and the receivership or trustees within such one hundred twenty (120) days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the city.

2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise granted.

B. Foreclosure. In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, city may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. City shall have approved the transfer of the franchise, as and in the manner that this section provides.
2. Such successful bidder shall have covenanted and agreed with city to assume and be bound by all terms and conditions of the franchise.

Source: 1965 Rev. Ord. 24-0210, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0211. Administration of franchise.--The city shall be responsible for the continued administration of this code and any franchises granted hereunder. The city may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the city shall not delegate enforcement authority.

Source: 1965 Rev. Ord. 24-0211, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

24-0212. Effective date, publication, acceptance and governing law.--

A. Publication: Effective date.

1. A franchise shall be signed by the mayor and attested by the city auditor. A franchise shall be published in accordance with the requirements of city and state law and shall take effect upon acceptance by a grantee, and in accordance with the requirements as provided for in § 24-0212(2) of this ordinance, the effective date.
2. Cost of publication. A grantee shall assume any cost of publication of its franchise, as such publication may be required by law, and such cost is payable upon a grantee's filing of its written acceptance of the franchise as provided in § 24-0212(2) of this ordinance.

B. Acceptance and governing law.

1. A grantee shall have thirty (30) days from the date of adoption

of a franchise to accept a franchise in a written form approved by the city attorney which shall include grantee acceptance of this ordinance and the franchise, its authority to do business in North Dakota, a representation of its legal, technical, and financial qualifications to fully perform the obligations of this ordinance and a franchise, and the representations required in § 24-0205(B)(2) of this ordinance. Such acceptance by grantee shall be deemed the grant of a franchise for all purposes. Grantee shall also deliver a guarantee, if required by the city, when granting the franchise, within the same time as delivery of the acceptance, in a form acceptable to the city attorney. In the event acceptance does not take place within thirty (30) days or such other time as the city might allow, a franchise shall be null and void.

2. Upon acceptance of a franchise, grantee shall be bound by all the terms and conditions contained in this ordinance and in a franchise. Grantee shall provide all services and offerings specifically set forth in this ordinance and in a franchise, to provide cable services within the city.
3. With its acceptance, grantee shall also deliver to the city a certified resolution evidencing a grantee's power and authority to accept a franchise. Such documents shall also describe the officers authorized to accept on behalf of grantee.
4. With its acceptance, grantee shall also deliver any security deposit, insurance certificate, and performance bonds required by this ordinance and a franchise.
5. This ordinance and a franchise granted pursuant to it and every question arising thereunder shall be construed or determined according to the laws of the State of North Dakota and applicable federal law.

Source: 1965 Rev. Ord. 24-0212, 1823 (1977), 1848 (1978), 1923 (1979), 2705 (1994), 4421 (2004).

ARTICLE 24-03

GRANT OF ACCESS AND USE OF PUBLIC RIGHTS-OF-WAY

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24-0301. Definitions--The following definitions apply in this article. References hereinafter to "sections" are, unless otherwise specified, references to sections in this article. Defined terms remain defined terms whether or not capitalized.

A. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

B. "City" means the city of Fargo, North Dakota.

C. "Department" means the City Engineering Department of the city.

D. "Director" means the City Engineer, or his or her designee.

E. "Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

F. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

G. "Excavation Permit" means the permit which, pursuant to Article 18-09 of the Fargo Municipal Code, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

H. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.

I. "Gross Revenues" means any and all revenue in any way derived and collected directly or indirectly by permittee, its affiliates, subsidiaries, parents, or any person in which permittee

has a financial interest, from or in connection with the providing of services or materials to persons, firms or corporations within the city of Fargo; provided, however, that this shall not include any taxes collected by such permittee on behalf of a governmental unit.

J. “Local Representative” means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this article.

K. “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

L. “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this article.

M. “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

N. “Registrant” means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

O. “Construction Performance Bond” means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in accordance with the terms of the right-of-way permit, or other applicable state law or local regulation.

P. “Restore” or “Restoration” means the process by which a right-of-way is returned to the same condition and life expectancy that existed before excavation.

R. “Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular other nonwire telecommunications or broadcast service.

Source: 2918 (1998).

24-0302. Administration.--The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

Source: 2918 (1998).

24-0303. Utility coordination committee.--The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The director may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

Source: 2918 (1998).

24-0304. Registration and right-of-way occupancy.--

A. Registration.--Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in the right-of-way, including

persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the director. Registration will consist of providing application information and paying a registration fee.

- B. Registration prior to work.--No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the director.
- C. Exceptions.--Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting or requiring persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits under this article. However, nothing herein relieves a person from complying with the provisions of the North Dakota "One-Call Excavation Notice System" law, N.D.C.C. chapter 49-23.

Source: 2918 (1998).

24-0305. Registration Information--

- A. Information required.--The information provided to the director at the time of registration shall include, but not be limited to:
 - 1. Each registrant's name, North Dakota One-Call registration certificate number, address and e-mail address if applicable, and a telephone and facsimile numbers.
 - 2. The name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - 3. A certificate of insurance of self-insurance:
 - (a) Verifying that an insurance policy has been insured to the registrant by an insurance company licensed to do business in the state of North Dakota or a form of self-insurance acceptable to the directors;
 - (b) Verifying that the registrant is insured against claims for personal injury, including death, as well claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

- (c) Name the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (d) Requiring that the director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - (e) Indicating comprehensive liability coverage, automotive liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.
4. The city may require a copy of the actual insurance policies.
 5. If the person is a corporation, a copy of the certificate of incorporation as recorded and certified by the Secretary of State.
 6. A copy of the person's order granting a certificate of authority from the North Dakota Public Service Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
- B. Notice of changes.--The registrant shall keep all of the information listed above current at all times by providing to the director information as to changes within 15 days following the date on which the registrant has knowledge of any change.

Source: 2918 (1998).

24-0306. Reporting obligations.--

- A. Operations.--Each registrant shall, at the time of registration and by December 1st of each year, file a construction and major maintenance plan for underground facilities with the director. Such plan shall be submitted using a format designated by the director and shall contain the information determined by the director to be necessary to facilitate the coordination and reduction in frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:
1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
 2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term “project” in this section shall include both next-year projects and five-year projects.

By January 1st of each year the director will have available for inspection in the director’s office a composite list of all projects of which the director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1st, each registrant may change any project in its list of next-year projects, and must notify the director and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

- B. Additional next-year projects.--Notwithstanding the foregoing, the director will not deny an application for right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Source: 2918 (1998).

24-0307. Permit requirement.--

- A. Permit required.--Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way occupancy permit and excavation permit from the director to do so.
- B. Permit extensions.--No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit and (ii) a new permit or permit extension is granted.
- C. Delay penalty.--Notwithstanding subdivision (b) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by city commission resolution.
- D. Permit display.--Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director.

Source: 2918 (1998).

24-0308. Permit applications--Application for a permit is made to the director.--Right-of-way permit application shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- A. Registration with the director pursuant to this article;
- B. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known and existing proposed facilities.
- C. Payment of money due the city for:

1. Permit fees and franchise or user fees, if applicable.
2. Any overdue permit or fee payment.
3. Any disputed loss, damage or expense suffered by the city as a result of the applicants prior excavating or any emergency actions taken by the city.

Source: 2918 (1998).

24-0309. Issuance of permit; conditions.--

- A. Permit issuance.--If the applicant has satisfied the requirements of this article, the director shall issue a permit.
- B. Conditions.--The director may impose reasonable conditions upon issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

Source: 2918 (1998).

24-0310. Permit Fees.--

- A. Annual fees shall be in the amount of (i) \$1 per foot of right-of-way access or excavation, (ii) if the right-of-way user is providing service on a city-wide basis, then the annual fees shall be five percent of the applicant's gross revenues in the manner as described in § 24-0331, below.
- B. Excavation permit fees shall be in the amount set forth in the Excavation Code B Article 18-09 of the Fargo Municipal Code.
- C. Payment of permit fees.--No permit shall issued without the payment of permit fees. The city may allow applicant to pay such fees within 30 days of billing.
- D. Non-Refundable.--Permit fees that were paid for a permit that the director has revoked for a breach as stated in § 24-0319 are not refundable.

Source: 2918 (1998).

24-0311. Right-of-way patching and restoration--Compliance with excavation code.--

- A. Timing--The work to be done under the permit and the patching and restoration of the right-of-way as required herein must be completed within the date specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable.
- B. Patch and restoration--Compliance with excavation code. Permittee shall patch and restore its own work in compliance with the excavation code, article 18-09 of the Fargo Municipal Code.
- C. Standards--The permittee shall perform patching and restoration according to the standards and with the materials specified by the director and the excavation restoration requirements in Fargo Municipal Code Article 18-09. The director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The director in exercising this authority shall comply with excavation code standards for right-of-way restoration and shall further be guided by the following considerations:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
 2. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
 3. The pre-excavation condition of the right-of-way; the remaining life-expectancy of the right-of-way affected by the excavation;
 4. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
 5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
- D. Guarantees--The permittee guarantees its work and shall maintain it for 36 months following its completion. During this 36-month period, it shall, upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five calendar days of the receipt of the notice from the director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable.
- E. Failure to Restore.--If the permittee fails to restore the right-of-way in the manner and condition required by the director, or fails to satisfactorily and timely complete all restoration required by the director, the director at its option may do such work. In that event, the permittee shall pay to the city within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Source: 2918 (1998).

24-0312. Joint applications--

- A. Joint application.--Registrants may jointly apply for permits to excavate or obstruct a right-of-way at the same place and time.
- B. Shared fees.--Registrants who apply for permits for the same obstruction or excavation, which the director does not perform, may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Source: 2918 (1998).

24-0313. Supplementary applications--

- A. Limitation on area.--A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee

which determines that an area greater than that specified in the permit obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby and (ii) be granted a new permit or a permit extension.

- B. Limitation on dates.--A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

Source: 2918 (1988).

24-0314. Other obligations.--

- A. Compliance with other laws.--Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including N.D.C.C. Chapter 49-23 (“One-Call Excavation Notice System”). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- B. Prohibited work.--Except in an emergency, and with the approval of the director, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference with right-of-way.--A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Work area protection.--All work zones shall have advance and local area signing and work zone protection in conformance to the current version of the Manual on Uniform Traffic Control Devices (MUTCD). A work zone protection plan must be submitted as part of the right-of-way permit application.

Source: 2918 (1998).

24-0315. Denial of permit.--The director may deny a permit for failure to meet the requirements and conditions of this article or if the director determines that the denial is necessary to protect the health, safety and welfare of the public or when necessary to protect the right-of-way and its current use.

Source: 2918 (1998).

24-0316. Inspection--

- A. Notice of completion.--When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the director.
- B. Site inspection.--Permittee shall make the work-site available to the director and to all others as authorized by law for inspections at all reasonable times during the execution of and upon completion of the work.
- C. Authority of director.--
 - 1. At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - 2. The director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within 10 days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to § 24-0319.

Source: 2918 (1998).

24-0317. Work done without a permit--

- A. Emergency situations.--Each registrant shall immediately notify the director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.
If the director becomes aware of an emergency regarding a registrant's facilities, the director will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the director may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- B. Non-Emergency situations.--Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, deposit with the director the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this article.

Source: 2918 (1998).

24-0318. Supplementary notification.--If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the director of the accurate information as soon as this information is known.

Source: 2918 (1998).

24-0319. Revocation of permits.--

- A. Substantial breach.--The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
1. The violation of any material provision of the right-of-way permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 3. Any material misrepresentation of fact in the application for a right-of-way permit;
 4. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 24-0316.
- B. Written notice of breach. If the director determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. Response to notice of breach. Within 24 hours of receiving notification of the breach, permittee shall provide the director with a plan, acceptable to the director, that will cure the breach. Permittee's failure to so contact the director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- D. Reimbursement of city costs.--If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

Source: 2918 (1998).

24-0320. Mapping data.--Each registrant shall provide mapping information required by the

director. Mapping data shall generally consist of drawing exhibits showing all existing above ground and underground facilities and proposed location of new facilities. Drawing shall be submitted in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the city's coordinate system and certified by a registered land surveyor or professional engineer.

Source: 2918 (1998).

24-0321. Location of facilities.--

- A. Undergrounding.--Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing above-ground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- B. Corridors.--The director may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the director expects will someday be located within the right-of-way. All permits issued by the director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five-foot clear zone shall be maintained on each side of city sanitary sewer, storm sewer and water main utilities.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the director shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
- C. Nuisance.--One year after the passage of this article, and facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.
- D. Limitation of space.--To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

Source: 2918 (1998).

24-0322. Relocation of facilities.--A registrant must promptly and at its own expense, with do regard for seasonal working conditions, permanently remove and relocate its facilities in the

right-of-way whenever the director for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The director may make such requests to prevent interference by the company's equipment or facilities with (i) a present or future city use of the right-of-way, (ii) a public improvement undertaken by the city, (iii) an economical development project in which the city has an interest or investment, (iv) when the public health, safety, and welfare of the public require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid to the person they are for.

Source: 2918 (1998).

24-0323. Pre-excavation facility and facility's location.--In addition to complying with the requirements of North Dakota Century Code Chapter 49-23 ("One-Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify or work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

Source: 2918 (1998).

24-0324. Damage to other facilities.--When the director does work in the right-of-way and finds it necessary to maintain, support, or move a registrants facilities to protect it, the director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing.

Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of any other registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

Source: 2918 (1998).

24-0325. Right-of-way vacation.--

- A. Reservation of right.--If the city vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the city shall reserve, to and for itself and all registrants 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 such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- B. Relocation of facilities.--If the vacation requires the relocation of registrant's or permittee's facilities; and (i) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the city and the registrant or permittee; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

Source: 2918 (1998).

24-0326. Indemnification and liability.--By registering with the director, or by accepting a permit under this article, a registrant or permittee agrees as follows:

- A. Limitation of Liability.--By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability (i) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.
- B. Indemnification.--A registrant or permittee 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 issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrants or permittee's facilities located in the right-of-way.

The city shall not be indemnified for losses or claims occasioned through its own negligence except for losses and claims arising out of or alleging the local government units, negligence as to the issuance of permits or inspections to ensure permit compliance. The city shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the city after receiving notice of the registrants or permittees determination.

- C. Defense.--If a suit is brought against the city under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the city in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudice by the lack or delay of notice. If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without consent of the city. Consent will not be unreasonably withheld.

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the city.

In defending an action on behalf of the city, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the city could assert in its own behalf.

Source: 2918 (1998).

24-0327. Abandoned and unusable facilities.--

- A. Discontinued operations.--A registrant who has determined to discontinue its operations in the city must either: (1) provide information satisfactory to the director that the registrants obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant; or (2) submit to the director a proposal an instruments for transferring ownership of its facilities to the city. If a registrant proceeds under this clause, the city may, at its option: (a) purchase a facility; or (b) require the registrant, at its own

expense, to remove it; or (c) require the registrant to post a bond in an amount sufficient to reimburse the city for reasonably anticipate costs to be incurred in removing the facilities.

- B. Abandoned facilities.--Facilities of a registrant who fails to comply with subparagraph (A) of this section, and which, for two years remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, by not limited to, (i) abating the nuisance (ii) taking possession of the facilities and restoring it to a usable condition, or (iii) requiring removal of the facilities by the registrant, or the registrants successor in interest.
- C. Removal.--Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from the right-of-way during the next scheduled excavation, unless this requirement is waived by the director.

Source: 2918 (1998).

24-0328. Appeal.--

- A. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, they have the denial, revocation, or fee imposition reviewed, upon written request by the city commission. The city commission shall act on a timely written request at its next regularly scheduled meeting. A decision by the city commission affirming the denial, revocation, or fee imposition will be in writing and supported by written finding establishing the reasonableness of the decision.
- B. Upon confirmation by the city commission of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the city commission and the right-of-way user. If the parties cannot agree, on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the city, one arbitrator selected by the right-of-way user, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be born equally by the city and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and of the arbitration.

Source: 2918 (1998).

24-0329. Reservation of regulator and police powers.--A permittees or registrants rights are subject to the regulator police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Source: 2918 (1998).

24-0330. Severability.--If any section, subsection, sentence, clause, fraise, or portion of this article is for any reason held invalid or unconstitutional by any court or administrative agency of competence jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order then any permit, right, or registration issued under this article or any portions of this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Source: 2918 (1988).

24-0331. General financial and insurance provisions.--

A. Form of payment to city for city-wide services.

1. When required under § 24-0310, when permittee is providing city-wide services, Permittee shall pay to the city, credited to the department, an annual amount equal to 5% of permittee's gross revenues. The foregoing payment shall be compensation for use of streets and other public property.
2. Payments due the city under this provision 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 provision 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 5% fee shall be clearly shown as part of this certification in a form approved by the director. 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 Fargo, and delivered or sent by mail to the director.
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 allowable rate pursuant to § 47-14-09, N.D.C.C. but in no event to exceed an annual rate of 12%.
7. 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. The operator shall first be given seven 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, 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.

Source: 2918 (1998).

24-0332. Penalty. Every person, firm, or corporation violating article 24-03 of the Fargo Municipal Code shall, upon conviction thereof, be guilty of an infraction and shall be punished by a fine not to exceed \$500 for each such offense; the court to have power to suspend said sentence and to revoke the suspension thereof. Each day any person shall violate article 24-03 of the Fargo Municipal Code shall constitute a separate infraction or offense.

Source: 2918 (1998).