

TITLE XIV.

FRANCHISES

CHAPTERS:

- 14-01. Cable Television Franchise.
- 14-02. Otter Tail Power Company - Electrical.
- 14-03. Northern States Power Company - Gas.

CHAPTER 14-01.

CABLE TELEVISION FRANCHISE

Source: Ord. 2008-1

SECTIONS:

- 14-0101. Short Title and Definitions.
- 14-0102. Grant of Authority and General Provisions.
- 14-0103. Application for New Franchise.
- 14-0104. Construction and Operations Standards.
- 14-0105. System Provisions and Public Services.
- 14-0106. Operation and Administration Provisions.
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14-0101. **SHORT TITLE AND DEFINITIONS.**

1. Short Title. This Ordinance shall be known and cited as the “Cable Communications Regulatory Ordinance.”
2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
 - a. “Basic Cable Service” means the service tier which includes the retransmission of local broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
 - b. "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:
 - Video Programming carried on the Basic Service Tier;
 - Video Programming offered on a per-per-channel or pay-per-program basis;
 - or
 - A combination of multiple channels of per-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long

as the combined service: consists of commonly-identified Video Programming; and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth un 47 U.S.C. §543(1)(2) and 47 C.F.R. 76.901(b) (1993).

- (c) “Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming servide, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service. There shall be at least 35 channels offered for cable service.
- (d) “Cable System” or “System” shall have the meaning ascribed to it in federal law.
- (e) "Council" means the Horace, North Dakota City Council.
- (f) “Franchise” means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.
- (g) “Franchise Area” means the area within the legal boundaries of the Grantor.
- (h) “Grantee” is the Person which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.
- (i) “Grantor” is the City of Horace.
- (j) “Gross Revenue” means only that monthly revenue received from Basic Cable Service, Cable Programming Service, and Pay Television directly by Grantee from the operation of its System within Franchise Area. The Term “Gross Revenues” shall not include any other revenue billed or received by the Grantee, including, but not limited to installation fees, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- (k) “Multichannel Video Program Distributor” or “MVPD” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television

receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

- (l) “Open Video Services” or “OVS” means any video programming Services provided to any person by a Franchisee 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.
- (m) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (n) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o) “Standard Installation” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- (p) “Street” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q) “Subscriber” means any Person who lawfully receives Cable Service.
- (r) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

14-0102. **GRANT OF AUTHORITY AND GENERAL PROVISIONS.**

1. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the Grantor without a Franchise authorizing the same, unless applicable federal or State law prohibits the Grantor’s enforcement of such a requirement.
2. Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein.
3. Grant of Nonexclusive Authority.
 - a. A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof,

and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System. The Grantee shall be obligated to utilize underground facilities whenever reasonably possible.

- b. A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other Grantees shall have the right either (i) to opt in to the competitor's Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.
 - c. Before granting an additional Franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.
 - d. Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.
 - e. In the event Grantor grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Grantor, a Grantee shall have the right to terminate or reduce the term of this Franchise in its sole discretion.
 - f. Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, the Franchise shall control.
4. Franchise Term. A Franchise shall be in effect for a period of up to fifteen (15) years from the date of acceptance by a Grantee, unless renewed, revoked, or terminated sooner as herein provided.
5. Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered,

provided, however, that Grantee(s) shall not be required to extend service beyond its present System boundaries unless there is a minimum of thirty (30) homes per cable mile as measured from the last fiber node or terminating amplifier.

6. Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or Grantor's Administrator of this Ordinance as specified in a Franchise.

14-0103. **APPLICATION FOR NEW FRANCHISE.**

1. An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:
 - (a) Applicant name and business address of Applicant.
 - (b) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.
 - (c) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.
 - (d) List of officers, directors and managing employees of Applicant and resumes of each.
 - (e) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.
 - (f) A certificate of insurance consistent with the requirements of this Ordinance.
 - (g) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
 - (h) A description of the financial qualifications of the Applicant to construct and operate the System, including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.
 - (i) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use. No franchise applicant will

be expected to provide more than one (1) channel, and it may be subjected to shared use as determined by the City of Horace.

2. The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review and approval will be ninety (90) days.
 - (a) The evidence of legal, technical and financial ability required in the Applicant's proposal will be such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.
 - (b) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.
 - (c) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.
 - (d) The City may consider any additional information that it deems applicable.

14-0104. **CONSTRUCTION AND OPERATIONS STANDARDS**

1. Conditions on Street Use.

- (a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.
- (b) The Grantor shall impose no permit fees upon a Grantee.
- (c) If at any time during the period of this Franchise Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.
- (d) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the

Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

- (e) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
- (f) Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.
- (g) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- (h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.
- (i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire the system as specified in Section 3.1.(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- (j) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.
- (k) All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee, and Grantee shall have the right to remove said cable and equipment as owner. The City of Horace will have no right to use or remove said cable and equipment installed by Grantee. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

- (l) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest, and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.
- (m) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (n) Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, and further provided, such proposed joint use would not unduly interfere with the Grantee's operations, the City Council may require the Grantee to participate in mediation/arbitration involving neutral third person(s) seeking to ascertain (1) just and reasonable consideration and (2) such other terms are necessary so as to enhance the public convenience of joint use of poles or other wire-holding structures of the Grantee.
- (o) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.
- (p) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulation.

14-0105. **SYSTEM PROVISIONS AND PUBLIC SERVICES**

1. Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.
2. Service to Schools and City. A Grantee shall, subject to the line extension requirements of Section 2.5 herein, provide one (1) Drop and one (1) outlet of Basic Cable Service at no cost to public and parochial elementary and secondary schools in City, and one (1) City building to be mutually agreed upon by City and a Grantee.

3. Community Channel. The Grantee shall allocate one (1) channel to the City as a community channel. A Grantee shall have no responsibility to manage, program or otherwise administer the use of the community channel. Until such time as the City files a written request with Grantee for full-time use of such channel, a Grantee may use that portion of the channel not being used by the City. City shall provide at least ninety (90) days prior written notice of its intent to increase its use of the community channel to allow Grantee a reasonable time period to vacate said capacity.
4. Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the emergency alert requirements of federal law.
5. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

14-0106. **OPERATION AND ADMINISTRATION PROVISIONS**

1. Indemnification of Grantor.
 - a. A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.
 - (b) In order for Grantor to assert its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:
 - (1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2. Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence; Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.
3. Franchise Fee.
 - (a) A Grantee will pay Grantor an annual franchise fee in the amount of three percent (3%) of Grantee's Gross Revenues for the first five (5) years of the franchise period. At its option by ninety (90) days written notice to Grantee, the City of Horace may increase the annual franchise fee for the years six (6) through ten (10) of the franchise term by up to an additional one (1%) percent [but no more than a total of 4%]. Similarly, at its option by ninety (90) days written notice to Grantee, the City of Horace may increase the annual franchise fee for the years eleven (11) through fifteen (15) of the franchise term by up to an additional one (1%) percent [but no more than a total of 5%].
 - b. The franchise fee shall be payable at least quarterly. The quarterly payments shall be made within thirty (30) days of the end of Grantee's fiscal quarter, together with a brief report showing the basis for the computation. Grantee can make franchise fee payments for lesser regular periods of time provided there exists a brief report showing the basis for the computation.
 - c. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

14-0107. **REVOCAION, ABANDONMENT, AND SALE OR TRANSFER**

1. Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if, after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.
2. Procedures for Revocation.
 - (a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice

required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

- (b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - (c) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
 - (d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
 - (e) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.
3. Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

14-0108. MISCELLANEOUS PROVISIONS

- 1. Franchise Renewal. The Franchise may be renewed upon application of the Grantee pursuant to 47 U.S.C. § 546, or in accordance with any relevant successor state or federal law.
- 2. Amendment of Franchise. A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.
- 3. Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.
- 4. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance and the remainder shall remain in full force and effect.

5. Theft of Services. The City of Horace will support reasonable efforts of any Grantee to guard against theft of Grantee's services or tampering with Grantee's property.

CHAPTER 14-02

OTTER TAIL POWER COMPANY - ELECTRICAL

SECTIONS:

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

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

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

14-0203. **OBSTRUCTION OF ROADWAYS TO BE MINIMIZED.** all conduits, poles, wires and pipes installed by virtue of this ordinance shall be erected in such places and in such

manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor under the supervision of the City Council of said City.

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

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

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

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

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

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

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

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

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

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

14-0211. **GRANTEE SUBJECT TO POLICE POWER REGULATIONS.** The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

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

CHAPTER 14-03

NORTHERN STATES POWER COMPANY - GAS

SECTIONS:

- 14-0301. Definitions.
- 14-0302. Grant of Franchise.
- 14-0303. Restrictions.
- 14-0304. Service and Rates.
- 14-0305. Relocating.
- 14-0306. Indemnification.
- 14-0307. Vacation of Public Ways.
- 14-0308. Written Acceptance.
- 14-0309. General Provisions.
- 14-0310. Effective Date.

14-0301. **DEFINITIONS.**

1. "City" means the City of Horace, County of Cass, State of North Dakota.
2. "City Utility System" means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
3. "Company" means Northern States Power Company, a Minnesota corporation, its successors and assigns.
4. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
5. "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Manager and Chief Executive, NSP-North Dakota, P.O. Box 2747, Fargo, ND 58108. Notice to the City shall be mailed to the City Auditor; P.O. Box 9, Horace, ND 58059. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
6. "Public Way" means any street, alley, walkway or other public right-of-way within the City.

14-0302. **GRANT OF FRANCHISE.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the non-exclusive right and privilege of erecting a gas distribution system and using the Public Ways of City for the purpose of constructing, operating, repairing, and maintaining in, on, over, under and across the same, all gas pipes, mains and appurtenances usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise agreement.

14-0303. **RESTRICTIONS.**

1. All gas pipes, mains, regulators, and other property and facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits, including excavation permits, required by ordinance, and other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided at City's request Company removes abandoned metal pipe and other inflexible structures interfering with a City improvement project to the extent Company can so remove without doing additional excavation to that already done by the City.
2. In constructing, removing, replacing, repairing, or maintaining said gas pipes, mains and appurtenances, Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter.

14-0304. **SERVICE AND RATES.** The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Service Commission of this State or its successor agency.

14-0305. **RELOCATING.**

1. Whenever the City, at its cost, including by assessment to property owners, shall grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its mains, services, and other property located in said Public Way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five

(5) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City Utility System to previously unserved area, Company may be required to relocate at its own expense at any time.

2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.
3. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project or federally-aided improvement thereto shall be governed by the provisions of North Dakota law as supplemented or amended.
4. The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

14-0306. **INDEMNIFICATION.**

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

14-0307. **VACATION OF PUBLIC WAYS.** The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required primarily for a City improvement project, the vacation of any Public Way, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota law.

14-0308. **WRITTEN ACCEPTANCE.** Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Auditor after the final passage and any required publication of this Ordinance. The City, by resolution, may revoke this franchise agreement if Company does not file a written acceptance within 90 days after publication.

14-0309. **GENERAL PROVISIONS.**

1. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
2. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.
3. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.
4. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

5. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

14-0310. **EFFECTIVE DATE.** This Ordinance is effective as provided by statute or charter and upon acceptance by Company as provided in Section 14-0308.