

Chapter 9.10  
FRANCHISE - QWEST CORPORATION

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9.10.010     Franchise Granted

Qwest Corporation, a Colorado corporation, hereinafter referred to as the "Company," is hereby granted, subject to the terms and conditions hereof, the franchise right and privilege to do a telecommunication business within said City of North Plains and to place, erect, lay, maintain and operate in, upon, over and under the public rights-of way within the corporate limits of the City of North Plains, telecommunications facilities and equipment for its telecommunications purposes.

9.10.020     Term

That all rights and privileges hereby granted shall be effective as of October 15, 2008, and shall terminate at the expiration of ten years from said date. This term is subject to the provisions relating to modification, amendment, or revocation of franchises as provided in North Plains Municipal Code Section 3.25.045 and are not inconsistent with the terms of this franchise.

9.10.030     Performance

During the term of this franchise, the Company agrees to comply with all lawful terms and conditions of North Plains Municipal Code Chapter 3.25, the terms, definitions, conditions, and requirements of which are hereby incorporated by reference into this franchise grant.

9.10.040     Excavations

The Company, under the direction of the City or its properly constituted authorities, may make all necessary excavations in any right-of way for the purpose of erecting, constructing, repairing, maintaining, removing and relocating its telecommunications facilities and equipment. Such excavation and other work within the public rights-of-way shall be done in compliance with applicable rules, regulations, ordinances, and orders which may, during the continuance of this franchise, be adopted from time to time by the City or as may be otherwise provided by law and are not inconsistent with the terms of this franchise.

9.10.050      Restoration of Streets

That when any excavation shall be made pursuant to the provisions of this Chapter, the Company shall restore the portion of the public right-of-way to good order and condition, and all work shall be done in strict compliance with the rules, regulations, ordinances or orders which may, during the continuance of this franchise, be adopted from time to time by the City or as may be otherwise provided by law and are not inconsistent with the terms of this franchise. The City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by the Company, its successors and assigns; the City shall cause such repairs to be made at the expense of the Company, its successors and assigns.

9.10.060      Franchise Conditions

The rights and privileges granted by this Chapter are granted upon the conditions herein contained and also upon the following considerations and conditions:

- (1) That the Company shall, within thirty (30) days from the effective date of this franchise, file with the City Recorder its written acceptance of this franchise, subject to all the terms, obligations, restrictions and provisions of this franchise, and upon the expiration of the allotted time for the acceptance of this franchise, the same not having been accepted unconditionally, then this franchise shall become wholly void, inoperative and of no effect.
- (2) That in consideration of the rights and privileges herein granted, the Company shall pay to the City a franchise fee for each year, or part of each year, during the life of this franchise. Such franchise fee payment made by the Company will be accepted by the City from the Company also in payment of any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose relating to right-of-way use now or hereafter to be imposed by the City upon the Company during the term of this franchise. The amount of the franchise fee shall be seven percent (7%) of the gross revenue of the Company as defined by ORS 221.515. In the event that there is a change to ORS 221.515 or other law impacting the rights of the City to assess franchise fees, the parties shall negotiate in good faith to adjust the franchise fee in accordance with Section 9.10.090. Notwithstanding the foregoing, if there is a change to ORS 221.515 or other law that results in a legislative expression of a specific new maximum allowed franchise fee, upon notice from one or both parties the franchise fee will be automatically adjusted accordingly. The new franchise fee will be effective on the date that the applicable change to the law becomes effective. Nothing herein shall be deemed to be a waiver by either party of their rights under existing law or their right to challenge the legality of the new franchise fee.
- (3) That on or before the first day of April, 2009, and on or before said day of each year thereafter during the term of this franchise, the Company shall file

with the City Recorder a statement showing the amount of gross revenue of the Company within the City on the basis-outlined in Subsection (2) of this Section for the calendar year immediately preceding the year in which the statement is filed. The annual franchise fee for the year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee shall be payable quarterly on or before the forty-fifth day after the end of the preceding quarter.

The City has the right to conduct or have conducted an audit of gross revenues to determine if the fee required by this Chapter has been paid by the Company. Upon receipt of a written request, the Company must provide the City copies of documents requested by the City that are necessary to conduct an audit. If the Company believes the requested documents contain confidential information that is not subject to public disclosure, the Company may mark the documents as confidential and exempt from public disclosure. The City will not disclose such documents to third parties unless such disclosure is required to comply with state law. After an audit any undisputed under fee payment due the City or over fee payment due the utility is payable 30 days after written notice of the amount due.

If the franchise fee is not paid on or before the due date, nine percent interest must be paid on the fee from the date due to the date on which payment is received by the City, compounded daily, unless payment was delayed based on a good faith dispute as to the proper amount owing, in which case the interest on the franchise fee shall be compounded annually and prorated for the period during which the payment was delayed. Should the Company fail or neglect to pay any of said annual payments provided for in this Section for thirty (30) days after any payment shall become due and payable and after thirty (30) days' written notice from the City, the City, by its properly constituted authority, may at its option either continue this franchise in force and/or proceed by suit or action to collect said payment or declare a forfeiture of this franchise because of the failure to make such payment but without waiving the right to collect earned franchise payments.

- (4) With the exception for transactions between the Company's affiliates, the Company shall not during the term of this franchise sell, assign, transfer or convey this franchise without the consent of the Common Council of the City as provided by North Plains Municipal Code Section 3.25.045(M).
- (5) If the Company provides cable service, it shall be subject to the separate cable franchise requirements of the City and other applicable authority.
- (6) If any right is granted, by lease, franchise or other manner, to use and occupy City Property (as defined in Section 3.25.025 of the City Municipal Code) for

the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

- (7) Within ten (10) business days of a written request from the City, or such other time agreed to in writing by the City (which agreement shall not be unreasonably withheld if such extension request is limited to 30 days or less), the Company shall furnish the City with information sufficient to demonstrate that the Company has complied with all requirements of this Code. All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the City at reasonable times and intervals.
- (8) If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the Company, the Company shall charge the City the Company's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of the Company's tariffs or price lists on file with the OPUC. With the City's permission, the Company may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and the Company.
- (9) Before this franchise is effective, and as necessary thereafter, the Company shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Code, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Company to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required for construction of facilities. The City may agree in writing to waive this requirement prior to the effective date of this franchise, provided that such waiver shall have no effect on the City's authority to require the performance bond set forth herein as necessary in the future.

9.10.070

Indemnification of City

- (1) The Company hereby agrees and covenants to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Company or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts

or omissions are authorized, allowed or prohibited by this Code or by a franchise agreement made or entered into pursuant to this Code.

- (2) The Company shall secure and maintain the following liability insurance policies insuring the Company and including the City, and its elected and appointed officers, officials, agents and employees as additional insureds:
- (a) Comprehensive general liability insurance with limits not less than:
    - (i) Three Million Dollars (\$3,000,000) for bodily injury or death to each person;
    - (ii) Three Million Dollars (\$3,000,000) for property damage resulting from any one accident; and,
    - (iii) Three Million Dollars (\$3,000,000) for all other types of liability.
  - (b) Automobile liability for owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.
  - (c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
  - (d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
  - (e) The liability insurance policies required by this Section shall be maintained by the Company throughout the term of the telecommunications franchise, and such other period of time during which the Company is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."
  - (f) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the

Company shall obtain and furnish to the City evidence that the grantee meets requirements of this Section.

- (g) As an alternative to the insurance requirements contained herein, the Company may provide evidence of self-insurance subject to review and acceptance by the City.
- (3) Unless directly and proximately caused by willful, intentional, negligent or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights of way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the City. Unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any consequential losses resulting directly or indirectly therefrom.

9.10.080 Non-Exclusive Franchise

The franchise hereby granted shall not be exclusive and shall not be construed as any limitation on the City to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth.

9.10.090 Change of Law

It is the intent of the parties that this franchise may be amended from time to time to conform to controlling federal or state law, including changes thereto. The parties agree to negotiate in good faith concerning such proposed amendments. This franchise may be amended only by the mutual written consent of the parties.

(Ord. No. 376, September 15, 2008; supercedes Ord. No. 157, December 5, 1985; supercedes amending Ord. No. 189, May 21, 1990; supercedes amending Ord. No. 191, July 23, 1990; and supercedes amending Ord No. 290, May 6, 2002)