

CITY OF GRANT

ORDINANCE NO. 38

0219

NEWAYGO COUNTY INTERMEDIATE SCHOOL DISTRICT  
N.C.A.T.S. (Newaygo County Advanced Technology Service) FRANCHISE

AN ORDINANCE, granting to Newaygo County Intermediate School District, its successors and assigns the right, power and authority to install, lay, maintain and operate fiber-optic cable and services on, along, across and under the highways, streets, alleys, bridges and other public places, and to conduct a communication service in the City of Grant, Newaygo County, Michigan.

THE CITY OF GRANT ORDAINS:

Section 1. Grant of communication service franchise and consent to laying fiber-optic cable, etc. Subject to all the terms and conditions contained in this franchise ordinance, the City Charter and City Ordinances as from time to time in effect, City hereby grants Newaygo County Intermediate School District (the "ISD"), and to its successors and assigns, consent to erect, construct, install, maintain, and operate fiber-optic cable and other necessary equipment and appurtenances in the highways, streets, alleys, and other public places in the City of Grant, Newaygo County, Michigan, and a franchise is hereby granted to the ISD, its successors and assigns, to transact and conduct a communication service in the City of Grant for the purpose of transmitting and communicating information by means of fiber-optic cable to school systems, local businesses and such other participants as may from time to time be determined, and all other matters incidental thereto.

Section 2. Communication Service. If the provisions and conditions herein contained are accepted by the ISD, then the ISD shall provide communication service

to such parties residing or located in the City of Grant as may from time to time be determined by the ISD, provided same shall be in accordance with all applicable federal, state or local laws, rules and regulations including, but not limited to, those of the Michigan Public Service Commission or a successor agency having similar jurisdiction.

Section 3. Nonexclusive Franchise. This franchise and all rights granted hereunder are nonexclusive. City reserves the right to grant such other and future franchises as it deems appropriate. This franchise does not establish any priority for the use of public rights-of-way by the ISD or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights-of-way the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

Section 4. Emergencies. City may remove or damage the fiber-optic cable and any associated equipment or appurtenances, in the case of fire, disaster, or other emergencies threatening life or property, as determined by the Mayor, City Manager, Fire Chief, or Police Chief. In such event neither City nor any agent, contractor or employee thereof shall be liable to the ISD for any damages caused to the ISD or the fiber-optic system, equipment or appurtenances.

Section 5. Other Permits. This franchise does not relieve the ISD of the

obligation to obtain permits, licenses and other approvals from the City necessary for the construction, repair or maintenance of the fiber-optic cable, equipment or appurtenances, or compliance with City ordinances such as compliance with right-of-way, building permits and the like. No road, street, alley, or highway shall be opened for the installing or laying of fiber-optic cable or associated equipment and appurtenances except upon application to the Highway Commissioner or the City of Grant or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, it shall be the duty of the Highway Commissioner or the City Commission or such other authority as may have jurisdiction, to issue a permit to the ISD to do the work proposed.

Section 6. No Burden on Public Ways. ISD shall not erect, install, construct, repair, replace or maintain the fiber-optic cable, equipment and appurtenances in such a fashion as to unduly burden the present or future use of the public ways. If the City in its reasonable judgment determines that any portion of the fiber-optic cable, equipment or appurtenances is an undue burden, the ISD at its expense shall modify its system or take such other actions as City may determine are in the public interests to remove or alleviate the burden, and the ISD shall do so within the time period established by City.

Section 7. Minimum Interference. The fiber-optic cable, equipment and appurtenances shall be erected and maintained by the ISD so as to cause the minimum interference with the use of the public ways and with the rights or reasonable convenience of property owners who adjoin any of the public ways.

Section 8. Restoration of Property. ISD shall immediately restore at its sole cost

and expense, in a manner approved by City, any portion of the public ways that is in any way disturbed by the construction, operation, maintenance or removal of the fiber-optic cable, equipment or appurtenances, to as good or better condition than that which existed prior to the disturbance, and shall at its sole cost and expense immediately restore and replace any other property, real or personal, disturbed, damages or in any manner damaged by or on account of the ISD, or by its acts or omissions to as good or better condition as such property was in immediately prior to the disturbance, damage or injury.

Section 9. Tree Trimming. The ISD may trim trees upon and overhanging the public ways so as to prevent the branches of such trees from coming into contact with the fiber-optic cable, equipment or appurtenances. The ISD shall minimize the trimming of trees to trimming only those trees which are essential to maintain the integrity of the fiber-optic cable system. No trimming shall be performed in the public ways without previously informing City. All trimming of trees, except in an emergency, on public property shall have the prior approval of City and, except in an emergency, all trimming of trees on private property shall require the consent of the property owner.

Section 10. Relocation of Facilities. ISD shall at its own cost and expense, protect, support, disconnect, relocate or remove from the public ways any portion of the fiber-optic cable, equipment or appurtenances, when required to do so by City.

Section 11. Private Property. ISD shall be subject to all laws, ordinances or regulations, regarding private property in the course of constructing, installing, operating or maintaining the fiber-optic cable system in City. ISD shall comply with all

zoning and land use restrictions as may hereafter exist or may hereafter be amended.

Section 12. Underground Facilities. If City in the future requires that, in a specific area of the City, public utilities shall place their cables, wires, or other equipment underground, then ISD shall also place its existing and future cables, wires, and other equipment underground within a reasonable period of time, not to exceed six months of notification by City, and same shall be without expense or liability therefor to City. In those developing areas where underground facilities are required, ISD shall install the necessary cables, wires or other equipment at the same time and utilize the same trenches as other utility companies, such as telephone or electric utilities.

Section 13. Discontinuance and Removal of the Fiber-Optic System. Upon the revocation, termination or expiration of this franchise, unless an extension is granted, ISD shall immediately discontinue the provision of technology communication services and all rights of ISD to use the public ways shall cease. ISD, at the direction of City, shall remove its fiber-optic cable, equipment and appurtenances, from the public ways, in, over, under, along, or through which they are installed within six months of the revocation, termination or expiration of this franchise. ISD shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its fiber-optic cable system. Restoration of City property shall be in accordance with the directions and specifications of City and all applicable laws, ordinances and regulations, at ISD's sole expense. If such removal and restoration is not completed within six months after the revocation, termination, or expiration of this franchise, all of ISD's property remaining in the affected public ways

shall, at the option of City, be deemed abandoned, and shall, at the option of City, become its property or City may obtain a court order compelling ISD to remove same. In the event ISD fails or refuses to remove its fiber-optic cable system, equipment and appurtenances, or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of said system, City, at its option, may perform such work and collect the costs thereof from ISD.

Section 14. Disclaimer of Liability. City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of ISD's fiber-optic cable system or service.

Section 15. Indemnification. ISD shall at its sole cost and expense indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses, including reasonable fees and attorney expenses, whether legal or equitable, which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of ISD, its personnel, employees, agents, or contractors, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the fiber-optic cable system, equipment, appurtenances or services (including those arising from any manner contained in or resulting from the transmission of information or

programming over said system and including any claim or lien arising out of work, labor, materials or supplies provided or supplied to ISD, its contractors or subcontractors), the provision of services by ISD, or ISD's failure to comply with any Federal, State or local statute, ordinance or regulation.

Section 16. Assumption of Risk. ISD understands and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including public ways, and ISD hereby agrees to indemnify and hold harmless the Indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the fiber-optic cable system or ISD's failure to comply with any Federal, State or local statute, ordinance or regulation.

Section 17. Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder ISD shall, upon notice from any of the Indemnitees, at ISD's sole cost and expense, resist and defend the same with legal counsel selected by City, provided further, ISD shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of City.

Section 18. Notice, Cooperation and Expenses. City shall give ISD prompt notice of the making of any claim or the commencement of any action, suit or other proceeding with respect to City's liability or indemnification. Nothing herein shall be deemed to prevent City from cooperating with ISD and participating in the defense of any litigation by City's own counsel.

Section 19. Insurance. At all times during the terms of this franchise, including any time for removal of facilities or restoration, ISD shall obtain, maintain and pay premiums for all insurance policies of such type and in such amounts as required by City. ISD shall file with City certificates of insurance evidencing coverage as so required. Failure to obtain and maintain any insurance policy required may be grounds for revocation or termination of this franchise, at the option of City.

Section 20. Transfer of Ownership - Consent Required. This franchise and the fiber-optic cable system shall not be sold, transferred, assigned, or otherwise encumbered, without the prior consent of City, such consent not to be unreasonably withheld.

Section 21. Rates. Any rates charges for services provided by ISD shall be in accordance with the rules and regulations of the Michigan Public Service Commission or such other public agencies or authorities or governmental entities as may have jurisdiction to set same, if any.

Section 22. Charter/Preemption. ISD, its successors and assigns, in the operation of the franchise agreement, is expressly subject to the terms and provisions of the Charter of the City of Grant and said Charter terms and provisions shall control unless preempted by other law, statute or regulation.

Section 23. Severability. If any section, paragraph or provision of this franchise shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this franchise.

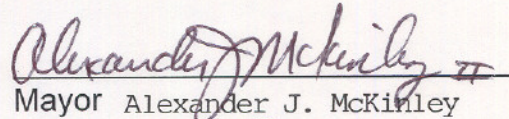


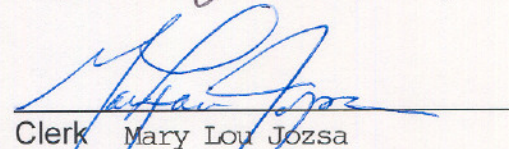
Section 24. Conflicts/Repealer. All ordinances and resolutions and parts thereof, which conflict with any of the terms of this ordinance are hereby rescinded. In the case of conflict between this ordinance or any such ordinances and resolutions, this ordinance shall control.

Section 25. Revocation of Franchise. This franchise may be revoked at the will of the City of Grant.

Section 26. Effective Date. This ordinance shall take effect on July 3, 1995

Commissioner Robinson moved the adoption of the foregoing ordinance which was supported by Commissioner Raterink, and thereupon adopted by the City Commission of the City of Grant at a regular meeting held June 12, 1995.

  
Mayor Alexander J. McKinley

  
Clerk Mary Lou Jozsa

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