

Special City Council Agenda
City Council Chambers, City Hall, 612 N. Main Street

The meeting start time is 5:00 PM.

1. **Call To Order**
2. **Pledge Of Allegiance**
3. **Roll Call**
4. **First Reading Ordinance #2548, Creating Standard Cable Franchise:**

AN ORDINANCE REVISING AND REORGANIZING Mitchell City Code Chapter 8-10 and the Articles thereof by ESTABLISHING a standard franchise agreement for cable systems providing video programming in the City of Mitchell, SD; setting forth conditions accompanying the grant of a franchise; providing for regulation and use of the system; and prescribing penalties for the violation of its provisions.

Documents:

[AGENDA ITEM- STANDARD CABLE FRANCHISE.PDF](#)
[MITCHELL- ORDINANCE CREATING STANDARD CABLE FRANCHISE \(FINAL REVISION\).PDF](#)
[MITCHELL- EXHIBIT 1 TO STANDARD CABLE FRANCHISE- TECHNOLOGY GRANT.PDF](#)
[MITCHELL- EXHIBIT 2 TO STANDARD CABLE FRANCHISE- LOCATIONS.PDF](#)

5. **First Reading Ordinance #2549:**
An Ordinance RENEWING the Mitchell Telecom Franchise Agreement on terms consistent with Mitchell's Standard Cable Franchise

Documents:

[AGENDA ITEM- MITCHELL TELECOM FRANCHISE AGREEMENT.PDF](#)
[MITCHELL TELECOM INDIVIDUAL CABLE FRANCHISE.PDF](#)
[MITCHELL TELECOM- EXHIBIT 1 TO INDIVIDUAL CABLE FRANCHISE- TECHNOLOGY GRANT.PDF](#)
[MITCHELL TELECOM- EXHIBIT 2 TO INDIVIDUAL CABLE FRANCHISE- LOCATIONS.PDF](#)

6. **First Reading Ordinance #2550:**
An Ordinance RENEWING the Midco Franchise Agreement on terms consistent with Mitchell's Standard Cable Franchise

Documents:

[AGENDA ITEM- MIDCO FRANCHISE AGREEMENT.PDF](#)
[MIDCO INDIVIDUAL CABLE FRANCHISE.PDF](#)
[MIDCO- EXHIBIT 1 TO INDIVIDUAL CABLE FRANCHISE- TECHNOLOGY GRANT.PDF](#)
[MIDCO- EXHIBIT 2 TO INDIVIDUAL CABLE FRANCHISE- LOCATIONS.PDF](#)

7. **Motion To Adjourn**

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following at City Hall (605) 995-8420 at least 24 hours prior to the meeting with requests for

assistance: Human Resources Officer, Finance Officer, Public Works Director, or City Administrator.

CITY OF MITCHELL

City Council Meeting Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested:

Requested By:

Desired Action of City Council

Authorization
Ordinance

Approval
Citizen Request

Resolution
Discussion

Amount budgeted in current fiscal
year for this item (if applicable):

Agenda Item:

Explanation/Background of Agenda
Item Requested:

ORDINANCE NO. ____

AN ORDINANCE REVISING AND REORGANIZING Mitchell City Code Chapter 8-10 and the Articles thereof by ESTABLISHING a standard franchise agreement for cable systems providing video programming in the City of Mitchell, SD; setting forth conditions accompanying the grant of a franchise; providing for regulation and use of the system; and prescribing penalties for the violation of its provisions.

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That a NEW SECTION be added to the Mitchell City Code as Section 8-10-1 which shall read:

8-10-1: STANDARD CABLE FRANCHISE EMPLOYED:

- A. The City intends, by the adoption of a Standard Cable Franchise, to bring about the continued development and maintenance of one or more cable systems. Such activity shall contribute significantly to the communication needs and desires of many.
- B. This Standard Cable Franchise shall be codified as Article A of Chapter 8-10 which shall be titled "STANDARD CABLE FRANCHISE" with such provisions and sections as provided in this ordinance.
- C. All persons operating a Cable System shall be required to first obtain a Cable Franchise from the City of Mitchell, unless applicable federal or state law shall prohibit such a requirement.
- D. Each individual Cable Franchise granted in the City of Mitchell shall be codified in its own Article to Chapter 8-10 of the Mitchell City Code and be titled after the company to which the franchise is granted. All franchises granted shall substantially conform to the Standard Cable Franchise as codified under Article A of Chapter 8-10 of the Mitchell City Code.

Section 2.

That a NEW ARTICLE TO AN EXISTING CHAPTER be added to the Mitchell City Code as Article A of Chapter 8-10 to be titled STANDARD CABLE FRANCHISE with sections as further provided below:

8-10A-1: SHORT TITLE AND DEFINITIONS

8-10A-1-1: SHORT TITLE:

This Ordinance shall be known and cited as the “*Insert Grantee Name*” Television Franchise Ordinance or as the “*Insert Grantee Name*” Franchise Agreement.

8-10A-1-2: 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. *This section may be incorporated by reference in individual cable franchises.*

A. “Affiliate” means any entity controlling, controlled by, or under common control with the entity in question.

B. “Applicant” shall mean and refer to a potential Grantee seeking an initial grant of a Franchise and does not include a Grantee seeking renewal of an existing Franchise.

C. “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).

D. “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 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(l)(2) and 47 C.F.R. 76.901(b) (1993).

E. “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.

F. “Cable System” or “System” shall have the meaning ascribed to it under 47 USC §522(7).

G. “City Council” or “Council” means the Mitchell, South Dakota City Council.

H. “Commercial Subscriber” means a Subscriber primarily utilizing Cable Services or a Grantee’s Cable System in connection with carrying on a business, whether for profit or non-profit.

I. “Drop” means the cable or wire that connects the distribution portion of a Cable System solely to a Subscriber’s premises; which shall typically be from a Subscriber’s residence to the adjacent public way or easement usable for cable purposes.

J. “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.

K. “Franchise Area” means the area within the legal boundaries of the Grantor as they now or in the future exist.

L. “Grantee” is “*insert name of franchisee*”, its agents and employees, lawful successors, transferees or assignees.

M. “Grantor” or “City” is the City of Mitchell, SD.

N. “Gross Revenues” shall refer, without limitation, to all revenues of any type earned, accrued, or received by the Grantee, net of bad debts, which are derived from the operation of the Cable System to provide Cable Services, including, but not limited to, revenues directly received by the Grantee or an affiliate of the Grantee in respect to Cable Services from subscribers or users of the system for: 1) Basic Cable Services; 2) additional tiers; 3) premium services; 4) pay per view programming; 5) electronic program guides; 6) installation, disconnection or service call fees; 7) fees for the provision, rental or lease of converters, remote controls, additional outlets and other customer premises equipment; 8) the use of leased access channels; 9) other fees collected by the Grantee in respect to the provision of Cable Service; 10) the Grantee’s lease of any part of the Cable System to a third party; 11) advertising revenues from the System; 12) revenues received by Grantee from home shopping

programming. The term “Gross Revenues” does not include taxes imposed by any municipal, state, or other governmental unit.

O. “Low Density Area” means any area in the Franchise Area with less than 5 potential or actual Subscribers per one quarter (1/4) mile.

P. “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.

Q. “Open Video Services” or “OVS” means any video programming services provided to any Person by a Grantee 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.

R. “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.

S. “Person” is any natural person, firm, partnership, association, corporation, company, or other legal entity.

T. “Residential Subscriber” means a subscriber utilizing Cable Services or a Grantee’s Cable System for personal or household use; not in connection with carrying on a business.

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

V. “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.

W. “Subscriber” means any Person who lawfully receives Cable Service.

X. “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

8-10A-2: GRANT OF AUTHORITY AND GENERAL PROVISIONS

8-10A-2-1: FRANCHISE REQUIRED:

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

8-10A-2-2: GRANT OF FRANCHISE:

A Franchise that is granted in the City shall be subject to the terms and conditions contained in each individual Franchise.

8-10A-2-3: GRANT OF NON-EXCLUSIVE 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 other Persons at any time, provided, however, that all Franchises shall contain substantially similar terms and conditions as this Franchise. In order that one Person is not granted a competitive advantage over another, in the event a Person commences provision of Cable Services without a Franchise or is granted a Franchise to provide Cable Services by the Grantor, the terms and conditions of which differ with this Franchise, Grantee 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. Every Franchise shall apply to the entire Franchise Area of the Grantor, as it exists now or may later be configured.

D. 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.

8-10A-2-4: FRANCHISE TERM:

Unless renewed, revoked, or terminated sooner as herein provided, a Franchise shall be in effect for a period of up to five (5) years from the effective date of an individual Franchise, with an automatic renewal term of up to an additional five (5) years unless notice of non-renewal is provided 6 months in advance of expiration.

8-10A-2-5: TERRITORIAL AREA INVOLVED:

A. Grantee shall provide Cable Services to any and all Persons requesting same at a location within the Franchise Area as such area boundaries may exist from time to time. No line extension charge or comparable charge shall be imposed on any current or potential subscriber when located within the franchise area except as further provided by this section.

B. Grantee shall not be required to extend its lines or provide Cable Service any sooner than electric utility service is available to the Subscriber's location. Grantee shall provide service to a requesting Subscriber within a reasonable amount of time which in no event shall exceed three (3) months.

C. Grantee may choose either alternative C1 or alternative C2, relating to line extensions in Low Density Areas, which such choice shall be effective for the entire Franchise Term. *Alternative C1 or alternative C2 shall be inserted in an individual franchise in place of this section.*

C1. Prior to providing service in Low Density Areas to Residential Subscribers, a Grantee may require a Residential Subscriber to commit to an initial service agreement of up to three (3) years, subject to the following restrictions:

1. A Grantee shall not require a Residential Subscriber to pay a line extension charge or comparable charge as a condition precedent to the provision of service.
2. An agreement shall not require a Residential Subscriber to maintain services in excess of the stand-alone rate of Basic Cable Service. However, a Residential Subscriber and Grantee are not restricted from agreeing on the provision of additional services so long as Subscriber may cancel such additional services.
3. An agreement shall be terminable by a Residential Subscriber at any time upon reasonable notice. However, said agreement may contain a provision requiring payment of a line extension charge that shall only be applicable if, prior to the end of the three (3) year

term, the Residential Subscriber terminates service entirely or the Residential Subscriber reduces Subscriber's services to a monthly rate less than the stand-alone rate of Basic Cable Service.

4. Any such line extension charge shall be reasonable and shall be pro-rated and reduced by the number of months the Residential Subscriber maintained service and must take into consideration any subsequent development in the area.

5. At the option of Subscriber, Subscriber may, as an alternative to signing an initial service agreement, agree to pay a line extension charge.

6. The provisions of this subsection shall not apply to any existing or potential Commercial Subscriber and, with a Commercial Subscriber, Grantee is not prohibited from reaching agreements or charging a line extension charge that would otherwise be prohibited with a Residential Subscriber.

C2. Grantee shall not require a Subscriber to pay a line extension charge or comparable charge in Low Density Areas.

D. Notwithstanding subsection A of this section, a Grantee may charge a uniform Standard Installation fee. Grantee may also charge a Drop fee for Drops exceeding the Standard Installation length of one hundred fifty (150') feet but shall only charge for the incremental cost beyond one hundred fifty (150') feet, which amount shall be reasonable.

8-10A-2-6: WRITTEN NOTICE:

All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to the party listed below:

For City:

City of Mitchell
c/o Finance Office
612 North Main Street
Mitchell, SD 57301

For Grantee:

"Insert Grantee Address"

8-10A-3: APPLICATION FOR NEW FRANCHISE: This section and its subsections may be incorporated by reference in individual cable Franchises.

8-10A-3-1: WRITTEN APPLICATION REQUIREMENTS:

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, as well as a list of any other municipalities or areas where Applicant has provided Cable Service or is so providing at the time of application.
- 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.

8-10A-3-2: REVIEW OF NEW APPLICATION:

The Initial Franchise Application may be evaluated according to the following criteria, and approved within one hundred eighty (180) days after City deems the

Application is complete. In the event Applicant is already authorized to occupy the Rights of Way, the time for review and approval will be ninety (90) days.

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

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

C. A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions, including those imposed by SDCL 9-35-3.

D. The City may consider any additional information that it deems applicable.

8-10A-4: CONSTRUCTION, OPERATIONS STANDARDS AND 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 Grantee shall not be subject to permit fees except for any fees or costs associated with repairs of Streets or other infrastructure necessitated by Grantee's operations.

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 vegetation or any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent such vegetation or 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 System or facilities; nor shall Grantee be so relieved of liability arising out of its failure to exercise reasonable care to avoid injury to any Person's property.

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, subject to any future requirement of City to have such aerial utilities placed underground.

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, except for non-use arising from discontinued service by a Subscriber, 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 abandoned portions of the System as specified in subsection (J) of this section, promptly remove from the Streets, or public places all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the Street or other area from which such property has been removed to a condition satisfactory to the City.

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

K. All cable and passive equipment for reception of Cable Services 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 Cable Service to any Subscriber, the

Grantee shall promptly remove all its above ground facilities and equipment from the premises of such Subscriber upon the Subscriber's 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 burden Grantee or interfere with the Grantee's operations.

O. Grantee shall at all times maintain on file with the City Finance Office 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 reserves the right to regulate rates pursuant to federal law and Federal Communications Commission ("FCC") regulations and any such rate regulation shall not conflict with the provisions of FCC regulations and federal law.

8-10A-5: SYSTEM PROVISIONS AND PUBLIC SERVICES

8-10A-5-1: OPERATION AND MAINTENANCE OF SYSTEM:

A Grantee shall render effective Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible.

8-10A-5-2: PEG CHANNELS:

A. Grantee shall provide to its Subscribers one (1) public, educational, or governmental (“PEG”) channel administered by the City or its designee. Such PEG channel shall only broadcast content originated by the City or its designee.

B. If the City deems it necessary, and upon reasonable notice, Grantee shall make available a second PEG channel to be utilized by City or a designee, which shall also only broadcast content originated by the City or its designee.

C. City may require a technology grant from Grantee to be used in or associated with the construction of PEG access facilities. The terms of such grant shall be included in Exhibit 1 to this Franchise. In accordance with FCC rules and regulations, such grant is a capital cost and shall be excluded from Franchise fee calculation

8-10A-5-3: EMERGENCY USE:

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

8-10A-5-4: LOCKOUT DEVICE:

Upon the request of a Subscriber, Grantee shall provide by sale or lease a lockout device which inhibits Video Programming or portions of Video Programming delivered by the Cable System.

8-10A-5-5: CITY CABLE SERVICE:

Grantee agrees to provide free Basic Cable Services to a central location at up to fifteen (15) buildings designated by City. Such Basic Cable Services shall not be calculated against the Franchise fee. This section of the Franchise is a material term of the contract, however, its inclusion is not mandated by City as a condition precedent to the grant of an individual Franchise. Grantee understands that federal law allows for the amount of the benefit of free Basic Cable Services to be calculated against the Franchise fee and Grantee specifically waives such right. Locations designated by the City shall be listed in Exhibit 2 to this Franchise.

8-10A-6: OPERATION AND ADMINISTRATION PROVISIONS:

8-10A-6-1: INDEMNIFICATION OF GRANTOR:

A. A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees, and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's System or facilities while performing work connected with grading, re-grading, 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 subsection two (2) above.

8-10A-6-2: INSURANCE:

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

8-10A-6-3: FRANCHISE FEE:

A. A Grantee will pay Grantor a monthly Franchise fee in the amount of five (5%) 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, such report to be held confidential and exempt from public records disclosure requirements pursuant to SDCL 1-27-1.5(3) as containing trade secrets and other proprietary or commercial information which if released would infringe intellectual property rights or give advantage to business competitors.

C. Grantor shall be limited to a period of limitation for recovery of any Franchise fee payable hereunder of five (5) years. However, Grantee shall be liable for interest, at the judicial rate, on any late payments from the date of the payment missed. Such limitation shall not apply in cases of fraud. Grantor may request a review of records relating to the Franchise fee and Grantee shall accommodate all reasonable requests to review such records. In the event such review reveals a discrepancy of more than 5%, Grantee shall be responsible for reimbursing the reasonable cost of such review to Grantor in addition to the deficiency amount plus interest at the judicial rate.

8-10A-7: REVOCATION, ABANDONMENT, SALE, OR TRANSFER

8-10A-7-1: GRANTOR'S RIGHT TO REVOKE:

Grantor reserves the right to revoke, terminate, or cancel a Franchise, if after strictly following the procedures required below, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation. Such revocation procedures include, in their entirety:

A. Grantor shall provide a Grantee with written notice of a cause for revocation, including facts establishing the basis of revocation, and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance.

B. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the thirty (30) day notice period to cure the violation. 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. If violations re-occur for substantially similar reasons, the notice period may be reduced by the number of days previously spent in violation for any substantially similar prior violations.

8-10A-7-2: SALE OR TRANSFER OF FRANCHISE:

No sale or transfer of a Franchise shall take place without the Grantor's amendment of Grantee's individual Franchise ordinance, which shall not be unreasonably withheld. Upon such amendment, all of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assignee of a Grantee. No approval shall be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

8-10A-8: MISCELLANEOUS PROVISIONS:

8-10A-8-1: FRANCHISE RENEWAL:

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

8-10A-8-2: AMENDMENT OF FRANCHISE:

A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, subject to applicable law.

8-10A-8-3: MARKETING:

A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, subject to any peddler or solicitor ordinance.

8-10A-8-4: SEVERABILITY:

If any section, sentence, clause, or phrase of this Franchise 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 Franchise and the remainder shall remain in full force and effect.

8-10A-8-5: SUPPLEMENTAL EXHIBITS:

Supplemental exhibits to an individual Franchise shall have full force and effect but may or may not be codified. A supplemental exhibit shall be for the purpose of complementing, clarifying, or otherwise augmenting a term of the Standard Cable Franchise but in no event shall a supplemental exhibit place a Grantee at an undue competitive disadvantage. As Exhibit 1 and Exhibit 2 are specifically referred to in this Franchise, neither Exhibit 1 nor Exhibit 2 shall be required to be individually executed by the City or Grantee. Future Exhibits shall be individually executed by the City and Grantee before they take effect.

8-10A-9: PUBLICATION AND EFFECTIVE DATE

A Franchise shall become effective twenty (20) days after its adoption and publication if not referred, all pursuant to state law. Once effective, the Franchise will be deemed to have been in effect as of "*insert chosen date*".

8-10A-10: ACCEPTANCE:

- A. Grantee shall accept an individual Franchise by executing the same. Such acceptance by the Grantee shall be deemed the grant of an individual 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 an individual Franchise, Grantee shall be bound by all the terms and conditions contained herein.
- C. Grantee warrants that it is an Equal Opportunity/Affirmative Action employer.

Section 3.

That the existing franchise granted under Article A of Chapter 8-10 titled MIDCONTINENT COMMUNICATIONS remain in full force and effect under the terms thereof or, if applicable, under the terms of a new franchise granted to such company consistent with the Standard Cable Franchise; but that said Article be re-codified as Article C of Chapter 8-10.

Section 4.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 5.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____
day of _____, 20____.

Jerry Toomey – Mayor

Attest:

Michelle Bathke – City Finance Officer

(seal)

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____

EXHIBIT 1

Technology Grant Terms and Conditions

WHEREAS the City of Mitchell and Grantee have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides for the payment of a Technology Grant by Grantee to City, with the terms of such Technology Grant to be set out in Exhibit 1 to the Franchise; and

WHEREAS the Technology Grant required by the City is specifically allowed under federal law pursuant to the grant of a Franchise so long as funds are to be used in or associated with the construction of PEG access facilities;

THEREFORE, terms and conditions relating to the Technology Grant are hereby detailed as follows:

1. The total of funds required by the City shall not exceed \$25,000.00 for an individual Grantee. The City shall request Technology Grant funds from all Franchise Grantee's proportionally.
2. The City shall utilize funds solely as permitted under federal law to be used in or associated with construction of PEG access facilities.
3. The City shall provide six months' notice prior to its first request for any funds.
4. The City intends for funds to be used for new PEG access facilities in conjunction with the upgrade of the existing City Hall building or construction of a new City Hall building; with such project to begin no sooner than June 2018.
5. City shall have sole discretion in choosing the equipment, parts, design, specifications, and all other aspects relating to the capabilities of the new PEG access facilities and may seek reimbursement for costs associated therefrom, as they arise, proportionally from all Grantees up to \$25,000.00 in accordance with the terms of this agreement. City shall provide documentation detailing the expenses incurred when requesting funds.
6. A Grantee shall not be precluded from implementing any billing practice it deems necessary to compensate for this Technology Grant provided that an individual Subscriber's monthly bill does not increase more than fifty (\$0.50) cents per month and then only for such period of time as is necessary to recover funds actually requested by City.

EXHIBIT 2

Locations for Free Basic Cable Service

WHEREAS the City of Mitchell and Grantee have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides that Grantee will provide free Basic Cable Services to up to 15 locations designated by the City to be set out in Exhibit 2 to the Franchise; and

THEREFORE, the terms and conditions relating to the provision of free Basic Cable Services are detailed as follows:

1. The total number of locations designated by City shall be apportioned evenly between all Grantees.
2. The City designates the following locations to be provided with free Basic Cable Service:
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)
 - (6)
 - (7)
 - (8)
 - (9)
 - (10)
 - (11)
 - (12)
 - (13)
 - (14)
 - (15)
3. The City may designate additional locations to Grantee, up to the maximum of 15 per Grantee, and Grantee shall provide Service to such location within a reasonable amount of time.
4. Grantee shall not be required to extend its Cable System at no cost in order to provide a designated location with free Basic Cable Service.

CITY OF MITCHELL

City Council Meeting Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested:

Requested By:

Desired Action of City Council

Authorization
Ordinance

Approval
Citizen Request

Resolution
Discussion

Amount budgeted in current fiscal
year for this item (if applicable):

Agenda Item:

Explanation/Background of Agenda
Item Requested:

ORDINANCE NO. ____

AN ORDINANCE RENEWING the Mitchell Telecom Franchise Agreement on terms consistent with Mitchell's Standard Cable Franchise.

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That a NEW ARTICLE TO AN EXISTING CHAPTER be added to the Mitchell City Code as Article B of Chapter 8-10 to be titled MITCHELL TELECOM FRANCHISE AGREEMENT with sections as further provided below:

8-10B-1: SHORT TITLE AND DEFINITIONS

8-10B-1-1: SHORT TITLE:

This Ordinance shall be known and cited as the Mitchell Telecom Television Franchise Ordinance or as the Mitchell Telecom Franchise Agreement.

8-10B-1-2: DEFINITIONS:

This Franchise hereby incorporates by reference the definitions contained in Mitchell's Standard Cable Franchise as codified in Mitchell City Code Section 8-10A-1-2; except as hereafter modified:

L. "Grantee" is ATV Holdings, LLC, doing business as Mitchell Telecom, its agents and employees, lawful successors, transferees or assignees.

8-10B-2: GRANT OF AUTHORITY AND GENERAL PROVISIONS

8-10B-2-1: FRANCHISE REQUIRED:

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

8-10B-2-2: GRANT OF FRANCHISE:

A Franchise that is granted in the City shall be subject to the terms and conditions contained in each individual Franchise.

8-10B-2-3: GRANT OF NON-EXCLUSIVE 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 other Persons at any time, provided, however, that all Franchises shall contain substantially similar terms and conditions as this Franchise. In order that one Person is not granted a competitive advantage over another, in the event a Person commences provision of Cable Services without a Franchise or is granted a Franchise to provide Cable Services by the Grantor, the terms and conditions of which differ with this Franchise, Grantee 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. Every Franchise shall apply to the entire Franchise Area of the Grantor, as it exists now or may later be configured.

D. 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.

8-10B-2-4: FRANCHISE TERM:

Unless renewed, revoked, or terminated sooner as herein provided, a Franchise shall be in effect for a period of up to five (5) years from the effective date of an individual Franchise, with an automatic renewal term of up to an additional five (5) years unless notice of non-renewal is provided 6 months in advance of expiration.

8-10B-2-5: TERRITORIAL AREA INVOLVED:

A. Grantee shall provide Cable Services to any and all Persons requesting same at a location within the Franchise Area as such area boundaries may exist from time to time. No line extension charge or comparable charge shall be imposed on any current or potential subscriber when located within the franchise area except as further provided by this section.

B. Grantee shall not be required to extend its lines or provide Cable Service any sooner than electric utility service is available to the Subscriber's location. Grantee shall provide service to a requesting Subscriber within a reasonable amount of time which in no event shall exceed three (3) months.

C. Prior to providing service in Low Density Areas to Residential Subscribers, a Grantee may require a Residential Subscriber to commit to an initial service agreement of up to three (3) years, subject to the following restrictions:

1. A Grantee shall not require a Residential Subscriber to pay a line extension charge or comparable charge as a condition precedent to the provision of service.
2. An agreement shall not require a Residential Subscriber to maintain services in excess of the stand-alone rate of Basic Cable Service. However, a Residential Subscriber and Grantee are not restricted from agreeing on the provision of additional services so long as Subscriber may cancel such additional services.
3. An agreement shall be terminable by a Residential Subscriber at any time upon reasonable notice. However, said agreement may contain a provision requiring payment of a line extension charge that shall only be applicable if, prior to the end of the three (3) year term, the Residential Subscriber terminates service entirely or the Residential Subscriber reduces Subscriber's services to a monthly rate less than the stand-alone rate of Basic Cable Service.
4. Any such line extension charge shall be reasonable and shall be pro-rated and reduced by the number of months the Residential Subscriber maintained service and must take into consideration any subsequent development in the area.
5. At the option of Subscriber, Subscriber may, as an alternative to signing an initial service agreement, agree to pay a line extension charge.
6. The provisions of this subsection shall not apply to any existing or potential Commercial Subscriber and, with a Commercial Subscriber, Grantee is not prohibited from reaching agreements or charging a line extension charge that would otherwise be prohibited with a Residential Subscriber.

D. Notwithstanding subsection A of this section, a Grantee may charge a uniform Standard Installation fee. Grantee may also charge a Drop fee for Drops exceeding the Standard Installation length of one hundred fifty (150') feet but shall only charge for the incremental cost beyond one hundred fifty (150') feet, which amount shall be reasonable.

8-10B-2-6: WRITTEN NOTICE:

All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to the party listed below:

For City:

City of Mitchell
c/o Finance Office
612 North Main Street
Mitchell, SD 57301

For Grantee:

ATV Holdings, LLC
c/o TrioTel Communications, Inc.
PO Box 630
330 S. Nebraska St.
Salem, SD 57058

8-10B-3: APPLICATION FOR NEW FRANCHISE:

Section 8-10A-3 of the Standard Cable Franchise and its subsections are hereby incorporated by reference.

8-10B-4: CONSTRUCTION, OPERATIONS STANDARDS AND 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 Grantee shall not be subject to permit fees except for any fees or costs associated with repairs of Streets or other infrastructure necessitated by Grantee's operations.

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 vegetation or any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent such vegetation or 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 System or facilities; nor shall Grantee be so relieved of liability arising out of its failure to exercise reasonable care to avoid injury to any Person's property.

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, subject to any future requirement of City to have such aerial utilities placed underground.

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, except for non-use arising from discontinued service by a Subscriber, 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 abandoned portions of the System as specified in subsection (J) of this section, promptly remove from the Streets, or public places all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the Street or other area from which such property has been removed to a condition satisfactory to the City.

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

K. All cable and passive equipment for reception of Cable Services 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 Cable Service to any Subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such Subscriber upon the Subscriber's 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 burden Grantee or interfere with the Grantee's operations.

O. Grantee shall at all times maintain on file with the City Finance Office 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 reserves the right to regulate rates pursuant to federal law and Federal Communications Commission

("FCC") regulations and any such rate regulation shall not conflict with the provisions of FCC regulations and federal law.

8-10B-5: SYSTEM PROVISIONS AND PUBLIC SERVICES

8-10B-5-1: OPERATION AND MAINTENANCE OF SYSTEM:

A Grantee shall render effective Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible.

8-10B-5-2: PEG CHANNELS:

A. Grantee shall provide to its Subscribers one (1) public, educational, or governmental ("PEG") channel administered by the City or its designee. Such PEG channel shall only broadcast content originated by the City or its designee.

B. If the City deems it necessary, and upon reasonable notice, Grantee shall make available a second PEG channel to be utilized by City or a designee, which shall also only broadcast content originated by the City or its designee.

C. City may require a technology grant from Grantee to be used in or associated with the construction of PEG access facilities. The terms of such grant shall be included in Exhibit 1 to this Franchise. In accordance with FCC rules and regulations, such grant is a capital cost and shall be excluded from Franchise fee calculation

8-10B-5-3: EMERGENCY USE:

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

8-10B-5-4: LOCKOUT DEVICE:

Upon the request of a Subscriber, Grantee shall provide by sale or lease a lockout device which inhibits Video Programming or portions of Video Programming delivered by the Cable System.

8-10B-5-5: CITY CABLE SERVICE:

Grantee agrees to provide free Basic Cable Services to a central location at up to fifteen (15) buildings designated by City. Such Basic Cable Services shall not be calculated against the Franchise fee. This section of the Franchise is a material

term of the contract, however, its inclusion is not mandated by City as a condition precedent to the grant of an individual Franchise. Grantee understands that federal law allows for the amount of the benefit of free Basic Cable Services to be calculated against the Franchise fee and Grantee specifically waives such right. Locations designated by the City shall be listed in Exhibit 2 to this Franchise.

8-10B-6: OPERATION AND ADMINISTRATION PROVISIONS:

8-10B-6-1: INDEMNIFICATION OF GRANTOR:

A. A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees, and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's System or facilities while performing work connected with grading, re-grading, 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 subsection two (2) above.

8-10B-6-2: INSURANCE:

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

one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence, which amounts may be modified by City from time to time in its sole discretion to be exercised in good faith.

8-10B-6-3: FRANCHISE FEE:

A. A Grantee will pay Grantor a monthly Franchise fee in the amount of five (5%) 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, such report to be held confidential and exempt from public records disclosure requirements pursuant to SDCL 1-27-1.5(3) as containing trade secrets and other proprietary or commercial information which if released would infringe intellectual property rights or give advantage to business competitors.

C. Grantor shall be limited to a period of limitation for recovery of any Franchise fee payable hereunder of five (5) years. However, Grantee shall be liable for interest, at the judicial rate, on any late payments from the date of the payment missed. Such limitation shall not apply in cases of fraud. Grantor may request a review of records relating to the Franchise fee and Grantee shall accommodate all reasonable requests to review such records. In the event such review reveals a discrepancy of more than 5%, Grantee shall be responsible for reimbursing the reasonable cost of such review to Grantor in addition to the deficiency amount plus interest at the judicial rate.

8-10B-7: REVOCATION, ABANDONMENT, SALE, OR TRANSFER

8-10B-7-1: GRANTOR'S RIGHT TO REVOKE:

Grantor reserves the right to revoke, terminate, or cancel a Franchise, if after strictly following the procedures required below, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation. Such revocation procedures include, in their entirety:

A. Grantor shall provide a Grantee with written notice of a cause for revocation, including facts establishing the basis of revocation, and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance.

B. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the thirty (30) day notice period to cure the violation. 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. If violations re-occur for substantially similar reasons, the notice period may be reduced by the number of days previously spent in violation for any substantially similar prior violations.

8-10B-7-2: SALE OR TRANSFER OF FRANCHISE:

No sale or transfer of a Franchise shall take place without the Grantor's amendment of Grantee's individual Franchise ordinance, which shall not be unreasonably withheld. Upon such amendment, all of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assignee of a Grantee. No approval shall be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

8-10B-8: MISCELLANEOUS PROVISIONS:

8-10B-8-1: FRANCHISE RENEWAL:

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

8-10B-8-2: AMENDMENT OF FRANCHISE:

A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, subject to applicable law.

8-10B-8-3: MARKETING:

A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, subject to any peddler or solicitor ordinance.

8-10B-8-4: SEVERABILITY:

If any section, sentence, clause, or phrase of this Franchise 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 Franchise and the remainder shall remain in full force and effect.

8-10B-8-5: SUPPLEMENTAL EXHIBITS:

Supplemental exhibits to an individual Franchise shall have full force and effect but may or may not be codified. A supplemental exhibit shall be for the purpose of complementing, clarifying, or otherwise augmenting a term of the Standard Cable Franchise but in no event shall a supplemental exhibit place a Grantee at an undue competitive disadvantage. As Exhibit 1 and Exhibit 2 are specifically referred to in this Franchise, neither Exhibit 1 nor Exhibit 2 shall be required to be individually executed by the City or Grantee. Future Exhibits shall be individually executed by the City and Grantee before they take effect.

8-10B-9: PUBLICATION AND EFFECTIVE DATE

A Franchise shall become effective twenty (20) days after its adoption and publication if not referred, all pursuant to state law. Once effective, the Franchise will be deemed to have been in effect as of September 18th, 2016.

8-10B-10: ACCEPTANCE:

- A. Grantee shall accept an individual Franchise by executing the same. Such acceptance by the Grantee shall be deemed the grant of an individual 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 an individual Franchise, Grantee shall be bound by all the terms and conditions contained herein.
- C. Grantee warrants that it is an Equal Opportunity/Affirmative Action employer.

Section 2.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective as of the effective date noted.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 20____.

CITY OF MITCHELL

Jerry Toomey – Mayor

(seal)

Attest:

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____

MITCHELL TELECOM

(signature)

Name: _____

Title: _____

EXHIBIT 1

Technology Grant Terms and Conditions

WHEREAS the City of Mitchell and Grantee (Mitchell Telecom) have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides for the payment of a Technology Grant by Grantee to City, with the terms of such Technology Grant to be set out in Exhibit 1 to the Franchise; and

WHEREAS the Technology Grant required by the City is specifically allowed under federal law pursuant to the grant of a Franchise so long as funds are to be used in or associated with the construction of PEG access facilities;

THEREFORE, terms and conditions relating to the Technology Grant are hereby detailed as follows:

1. The total of funds required by the City shall not exceed \$25,000.00 for an individual Grantee. The City shall request Technology Grant funds from all Franchise Grantee's proportionally.
2. The City shall utilize funds solely as permitted under federal law to be used in or associated with construction of PEG access facilities.
3. The City shall provide six months' notice prior to its first request for any funds.
4. The City intends for funds to be used for new PEG access facilities in conjunction with the upgrade of the existing City Hall building or construction of a new City Hall building; with such project to begin no sooner than June 2018.
5. City shall have sole discretion in choosing the equipment, parts, design, specifications, and all other aspects relating to the capabilities of the new PEG access facilities and may seek reimbursement for costs associated therefrom, as they arise, proportionally from all Grantees up to \$25,000.00 in accordance with the terms of this agreement. City shall provide documentation detailing the expenses incurred when requesting funds.
6. A Grantee shall not be precluded from implementing any billing practice it deems necessary to compensate for this Technology Grant provided that an individual Subscriber's monthly bill does not increase more than fifty (\$0.50) cents per month and then only for such period of time as is necessary to recover funds actually requested by City.

EXHIBIT 2

Locations for Free Basic Cable Service

WHEREAS the City of Mitchell and Grantee (Mitchell Telecom) have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides that Grantee will provide free Basic Cable Services to up to 15 locations designated by the City to be set out in Exhibit 2 to the Franchise; and

THEREFORE, the terms and conditions relating to the provision of free Basic Cable Services are detailed as follows:

1. The total number of locations designated by City shall be apportioned evenly between all Grantees.
2. The City designates the following locations to be provided with free Basic Cable Service:
 - (1) **Corn Palace**- 604 North Main
 - (2) **Ice Arena**- 1001 North Minnesota
 - (3) **James Valley Community Center**- 300 West 1st
 - (4) **Lakeview Clubhouse**- 3300 North Ohlman
 - (5) **Library**- 221 North Duff
 - (6) **Mitchell Aquatic Center**- 1201 E Hanson
 - (7) **Recreation Center**- 1300 North Main
 - (8)
 - (9)
 - (10)
 - (11)
 - (12)
 - (13)
 - (14)
 - (15)
3. The City may designate additional locations to Grantee, up to the maximum of 15 per Grantee, and Grantee shall provide Service to such location within a reasonable amount of time.
4. Grantee shall not be required to extend its Cable System at no cost in order to provide a designated location with free Basic Cable Service.

CITY OF MITCHELL

City Council Meeting Agenda Item Request



The deadline for agenda items is Wednesday at noon, prior to the City Council Meeting

Meeting Date Requested:

Requested By:

Desired Action of City Council

Authorization
Ordinance

Approval
Citizen Request

Resolution
Discussion

Amount budgeted in current fiscal
year for this item (if applicable):

Agenda Item:

Explanation/Background of Agenda
Item Requested:

ORDINANCE NO. ____

AN ORDINANCE RENEWING the Midco Franchise Agreement on terms consistent with Mitchell's Standard Cable Franchise.

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That a NEW ARTICLE TO AN EXISTING CHAPTER be added to the Mitchell City Code as Article C of Chapter 8-10 to be titled MIDCO FRANCHISE AGREEMENT with sections as further provided below:

8-10C-1: SHORT TITLE AND DEFINITIONS

8-10C-1-1: SHORT TITLE:

This Ordinance shall be known and cited as the Midco Television Franchise Ordinance or as the Midco Franchise Agreement.

8-10C-1-2: DEFINITIONS:

This Franchise hereby incorporates by reference the definitions contained in Mitchell's Standard Cable Franchise as codified in Mitchell City Code Section 8-10A-1-2; except as hereafter modified:

L. "Grantee" is Midcontinent Communications, doing business as Midco, its agents and employees, lawful successors, transferees or assignees.

8-10C-2: GRANT OF AUTHORITY AND GENERAL PROVISIONS

8-10C-2-1: FRANCHISE REQUIRED:

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

8-10C-2-2: GRANT OF FRANCHISE:

A Franchise that is granted in the City shall be subject to the terms and conditions contained in each individual Franchise.

8-10C-2-3: GRANT OF NON-EXCLUSIVE 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 other Persons at any time, provided, however, that all Franchises shall contain substantially similar terms and conditions as this Franchise. In order that one Person is not granted a competitive advantage over another, in the event a Person commences provision of Cable Services without a Franchise or is granted a Franchise to provide Cable Services by the Grantor, the terms and conditions of which differ with this Franchise, Grantee 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. Every Franchise shall apply to the entire Franchise Area of the Grantor, as it exists now or may later be configured.

D. 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.

8-10C-2-4: FRANCHISE TERM:

Unless renewed, revoked, or terminated sooner as herein provided, a Franchise shall be in effect for a period of up to five (5) years from the effective date of an individual Franchise, with an automatic renewal term of up to an additional five (5) years unless notice of non-renewal is provided 6 months in advance of expiration.

8-10C-2-5: TERRITORIAL AREA INVOLVED:

A. Grantee shall provide Cable Services to any and all Persons requesting same at a location within the Franchise Area as such area boundaries may exist from time to time. No line extension charge or comparable charge shall be imposed on any current or potential subscriber when located within the franchise area except as further provided by this section.

B. Grantee shall not be required to extend its lines or provide Cable Service any sooner than electric utility service is available to the Subscriber's location. Grantee shall provide service to a requesting Subscriber within a reasonable amount of time which in no event shall exceed three (3) months.

C. Prior to providing service in Low Density Areas to Residential Subscribers, a Grantee may require a Residential Subscriber to commit to an initial service agreement of up to three (3) years, subject to the following restrictions:

1. A Grantee shall not require a Residential Subscriber to pay a line extension charge or comparable charge as a condition precedent to the provision of service.
2. An agreement shall not require a Residential Subscriber to maintain services in excess of the stand-alone rate of Basic Cable Service. However, a Residential Subscriber and Grantee are not restricted from agreeing on the provision of additional services so long as Subscriber may cancel such additional services.
3. An agreement shall be terminable by a Residential Subscriber at any time upon reasonable notice. However, said agreement may contain a provision requiring payment of a line extension charge that shall only be applicable if, prior to the end of the three (3) year term, the Residential Subscriber terminates service entirely or the Residential Subscriber reduces Subscriber's services to a monthly rate less than the stand-alone rate of Basic Cable Service.
4. Any such line extension charge shall be reasonable and shall be pro-rated and reduced by the number of months the Residential Subscriber maintained service and must take into consideration any subsequent development in the area.
5. At the option of Subscriber, Subscriber may, as an alternative to signing an initial service agreement, agree to pay a line extension charge.
6. The provisions of this subsection shall not apply to any existing or potential Commercial Subscriber and, with a Commercial Subscriber, Grantee is not prohibited from reaching agreements or charging a line extension charge that would otherwise be prohibited with a Residential Subscriber.

D. Notwithstanding subsection A of this section, a Grantee may charge a uniform Standard Installation fee. Grantee may also charge a Drop fee for Drops exceeding the Standard Installation length of one hundred fifty (150') feet but shall only charge for the incremental cost beyond one hundred fifty (150') feet, which amount shall be reasonable.

8-10C-2-6: WRITTEN NOTICE:

All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to the party listed below:

For City:

City of Mitchell
c/o Finance Office
612 North Main Street
Mitchell, SD 57301

For Grantee:

Midco
Attn: Nancy Vogel
3901 N Louise Avenue
Sioux Falls, SD 57107

8-10C-3: APPLICATION FOR NEW FRANCHISE:

Section 8-10A-3 of the Standard Cable Franchise and its subsections are hereby incorporated by reference.

8-10C-4: CONSTRUCTION, OPERATIONS STANDARDS AND 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 Grantee shall not be subject to permit fees except for any fees or costs associated with repairs of Streets or other infrastructure necessitated by Grantee's operations.
- 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 vegetation or any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent such vegetation or 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 System or facilities; nor shall Grantee be so relieved of liability arising out of its failure to exercise reasonable care to avoid injury to any Person's property.

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, subject to any future requirement of City to have such aerial utilities placed underground.

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, except for non-use arising from discontinued service by a Subscriber, 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 abandoned portions of the System as specified in subsection (J) of this section, promptly remove from the Streets, or public places all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the Street or other area from which such property has been removed to a condition satisfactory to the City.

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

K. All cable and passive equipment for reception of Cable Services 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 Cable Service to any Subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such Subscriber upon the Subscriber's 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 burden Grantee or interfere with the Grantee's operations.

O. Grantee shall at all times maintain on file with the City Finance Office 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 reserves the right to regulate rates pursuant to federal law and Federal Communications Commission

("FCC") regulations and any such rate regulation shall not conflict with the provisions of FCC regulations and federal law.

8-10C-5: SYSTEM PROVISIONS AND PUBLIC SERVICES

8-10C-5-1: OPERATION AND MAINTENANCE OF SYSTEM:

A Grantee shall render effective Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible.

8-10C-5-2: PEG CHANNELS:

A. Grantee shall provide to its Subscribers one (1) public, educational, or governmental ("PEG") channel administered by the City or its designee. Such PEG channel shall only broadcast content originated by the City or its designee.

B. If the City deems it necessary, and upon reasonable notice, Grantee shall make available a second PEG channel to be utilized by City or a designee, which shall also only broadcast content originated by the City or its designee.

C. City may require a technology grant from Grantee to be used in or associated with the construction of PEG access facilities. The terms of such grant shall be included in Exhibit 1 to this Franchise. In accordance with FCC rules and regulations, such grant is a capital cost and shall be excluded from Franchise fee calculation

8-10C-5-3: EMERGENCY USE:

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

8-10C-5-4: LOCKOUT DEVICE:

Upon the request of a Subscriber, Grantee shall provide by sale or lease a lockout device which inhibits Video Programming or portions of Video Programming delivered by the Cable System.

8-10C-5-5: CITY CABLE SERVICE:

Grantee agrees to provide free Basic Cable Services to a central location at up to fifteen (15) buildings designated by City. Such Basic Cable Services shall not be calculated against the Franchise fee. This section of the Franchise is a material

term of the contract, however, its inclusion is not mandated by City as a condition precedent to the grant of an individual Franchise. Grantee understands that federal law allows for the amount of the benefit of free Basic Cable Services to be calculated against the Franchise fee and Grantee specifically waives such right. Locations designated by the City shall be listed in Exhibit 2 to this Franchise.

8-10C-6: OPERATION AND ADMINISTRATION PROVISIONS:

8-10C-6-1: INDEMNIFICATION OF GRANTOR:

A. A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees, and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's System or facilities while performing work connected with grading, re-grading, 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 subsection two (2) above.

8-10C-6-2: INSURANCE:

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

one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence, which amounts may be modified by City from time to time in its sole discretion to be exercised in good faith.

8-10C-6-3: FRANCHISE FEE:

A. A Grantee will pay Grantor a monthly Franchise fee in the amount of five (5%) 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, such report to be held confidential and exempt from public records disclosure requirements pursuant to SDCL 1-27-1.5(3) as containing trade secrets and other proprietary or commercial information which if released would infringe intellectual property rights or give advantage to business competitors.

C. Grantor shall be limited to a period of limitation for recovery of any Franchise fee payable hereunder of five (5) years. However, Grantee shall be liable for interest, at the judicial rate, on any late payments from the date of the payment missed. Such limitation shall not apply in cases of fraud. Grantor may request a review of records relating to the Franchise fee and Grantee shall accommodate all reasonable requests to review such records. In the event such review reveals a discrepancy of more than 5%, Grantee shall be responsible for reimbursing the reasonable cost of such review to Grantor in addition to the deficiency amount plus interest at the judicial rate.

8-10C-7: REVOCATION, ABANDONMENT, SALE, OR TRANSFER

8-10C-7-1: GRANTOR'S RIGHT TO REVOKE:

Grantor reserves the right to revoke, terminate, or cancel a Franchise, if after strictly following the procedures required below, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation. Such revocation procedures include, in their entirety:

A. Grantor shall provide a Grantee with written notice of a cause for revocation, including facts establishing the basis of revocation, and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance.

B. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the thirty (30) day notice period to cure the violation. 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. If violations re-occur for substantially similar reasons, the notice period may be reduced by the number of days previously spent in violation for any substantially similar prior violations.

8-10C-7-2: SALE OR TRANSFER OF FRANCHISE:

No sale or transfer of a Franchise shall take place without the Grantor's amendment of Grantee's individual Franchise ordinance, which shall not be unreasonably withheld. Upon such amendment, all of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assignee of a Grantee. No approval shall be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

8-10C-8: MISCELLANEOUS PROVISIONS:

8-10C-8-1: FRANCHISE RENEWAL:

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

8-10C-8-2: AMENDMENT OF FRANCHISE:

A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, subject to applicable law.

8-10C-8-3: MARKETING:

A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, subject to any peddler or solicitor ordinance.

8-10C-8-4: SEVERABILITY:

If any section, sentence, clause, or phrase of this Franchise 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 Franchise and the remainder shall remain in full force and effect.

8-10C-8-5: SUPPLEMENTAL EXHIBITS:

Supplemental exhibits to an individual Franchise shall have full force and effect but may or may not be codified. A supplemental exhibit shall be for the purpose of complementing, clarifying, or otherwise augmenting a term of the Standard Cable Franchise but in no event shall a supplemental exhibit place a Grantee at an undue competitive disadvantage. As Exhibit 1 and Exhibit 2 are specifically referred to in this Franchise, neither Exhibit 1 nor Exhibit 2 shall be required to be individually executed by the City or Grantee. Future Exhibits shall be individually executed by the City and Grantee before they take effect.

8-10C-9: PUBLICATION AND EFFECTIVE DATE

A Franchise shall become effective twenty (20) days after its adoption and publication if not referred, all pursuant to state law. Once effective, the Franchise will be deemed to have been in effect as of September 18th, 2016.

8-10C-10: ACCEPTANCE:

- A. Grantee shall accept an individual Franchise by executing the same. Such acceptance by the Grantee shall be deemed the grant of an individual 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 an individual Franchise, Grantee shall be bound by all the terms and conditions contained herein.
- C. Grantee warrants that it is an Equal Opportunity/Affirmative Action employer.

Section 2.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective as of the effective date noted.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 20____.

CITY OF MITCHELL

Jerry Toomey – Mayor

(seal)

Attest:

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____

MIDCO

(signature)

Name: _____

Title: _____

EXHIBIT 1

Technology Grant Terms and Conditions

WHEREAS the City of Mitchell and Grantee (Midco) have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides for the payment of a Technology Grant by Grantee to City, with the terms of such Technology Grant to be set out in Exhibit 1 to the Franchise; and

WHEREAS the Technology Grant required by the City is specifically allowed under federal law pursuant to the grant of a Franchise so long as funds are to be used in or associated with the construction of PEG access facilities;

THEREFORE, terms and conditions relating to the Technology Grant are hereby detailed as follows:

1. The total of funds required by the City shall not exceed \$25,000.00 for an individual Grantee. The City shall request Technology Grant funds from all Franchise Grantee's proportionally.
2. The City shall utilize funds solely as permitted under federal law to be used in or associated with construction of PEG access facilities.
3. The City shall provide six months' notice prior to its first request for any funds.
4. The City intends for funds to be used for new PEG access facilities in conjunction with the upgrade of the existing City Hall building or construction of a new City Hall building; with such project to begin no sooner than June 2018.
5. City shall have sole discretion in choosing the equipment, parts, design, specifications, and all other aspects relating to the capabilities of the new PEG access facilities and may seek reimbursement for costs associated therefrom, as they arise, proportionally from all Grantees up to \$25,000.00 in accordance with the terms of this agreement. City shall provide documentation detailing the expenses incurred when requesting funds.
6. A Grantee shall not be precluded from implementing any billing practice it deems necessary to compensate for this Technology Grant provided that an individual Subscriber's monthly bill does not increase more than fifty (\$0.50) cents per month and then only for such period of time as is necessary to recover funds actually requested by City.

EXHIBIT 2

Locations for Free Basic Cable Service

WHEREAS the City of Mitchell and Grantee (Midco) have entered a Franchise agreement; and

WHEREAS the Franchise agreement provides that Grantee will provide free Basic Cable Services to up to 15 locations designated by the City to be set out in Exhibit 2 to the Franchise; and

THEREFORE, the terms and conditions relating to the provision of free Basic Cable Services are detailed as follows:

1. The total number of locations designated by City shall be apportioned evenly between all Grantees.
2. The City designates the following locations to be provided with free Basic Cable Service:
 - (1) **City Hall**- 612 North Main
 - (2) **Davison County Courthouse**- 200 East 4th
 - (3) **Golf/Cemetery Office**- 600 West 23rd
 - (4) **Highway Patrol**- 1300 South Ohlman
 - (5) **Lake Mitchell Sportsman Club**- 950 Indian Village Road
 - (6) **Mitchell Fire & Police Station**- 201 West 1st
 - (7) **Public Safety Building**- 1015 South Miller
 - (8) **Tournament Headquarter Building**- 1301 North Minnesota
 - (9)
 - (10)
 - (11)
 - (12)
 - (13)
 - (14)
 - (15)
3. The City may designate additional locations to Grantee, up to the maximum of 15 per Grantee, and Grantee shall provide Service to such location within a reasonable amount of time.
4. Grantee shall not be required to extend its Cable System at no cost in order to provide a designated location with free Basic Cable Service.