



## City of Fergus Falls Committee of the Whole Agenda

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August 14, 2024

7:00 am

City Council Chambers

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A. Call to Order

B. Roll Call

C. Discussion Items

1. PI 9353, the Airport Masterplan and Airport Layout Plan Update  
Brian Yavarow  
Requested Action: Recommendation to the council to accept State Grants 1057671 & 1057628 for the Airport Masterplan and Airport Layout Plan
2. Airport Rescue Grant Program  
Brian Yavarow  
Requested Action: Recommendation to the council to accept State Grant No. 1057675 for the Airport Rescue Grant Program
3. Update on the DeLagoon Park Improvements (PI 9148)  
Grant Kuper
4. Emergency Medical and Rescue Equipment  
Kile Bergren  
Requested Action: Recommendation to the council to approve using state public safety funds to replace and upgrade emergency medical and rescue equipment
5. HRA Levy Request  
Mikel Olson  
Requested Action: Recommendation to the council to approve a levy for the Fergus Falls HRA
6. Charter Communications Franchise Ordinance  
Andrew Bremseth  
Requested Action: Recommendation to the council to hold a first reading of the Charter Communications Ordinance on August 19, 2024 and to hold a public hearing on September 3, 2024

D. Additional Agenda Items

Announcements

August 19 City Council meeting 5:30 pm

August 28 Committee of the Whole meeting 7:00 am

September 2 Most city offices and buildings closed for observance of Labor Day

Adjourn



# Council Action Recommendation

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Page 1 of 1

**Meeting Date:**

August 14, 2024 – Committee of the Whole

August 19, 2024 – City Council

**Subject:**

P. I. No. 9353 - FFM Airport Masterplan and ALP (Airport Layout Plan) Update

**Recommendation:**

- 1) Resolution accepting State Grant No.'s 1057671 & 1057628 for P. I. No. 9353

**Background/Key Points:**

Last September, the City Council accepted the FAA Grant offer the above-referenced public improvement project. Recently, the State of Minnesota sent two (2) companion grants because the total Federal funding share consists of Airport Improvement Program (AIP) funds for Phase 1 and Bipartisan Infrastructure Law (BIL) Airport Infrastructure Grant (AIG) funds for Phase 2 hence two State grant offers. I am requesting authorization to accept these two (2) State companion grant offers to fully fund this project.

**Budgetary Impact:**

The total estimated cost is \$368,200.00. 90% (\$331,380.00) of the funding comes from a combination of Federal Bipartisan Infrastructure Law (BIL) Airport Infrastructure Grant (AIG) and Airport Improvement Program (AIP) funds. The State is contributing 5% (\$18,410.00) and the remaining 5% share is funded thru the local Airport 456 fund. The funding breakdown as follows:

Federal AIP Funds	= \$303,030.00
Federal AIG Funds	= \$ 28,350.00
*State Companion AIP Funds	= \$ 16,835.00
*State Companion AIG Funds	= \$ 1,575.00
City Local 456 Funds	= <u>\$ 18,410.00</u>
	\$368,200.00

(\* Current requested action

**Originating Department:**

Engineering Department

**Respectfully Submitted:**

Brian Yavarow, P.E. - City Engineer

**Attachments:**

State Grant 1057671 & 1057628

**STATE OF MINNESOTA  
STATE AIRPORTS FUND  
GRANT AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), and the City of Fergus Falls, 112 W WASHINGTON AVE, FERGUS FALLS MN 56537 ("Grantee").

## **RECITALS**

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1. Minnesota Statutes Chapter 360 authorizes State to provide financial assistance to eligible airport sponsors for the acquisition, construction, improvement, marketing, maintenance, or operation of airports and other air navigation facilities.
2. Grantee owns, operates, controls, or desires to own an airport ("Airport") in the state system, and Grantee desires financial assistance from the State for an airport improvement project ("Project").
3. Grantee represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, Grantee agrees to minimize administrative costs as a condition of this agreement.

## **AGREEMENT TERMS**

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### **1 Term of Agreement, Survival of Terms, and Incorporation of Exhibits**

- 1.1 **Effective Date.** This agreement will be effective on the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5, whichever is later. As required by [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement will expire on December 31<sup>st</sup>, 2027, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 11. Workers Compensation; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.
- 1.4 **Plans, Specifications, Descriptions.** Grantee has provided the State with the plans, specifications, and a detailed description of the Project A5601-57 which are on file with the State's Office of Aeronautics and are incorporated into this Agreement by reference.
- 1.5 **Exhibits.** Exhibit A: Credit Application, Exhibit B: Grant Request Letter and Exhibit C: Cost Split.

### **2 Grantee's Duties**

- 2.1 Grantee will complete the Project in accordance with the plans, specifications, and detailed description of the Project, which are on file with the State's Office of Aeronautics. Any changes to the plans or specifications of the Project after the date of this Agreement will be valid only if made by written change order signed by the Grantee and the State. Subject to the availability of funds, the State may prepare an amendment to this Agreement to reimburse the Grantee for the allowable costs of qualifying change orders.
- 2.2 If the Project involves construction, Grantee will designate a registered engineer to oversee the Project work. If, with the State's approval, the Grantee elects not to have such services performed by a registered engineer, then the Grantee will designate another responsible person to oversee such work.
- 2.3 Grantee will notify State's Authorized Representative in advance of any meetings taking place relating to the Project.
- 2.4 Grantee will comply with all required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
- 2.5 **Asset Monitoring.** If Grantee uses funds obtained by this agreement to acquire a capital asset, the Grantee is required to use that asset for a public aeronautical purpose for the normal useful life of the asset. Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office.

**2.6 Airport Operations, Maintenance, and Conveyance.** Pursuant to Minnesota Statutes Section 360.305, subdivision 4 (d) (1), the Grantee will operate the Airport as a licensed, municipally-owned public airport at all times of the year for a period of 20 years from the date the Grantee receives final reimbursement under this Agreement. The Airport must be maintained in a safe, serviceable manner for public aeronautical purposes only. Without prior written approval from the State, Grantee will not transfer, convey, encumber, assign, or abandon its interest in the airport or in any real or personal property that is purchased or improved with State funds. If the State approves such a transfer or change in use, the Grantee must comply with such conditions and restrictions as the State may place on such approval. The obligations imposed by this clause survive the expiration or termination of this Agreement.

### 3 Time

3.1 Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence.

### 4 Cost and Payment

4.1 **Cost Participation.** Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
Master Plan and Airport Layout Plan	90%	5%	5%
Federal Committed:	<b>\$ 303,030.00</b>		
State:	<b>\$ 16,835.00</b>		
Grantee:	<b>\$ 16,835.00</b>		

The federal multiyear amount is an estimate only. These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State. In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

4.2 **Travel Expenses.** Blank.

4.3 **Sufficiency of Funds.** Pursuant to Minnesota Rules 8800.2500, the Grantee certifies that (1) it presently has available sufficient unencumbered funds to pay its share of the Project; (2) the Project will be completed without undue delay; and (3) the Grantee has the legal authority to engage in the Project as proposed.

4.4 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed \$16,835.00.

#### 4.5 Payment

4.5.1 **Invoices.** Grantee will submit invoices for payment by Credit Application via email, Exhibit A, which is attached and incorporated into this agreement, is the form Grantee will use to submit invoices. The State's Authorized Representative, as named in this agreement, will review each invoice against the approved grant budget and grant expenditures to-date before approving payment. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices will be submitted timely and according to the following schedule: Monthly basis as needed.

4.5.2 **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion.

4.5.3 **State's Payment Requirements.** State will promptly pay all valid obligations under this agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee's invoices for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.

4.5.4 **Grantee Payment Requirements.** Grantee must pay all contractors under this agreement promptly. Grantee will make undisputed payments no later than 30 days after receiving an invoice. If an invoice is incorrect, defective, or otherwise improper, Grantee will notify the contractor within ten days of discovering the error. After Grantee receives the corrected invoice, Grantee will pay the contractor within 30 days of receipt of such invoice.

4.5.5 **Grant Monitoring Visit and Financial Reconciliation.** During the period of performance, the State will

make at least annual monitoring visits and conduct annual financial reconciliations of Grantee's expenditures.

4.5.5.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided notice prior to any monitoring visit or financial reconciliation.

4.5.5.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.

4.5.5.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.

4.5.6 **Closeout.** The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

4.5.7 **Closeout Deliverables.** At the close of the Project, the Grantee must provide the following deliverables to the State before the final payment due under this Agreement will be released by the State: (1) Electronic files of construction plans as a PDF and in a MicroStation compatible format; and (2) Electronic files of as-builts as a PDF and in a MicroStation compatible format. (3) Electronic files of planning documents (Airport Layout Plans – ALP) and Airport Zoning as a PDF and in a MicroStation compatible format and in GIS.

4.6 **Contracting and Bidding Requirements.** Prior to publication, Grantee will submit to State all solicitations for work to be funded by this Agreement. Prior to execution, Grantee will submit to State all contracts and subcontracts funded by this agreement between Grantee and third parties. State's Authorized Representative has the sole right to approve, disapprove, or modify any solicitation, contract, or subcontract submitted by Grantee. All contracts and subcontracts between Grantee and third parties must contain all applicable provisions of this Agreement. State's Authorized Representative will respond to a solicitation, contract, or subcontract submitted by Grantee within ten business days.

## 5 Conditions of Payment

All services provided by Grantee under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. In addition, Grantee will not receive payment for Airport's failure to pass periodic inspections by a representative of the State's Office of Aeronautics.

## 6 Authorized Representatives

6.1 The State's Authorized Representative is:

Arika Johnson, Airport Development Section Supervisor, 395 John Ireland Boulevard, Mail Stop 410, Saint Paul MN 55155 (651) 356-1336, [arika.johnson@state.mn.us](mailto:arika.johnson@state.mn.us), or their successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 Grantee's Authorized Representative is:

Brian Yavarow, City Engineer, 112 W WASHINGTON AVE, FERGUS FALLS MN 56537, 218-332-5413, [brian.yavarow@fergusfallsmn.gov](mailto:brian.yavarow@fergusfallsmn.gov), or their successor. If Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

## 7 Assignment Amendments, Waiver, and Grant Agreement Complete

7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

7.2 **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office. Notwithstanding the foregoing, when FAA issues a Letter Amendment on a federal grant agreement that results in an increase in federal funds beyond the total amount in this grant agreement (i.e., federal amendment), MnDOT's receipt of the Letter Amendment from FAA has the effect of amending the total amount in this grant

agreement.

- 7.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- 7.4 **Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 7.6 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.

## 8 Liability

In the performance of this agreement, and to the extent permitted by law, Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for the State's failure to fulfill its obligations under this agreement.

## 9 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

## 10 Government Data Practices and Intellectual Property Rights

10.1 **Government Data Practices.** Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either Grantee or the State. If Grantee receives a request to release the data referred to in this section 10.1, Grantee must immediately notify the State. The State will give Grantee instructions concerning the release of the data to the requesting party before the data is released. Grantee's response to the request shall comply with applicable law.

### 10.2 Intellectual Property Rights.

10.2.1 **Intellectual Property Rights.** State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this agreement. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Grantee, its employees, agents and subcontractors, either individually or jointly with others in the performance of this agreement. Works includes Documents. "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Grantee, its employees, agents or subcontractors, in the performance of this agreement. The Documents will be the exclusive property of State, and Grantee upon completion or cancellation of this agreement must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." Grantee assigns all right, title and interest it may have in the Works and the Documents to State. Grantee must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

### 10.2.2 Obligations

10.2.2.1 **Notification.** Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Grantee, including its employees and subcontractors, in the performance of this agreement, Grantee will

immediately give State's Authorized Representative written notice thereof and must promptly furnish State's Authorized Representative with complete information and/or disclosure thereon.

- 10.2.2.2 **Representation.** Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Grantee nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Grantee's expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Grantee's or State's opinion is likely to arise, Grantee must, at State's discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

## 11 Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## 12 Publicity and Endorsement

12.1 **Publicity.** Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee's website when practicable.

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

## 13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 14 Termination; Suspension

14.1 **Termination.** The State or Commissioner of Administration may unilaterally terminate this agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 **Termination for Cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if:

14.3.1 It does not obtain funding from the Minnesota Legislature; or

14.3.2 If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent



that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

**14.4 Suspension.** The State may immediately suspend this agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

#### 15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

**16 Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project. For a list of disqualified or debarred vendors, see [www.mmd.admin.state.mn.us/debarredreport.asp](http://www.mmd.admin.state.mn.us/debarredreport.asp).

**17 Discrimination Prohibited by Minnesota Statutes §181.59.** Grantee will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**18 Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Grantee, however, the Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.

**19 Telecommunications Certification.** By signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

**20 Title VI/Non-discrimination Assurances.** Grantee agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: [https://edocs-public.dot.state.mn.us/edocs\\_public/DMResultSet/download?docId=11149035](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035).

Grantee will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Grantee's compliance with this provision. The Grantee must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Grantee staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

**21 Additional Provisions**

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**[The remainder of this page has intentionally been left blank.]**

**STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and § 16C.05.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract/PO No(s). \_\_\_\_\_

**GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that he/she is the  
\_\_\_\_\_ of the Municipality of \_\_\_\_\_, in the County  
of \_\_\_\_\_, State of Minnesota; that he/she has prepared the foregoing Credit Application,  
knows the contents thereof, that the same is a true and accurate record of disbursements made, and that the same is true of his/her own  
knowledge; and that this application is made by authority of the municipal council (or board) of said Municipality.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



**STATE OF MINNESOTA  
STATE AIRPORTS FUND  
GRANT AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), and the City of Fergus Falls, 112 W WASHINGTON AVE, FERGUS FALLS MN 56537 ("Grantee").

## **RECITALS**

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2. Grantee owns, operates, controls, or desires to own an airport ("Airport") in the state system, and Grantee desires financial assistance from the State for an airport improvement project ("Project").
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## **AGREEMENT TERMS**

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- 1.1 **Effective Date.** This agreement will be effective on the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5, whichever is later. As required by [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement will expire on December 31<sup>st</sup>, 2028, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 11. Workers Compensation; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.
- 1.4 **Plans, Specifications, Descriptions.** Grantee has provided the State with the plans, specifications, and a detailed description of the Project A5601-58 which are on file with the State's Office of Aeronautics and are incorporated into this Agreement by reference.
- 1.5 **Exhibits.** Exhibit A: Credit Application, Exhibit B: Grant Request Letter, and Exhibit C: Cost Split.

### **2 Grantee's Duties**

- 2.1 Grantee will complete the Project in accordance with the plans, specifications, and detailed description of the Project, which are on file with the State's Office of Aeronautics. Any changes to the plans or specifications of the Project after the date of this Agreement will be valid only if made by written change order signed by the Grantee and the State. Subject to the availability of funds, the State may prepare an amendment to this Agreement to reimburse the Grantee for the allowable costs of qualifying change orders.
- 2.2 If the Project involves construction, Grantee will designate a registered engineer to oversee the Project work. If, with the State's approval, the Grantee elects not to have such services performed by a registered engineer, then the Grantee will designate another responsible person to oversee such work.
- 2.3 Grantee will notify State's Authorized Representative in advance of any meetings taking place relating to the Project.
- 2.4 Grantee will comply with all required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
- 2.5 **Asset Monitoring.** If Grantee uses funds obtained by this agreement to acquire a capital asset, the Grantee is required to use that asset for a public aeronautical purpose for the normal useful life of the asset. Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office.

**2.6 Airport Operations, Maintenance, and Conveyance.** Pursuant to Minnesota Statutes Section 360.305, subdivision 4 (d) (1), the Grantee will operate the Airport as a licensed, municipally-owned public airport at all times of the year for a period of 20 years from the date the Grantee receives final reimbursement under this Agreement. The Airport must be maintained in a safe, serviceable manner for public aeronautical purposes only. Without prior written approval from the State, Grantee will not transfer, convey, encumber, assign, or abandon its interest in the airport or in any real or personal property that is purchased or improved with State funds. If the State approves such a transfer or change in use, the Grantee must comply with such conditions and restrictions as the State may place on such approval. The obligations imposed by this clause survive the expiration or termination of this Agreement.

### 3 Time

3.1 Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence.

### 4 Cost and Payment

4.1 **Cost Participation.** Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
Master Plan and Airport Layout Plan (Phase 2)	90%	5%	5%
Federal Committed:	\$ 28,350		
State:	<b>\$ 1,575</b>		
Grantee:	<b>\$ 1,575</b>		

The federal multiyear amount is an estimate only. These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State. In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

4.2 **Travel Expenses.** Blank.

4.3 **Sufficiency of Funds.** Pursuant to Minnesota Rules 8800.2500, the Grantee certifies that (1) it presently has available sufficient unencumbered funds to pay its share of the Project; (2) the Project will be completed without undue delay; and (3) the Grantee has the legal authority to engage in the Project as proposed.

4.4 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed \$28,350

#### 4.5 Payment

4.5.1 **Invoices.** Grantee will submit invoices for payment by Credit Application via email, Exhibit A, which is attached and incorporated into this agreement, is the form Grantee will use to submit invoices. The State's Authorized Representative, as named in this agreement, will review each invoice against the approved grant budget and grant expenditures to-date before approving payment. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices will be submitted timely and according to the following schedule: Monthly basis as needed.

4.5.2 **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion.

4.5.3 **State's Payment Requirements.** State will promptly pay all valid obligations under this agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee's invoices for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.

4.5.4 **Grantee Payment Requirements.** Grantee must pay all contractors under this agreement promptly. Grantee will make undisputed payments no later than 30 days after receiving an invoice. If an invoice is incorrect, defective, or otherwise improper, Grantee will notify the contractor within ten days of discovering the error. After Grantee receives the corrected invoice, Grantee will pay the contractor within 30 days of receipt of such invoice.

4.5.5 **Grant Monitoring Visit and Financial Reconciliation.** During the period of performance, the State will

make at least annual monitoring visits and conduct annual financial reconciliations of Grantee's expenditures.

4.5.5.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided notice prior to any monitoring visit or financial reconciliation.

4.5.5.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.

4.5.5.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.

4.5.6 **Closeout.** The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

4.5.7 **Closeout Deliverables.** At the close of the Project, the Grantee must provide the following deliverables to the State before the final payment due under this Agreement will be released by the State: (1) Electronic files of construction plans as a PDF and in a MicroStation compatible format; and (2) Electronic files of as-builts as a PDF and in a MicroStation compatible format. (3) Electronic files of planning documents (Airport Layout Plans – ALP) and Airport Zoning as a PDF and in a MicroStation compatible format and in GIS.

4.6 **Contracting and Bidding Requirements.** Prior to publication, Grantee will submit to State all solicitations for work to be funded by this Agreement. Prior to execution, Grantee will submit to State all contracts and subcontracts funded by this agreement between Grantee and third parties. State's Authorized Representative has the sole right to approve, disapprove, or modify any solicitation, contract, or subcontract submitted by Grantee. All contracts and subcontracts between Grantee and third parties must contain all applicable provisions of this Agreement. State's Authorized Representative will respond to a solicitation, contract, or subcontract submitted by Grantee within ten business days.

## 5 Conditions of Payment

All services provided by Grantee under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. In addition, Grantee will not receive payment for Airport's failure to pass periodic inspections by a representative of the State's Office of Aeronautics.

## 6 Authorized Representatives

6.1 The State's Authorized Representative is:

Arika Johnson, Airport Development Section Supervisor, 395 John Ireland Boulevard, Mail Stop 410, Saint Paul MN 55155 (651) 356-1336, [arika.johnson@state.mn.us](mailto:arika.johnson@state.mn.us), or their successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 Grantee's Authorized Representative is:

Brian Yavarow, City Engineer, 112 W WASHINGTON AVE, FERGUS FALLS MN 56537, 218-332-5413, [brian.yavarow@fergusfallsmn.gov](mailto:brian.yavarow@fergusfallsmn.gov), or their successor. If Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

## 7 Assignment Amendments, Waiver, and Grant Agreement Complete

7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

7.2 **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office. Notwithstanding the foregoing, when FAA issues a Letter Amendment on a federal grant agreement that results in an increase in federal funds beyond the total amount in this grant agreement (i.e., federal amendment), MnDOT's receipt of the Letter Amendment from FAA has the effect of amending the total amount in this grant



agreement.

- 7.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- 7.4 **Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 7.6 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.

## 8 Liability

In the performance of this agreement, and to the extent permitted by law, Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for the State's failure to fulfill its obligations under this agreement.

## 9 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

## 10 Government Data Practices and Intellectual Property Rights

10.1 **Government Data Practices.** Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either Grantee or the State. If Grantee receives a request to release the data referred to in this section 10.1, Grantee must immediately notify the State. The State will give Grantee instructions concerning the release of the data to the requesting party before the data is released. Grantee's response to the request shall comply with applicable law.

### 10.2 Intellectual Property Rights.

10.2.1 **Intellectual Property Rights.** State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this agreement. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Grantee, its employees, agents and subcontractors, either individually or jointly with others in the performance of this agreement. Works includes Documents. "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Grantee, its employees, agents or subcontractors, in the performance of this agreement. The Documents will be the exclusive property of State, and Grantee upon completion or cancellation of this agreement must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." Grantee assigns all right, title and interest it may have in the Works and the Documents to State. Grantee must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

### 10.2.2 Obligations

10.2.2.1 **Notification.** Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Grantee, including its employees and subcontractors, in the performance of this agreement, Grantee will

immediately give State's Authorized Representative written notice thereof and must promptly furnish State's Authorized Representative with complete information and/or disclosure thereon.

- 10.2.2.2 **Representation.** Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Grantee nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Grantee's expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Grantee's or State's opinion is likely to arise, Grantee must, at State's discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

## 11 Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## 12 Publicity and Endorsement

12.1 **Publicity.** Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee's website when practicable.

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

## 13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 14 Termination; Suspension

14.1 **Termination.** The State or Commissioner of Administration may unilaterally terminate this agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 **Termination for Cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if:

14.3.1 It does not obtain funding from the Minnesota Legislature; or

14.3.2 If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent

that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

**14.4 Suspension.** The State may immediately suspend this agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

**15 Data Disclosure**

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

**16 Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project. For a list of disqualified or debarred vendors, see [www.mmd.admin.state.mn.us/debarredreport.asp](http://www.mmd.admin.state.mn.us/debarredreport.asp).

**17 Discrimination Prohibited by Minnesota Statutes §181.59.** Grantee will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**18 Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Grantee, however, the Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.

**19 Telecommunications Certification.** By signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

**20 Title VI/Non-discrimination Assurances.** Grantee agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: [https://edocs-public.dot.state.mn.us/edocs\\_public/DMResultSet/download?docId=11149035](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035).

Grantee will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Grantee's compliance with this provision. The Grantee must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Grantee staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

**21 Additional Provisions**

[Intentionally left blank.]

**[The remainder of this page has intentionally been left blank.]**

**STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and § 16C.05.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract/PO No(s). \_\_\_\_\_

**GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment A**

**Fergus Falls Municipal Airport**

**AIG 3-27-0031-20-23; AIG 3-27-0031-21-24; SP A5601-57/58**

**Grant - 31AUG2023**

**Master Plan and Airport Layout Plan**

	Total Cost	Federal Share	State Share	Local Share
Master Plan and Airport Layout Plan	\$ 364,200.00	\$ 327,780.00	\$ 18,210.00	\$ 18,210.00
IFE	\$ 4,000.00	\$ 3,600.00	\$ 200.00	\$ 200.00
<b>TOTAL</b>	<b>\$368,200.00</b>	<b>\$331,380.00</b>	<b>\$18,410.00</b>	<b>\$18,410.00</b>

**RESOLUTION**

**AUTHORIZATION TO EXECUTE  
MINNESOTA DEPARTMENT OF TRANSPORTATION  
GRANT AGREEMENT FOR AIRPORT IMPROVEMENT  
EXCLUDING LAND ACQUISITION**

It is resolved by the City of Fergus Falls as follows:

- 1. That the state of Minnesota Agreement No. 1057671,  
"Grant Agreement for Airport Improvement Excluding Land Acquisition," for  
State Project No. A5601-58 at the Fergus Falls Municipal Airport is accepted.

- 2. That the \_\_\_\_\_ and \_\_\_\_\_  
are (Title) (Title)  
authorized to execute this Agreement and any amendments on behalf of the  
City of Fergus Falls.

**CERTIFICATION**

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

I certify that the above Resolution is a true and correct copy of the Resolution adopted by the

\_\_\_\_\_  
(Name of the Recipient)

at an authorized meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
as shown by the minutes of the meeting in my possession.

Signature: \_\_\_\_\_  
(Clerk or Equivalent)

CORPORATE SEAL

/OR/

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



# Council Action Recommendation

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Page 1 of 1

**Meeting Date:**

August 14, 2024 – Committee of the Whole

August 19, 2024 – City Council

**Subject:**

FAA Airport Rescue Grant Program (ARGP)

**Recommendation:**

- 1) Resolution accepting State Grant No. 1057675

**Background/Key Points:**

In August 2022, the City Council accepted the FAA Grant offer derived from the Covid relief funds. MnDOT is designated as the agent of the City to receive and disburse these Federal funds. Because of this, the State of Minnesota recently sent the attached State companion grant. I am requesting authorization to accept this grant offer.

**Budgetary Impact:**

There is no cost implications associated with this request. The previously approved Airport Rescue Grant Program (ARGP) amount is \$32,000.00. City staff is ready to submit reimbursement thru the State to close out this Federal grant.

**Originating Department:**

Engineering Department

**Respectfully Submitted:**

Brian Yavarow, P.E. - City Engineer

**Attachments:**

State Grant 1057675



**STATE OF MINNESOTA**  
**AGENCY AGREEMENT for**  
**FEDERAL AIRPORT EXPENSES REIMBURSEMENT**

This agreement is entered into by and between the City of Fergus Falls (“Local Government”) and the State of Minnesota, acting through its Commissioner of Transportation (“MnDOT”).

**RECITALS**

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1. Local Government has received an Airport Rescue Grant (“ARG”) under the American Rescue Plan Act of 2021 (H.R. 1319, Public Law 117-2) (“ARPA”) directly from the Federal Aviation Administration (“FAA”) to reimburse eligible airport expenses at Local Government’s airport.
2. This agreement is not a subgrant of the ARG funds. The FAA will be conducting oversight and monitoring the ARG funding (see ARPA FAQs for more information, at: [https://www.faa.gov/airports/airport\\_rescue\\_grants/media/20211124\\_ARPA\\_FAQs.pdf](https://www.faa.gov/airports/airport_rescue_grants/media/20211124_ARPA_FAQs.pdf)).
3. Pursuant to Minnesota Statutes Sections 360.016 and 360.039, subd. 2, the Local Government desires MnDOT to act as the Local Government’s agent in accepting the federal funds on the Local Government’s behalf and disbursing the federal funds to the Local Government for expenses at the airport.

**AGREEMENT TERMS**

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**1. Term of Agreement**

- 1.1. Effective Date: This agreement will be effective on the date the MnDOT obtains all required signatures under Minn. Stat. §16C.05, Subd. 2.
- 1.2. Expiration Date: This agreement will expire on September 30, 2025.

**2. Local Government’s Duties**

- 2.1. The Local Government designates MnDOT to act as its agent in accepting the federal funds on its behalf and disbursing the federal funds to the Local Government for airport expenses deemed allowable by the FAA under the ARPA Act.
- 2.2. The Local Government will prepare reports, keep records, and perform work so as to meet federal requirements and to enable MnDOT to disburse the federal aid sought by the Local Government.
- 2.3. The Local Government will comply with all applicable Federal, State, and local laws, ordinances, and regulations. The Local Government will comply with all requirements and assurances in the ARG Grant, which is incorporated into this contract by reference.

**3. MnDOT’s Duties**

- 3.1. MnDOT accepts designation as agent of the Local Government for the receipt of the federal funds and disbursement of the federal funds to the Local Government and will act in accordance herewith.
- 3.2. MnDOT will make the necessary requests to the FAA for authorization to disburse federal funds for airport expenses and for reimbursement of eligible costs under the ARPA Act.
- 3.3. MnDOT may withhold federal funds where the FAA determines that airport expenditures were not made in compliance with federal requirements.
- 3.4. MnDOT, the FAA, or duly authorized representatives of the state and federal government will have the right to audit the work performed under this agreement. The Local Government will make available

all books, records, and documents pertaining to the work hereunder, for a minimum of six years following the closing of the contract.

#### 4. **Payment**

- 4.1. **Eligibility.** Eligible expenses under the act include costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments for the «Airport Name» Airport. Eligible expenses will be determined by the Federal Aviation Administration. Eligible expenses will be determined in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenues, 64 Federal Register 7696 (64 FR 7696), as amended by 79 Federal Register 66282 (79 FR 66282), which is incorporated into this agreement by reference, and the ARPA Act.
- 4.2. **Reimbursement.** Local Government has been awarded \$32,000 in Federal ARPA Act funding to reimburse federally-eligible expenses at airport(s) it operates. Local Government will be reimbursed for 100% of federally-eligible expenses not reimbursed by any other source. The Local Government will pay any part of the cost or expense that is not paid by federal, state, or other funds. MnDOT will receive the federal funds to be paid by the FAA for eligible expenses and will reimburse the Local Government from said federal funds for each payment request, subject to the limits of those funds.
- 4.3. **Payment Requests.** The Local Government will prepare payment requests in accordance with the terms of the federal award.
  - 4.3.1. In the event MnDOT does not obtain funding from the Minnesota Legislature or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the Local Government may work directly with FAA to receive the federal funds under the ARPA Act grant pursuant to any terms and conditions imposed by FAA.
- 4.4. **Federal Funds.** Payments under this Agreement will be made from federal funds. The Local Government is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for the Local Government's failure to comply with federal requirements. The Local Government agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.
- 4.5. **Closeout.** The Local Government must liquidate all obligations incurred under this Agreement and submit all financial, performance, and other reports as required by the terms of the Federal award. The FAA will determine whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed.

5. **Conditions of Payment.** Local Government's use of federal funds disbursed under this agreement must be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Local Government will not receive reimbursement under this Agreement for expenses that are not eligible as described in Section 4.1 above.

#### 6. **Authorized Representatives**

- 6.1. MnDOT's Authorized Representative is:

Name: Jessica McBroom, or her successor or designee.

Title: Grants Specialist

Email: jessica.mcbroom@state.mn.us

6.2. The Local Government's Authorized Representative is:

Name: Ben Schierer  
Title: Mayor  
Email: ben.schierer@ci.fergus-falls.mn.us  
Address: City of Fergus Falls  
112 W Washington Ave  
Fergus Falls, MN 56537

If the Local Government's Authorized Representative changes at any time during this agreement, the Local Government will immediately notify MnDOT.

**7. Assignment Amendments, Waiver, and Agreement Complete**

- 7.1. **Assignment.** The Local Government may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of MnDOT and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 7.2. **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 7.3. **Waiver.** If MnDOT fails to enforce any provision of this agreement, that failure does not waive the provision or MnDOT's right to subsequently enforce it.
- 7.4. **Agreement Complete.** This agreement contains all negotiations and agreements between MnDOT and the Local Government. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5. **Severability.** If any provision of this Agreement or the application thereof is found invalid or unenforceable to any extent, the remainder of the Agreement, including all material provisions and the application of such provisions, will not be affected and will be enforceable to the greatest extent permitted by the law.
- 7.6. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.

**8. Liability and Claims**

- 8.1. **Tort Liability.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability. Minnesota Statutes Section 466.04 governs Local Government Liability.
- 8.2. **Claims.** The Local Government acknowledges that MnDOT is acting only as the Local Government's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to this agreement. The Local Government will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any and all lawful claims or costs arising out of or incidental to Local Government's acts or omissions under this agreement and any *ultra vires* acts, including reasonable attorney fees incurred by MnDOT.

## 9. Audits

9.1. Under Minn. Stat. § 16C.05, Subd.5, the Local Government's books, records, documents, and accounting procedures and practices of the Local Government, or other party relevant to this agreement or transaction, are subject to examination by MnDOT and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. The Local Government will take timely and appropriate action on all deficiencies identified by an audit.

9.2. All requests for reimbursement are subject to audit by FAA or MnDOT.

10. **Government Data Practices.** The Local Government and MnDOT must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by MnDOT under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Local Government under this agreement.
11. **Workers Compensation.** The Local Government certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Local Government's employees and agents will not be considered MnDOT employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MnDOT's obligation or responsibility.
12. **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
13. **Termination for Cause.** MnDOT may terminate this agreement if Local Government fails to observe or perform any of the terms, conditions, or covenants required to be observed or performed by it pursuant to this agreement and such failure continues for a period of 30 calendar days after MnDOT has given written notice to Local Government of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
14. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Local Government consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to MnDOT, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Local Government to file state tax returns and pay delinquent state tax liabilities, if any.
15. **Fund Use Prohibited.** The Local Government will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a federal or state contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Local Government from utilizing these funds to pay any party who might be disqualified or debarred after the Local Government's contract award on this agreement.
16. **Discrimination Prohibited by Minnesota Statutes §181.59.** The Local Government will comply with the provisions of Minnesota Statutes §181.59, if applicable, which requires that every contract for or on

behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

17. **Limitation.** Under this contract, MnDOT is only responsible for disbursing funds. Nothing in this contract will be construed to make MnDOT a principal, co-principal, partner, or joint venturer with respect to this agreement. MnDOT may provide technical advice and assistance as requested by the Local Government, however, the Local Government will remain responsible for all aspects of administering this agreement.

**[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.]**

**LOCAL GOVERNMENT**

Local Government certifies that the appropriate person(s) have executed the contract on behalf of the Local Government as required by applicable articles, bylaws, resolutions or ordinances

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE ENCUMBRANCE VERIFICATION**

The individual certifies funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05

By: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract # \_\_\_\_\_

SWIFT Purchase Order # \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MnDOT CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_



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## MEMORANDUM

**Date:** August 14, 2024  
**To:** Honorable Mayor Schierer and City Council Members  
**From:** Grant J. Kuper, PE, CFM, Principal Engineer  
**Subject:** DeLagoon Park Improvements Update  
City of Fergus Falls, Minnesota  
Project No.: 0W1.127028

### Campground Improvements Update

The DeLagoon Park Improvements Project (campground improvements) was awarded to Comstock Construction at the May 6, 2024 council meeting. After the council meeting the contract documents were executed and a notice to proceed was distributed to Comstock Construction on June 6th. A preconstruction meeting was held on June 20th, where Comstock Construction provided a schedule for the project. Construction on the campground improvements started the week of August 5th and will continue until winter shutdown.

Comstock Construction's schedule shows all underground utilities, site grading, and bathhouse installation taking place during the 2024 construction season. Asphalt paving and final turf establishment is scheduled for installation as soon as weather allows in 2025. The schedule submitted by Comstock Construction does not meet the completion dates set forth in the contract documents.

The contractual completion dates are:

- **Milestone 1 – 11/1/2024:** This completion date consists of seeding throughout the project meeting acceptance.
- **Substantial Completion – 05/09/2025:** Construction is sufficiently completed so that the owner can use the improvement for the intended purpose.
- **Final Completion – 07/18/2025:** Punch list items are completed and all parties are in agreement that the work is complete.

The completion dates defined in the contract documents were intentionally chosen to provide the City with a functional campground ready for use for the entire 2025 season. Given the schedule provided by Comstock Construction, it's unlikely the campground will be ready for use until sometime in July 2025.

There are mechanisms in the contract documents that protect the city in cases like this. Liquidated damages provide the city with the ability to realize financial and other losses if the work is not completed within the completion dates. In this scenario, damages could include but not be limited to lost revenue from the campground not being open right away in 2025. Bolton & Menk will closely monitor the contractor's progress and completion dates as defined in the contract. We have notified Comstock that the city intends to enforce the liquidated damages.

Name: DeLagoon Park Improvements Update

Date: August 14, 2024

Page: 2

**Ballfield Lighting Improvements Update**

Lighting improvements at the softball complex are complete and have been functioning throughout the summer.

The baseball field lighting improvement quotes for Farmers and Legion fields provided by Otter Electric were approved at the May 6, 2024 council meeting. Otter Electric is currently procuring materials and will be conducting work in late fall and into the winter. Improvements to the fields will be completed prior to the 2025 spring baseball season.





## Council Action Recommendation

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Page 1 of 1

**Meeting Date:** August 14, 2024

**Subject:** Upgrade & Replace Emergency Medical and Rescue Equipment

**Recommendation:** Approve using State Public Safety Funds to replace and upgrade

**Background/Key Points:** The State of Minnesota has provided the City of Fergus Falls with Public Safety Fund monies. The Police and Fire Departments are looking to use \$22,000 of those funds to replace and or upgrade a variety of emergency medical, trauma and rescue equipment that are used by our agencies. Items include but are not limited to water/ice rescue equipment, drone, upgraded LifePak Monitor/AED, replacement AED batteries, pulse oximeters, and assorted trauma equipment. This equipment is used routinely while responding to medical and trauma related emergencies and rescue events within the community.

**Budgetary Impact:** Approximately \$22,000 will be used from the State Public Safety Funds to cover the costs of the equipment.

**Respectfully Submitted:** Kile Bergren, Chief of Public Safety

**Attachments:**

# Fergus Falls Housing & Redevelopment Authority

Email: [ffhra@fergusfallshra.com](mailto:ffhra@fergusfallshra.com) Website: [www.fergusfallshra.com](http://www.fergusfallshra.com)

## HRA OFFICE and TIMBER PLACE TOWNHOMES

1151 Friberg Avenue, Fergus Falls, MN 56537  
Phone: (218) 739-3249  
Fax: (218) 736-4706



**RIVERVIEW HEIGHTS**  
205 North Sheridan Avenue  
Fergus Falls, MN 56537  
Phone: (218) 739-9498  
Fax: (218) 736-4706

August 7, 2024

Andrew Bremseth, City Administrator  
City of Fergus Falls  
112 West Washington Ave.  
Fergus Falls, MN 56537

Andrew:

This is a request by the Fergus Falls Housing and Redevelopment Authority (HRA) for 2025 operational funds as allowed by Minnesota Statute.

Tax levy funds continue to be vitally important to the Fergus Falls HRA as funds received from Federal and State programs are less than adequate to cover the cost of administration. Program funds directly assisting lower income families have been stable through 2024. However, a portion of the funding required for the administration of these programs is being passed on to local units of government in the areas the programs are benefiting.

According to the Otter Tail County Assessors office, Fergus Falls has 6,452 parcels with a total estimated market value of \$1,383,727,200.00. I am requesting approval of the statutory maximum which provides approximately \$255,989.00 to the HRA. This is an increase of \$12,613.00 or 5% from last year, allowing us to continue our mission.

We're proud to announce that construction of Garitz Grove Apartments was complete in January. 14 of the 24 units are full and we are processing applications for remaining vacancies. Permanent Supportive Housing serves a critical need in Fergus Falls. It helps end the cycle of some of our most vulnerable citizens becoming unhoused and facing few options for stability. Two full-time case managers office at Garitz Grove, and other service providers are onsite weekly.

Timber Place is a 20-unit tax credit townhome complex consisting of two and three-bedroom units, each with an attached garage space. All units are full and 12 families are on the waiting list. Timber Place Townhomes is one of the most affordable developments in Fergus Falls with 2-bedroom rents advertised at \$750/month and 3-bedroom rents advertised at \$850/month.

Riverview Heights offers 59 one-bedroom units of Public Housing and we offer 8 three-bedroom scattered site duplexes in Fergus Falls. Our Public Housing units are all full. There is a waiting list of 70 applicants for Riverview Heights and 60 for family duplexes.

Housing and Urban Development recently opened a competitive application to fund a ROSS (Resident Opportunity and Self Sufficiency) Coordinator. Our application is in process and will be submitted ahead of the September 30 deadline. The purpose of the ROSS Coordinator



*Providing Housing Opportunities in Fergus Falls since 1950*

program is to provide funding to hire and maintain a Service Coordinator who will assess the needs of residents of Public Housing and coordinate available resources in the community to meet those needs. This program works to promote the development of local strategies to coordinate the use of assistance under the Public Housing program with public and private resources, for supportive services and resident empowerment activities. These services should enable participating families to increase earned income, reduce or eliminate the need for welfare assistance, make progress toward achieving economic independence and housing self-sufficiency. In the case of elderly or disabled residents, services help improve living conditions and enables residents to age-in-place. If our application is approved, I anticipate the use of tax levy funding to cover a portion of this position.


The HRA's most recognized program is the voucher program providing reduced rent for families in regular market rate rentals in Fergus Falls, with the subsidy paid directly to landlords. Housing Assistance Payments (HAP) totaled \$102,494.00 for August and we assisted 191 families in Fergus Falls. Three types of vouchers are being administered by the HRA: Stability, Mainstream, and Housing Choice. Stability Vouchers assist those who are currently unhoused or are facing homelessness. Mainstream Vouchers are special purpose vouchers that aid non-elderly applicants with a disability. Applications for vouchers outnumber our ability to assist, and we continually look for additional programs that could be of benefit. Our waiting list for rental assistance exceeds 300 and the wait time is more than 18 months.

Minnesota Housing has announced a new program that will benefit income qualifying renters in Fergus Falls. "Bring it Home Minnesota" is a state funded rental assistance program, similar to the federally funded Housing Choice Voucher program. Fergus Falls HRA will be following through the application process and additional funding for qualified applicants will be available to help renters in Fergus Falls some time in 2025.

As in years past, I hope this proposal will be given favorable consideration so that we may continue meeting the housing needs of lower-income families and individuals within the City of Fergus Falls. My time for presenting this request will be limited, and the information within this letter offers a narrow view of the important work done at the HRA. Please accept my invitation to visit us at any of our properties. I'd be happy to discuss in greater detail the programs we currently offer and the possibilities of developing additional programs that can be of benefit to the city and its residents.

If you have any questions, please feel free to call me.

Sincerely,



Mikel B. Olson, Executive Director  
cc: Mayor, Ben Schierer



## Council Action Recommendation

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Page 1 of 2

**Meeting Date:** 8/14/24 Committee of the Whole, 8/19/24 City Council

**Subject:**

Charter Communications Franchise Agreement Extension/Renewal

**Recommendation:**

Introduce an Ordinance extending the Franchise Agreement with Charter Communications and set a public hearing for September 3<sup>rd</sup>, 2024 at 5:30 PM

**Background/Key Points:**

Charter Communications has been operating in Fergus Falls for decades with various franchise agreements over the years. Most recently, the City Council approved a 10-year agreement, effective November 5, 2016. In advance of the expiration of that existing franchise agreement, Charter Communications is proactively asking for an extension for an additional 10-year term. The franchise agreement in place with Charter Communications is a non-exclusive agreement, meaning other entities can operate in Fergus Falls with similar franchise agreements. Park Region/Otter Tail Telecom has a similar agreement with Fergus Falls and it's anticipated they will be seeking a renewal/extension in the next few years as well.

Prior to the approval in 2016, there was a very thorough review of the franchise agreements and significant changes were made. Since then, there have not been any issues with Charter's operation in Fergus Falls, so no changes to the existing agreement are being initiated by staff. Charter is asking for some minor changes, as highlighted in the attached extension ordinance. Both the City Attorney and staff are comfortable with these changes.

If acceptable to Council, this extension will be in effect until November 4, 2036. Per Section 10.06 of the City Charter, franchise extensions, renewals or modifications are subject to the same procedures of a new franchise, which requires an ordinance and a public hearing. The proposed timeline would be holding a 1<sup>st</sup> reading of the ordinance on August 19<sup>th</sup>, with a public hearing, 2<sup>nd</sup> reading and vote on September 3<sup>rd</sup>.

**Budgetary Impact:**

The 3% (of Charter's gross revenues) PEG Access fee will continue to be collected during the extension term.

**Respectfully Submitted:**

Andrew Bremseth, City Administrator

**Attachments:**

Existing Franchise Agreement (Ordinance No. 51, Seventh Series)  
Franchise Agreement Extension

**FRANCHISE AGREEMENT EXTENSION  
CITY OF FERGUS FALLS, MINNESOTA**

**WHEREAS**, Spectrum Mid-America, LLC (successor-in-interest to CC VIII Operating, LLC) (“Grantee”) currently holds a Franchise Agreement (“Agreement”) with the City of Fergus Falls, Minnesota (“Grantor” or “City”) which became effective on November 5, 2016; and

**WHEREAS**, the Agreement will expire by its terms on November 4, 2026; and

**WHEREAS**, Grantee filed timely notice of intent to renew its Agreement with the Grantor pursuant to section 626 of the Cable Communications Policy Act of 1984 (The “Cable Act”); and

**WHEREAS**, the Grantor finds that the Grantee has substantially complied with the material terms of the current Cable Franchise under applicable laws, and that the financial, legal, and technical ability of the Grantee is sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Grantee is willing to grant an extension of the current Agreement until November 4, 2036. Except as stated below, all other terms and conditions of the existing franchise shall remain the same. The parties continue to reserve all rights under the formal procedures of Section 626 of Title VI of the Communications Act of 1934, as amended, and do not waive any rights related thereto.

In addition, the following amendments are made:

Subdivision 4(J) is amended to state that, “No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Subdivision 4(I) above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence.”

Subdivision 4(L) is deleted in its entirety.

Subdivision 4(M) is amended to state, “Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”).”

Subdivision 5(A) is amended to state, “During the term of this franchise extension, the City does not require the Grantee to pay the Grantor a franchise fee.”

Subdivision 5(F) is amended to replace the first sentence with the following: “The City shall be entitled to a right of first refusal of any bona fide offer to purchase the Grantee as set forth in Section E above, but only if and for so long as such a right is required to be part of a franchise under Minnesota law.”

Subdivision 11(E) is amended to reflect that a copy of notices to the Grantee pursuant to the Agreement shall be sent to:

Charter Communications, Inc.  
Attn: Vice President, Local Government Affairs & Franchising  
601 Massachusetts Ave. NW, Suite 400W  
Washington, DC 20001

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2024.

City of Fergus Falls, Minnesota

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 2024.

Spectrum Mid-America, LLC  
By Charter Communications, Inc., Its Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ORDINANCE NO. 51, SEVENTH SERIES**

**AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC D/B/A CHARTER COMMUNICATIONS TO OPERATE A CABLE SYSTEM WITHIN THE CITY OF FERGUS FALLS.**

THE CITY OF FERGUS FALLS DOES ORDAIN:

Section 1. **Cable Services Franchise Grant to CC VIII OPERATING, LLC D/B/A CHARTER COMMUNICATIONS.**

Subd. 1. **Statement of Intent and Purpose.** That after a full public proceeding which afforded reasonable notice and opportunity to be heard, it is hereby determined that:

- A. The City of Fergus Falls, pursuant to applicable laws, is authorized to grant one or more non-exclusive Franchises to construct, operate, upgrade, maintain and reconstruct Cable Services Systems within the City of Fergus Falls.
  
- B. The City Council finds that the development of a Cable Services System has the potential of having great benefits and impact upon the residents of the City, for such a System can contribute significantly to the communication needs and desires of many individuals, organizations, associations and institutions. Because of the complex and rapidly changing technology associated with cable television and other means of communication, the City Council further finds that the public convenience, safety and general welfare can best be served by granting one or more Cable Services franchises and by establishing regulatory powers which shall be vested in the City or such Persons as the City shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public, and any Cable Services franchises issued pursuant to this ordinance shall be deemed to include this finding as an integral part thereof.

Subd. 2. **Definitions.** For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with this context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and



“may” and “should” are permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Activated Channels” means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- B. “Affiliate”, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- C. “Basic Cable Service” means any Cable Service tier which includes the lawful retransmission of local television broadcast signals and any PEG Access programming required herein to be carried on the basic tier as defined in 47 U.S.C. § 522 (3)(as such may be amended from time to time).
- D. “Cable Act” collectively means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 and as the same may, from time to time be further amended.
- E. “Cable Operator” means any person or group of persons who: provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- F. “Cable Service” means: the one-way transmission to Subscribers of Video Programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
- G. “Cable System”, or “System” shall mean 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 City, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves Subscribers without using any Public Way; 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 shall be considered a Cable System (other than for purposes of 47 U.S.C. Section 541(c)) to the extent such facility is used in transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; an open video system that complies with 47 U.S.C. Section 653; or any facilities of any electric utility used solely for operating its electric utility system.

- H. "City" means the City of Fergus Falls and all of the geographic area within its municipal boundaries. The City acts through its City Council and is empowered by federal, state and local law to grant this Franchise to Grantee.
- I. "FCC or "Commission" means the Federal Communications Commission or any legally appointed designated or elected agent or successor thereto.
- J. "Franchise" shall mean the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes construction and operation of a Cable System.
- K. "Franchise fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on the Grantee or Subscribers, or both, solely because of their status as such. The term "franchise fee" does not include: any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); payments which are required by this franchise to be made by the Grantee during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities; capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under title 17 of the United States Code.
- L. "Grantee" means CC VIII Operating, LLC d/b/a Charter Communications and its lawful successors, transferees, or assignees.

- M. "Normal business hours" means those hours during which most similar businesses in the community are open to serve Subscribers.
- N. "Normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- O. "Other Programming Service" means information that a cable operator makes available to all subscribers generally.
- P. "Person" means an individual, natural person, proprietorship, general or limited partnership, association, joint stock company, trust, corporation, firm, limited liability company, joint venture or other legally recognized entity, private or public, whether for profit or not for profit.
- Q. "Public Way" shall mean the surface of, and the space above and below, any public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, maintaining and removing the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, repairing, maintaining and removing the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- R. "Public, Educational, or Governmental Access" means: channel capacity designated, pursuant to the terms of applicable law and this Franchise, for non-commercial public, educational, or governmental use; and (ii) facilities and equipment necessary for the use of such channel capacity in accordance with the terms of applicable law and this Franchise.

- S. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means.
- T. "Service Tier" means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- U. "State" means the State of Minnesota and any political subdivision or agency thereof.
- V. "Subscriber" means a Person who lawfully receives services of the Cable System with the Grantee's express permission.
- W. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**Subd. 3. Grant of Franchise.**

**A. Grant.**

1. The City previously granted a cable television franchise which expired on October 29, 2015.

2. The City Council has considered the Grantee's technical ability, financial condition, and legal qualifications and has approved the same.

3. There is hereby awarded to CC VIII Operating, LLC d/b/a Charter Communications, a non-exclusive franchise for the construction, operation, upgrading, maintenance and reconstruction of a Cable Services System which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services, subject to Subd. 3.C.1. in along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

4. Grantee's prior cable television franchise and any extensions thereof are terminated upon the passage by the City of this

Cable Services Franchise Ordinance and the acceptance by the Grantee. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein.

5. Grantee currently provides a cable system with channel capacity capable of delivering a minimum of 78 channels.

B. **Term.** The Franchise granted pursuant to this Ordinance shall be for an initial term of ten (10) years from the effective date of the Franchise, unless otherwise lawfully extended or terminated in accordance with the term of this Ordinance.

C. **Non-cable services.**

1. **Permission Granted.** Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by applicable law.

D. **Acceptance; Effective Date.** Grantee shall accept the Franchise granted pursuant hereto by signing this ordinance and filing same with the City Administrator within sixty (60) days after the passage and final adoption of this Ordinance., The effective date of this Ordinance shall be the date when the Grantee has signed the Franchise .

E. **Compliance with Laws and Regulations.** The provisions of this franchise shall be subject to applicable federal, state and local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes Annotated (M.S.A.) Chapter 238; provided, however, if any provisions of M.S.A. Chapter 238 conflict with the Cable Act or other applicable federal law or rulings, the provisions of the Cable Act or such other federal law or ruling shall have precedence. Grantee and the City shall conform to all state laws, rules and regulations regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws and regulations regarding Cable Services as they become effective. If there is a conflict between this Franchise and any City ordinance or regulation, this Franchise shall control.

Subd. 4. **Standards of Service.**

- A. **Construction Standards.** Grantee shall not commence construction of a cable services system, open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from the proper municipal authority. If Grantee fails to meet the conditions of the permit the City shall have the right to put the street or public place back into the condition that existed immediately prior to use by the Grantee at the actual or reasonable expense of the Grantee, whichever is less. Such permit shall not be unreasonably withheld. All wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. The Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Franchise area or endanger the life or property of any persons.
- B. **Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways by the City or others and with the rights and reasonable convenience of owners who own property that adjoins any of said Public Ways.
- C. **Restoration of Public Ways.** If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to the condition of the Public Way existing immediately prior to such disturbance.
- D. **Relocation at Request of City.** Upon its receipt of reasonable advance notice, not to be less than sixty (60) days, the Grantee shall at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.
- E. **Relocation at Request of Third Party.** The Grantee shall, on the request of any person holding a building moving permit issued by the City,

temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.

- F. **Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Public Ways of the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the City or property owner pursuant to the terms of this section.
- G. **Safety Requirements.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.
- H. **Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, either aerial or underground. Nothing contained in this section shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as, but not limited to, subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other

related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

1. **New Developments.** The City shall use its best efforts to provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Grantee shall then be responsible for coordinating such undergrounding with the developers, at Grantee's sole discretion and in compliance with the line extension requirements contained herein. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or Developer unless otherwise provided.

2. **Local Improvement District.** If an ordinance is passed creating a local improvement district which involves placing underground all utilities including that of the Grantee which are then located overhead, the Grantee shall, upon receipt of written notice of such ordinance, participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirements of the City. The Grantee may include as external costs subject to pass through to Subscribers its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law.

I. **Required Extensions of Service.** The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers provided that such extension is



technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System.

- J. **Subscriber Charges for Extensions of Service.** No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate its cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1,320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.
- K. **Annexation.** Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. The City shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below. The City shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the City the amounts required by Subd. 4(O) for any Subscriber from areas annexed by the City if the City has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay such fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the

addresses set forth in Subd 11(D) with a copy to the Director of Government Relations. In any audit of fees due under this Franchise, Grantee shall not be liable for fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

**L. Service to Public Buildings.**

Grantee shall continue to provide, on a voluntary basis in accordance with the industry supported Cable in the Classroom initiative, Basic Cable Service and one free outlet to each identified existing school, as well as future K-12 schools within its existing service area in the City: Cleveland Elementary School, McKinley Elementary School, Adams Elementary School, Kennedy Secondary School, Prairie Science School, Area Learning Center, and the following public facilities: Fergus Falls City Hall, Fergus Falls Police Department, Fergus Falls Fire Department. Additional equipment services and programming tiers to these locations will be billed according to Grantee's current pricing. No monthly service fee shall be charged for each such outlet.

**M. Emergency Use.**

1. In accordance with and at the time required by the provisions of FCC Regulations Part I 1, subpart D, Section 11.5 1, and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.18.

2. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney's fees and costs.

**N. Public, Educational, and Governmental (PEG) Access Channel.**

Grantee shall provide to each of its Subscribers who receives some or all of the services on the Cable System, reception on at least two (2) channels. The specially designated public, educational and governmental access channels may be used by the general public on a first-come, first-served, nondiscriminatory basis. The specially designated access channels may be used by local education authorities and local government on a first-come, first-served, nondiscriminatory basis during those hours when the channel is not in use by the general public. Grantee shall provide up to one (1) additional PEG Access Channel upon request of the City provided the signal for the additional channel is in a proper MPEG4 format and meets the criteria set forth in Subd. O. (2) below.

**O. Other Access Requirements.**

1. Grantee shall have no responsibility to produce programming for or to operate the access channel; Grantee's responsibility shall be to provide the access channels and to allow it to be used to distribute programming produced by the City and/or other third parties. Access channel programming and operation shall be the City's responsibility, subject to any access channel policies and procedures which the City may adopt consistent with applicable law. The PEG channels may be placed on any tier of service available to Subscribers.

2. **Additional Access Channels.** Whenever the specially designated access channels set forth above is in use during eighty percent (80%) of the weekdays (Monday through Friday), for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall have six (6) months in which to provide a third specially designated access channel for the same purpose.

3. **Access Channel Operating Rules.** The Grantee shall establish rules pertaining to the administration of the specially designated access channel(s). The rules shall be consistent with any state or federal rules or regulations relating to access channels.

4. **Origination Capability.** Grantee shall continue to provide the ability to transmit PEG programming from the Fergus Falls City Hall.

The Grantee shall provide, at the request of and cost of the City, complete construction, equipment and transmission to enable the ability to transmit PEG programming from:

i. Fergus Falls Public Library as currently located or at any future location within the City; and

ii. The following schools: Cleveland Elementary School, McKinley Elementary School, Adams Elementary School, Kennedy Secondary School, Prairie Science School, Area Learning Center, including any new schools constructed by the Fergus Falls School District No. 544

P. The Grantee shall pay, in support of PEG access channel-related capital and operating needs, a fee of three (3 %) percent of gross revenues, as defined below ("PEG Fee"). The PEG Fee at all times shall be equivalent, on a pro rata per Subscriber basis, to the amount paid to the City by any other Person providing Cable Service in the Service Area, but in no event shall the PEG Fee exceed five percent (5%) of Grantee's gross revenues. Grantee acknowledges that beginning on the effective date, the PEG Fee shall be 3% of gross revenues. Such charge may be itemized as a "PEG Fee" and passed-through on Subscribers' bills. All amounts received by the City shall be used in accordance with applicable federal law. Upon request, the City shall provide a report to Grantee verifying the expenditure of PEG Fees in accordance with applicable law.

1. For purposes of payment of the PEG Fee, "gross revenues" shall mean any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, the Franchise Fee, the PEG Fee or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusions available under applicable State law.

2. Payment of the PEG Fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by the City. In the event of a dispute, the City, upon written request, shall be furnished a statement of said payment reflecting the calculation of the PEG Fee and any other records reasonably requested by the City to verify the accuracy of the reported gross revenue calculations.

3. The City may, at any time, discontinue the imposition of the PEG Fee or change the amount of the PEG Fee, subject to the conditions in this Subd. 4 (P), and in Subd. 5(A)(1), but shall give the Grantee a minimum of ninety (90) days prior written notice to implement such change.

**Subd. 5. Regulation by City.**

**A. Franchise Fee.**

1. During the initial term of ten (10) years from the effective date of the Franchise, the City does not require the Grantee to pay the City a Franchise Fee.

**B. Rates and Charges.**

1. The City may not regulate the rates for the provision of Cable Service, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto as amended from time to time. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

2. A schedule of the current Subscriber charges, as well as the form of residential Subscriber contract, specifying the current length and term of subscriber contracts, shall be kept on file, and available for public inspection during normal office hours, at the office of Grantor.

**C. Renewal of Franchise.**

1. The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

2. In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and

interests, as well as the past performance of Grantee under the then current Franchise term. The City further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 of the Cable Act is considered to begin. Notwithstanding anything to the contrary set forth in this section, the Grantee and City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. The Grantee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

**D. Abandonment or Removal of Franchise Property.**

1. Grantee shall not abandon any portion of its Cable System without giving at least three (3) months prior written notice to City. A Grantee shall not abandon any portion of the Cable System without compensating the City for any damages resulting to the City from the abandonment.

2. Subject to 47 U.S.C. § 546, at the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days, except to the extent grantee is authorized or utilizing the System pursuant to other Applicable Laws.

3. Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

**E. Sale or Transfer of Franchise.**

1. This Franchise or Cable System shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner,

nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, other than to an entity controlling, controlled by, or under common control with the Grantee, without full compliance with the procedure set forth in this Section and Minn. Stat. § 238.083.

2. The provisions of this Section shall apply to the sale or transfer of all or a portion of Grantee's assets, merger (including any parent and its subsidiary entity), consolidation, creation of a subsidiary entity or sale or transfer of stock or other interest in Grantee so as to create a new controlling interest in the Cable System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

i. The parties to the sale or transfer shall make a written request to City for its approval of a sale or transfer. City shall then make a determination pursuant to this Franchise as to the exercise of its first right of refusal to purchase System.

ii. City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary.

iii. If a public hearing is deemed necessary pursuant to (ii) above, such hearing shall be conducted within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

iv. Within thirty (30) days after the public hearing, City shall approve or deny in writing the sale or transfer request, or it shall exercise its right of first refusal. Approval shall not be unreasonably withheld.

v. Grantee, upon transfer, shall within sixty (60) days thereafter file with City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.

3. In reviewing a request for sale or transfer, the City may inquire into the qualifications of the prospective controlling party, and Grantee shall assist City in so inquiring. City may condition said transfer

upon the new controlling party's compliance with the terms and conditions of this Franchise. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise, and reimbursing City for all costs and expenses, including its attorneys' fees resulting from such sale or transfer.

- F. **City's Right to Purchase System.** The City shall be entitled to a right of first refusal of any bona fide offer to purchase the Grantee as set forth in section E above. Bona fide offer as used in this Section means a written offer which has been accepted by Grantee subject to City's rights under this Franchise. The price to be paid by City shall be the bona fide offer for the Cable System including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within ninety (90) days of City's receipt from Grantee of a copy of written bona fide offer. If the City decides to exercise this right of first refusal, the City must complete its acquisition of the Cable System within 60 days after notifying Grantee of its decision to do so.
- G. **Purchase by City Upon Non-Renewal or Revocation.** City may, upon the payment of a fair valuation, purchase, take over and hold the property and plant of Grantee in whole or in part in the following circumstances.
1. If such purchase or taking over be at the non-renewal of the Franchise, subject to 47 U.S.C. § 546, such valuation shall be at fair market value determined on the basis of the cable system valued as a going concern, but with no value attributed to the Franchise itself.
  2. If such purchase or taking over be at the revocation of the Franchise for cause, such valuation shall be at an equitable price.
- H. **Removal of Property.** Upon revocation, termination, non-renewal or forfeiture of this Franchise, subject to 47 U.S.C. § 546, Grantee shall, if the City so requests, remove all of its cables, wires and appliances from the streets, alleys, and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. If the same are not so removed, the City may cause the same to be removed and recover the reasonable costs thereof from Grantee.
- I. **Continuing Administration Responsibility.** The office of the City Administrator shall be responsible for the continuing administration of this Franchise.



Subd. 6. **Technical Compliance**

A. **Technical Standards.**

1. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement.

2. Grantee shall at all times fully comply with the provisions of the Federal Communications Commission technical standards at Section 76, Subpart K of the Code of Federal regulations and found in 47 CFR §§ 76.601 to 76.617, as may be amended from time to time. Upon the City's request, Grantee shall provide the City with a copy of any tests required to be performed pursuant to FCC standards.

3. All installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended. All construction practices shall be in accordance with all applicable section of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.

4. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.

B. **Technical Violations.** The parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called technical breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

1. In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or

2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have

prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

**C. Records required and City's right to inspect.**

1. **Reports Required.** The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the City upon request.

2. The Grantee shall at all times maintain:

i. A record of all written complaints received regarding customer service, interruptions or degradation of Cable Service shall be maintained for one (1) year, including the resolution of such complaints.

ii. A full and complete set of plans, records and strand maps showing the location of the Cable System.

iii. All records of revenues and other financial information relative to the computation of the Franchise Fee set forth herein.

iv. An accurate count of the number of Subscribers in the Service Area.

3. **Inspection of Records.** Grantee shall permit any duly authorized representative of the City, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the City. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the City aware of such confidentiality. If the City believes it must release any such

confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

**D. Annual Reports.**

1. Upon request, Grantee shall, within ninety (90) days of each calendar year end, submit a written end of the year report to City with respect to the preceding calendar year containing the following information as it pertains to the Cable System authorized pursuant to this Ordinance:

i. 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 Cable Services commenced or discontinued during the reporting year;

ii. A report of total Subscribers for each quarter.

2. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during Normal Business Hours.

3. All reports and records required under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this Ordinance or the Franchise agreement.

**E. Audit.** The City and its agents and representatives shall have authority to arrange for and conduct at City's expense an audit of Grantee's accounting and financial records for the sole purpose of verifying the Grantee's PEG Fee payment. Grantee shall first be given thirty (30) days written notice of the inspection and description, to the best of City's ability, of the books, records, and documents prepared in the ordinary course of business that it wants to audit. The period of limitation for recovery of any fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

F. **Monitoring and Compliance Reports.** Upon request, Grantee shall provide a written report of the FCC performance tests for the System required in Part 76, Section 76.601 of FCC rules and regulations.

G. **Additional Reports.** Grantee shall prepare and furnish to City, at the times and if prepared in the ordinary course of business, such mutually agreed to additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of the Franchise, provided, however, Grantee shall not be required to disclose any information which it reasonably deems confidential or proprietary.

**Subd. 7. Insurance, Indemnification and Bonds or Other Surety**

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	[\$1,000,000] per occurrence, Combined Single Liability (C.S.L.) [\$2,000,000] General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	[\$1,000,000] per occurrence C.S.L. Umbrella Liability
Umbrella Liability	[\$1,000,000] per occurrence C.S.L.

B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

D. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages,

liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

**Subd. 8. Enforcement and Termination of Franchise**

- A. **Notice of Violation.** In the event that the City believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.
- B. **Grantee's Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the notice described in Subd. 8 A. to respond to the City contesting the assertion of noncompliance or; (b) to cure such default or; (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date of completion.
- C. **Public Hearing.** In the event that Grantee disputes the noncompliance or fails to respond to the notice described in Subd. 8.A. pursuant to the procedures set forth in Subd. 8.B., or in the event that the alleged default is not remedied within thirty (30) days after the Grantee is notified of the alleged default pursuant to Subd. 8.A. or the Grantee fails to take steps to cure pursuant to Subd. 8.B, then, the City, shall issue a written notice to the Grantee to appear before the Franchise administrator, to resolve the issue of noncompliance. Upon determination by the City that the Grantee is in noncompliance with the Franchise Agreement and that no proposed remedy is satisfactory to the City, the City shall make a written recommendation to schedule a public hearing to investigate the alleged default. Said public hearing shall be held at the next regularly scheduled hearing of the City that is scheduled at a time that is not less than twenty (20) business days there from. The City shall notify the Grantee, in writing, of the time and place of such hearing and provide the Grantee with an opportunity to be heard.
- D. **Enforcement.**
  - 1. Subject to applicable federal and state law, in the event the City, after such hearing, determines that Grantee is in default of any provision of the Franchise, the City may:
    - i. Commence an action at law for monetary damages or seek other equitable relief;

ii. In the case of a substantial default of a material provision of the Franchise, any willful and continued attempt by Grantee to evade the provisions of the Franchise, or Grantee practices fraud or deceit upon the City, declare the Franchise Agreement, and the rights and privileges thereof, to be revoked; or

iii. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

2. Any such determination by the City shall be subject to review *de novo* by a court of competent jurisdiction. During any appeal period, this Franchise shall remain in full force and effect unless the term thereof sooner expires.

3. The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance.

E. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, unavailability of equipment, access to third party facilities including by not limited to poles, conduits, or railroad crossings, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control.

#### Subd. 9. **Unauthorized Reception**

A. **Misdemeanor.** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the City shall incorporate into its criminal code, if not presently a part

thereof, criminal misdemeanor law that will enforce the intent of this section.

**Subd. 10. Consumer Protection Provisions**

- A. **Customer Service Standards.** The City hereby adopts the customer service standards set forth in 47 C.F.R. §76.309 and §§ 76.1601-1604 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

**Subd. 11. Miscellaneous Provisions**

- A. **Preemption.** If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the City, title jurisdiction of the City shall cease and no longer exist.
- B. **Actions of City.** In any action by the City or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- C. **Franchise Required.** It shall be unlawful for any Person to construct, operate or maintain a Cable Services System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Services Franchises granted by City shall contain the same substantive terms and conditions.
- D. **Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise

modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

- E. **Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the City shall be addressed as follows:

City of Fergus Falls  
Attn: City Administrator  
112 West Washington  
Fergus Falls, MN 56537

The notices or responses to the Grantee shall be addressed as follows:

CC VIII OPERATING, LLC D/B/A CHARTER  
COMMUNICATIONS  
Attn:

\_\_\_\_\_  
\_\_\_\_\_

City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

- F. **Descriptive Headings.** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- G. **Severability.** If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.



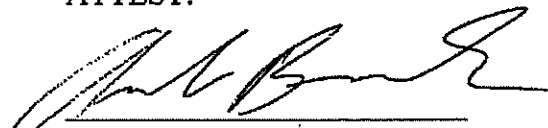
Section 2. Effective Date. The effective date of this ordinance shall be the 5<sup>th</sup> day of November, 2016.

THIS ORDINANCE was introduced on October 3, 2016, and adopted by the City Council of the City of Fergus Falls, Minnesota, on the 17<sup>th</sup> day of October, 2016, by the following vote:

AYES: Hicks, Appert, Schierer, Rachels, Fish, Arneson, Hurley, Spidahl

NAYS: None

ATTEST:

  
\_\_\_\_\_  
City Administrator

APPROVED:

  
\_\_\_\_\_  
Mayor

Published in the Fergus Falls Daily Journal on October 21, 2016.