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CHAPTER 14

FRANCHISE

ARTICLE 1 – Grant of Franchises

14.0101 Powers to Grant

The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or do business in the city, but such franchise shall be subject to the provisions of this article.

14.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the city, and to such reasonable regulation as the city shall be resolution or ordinance provide.

14.0103 Indemnification

The grantee of any franchise shall indemnify and save the city and its agents and employees harmless from all and any claims for person injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the city.

14.0104 Insurance

Any grantee of a franchise by the city shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the city against any all liability of not less than Fifty Thousand and No/100 Dollars (\$50,000.00) property damage, One Hundred Thousand and No/100 Dollars (\$100,000.00) for any one person, personal injury or death, and Two Hundred Thousand and No/100 Dollars (\$200,000.00) for any one accident resulting in personal injury or death. The city may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota.

ARTICLE 2 – Montana-Dakota Utilities Company Franchise

14.0201 Grant of Franchise

1. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.
2. There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, its successors and assigns, subject to limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, on, in and under the same, a gas distribution system for transmitting and distributing vaporized natural gas products and/or manufactured gas for public and private use.
3. Grantee shall maintain an efficient distribution system for furnishing vaporized natural gas products and/or manufactured gas for public and private use at such reasonable rates as may be approved by the Public Service Commission of the state wherein said Municipality is

located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

4. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys and public grounds of the Municipality for like purposes.
5. The Municipality reserves any right it may have, under its police power, or otherwise to control or regulate the use of said streets, alleys, and public grounds by Grantee.
6. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation and maintenance of its distribution system, and its use of the streets, alleys and public grounds of the Municipality.
7. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.
8. Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the town clerk of the Municipality its written acceptance of this franchise.
9. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.
10. The Grantee will pay three percent (3%) franchise tax on gross revenues to the City of Hettinger, North Dakota, or furnish gas at an equivalent reduction in rates to tax supported institutions in the City of Hettinger at the City of Hettinger's option; with the approval of the Public Service Commission of the State of North Dakota.

ARTICLE 3 – Montana-Dakota Utilities Company – Electricity Distribution

14.0301 Grant of Franchise

1. For convenience, herein, said municipal corporation is designated and referred to as “Municipality” and Montana-Dakota Utilities Co. is designated and referred to as “Grantee.” Any reference to either includes their respective successors and assigns.
2. There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, its successors and assigns, subject to limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, on, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.
3. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved by the Public Service Commission of the state wherein said Municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

ORDINANCE

AN ORDINANCE AMENDING AND RE-ENACTING SECTIONS 14.0301 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA RELATING TO MONTANA-DAKOTA UTILITIES COMPANY – ELECTRICITY DISTRIBUTION GRANT OF FRANCHISE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA AS FOLLOWS:

**ARTICLE 3 – MONTANA-DAKOTA UTILITIES COMPANY – ELECTRICITY
DISTRIBUTION**

14.301 Grant of Franchise

Montana-Dakota Utilities Company – Electricity Distribution Grant of Franchise, the full title of which ordinance is: **an ordinance granting to Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., a corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys, and public grounds in the City of Hettinger, Adams County, North Dakota, and an electric distribution system for transmitting and distributing electricity for public and private use**

First Reading: September 12, 2007

Second Reading: October 10, 2007

Final Passage: October 10, 2007

Dan Nudell
Mayor

Attest:

Patricia Carroll
Auditor

4. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys and public grounds of the Municipality for like purposes.

5. The Municipality reserves any right it may have, under its police power, or otherwise to control or regulate the use of said streets, alleys, and public grounds by Grantee.
6. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation and maintenance of its distribution system, and its use of the streets, alleys and public grounds of the Municipality.
7. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.
8. Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.
9. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

ORDINANCE NO. 2021-1

**AN ORDINANCE RELATED TO RE-AUTHORIZING THE GRANT OF CABLE
COMMUNICATIONS FRANCHISE IN THE CITY OF HETTINGER; SETTING FORTH
CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.**

**BE IT ORDAINED, BY THE CITY OF HETTINGER, NORTH DAKOTA THAT THE FOLLOWING
SECTIONS BE RECREATED AND AMENDED:**

SECTION 1: SHORT TITLE AND DEFINITIONS

1. Short Title. This Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.

2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

(a) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).

(b) “Cable Programming Service” means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:

Video Programming carried on the Basic Service Tier;

Video Programming offered on a pay-per-channel or pay-per-program basis; or

A combination of multiple channels of pay-per-channel or pay-per program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:

Consists of commonly-identified Video Programming; and

Is not bundled with any regulated tier of service.

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

(c) “Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

(d) “Cable System” or “System” shall have the meaning ascribed to it in federal law.

(e) “Council” means the Hettinger, North Dakota City Council.

(f) “Franchise” means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.

(g) “Franchise Area” means the area within the legal boundaries of the Grantor.

(h) “Grantee” is the entity which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.

- (i) “Grantor” is the City of Hettinger, North Dakota.
- (j) “Gross Revenue” means only those amounts of monthly revenue received from Basic and Premium Cable Service such as HBO. The Term “Gross Revenues” shall not include any other revenue billed or received by the Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit nor shall it include bad debt.
- (k) “Multichannel Video Program Distributor” or “MVPD” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- (l) “Open Video Services” or “OVS” means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- (m) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (n) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o) “Standard Installation” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- (p) “Street” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q) “Subscriber” means any Person who lawfully receives Cable Service.
- (r) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

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

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

4. Franchise Term. The term of the Franchise is set to be in effect for a period of ten (10) years after the final approval of this Ordinance, acceptance by Grantee, and expiration of the previous Ordinance.

5. Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered. Grantor shall advise Grantee whenever property is annexed. Whenever the Grantee shall receive a request for service from at least fifteen (15) residences within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual collection 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 system, or as provided for under section 2 item 6 of this franchise.

6. 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 his cable drop underground, existence of more than one hundred fifty (150) feet or distance from distribution cable to connection of service to subscribers, or a density of less than fifteen (15) residences per 1,320 cable-bearing strand feet of trunk or distribution cable, 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 the Grantee and subscribers in the area in which service may be expanded, the 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 residences per 1,320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a

pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

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

SECTION 3. APPLICATION FOR NEW FRANCHISE

1. An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:

- (a) Applicant name and business address of Applicant.
- (b) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.
- (c) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.
- (d) List of officers, directors, and managing employees of Applicant and resumes of each.
- (e) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.
- (f) A certificate of insurance consistent with the requirements of this Ordinance.
- (g) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
- (h) A description of the financial qualifications of the Applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.
- (i) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use if applicable.

2. The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review will be ninety (90) days.

- (a) The evidence of legal, technical and financial ability required in the Applicant's proposal will be such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.

- (b) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.
- (c) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.
- (d) The City may consider any additional information that it deems applicable.

SECTION 4. CONSTRUCTION AND OPERATIONS STANDARDS

1. Conditions on Street Use.

- (a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.
- (b) The Grantor shall impose no special permit fees upon a Grantee for access to the public way.
- (c) 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 and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.
- (d) Restoration of public ways. If during the course of Grantee's construction, operation, or maintenance of the system there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.
- (e) If at any time during the period of this Franchise, Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, not less than five (5) business days, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.
- (f) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same in advance of the move, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- (g) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. The Grantee shall reasonably compensate the franchising authority 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 system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the franchising authority pursuant to the terms of this section.

- (h) Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.
- (i) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- (j) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.
- (k) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire the system as specified in Section 3.1.(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- (l) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.
- (m) All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.
- (n) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.
- (o) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (p) Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as

the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

- (q) Subject to Federal Law and Regulation, Grantee shall at all times maintain on file with the Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.
- (r) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

SECTION 5. SYSTEM PROVISIONS AND PUBLIC SERVICES

1. Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

2. Service to City. A Grantee shall, subject to the line extension requirements of Section 2.5 herein, provide one (1) Drop and one (1) outlet of Basic Cable Service at no cost to one city-owned location. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds 150 cable feet or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. If additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

- (a) PEG Channel. Grantee, if requested by Grantor, shall dedicate one (1) channel for public, educational or governmental ("PEG") programming. Every subscriber receiving Cable Service over a Grantee's System shall receive the PEG channel at no additional charge. The PEG channel shall be provided as part of Basic Cable Service and shall not be moved without the City's written approval which shall not be unreasonably withheld. The Grantee shall cablecast all PEG programming produced or created by the City, or its designee, including any live programming. The City may use the PEG channel for any lawful purpose including to cablecast programming produced by the City, local educational institutions or other public institutions, or members of the public.
- (b) The City shall have sole responsibility for managing or controlling the PEG channel. The City shall establish rules for the programming, operation or administration of the PEG channel, which shall be subject to Grantee's review and approval. Grantee shall have no responsibility whatsoever for the programming, operation or administration of the PEG channel.
- (c) City understands the pursuant to federal law, a Grantee may collect the Capital Grant from Subscribers as a separate line item on Subscriber bills, in addition to the price for Cable Service. Any payments by Grantee to City in support of PEG Access shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542).

SECTION 6. OPERATION AND ADMINISTRATION PROVISIONS

1. Indemnification of Grantor.

- (a) A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, councils, elected officials, employees and agents, from and against all liability, damages, and penalties which they may

legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work completed with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

- (b) In order for Grantor to assess its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:
 - (1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2. Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000) for personal injury or death of any one Person, and Three Million Dollars (\$3,000,000) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

3. Franchise Fee.

- (a) Initially, Grantee will pay Franchising Authority an annual franchise fee in the amount of three percent (3%) of Grantee's annual Gross Revenues. Any subsequent change in the franchise fee by the Franchising Authority requires a minimum ninety (90) day notice to the Grantee.
 - (b) The franchise fee shall be payable monthly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal month, together with a brief report showing the basis for the computation.
 - (c) The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.
4. Compliance and monitoring. The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts and financial records at reasonable times and upon reasonable advance notice for the purpose of verifying payments. Grantee shall not be required to maintain any books for longer than five years. Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. Grantee shall not be required to provide subscriber information in violation of applicable law regarding subscriber privacy.

SECTION 7. REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

1. Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provisions of its Franchise or this Ordinance and has failed to substantially cure said violation.

2. Procedures for Revocation.

(a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

(e) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

3. Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

SECTION 8. MICELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.

2. Amendment of Franchise. A Grantee and Grantor may agree to amend a Franchise. Such written amendments may be made at any time.

3. Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

4. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

SECTION 9. PUBLICATION, EFFECTIVE DATE

1. Publication: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication, as required by law. The effective date of this Ordinance shall be January 13, 2022.

First Reading: 8/11/2021

Second Reading: 9/8/2021

ATTEST:

CITY OF HETTINGER, NORTH DAKOTA

By: _____

By: _____

Its _____

Its _____

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

Dated: _____

MIDCONTINENT COMMUNICATIONS

By: Midcontinent Communications

Its Managing Partner

By _____

Its: _____

This Ordinance replaced by 2021-1 (9/9/21)

ORDINANCE NO. 2009-2

AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 14, ARTICLES 4 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA RELATING TO THE GRANT OF CABLE COMMUNICATIONS FRANCHISES IN THE CITY OF HETTINGER; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISES(S).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 1 entitled "Chapter 14, Article 4 of the City Code of the City of Hettinger" is hereby amended and re-enacted as follows:

14.0401 Short Title. This ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.

14.0402 Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not

merely directory. The word "may" is directory and discretionary and not mandatory.

(a) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and may public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).

(b) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier other than:

Video Programming carried on the Basic Service Tier;

Video Programming offered on a pay-per-channel or pay-per-program
Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:

Consists of commonly-identified Video Programming; and

Is not bundled with any regulated tier of service.

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

(c) "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

(d) "Cable System" or "System" shall have the meaning ascribed to it in federal law.

(e) "Council" means the Hettinger, North Dakota City Council.

(f) "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.

(g) "Franchise Area" means the area within the legal boundaries of the Grantor.

(h) "Grantee" is the Person which is granted a Franchise in the City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.

(i) "Grantor" is the City of Hettinger.

(j) "Gross Revenue" means only that monthly revenue received from Basic Cable Service, Premium Pay Services such as HBO. The Term "Gross Revenues" shall not include any other revenue billed or received by the Grantee including, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements, or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by a municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

(k) "Multichannel Video Program Distributor" or "MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(l) "Open Video Services" or "OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

(m) "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

(n) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

(o) "Standard Installation" means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

(p) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.

(q) "Subscriber" means any Person who lawfully receives Cable Services.

(r) "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

14.0403 Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the territory of the Grantor without a Franchise authorizing the same, unless applicable federal or State law prohibits the Grantor's enforcement of such a requirement.

14.0404 Grant of Nonexclusive Authority

(a) A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.

(b) A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other Grantees shall have the right either (i) to opt in to the competitor's Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which cause the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.

(c) Before granting an additional franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.

(d) Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.

(e) Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this franchises, the Franchise shall control.

14.0406 Franchise Term. A Franchise shall be in effect for a period of twelve (12) years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.

14.0407 Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee(s) shall not be required to extend service beyond its present System boundaries

unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier

14.0408 Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or the City Auditor of the Grantor.

14.0409 An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:

- (a) Applicant name and business address of Applicant.
- (b) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.
- (c) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.
- (d) List of officers, directors, and managing employees of Applicant and resumes of each.
- (e) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.
- (f) A certificate of insurance consistent with the requirements of this Ordinance.
- (g) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
- (h) A description of the financial qualifications of the Applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.
- (i) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use.

14.0410 The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review will be ninety (90) days.

(a) The evidence of legal, technical and financial ability required in the Applicant's proposal will be such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City may also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.

(b) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.

(c) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.

(d) The City may consider any additional information that it deems applicable.

14.0411 Conditions on Street Use.

(a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.

(b) The Grantor shall impose no permit fees upon a Grantee.

(c) If at any time during the period of this Franchise, Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.

(d) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

(e) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(f) Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

(g) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.

(i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, upon the consent of the City, promptly remove from the streets, or public place all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

(j) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

(k) All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

(l) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

(m) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the

Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(n) Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

(o) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(p) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

14.0412 Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

14.0413 Service to Schools and City. A Grantee shall, subject to the line extension requirements of Section 14.0407 provide one (1) drop and one (1) outlet of Basic Cable Service at no cost to public and parochial elementary and secondary schools in City, and one (1) City building to be mutually agreed upon by City and a Grantee.

14.0414 PEG Channel. The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

14.0415 Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the emergency alert requirements of federal law.

14.0416 Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

14.0417 Indemnification of Grantor.

(a) A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

(b) In order for Grantor to assert its rights to be indemnified, defended, and held harmless, grantor must with respect to each claim:

(1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

14.0418 Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death or any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

14.0419 Franchise Fee.

(a) A Grantee will pay Grantor a monthly franchise fee in the amount of three (3%) percent of Grantee's gross Revenues.

(b) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(c) The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

14.0420 Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 14.0421 herein, it is determined that a Grantee has violated any material provisions of its Franchise or this Ordinance and has failed to substantially cure said violation.

14.0421 Procedures for Revocation.

(a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

14.0422 Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

14.0423 Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.

14.0424 Amendment of Franchise. A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.

14.0425 Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, consistent with any peddler or solicitor laws or regulations that may be applicable.

14.0426 Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

14.0427 Acceptance.

(a) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Section 3: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 4: Severability. In the event any section of this Ordinance is held invalid by a court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 5: Effective Date. This Ordinance shall be in full force and effect from and after final passage.

CITY OF HETTINGER

Mayor
Hettinger City Council

ATTEST:

Patricia Carroll, City Auditor

MIDCONTINENT COMMUNICATIONS

By: _____

Its: _____
Midcontinent Communications Investor, LLC
Managing Partner of Midcontinent
Communications

Dated: _____

First Reading: _____

Second Reading: _____

Final Passage: _____

ARTICLE 4 – Midcontinent Cable Systems Company

14.0401 Title

This Ordinance shall be known and may be cited as the “Hettinger Community Antenna Television Ordinance.”

14.0402 Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words use in tile present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1. “Basic Cable Service” means the service tier which includes the retransmission of local broadcast signals.
2. is the City of Hettinger, North Dakota.

3. "Council" is the City Council of Hettinger, North Dakota.
4. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
5. "Cable Television Reception Service" means the delivery by the Grantee to television receivers (or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over said system.
6. "FCC" shall mean Federal Communication Commission.
7. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
8. "Grantee" is Midcontinent Cable System Co. of North Dakota or anyone who succeeds Midcontinent Cable System Co., of North Dakota in accordance with the provision of this Ordinance.
9. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Grantee.

14.0403 Grant of Non-Exclusive Authority

1. There is hereby granted by the City of the Grantee, and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Hettinger, North Dakota, and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public by, what is commonly called a Community Antenna Television System, for a period of fifteen (15) years, commencing from and after the effective date of this Ordinance.
2. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.

14.0404 Compliance with Applicable Laws and Ordinances

The Grantee shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984 or which are regulated by the Federal Communication Commission, be subject to all lawful exercise of the regulating and police powers of the City.

14.0405 Territorial Area Involved

This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such residents. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

14.0406 Liability and Indemnification

1. Grantee shall, at all times, keep in effect the following types of insurance coverage:
 - a. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Hettinger, North Dakota.
 - b. each occurrence.
2. Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of the erection, maintenance, presence, use or removal of said attachments or poles within the City, or by any act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workman's Compensation laws in effect that may be applicable to grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.
3. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

14.0407 General System Specifications

The facilities used by the Grantee shall have a minimum capacity of 35 channels (300 MHz). The facilities shall also be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

14.0408 Technical Standards

Grantee shall be governed by technical standards established by the FCC.

14.0409 Operation and Maintenance of System

1. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
2. All service requests and complaints should be responded to within 24 hours of receipt.

14.0410 Service to Schools and City

The Grantee shall provide to public and parochial schools within the City, one terminal junction, for education purposes and at no cost to the City or the public or parochial school system, upon request.

Grantee shall also provide to the City without charge, in a location to be selected by the Council of Hettinger, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency, clearance to enable the City to use said channel.

14.0411 Emergency Use of Facilities

In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

14.0412 Safety Requirements

The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

14.0413 Limitations on Rights Granted

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City of Hettinger, North Dakota.
2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electric Code of the National Board of Fire Underwriters, and such applicable Ordinances and regulations of the City of Hettinger, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future Ordinances.
3. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Superintendent or Engineer, replace or restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.
4. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment

in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

6. The Grantee shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
7. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, the Grantee shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place, as hereinafter provided.
8. In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
9. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section XVIII, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
10. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

14.0414 Ownership and Removal of Facilities

All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

14.0415 Transfer of Ordinance

The Grantee shall not assign this Ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld.

14.0416 Payment to the City

During the term of the rights granted hereunder, and so long as the Grantee operates said system, the Grantee shall pay, commencing on the third anniversary of the effective date of this Ordinance, as compensation of the City a sum equal to three percent (3%) of the annual total gross receipts of the cable system received after said third anniversary date. Prior to said third anniversary date, the Grantee shall pay as compensation to the City a sum equal to one percent (1%) of the annual total gross receipts of the cable system. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers for basic cable service and premium pay services, such as HBO. Gross receipts shall not include revenues received as installation charges, and fees for re-connections, inspections, repairs or modifications of any installation, and all State and Federal Taxes relating thereto.

In no event shall any of such payments be payable until the system is actually in operation with paying subscribers, but there shall be no minimum number of subscribers hereunder. The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on a monthly basis based on the preceding years gross subscriber revenues. Upon completion of Grantee's audit, Grantee shall pay to the City within 15 days, the balance due, if any, for the operating year covered by the audit.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under the Ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

14.0417 Duration and Renewal of Ordinance

The rights granted to Grantee herein shall, except as provided in this Section, terminate twenty five (25) years from the effective date of this Ordinance, which Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original twenty five (25) year term has expired, if this Ordinance is not renewed or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

14.0418 Erection, Removal and Common Use of Poles

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.
2. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
3. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the

City Council may require the Grantee to permit such use for consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

14.0419 Rates

1. Grantee shall at all times maintain on file with the City Auditor or Clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charges.
2. Prior to December 29, 1986, before making any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the City Auditor or Clerk a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing or takes no other action to delay such changes, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.
3. If the Board sets the proposed rate change for hearing, said proposed rate changes will not become effective until the Council has taken action by means of a resolution or until the City's time for doing so has lapsed under federal law or FCC regulations.
4. This provision does not limit the right of Grantee to pass along to the subscribers state and local sales tax, programming cost increases or any specific copyright fees.
5. This Article is not applicable to rates for premium or pay service.
6. Following December 29, 1986, the City may regulate rates only if the cable television system in the City is defined by Federal Communications Commission regulations as one not subject to effective competition and then such regulation shall only be in accordance with the provisions of such regulations.

In the event that the City has authority to regulate rates, the following procedures shall be used:

- a. Before making any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the City Auditor or Clerk a new proposed rate change at least fifty (50) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 50-day notice period.
 - b. If the Board wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by Grantee. Following the hearing, the Board shall take final action on the proposed increase within thirty (30) days.
7. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Grantee by an amount not to exceed five percent (5%) per calendar year.
 8. The monthly rate set forth in subsection 1 above shall be payable in advance.
 9. The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commission regulations.

14.0420 Miscellaneous

1. Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested persons.
2. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Auditor or Clerk for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Finance Officer shall attempt to resolve the Complaints and, if this cannot be achieved, he shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

14.0421 Modification of FCC Rules

Any modification or amendment of the rules of the Federal Communications Commission shall, to the extent applicable, be considered part of this Ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment or at the time of the Federal Communications Commission's amendment or at the time of renewal of this Ordinance, whichever comes first.

14.0422 Modification of Obligations

In addition to any other remedies provided by law or regulation, Grantee's obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

14.0423 Unauthorized Cable Use

It shall be unlawful for any person or person to obtain any cable television reception service from Grantee, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of Grantee, unless the same is done with the prior permission of the Grantee. Any person or persons found guilty of violation of any of the provisions of this Section may be; fined not more than One Hundred Dollars (\$100.00) or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.

14.0424 Severability

If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

14.0425 Publication

The Grantee shall assume the cost of any required publication of this Ordinance.

14.0426 Ordinance Repealed

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

ARTICLE 5 – Consolidated Telcom

14.0501 Grant of Franchise

1. Consolidated Telcom (successor to US West Communications), its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the city of Hettinger, North Dakota for a term of twenty (20) years from the effective date hereof, for the purpose of constructing maintaining and operating a general telephone and telegraph system within said system.
2. The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said city.
3. This ordinance shall be in full force and effect and shall constitute a binding contract between the city of Hettinger and Consolidated Telcom. When it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by said Consolidated Telcom and such acceptance filed with the City Auditor.
4. During the construction, maintenance or enlargement of any part of said telecommunications system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

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

5. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall at its own cost and expense and in manner approved by the City Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

ACCEPTANCE OF CITY ORDINANCE

Please take notice that Consolidated Telcom hereby accepts all the terms and provisions of an Ordinance of the City of Hettinger, North Dakota, entitled:

“AN ORDINANCE GRANTING TO CONSOLIDATED TELCOM, A COOPERATIVE, AND ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF HETTINGER, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A TELECOMMUNICATIONS SYSTEM, WHICH INCLUDES VOICE, VIDEO AND DATA SERVICES OF ANY KIND OR TYPE, WITHIN THE CITY.”

which Ordinance was passed by the City Council and was approved by the Mayor of the City Council of the City of Hettinger, North Dakota, on the 11th day of April, 2007.

Dated this 17th day of April, 2007

Consolidated Telecom

By: _____
Paul Schuetzler, GM/CEO

Attest:

Bryan W. Personne, COO

I, Patricia Carroll, City Auditor of the City of Hettinger, North Dakota, do hereby certify that the foregoing is a true and correct copy of the original Acceptance of the Ordinance therein described and that said original Acceptance was filed in my office on the 16th day of April, 2007, and is now on file therein.

WITNESS my hand and the official seal of the City of Hettinger, North Dakota on the 16th day of April, 2007.

AN ORDINANCE GRANTING TO CONSOLIDATED TELCOM, A COOPERATIVE, AND ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF HETTINGER, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A TELECOMMUNICATIONS SYSTEM, WHICH INCLUDES VOICE, VIDEO AND DATA SERVICES OF ANY KIND OR TYPE, WITHIN SAID CITY.

Be it ordained by the City Council of Hettinger, North Dakota:

Section 1. That Consolidated Telcom, a cooperative, its subsidiaries, successors and assigns, is hereby granted the right to use and occupy the streets, alleys and other public places of the City of Hettinger, North Dakota, for a term of twenty (20) years from the date hereof, for the purpose of constructing, maintaining and operating a telecommunications system, which includes voice, video and data services of any kind or type, within the City.

Section 2. That the rights herein granted are non-exclusive. The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

Section 3. The City reserves the right, if not prohibited by the laws of the State of North Dakota, to make a charge of Grantee for this franchise, which charge shall be subject to change by the Hettinger City Council at its first meeting in January in every year of the franchise period. Prior to imposition of any franchise charge or fee, or change to an existing franchise charge or fee, the City shall provide the Grantee thirty (30) days' written notice of its intent to impose or charge said fee, and shall hold a public hearing thereon.

When Consolidated begins providing video services in the franchise area it shall pay the City of Hettinger a franchise fee of 3% of the Annual Gross Revenues from receipts from subscribers within the City of Hettinger. This fee shall be subject to change as set forth above. Annual Gross Revenues shall mean all gross revenues received by Consolidated Telecom from subscribers within the City of Hettinger in connection with the receipt of video services but shall not include any taxes, regulatory or government imposed fees of any kind, or any revenue received by Consolidated Telcom for the delivery of other services, including without limitation, telephony, data transmission, Internet access, interactive services or other broadband information services. This franchise fee shall be paid on a monthly basis within thirty (30) days after the end of calendar month.

Section 4. Consolidated Telcom shall provide basic video service at no cost to public and parochial elementary and secondary schools within Hettinger city limits at one terminal junction per school for educational purposes upon the request of the school system.

Consolidated Telcom shall provide basic video service at no cost to one (1) City owned building other than a hospital, nursing home, apartment or airport building, to be selected by the City Council of Hettinger. This will include one terminal junction to said building and all television sets connected within such building to said terminal junction.

Consolidated Telcom shall allocate one channel to the City as a public, educational or governmental access channel to be programmed by the City or its designee. Grantee shall provide a character generator and a DVD or VCR unit to the City for the programming of the access channel. Until such time as the City files a written request with Consolidated Telcom for fulltime use of the channel, Consolidated Telcom shall have the right to use that portion of the channel capacity that is not being used by the City. Consolidated Telcom shall have a reasonable period of time after notification to vacate its use of the channel.

Section 5. Consolidated Telcom shall keep in effect Workmen's Compensation and Property Damage – Liability insurance coverage for its operations in Hettinger, North Dakota. Property Damage – Liability Insurance shall have at least the following limits:

General Liability - \$250,000 each occurrence & \$250,000 aggregate

Personal Injury Liability - \$500,000 each occurrence & \$500,000 aggregate

Automobile Bodily Injury/Property Damage Combined - \$1,000,000 each occurrence

Excess Liability - \$1,000,000 each occurrence & \$1,000,000 aggregate

The Grantee shall indemnify, protect and save harmless the City of Hettinger from and against any and all losses and damages which may arise out of the construction and operation of said system and the provisioning of said services.

Section 6. During the construction, maintenance or enlargement of any part of said telecommunications system, Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work. In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such street, sidewalk, alley, public way or paved areas in as good a condition as before the work involving such disturbance was done.

Section 7. Grantee, at its expense, shall protect, support, temporarily disconnect, relocate along, under or over any street, alley or public place, or remove from any street, alley or public place, any equipment or facilities when required by the City Engineer of the City by reason of traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by the City or other public agencies when acting in a governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.

Section 8. That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Hettinger, North Dakota, and Consolidated Telcom, when it shall have been enacted according to the law and when the provisions hereof shall have been accepted in writing by Consolidated Telcom, and such acceptance filed with the City Auditor.

First Reading: March 14, 2007

Second Reading: April 11, 2007

Final Passage: April 11, 2007

Russell Ziegler
Hettinger City Mayor

Attest:

Patricia Carrol, City Auditor

ORDINANCE NO. 14-01-10 (2014-2)

AN ORDINANCE GRANTING TO SLOPE ELECTRIC COOPERATIVE, INC., A COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN, UPON, IN AND UNDER THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF THE CITY OF HETTINGER, ADAMS COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR DISTRIBUTING ELECTRIC ENERGY FOR HEAT, LIGHT, AND POWER PURPOSES, FOR PUBLIC AND PRIVATE USE, AND DEFINING THE EXTENT AND CONDITIONS OF SUCH RIGHTS AND PRIVILEGES.

**BE IT ORDAINED BY
THE CITY OF HETTINGER, ADAMS COUNTY, NORTH DAKOTA**
Section I.

For convenience, throughout this Ordinance, the CITY OF HETTINGER is designated and referred to as the "Municipality" and SLOPE ELECTRIC COOPERATIVE, INC. is designated and referred to as the "Grantee".

Section II.

There is hereby granted by the Municipality to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys, and public grounds of the Municipality as now or hereafter constituted, for the purpose of construction, maintaining and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

Section III.

The rights and privileges herein granted shall continue and remain in full force and effect for a period of twenty (20) years from the day upon which this Ordinance shall become effective as provided by law.

Section IV.

The Municipality reserves any right it may have, under its police power or otherwise, to control or regulate the use of said streets, alleys, and public grounds by the Grantee.

Section V.

The Grantee herein, its successors or assigns, shall maintain an efficient distribution system for furnishing electric energy for light, heat, and power, or other purposes, during twenty-four hours each day. The Grantee, its successors or assigns shall not be obligated to render service to any person who is indebted to the Grantee, its successors or assigns, until such indebtedness shall be paid.

Section VI.

Grantee shall indemnify and hold the Municipality harmless for any loss or damage due to the construction, installation, and maintenance of its distribution system, and the Grantee's use of the streets, alleys, and public grounds.

Section VII.

The Grantee, its successors or assigns, shall have full right and power to assign to any person, persons, or corporation, all the rights and privileges conferred upon and granted to it by the terms of this Ordinance and all obligations hereof shall be binding upon such successors and assigns.

Section VIII.

Nothing in this Ordinance shall be construed to prevent the said Municipality from granting to any other person, partnership, association or corporation the right to use the streets, alleys, avenues, lanes and other public grounds of said Municipality for all like purposes.

Section IX.

The said Grantee, its successors or assigns, shall file a written acceptance of the rights and obligations hereby granted and incurred with the Clerk or Auditor of said Municipality within thirty (30) days after the passage, approval and publication of this Ordinance.

Section X.

This Ordinance shall take effect and be in full force from and after its passage and approval as provided by law.

City of Hettinger

Richard Wyman, Mayor
Hettinger City Council

ATTEST:

Patricia Carroll, City Auditor
Hettinger City

First Reading: November 12, 2014
Second Reading: December 10, 2014
Final Passage: December 10, 2014