

ORDINANCE 1436

**AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE IN THE CITY OF
VERMILLION, SOUTH DAKOTA; SETTING FORTH
CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE**

CITY OF VERMILLION, SOUTH DAKOTA

June 21, 2021

CABLE TELEVISION FRANCHISE AGREEMENT

WITH

CLARITY TELECOM, LLC

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THIS FRANCHISE AGREEMENT made and entered into as of the _____ day of _____, 2021 by and between the City of Vermillion, a municipal corporation duly organized under the laws of the State of South Dakota (hereinafter referred to as “Municipality”) and Clarity Telecom, LLC (hereinafter referred to as “Company”), a Delaware limited liability company with offices located in Sioux Falls, South Dakota.

WITNESSETH

WHEREAS, Municipality is authorized to grant one or more non-exclusive franchises for the provision of cable service within Municipality by means of a cable system; and

WHEREAS, Municipality has reviewed Company’s request and has considered the terms and conditions for a new franchise and the future cable-related community needs and interests of the Municipality; and

WHEREAS, Municipality has determined that granting of this franchise will assist in meeting the cable-related needs and interests of the community, such as by providing a portion of the funding necessary for public, educational, and government channels; and

WHEREAS, Municipality has determined that granting of a franchise on the terms set forth herein is in the public interest and in the interest of the Municipality and its residents.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the City of Vermillion, South Dakota, in consideration of the mutual covenants and promises herein contained, that the following sections regarding the terms and conditions of the franchise agreement be recreated and amended and the parties hereto agree as follows:

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.
2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
 - (a) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
 - (b) “Cable Programming Service” means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:

Video Programming carried on the Basic Service Tier;

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

or

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

Consists of commonly-identified Video Programming; and

Is not bundled with any regulated tier of service.

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

- (c) “Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.
- (d) “Cable System” or “System” shall have the meaning ascribed to it in federal law.
- (e) “Council” means the Vermillion, South Dakota City Council.
- (f) “Franchise” means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.
- (g) “Franchise Area” means the area within the corporate boundaries of the Grantor.
- (h) “Grantee” is the entity which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.
- (i) “Grantor” is the City of Vermillion, South Dakota.
- (j) “Gross Revenue” means all amounts of monthly revenue received from Cable Service, Cable Programming Service, advertising sales, fees on equipment leased by customers in order to provide video services, and Pay Television directly by the Grantee from the operation of its System within Franchise Area. Gross Revenue shall not include bad debt.
- (k) “Multichannel Video Program Distributor” or “MVPD” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- (l) “Open Video Services” or “OVS” means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- (m) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or

Cable Programming Services.

- (n) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o) “Standard Installation” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- (p) “Street” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q) “Subscriber” means any Person who lawfully receives Cable Service.
- (r) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Franchise Required. It shall be unlawful for any Person or Entity to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the Franchise Area without a Franchise from Grantor authorizing the same, unless applicable federal or State law prohibits the Grantor’s enforcement of such a requirement.
2. Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein.
3. Grant of Nonexclusive Authority.
 - (a) A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, existing poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Franchise Area of a Cable System. Grantee is not authorized to erect any new poles without the express written permission of the Grantor.
 - (b) A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other Grantees shall have the right either (i) to opt in to the competitor’s Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.
 - (c) Before granting an additional franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.

- (d) Every Franchise shall apply to the entire Franchise Area of the Grantor, as it exists now or may later be configured.
 - (e) Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, the Franchise shall control. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity, whether federal, state or local.
4. Franchise Term. A Franchise shall be in effect for a period of up to ten (10) years from the date of acceptance by a Grantee, unless renewed, revoked, or terminated sooner as herein provided.
 5. Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the Franchise Area covered. Grantor shall advise Grantee whenever property is annexed. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its system to such subscribers concurrently with its build-out plans for the system at no cost to said subscribers for system extension, other than the usual collection fees for all subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the system, or as provided for under Section 2 item 6 of this franchise; provided that nothing shall require Grantee to complete build-out of its system sooner than five years after the date of this Franchise.
 6. Subscriber Charges for Extensions of Service. No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten (10) residences per 1,320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. If a potential Subscriber requires a non-Standard Installation (e.g. a Drop in excess of one hundred fifty (150) feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for one half (1/2) of the actual cost of any construction required beyond the cost of the Standard Installation; Grantee shall be responsible for the balance of the costs for the non-Standard Installation.
 7. Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or Grantor's Manager of this Ordinance as specified in a Franchise. Notices to Grantee shall be provided to:

Grantee: Clarity Telecom, LLC
5100 S. Broadband Lane
Sioux Falls, SD 57108
Attn: Legal Notices

Copy to: Clarity Telecom, LLC
c/o Holland & Hart LLP

555 17th Street, Suite 3200
Denver, CO 80202
Attn: Susan Oakes, Esq.

SECTION 3. APPLICATION FOR NEW FRANCHISE

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

- (c) A public hearing held at a regularly scheduled council meeting shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. A published Notice of the regularly scheduled meeting shall be considered sufficient public notice. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.
- (d) The City may consider any additional information that it deems applicable.

SECTION 4. CONSTRUCTION AND OPERATIONS STANDARDS

1. Conditions on Street Use.

- (a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.
- (b) The Grantor shall impose no special permit fees upon a Grantee for access to the public way.
- (c) Conditions of street occupancy. All transmission and distribution structures, existing poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.
- (d) Restoration of public ways. If during the course of Grantee's construction, operation, or maintenance of the system there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance as determined by the City Engineer. The restoration shall take place within 20 days during non-weather precluded construction times unless otherwise approved by Grantor.
- (e) If at any time during the period of this Franchise Grantor shall elect to alter, or change the grade or location of any utility, Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, not less than five (5) business days, but in any event adequate prior notice considering the size and complexity of the relocation, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.
- (f) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes, but in any event adequate prior notice considering the size and complexity of the relocation.
- (g) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Absent an emergency situation, Grantee shall provide Grantor and affected homeowners reasonable advance notice of Grantee's intent to trim trees. The Grantee shall reasonably compensate the franchising authority for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any

construction of the system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the franchising authority pursuant to the terms of this section.

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

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

- (q) Grantee shall furnish to and file with City the as built maps of the System including location of underground facilities. Grantee shall also file updates of such maps, plats and permanent records annually if changes have been made in the System.
- (r) Subject to Federal Law and Regulation, Grantee shall at all times maintain on file with the Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.
- (s) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

SECTION 5. SYSTEM PROVISIONS AND PUBLIC SERVICES

1. Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time reasonably practicable.
2. Service to Schools and City. A Grantee shall, subject to the line extension requirements of Section 2.5 herein, provide one (1) Drop and one (1) outlet of Basic Cable Service at no cost to the accredited K-12 schools and the City facilities listed in Appendix A, attached to this Agreement. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds 150 cable feet or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. If additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.
 - (a) PEG Channel. Grantee shall dedicate two (2) channels for public, educational and governmental ("PEG") programming. Every Subscriber receiving Cable Service over a Grantee's System shall receive the PEG channels at no additional charge. The PEG channels shall be provided as part of Basic Cable Service and shall not be moved without the City's written approval which shall not be unreasonably withheld. The Grantee shall cablecast all PEG programming produced or created by the City, or its designee, including any live programming. The City may use the PEG channels for any lawful purpose including to cablecast programming produced by the City, local educational institutions or other public institutions, or members of the public.
 - (b) The City shall have sole responsibility for managing and controlling the PEG channels. The City shall establish rules for the programming, operation or administration of the PEG channels, which shall be subject to Grantee's review and approval. Grantee shall have no responsibility whatsoever for the programming, operation or administration of the PEG channels.

3. Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council or City Manager, make available its facilities to the City for emergency use. A Grantee shall comply with the emergency alert requirements of federal law.
4. Viewing Controls. The Cable System and related equipment provided by or through Grantee shall have features that allow a Subscriber to block the viewing of Subscriber-selected Video Programming.

SECTION 6. OPERATION AND ADMINISTRATION PROVISIONS

1. Indemnification of Grantor.

- (a) A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, councils, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work complete with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.
- (b) In order for Grantor to assess its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:
 - i. Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph ii. above.

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

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.

- (c) The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by Grantee is due.
- 4. Compliance and Monitoring. The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts and financial records at reasonable times and upon reasonable advance notice for the purpose of verifying payments. Grantee shall not be required to maintain any books for longer than five years. Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. Grantee shall not be required to provide subscriber information in violation of applicable law regarding subscriber privacy.

SECTION 7. REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

- 1. Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.
- 2. Procedures for Revocation.
 - (a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance.
 - (b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - (c) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
 - (d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
 - (e) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.
- 3. Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor per applicable federal law, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee.

SECTION 8. MISCELLANEOUS PROVISIONS

- 1. Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.
- 2. Amendment of Franchise. A Grantee and Grantor may agree to amend a Franchise. Such written amendments may be made at any time.

3. Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, subject to the registration and compliance provisions of Grantor's existing ordinance.
4. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.
5. Status Reports. Grantee shall periodically meet with the City Council to brief them on the status of the system and franchise. Grantee acknowledges City has the right to amend this section to require different types and frequencies of reports.
6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond Grantee's control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

SECTION 9. PUBLICATION, EFFECTIVE DATE

1. Publication; Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication, as required by law.

First Reading: June 7, 2021
Second Reading: June 21, 2021
Published: July 2, 2021
Effective: July 22, 2021

2. Acceptance.
 - (a) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.
 - (b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted at Vermillion, South Dakota this 21st day of June, 2021.

WITNESSES:

**THE GOVERNING BODY OF THE CITY OF
VERMILLION, SOUTH DAKOTA**

By *Kelsey Collier Wise*
Kelsey Collier-Wise, Mayor

ATTEST:

By *Katie E. Redden*
Katie E. Redden, Finance Officer

and

CLARITY TELECOM, LLC

By _____

Its _____



ATTEST:

By _____

Its _____

APPENDIX A — MUNICIPAL LOCATIONS

The list of locations will be specified in (or attached to) this Appendix once determined by the City and Grantee.

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