

ORDINANCE NO. 2012-9-19

AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE

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A GAS DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING NATURAL OR MANUFACTURED GAS, OR A MIXTURE OF BOTH, FOR PUBLIC AND PRIVATE USE.

BE IT ORDAINED BY

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SECTION I. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Montana-Dakota Utilities Co, a Division of MDU Resources Group, Inc., a corporation, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the Public Utilities Commission of the state wherein said municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

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

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

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

SECTION VII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations hereunder shall be binding upon its successors and assigns.

SECTION VIII. Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION IX. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

Passed the 5th day of November, 2012.

Approved 5th day of November, 2012.

ATTEST: \_\_\_\_\_

Auditor

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Mayor-President

First reading: October 1, 2012  
Second Reading: November 5, 2012  
Published: Published November 21, 2012

Published at the cost of \$

(Seal of the Municipality)

## CABLE TV FRANCHISE

Ordinance No. 2007-1-3

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO VENTURE VISION INC. ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ERECT, CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN A BROADBAND COMMUNICATIONS SYSTEM FOR THE PURPOSE OF RECEIVING, TRANSMITTING AND DISTRIBUTING THE VARIOUS SIGNALS TO THE INHABITANTS OF THE CITY OF GETTYSBURG FOR A PERIOD OF FIFTEEN (15) YEARS, TOGETHER WITH THE RIGHT TO ERECT, CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN SAID SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER AND UNDER THE STREETS, ALLEYS, PUBLIC WAYS AND PUBLIC PLACES AS PRESENTLY EXIST, AND ALL EXTENSIONS AND ADDITIONS THEREOF FOR ALL POLES, WIRES, CABLES, LINES, CONDUITS, MANHOLES, TOWERS AND OTHER APPARATUS AS MAY BE NECESSARY FOR OPERATION AND MAINTENANCE OF SAID SYSTEM.

BE IT ORDAINED BY THE CITY OF GETTYSBURG, SOUTH DAKOTA.

### I. TITLE

This ordinance shall be known and may be cited as:

“Venture Vision Broadband Communications System Franchise Ordinance.”

### II. DEFINITIONS

SECTION 1. “Broadband Communications System” shall mean all of the component physical operational and programming elements of any network of cables, optical, electrical or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog, digital or by any other means to provide various Broadband Communications Service.

SECTION 2. “Broadband Communications Service” shall include all of the wideband and narrow-band services now available or that may be available during the term of this franchise.

SECTION 3. “City” is the City of Gettysburg, South Dakota.

SECTION 4. “Board” is the elected City Board of the City of Gettysburg.

SECTION 5. “Facilities” are, but not limited to, poles, wires, cables, modulators, towers, antennae and apparatus designed, constructed and/or wired for the purpose of receiving, transmitting and distributing television and other various signals.

SECTION 6. “Streets” mean the surface of and the space above and below, in, along and across any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bikepath, alley, court, sidewalk, park-way, drive, communications or utility easement by whatever name called, now or hereafter existing as such within the franchise area.

SECTION 7. “FCC” shall mean the Federal Communications Commission.

SECTION 8. “RUS” shall mean the Rural Utilities Service.

SECTION 9. “Person” is any person, firm, partnership, association, corporation, cooperative, company, organization or any other legal entity.

SECTION 10. "Company" hereinafter shall mean Venture Vision Inc., of Highmore, South Dakota.

SECTION 11. "Subscribers" are those persons contracting to receive broadband communications services furnished under this franchise by the Company.

III.  
GRANT OF NON-EXCLUSIVE  
AUTHORITY

There is hereby granted by the City to the Company and to its successor and assigns the non-exclusive rights and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now existing or dedicated and all extensions of and additions thereto in the City, all facilities, television conductors and fixtures necessary for the maintenance and operation in the City of a broadband communications system for the purpose of providing all broadband services of the present and future to the public for a period of Fifteen (15 years).

IV.  
COMPLIANCE WITH APPLICABLE  
LAWS AND ORDINANCES

The Company shall comply with applicable local, state and federal laws and ordinances, together with reasonable police power regulation by the City.

V.  
TERRITORIAL AREA INVOLVED

This Franchise is for the present territorial limits of the City and any area subsequently added thereto during the term of this Franchise.

VI  
LIABILITY AND INDEMNIFICATION

SECTION 1. The Company shall maintain at all times sufficient and adequate insurance coverages as required by law and in accordance with the requirements of RUS.

SECTION 2. The Company shall at all times protect and save harmless the City from all damages and injury arising out of or by any reason of the construction, maintenance and operation of said broadband communications system.

VII  
TECHNICAL STANDARDS

The Company shall meet the requirements of the technical standards established by RUS and FCC, which said standards are acceptable to the City.

VIII.  
CONSTRUCTION, OPERATION AND MAINTENANCE OF SYSTEM

SECTION 1. The Company may commence construction upon receiving all necessary and proper FCC and RUS permits, waivers, certifications, and approvals.

SECTION 2. Construction shall comply with the National Electrical Code and RUS Specifications.

SECTION 3. The Company shall maintain a sufficient number of employees to provide safe, adequate, and prompt service and repairs of its facilities, and periodically make system evaluation tests.

IX  
NEW DEVELOPMENTS

This Franchise shall allow the Company to take advantage of new developments in technology and state of the art improvements in providing the best service at a reasonable cost.

X  
CONDITIONS ON STREET OCCUPANCY

SECTION 1. All facilities installed by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys or other public ways and places. Said fixtures shall be removed and relocated at Company expense whenever the same would restrict or obstruct the operation of location of any future street in the City.

SECTION 2. All of said facilities shall be construed, maintained and operated under the supervision of the Company. Plans for all facilities to be construed will be coordinated with the proper City officials. The Company shall at all times maintain an up-to-date record of location of all its facilities and shall provide any related information required by City personnel.

SECTION 3. In case of disturbance of any street, the Company shall, at its own expense and in a manner approved by the street department, replace and restore such street in as good a condition as before such disturbance, insofar as the same may be practicable.

SECTION 4. The Company shall, at the request of any contractor hired by the City or any person, locate free of charge, any of its facilities. The Company shall be given not less than 24 hours advance notice of such locations, except for qualified emergencies, such as broken water mains, etc.

Damage to any facilities, located or not, will be billed to the contractor.

SECTION 5. Any property of the Company elected to be abandoned in place shall be abandoned in such a manner as the City may prescribe.

XI  
REMOVAL OF FACILITIES UPON REQUEST

The Company shall at its expense, remove, disconnect and relocate any of its facilities when required by the City by reason of traffic conditions, public safety, street vacation or construction, change or establishment of street grade, installation of sewers, drains, water pipes and/or power lines.

XII  
RATES

SECTION 1. The Company shall adopt and maintain on file at its office a schedule setting forth all rates and charges to be made to subscribers for each type of service available.

SECTION 2. The Company may adopt and regulate fair and reasonable rates in accordance with Section 623 of the Cable Communications Policy Act of 1984.

XIII  
EMERGENCY USE OF FACILITIES

In case of any emergency or disaster, the Company shall, upon request of the Board, make available whenever possible its facilities to the City during such emergency or disaster period.

XIV.  
SAFETY REQUIREMENTS

The Company shall at all times use ordinary care and shall maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

XV.  
TRANSFER OF FRANCHISE

The Company shall not transfer this Franchise to another person without prior approval of the Board.

XVI.  
DURATION OF FRANCHISE

This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of Fifteen (15) years.

XVII.  
TAMPERING

SECTION 1. It shall be unlawful for any person or persons to obtain any communications services from the Company by installing, rearranging or tampering with any facilities or equipment of said company for the purpose of receiving any signal, picture, sound or transmission, without subscribing and paying the Company therefor.

SECTION 2. Any person violating this Article shall be guilty of a misdemeanor punishable by a fine of not to exceed \$100.00, imprisonment for a term not to exceed thirty (30) days, or both.

XVIII.  
SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions herein. The City hereby agrees not to amend, alter or change this Franchise Ordinance without the prior express written consent of the Company.

XIX.  
SERVICE TO CITY AND SCHOOLS

The Company shall provide one cable drop, one cable outlet, and monthly Basic Video Service without charge to one City-owned building, excluding hospitals, nursing homes, apartments or buildings located at the airport. No redistribution of the free service provided pursuant to this section shall be allowed.

The Company shall provide one cable drop, one cable outlet, and monthly Basic Video Service without charge to all public and private elementary and secondary schools, excluding home schools, located within the city.

XX.  
FRANCHISE FEE

During the term of the franchise the Company shall pay an annual franchise fee in the amount of three percent (3%) of the "annual gross subscriber revenues." "Gross subscriber revenues" shall include revenues derived from the monthly service charge paid by subscribers for basic cable television service. Subscriber revenues shall not include any state or federal taxes relating to services provided by or fees charged by Company, or revenues received as installation charges and fees for reconnections, repairs or modifications of any installations.

Payments by Company to City shall be in lieu of any occupation tax, license tax or similar levy, and shall be paid quarterly "four times per year".

XXI.  
PUBLICATION

The Company shall assume the cost of publication of the Franchise and file its acceptance thereof.

APPROVED:

First Reading February 5, 2007

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Mayor

Second Reading March 19, 2007

ATTEST:

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Finance Officer

Published March 29, 2007

