

**ORDINANCE NO. 05-5325**

**AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 7-1501 THROUGH 7-1517; GRANTING TO MONTANA DAKOTA UTILITIES CO. A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A GAS DISTRIBUTION SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF BILLINGS, MONTANA.**

NOW, WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

*Section 1.* That the Billings, Montana City Code be amended by adding Article 7-1500 and sections to be numbered 7-1501 through 7-1517, to read as follows:

**“ARTICLE 7-1500. MONTANA-DAKOTA UTILITIES’ NON-EXCLUSIVE FRANCHISE**

WHEREAS, Montana Code Annotated Section 7-14-4101, Billings, Montana City Code Sections 22-401 through 22-703, and Billings’ self-governing powers grant the City broad authority to regulate the use of the public right-of-way; and

WHEREAS the City Council of the City of Billings (“City”) passed a franchise granting Montana Dakota Utilities Co. (“MDU”) the authority to operate a gas distribution system September 24, 1979 via Ordinance 4232;

WHEREAS the City extended that franchise through April 24, 2005 via Ordinance 04-5299;

WHEREAS MDU has operated under that franchise in good faith and provided service to the citizens of Billings;

WHEREAS, the City Council finds that it is in the best interests of the health, safety and welfare of residents of the Billings community to grant a non-exclusive franchise to Montana-Dakota Utilities Co. for the operation of a gas distribution system within the City right-of-way and therefore enacts the following ordinance.

**Sec. 7-1501. Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:

**City:** The City of Billings, a municipal corporation of the State of Montana, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

**Days:** Calendar days.

**Director:** The City Administrator or designee.

**Facilities:** All pipes, access ways, pump stations, storage facilities, equipment, and supporting structures, located in the City's right-of-way, utilized by the Utility in the operation of activities authorized by this Ordinance. The abandonment by Utility of any facilities as defined herein shall not act to remove the same from this definition.

**Permittee:** A person who has been granted a permit by the Permitting Authority.

**Permitting Authority:** The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized or designated to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

**Person:** An entity or natural person.

**Revenue:** This term as used herein shall refer to all revenue collected from Utility's customers with billing addresses that are within the corporate boundaries of the City, not including late fees.

**Right-of-way:** As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Billings.

**Utility:** Montana Dakota Utilities Co., a division of MDU Resources Group, Inc. a corporation.

## **Sec. 7-1502. Franchise Granted.**

- (a) The City hereby grants to Utility, its successors and assigns, subject to the terms and conditions hereinafter set forth, a Franchise to provide gas distribution services beginning on the effective date of this Ordinance.
- (b) This Franchise shall grant Utility the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, maintain, replace, and use all necessary equipment and facilities for a gas distribution system, in, under, on, across, over, through, along or below the public right-of-way located in the City of Billings, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.
- (c) This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under,

below or across any right-of-way. Such Franchise shall in no way prevent or prohibit the City from using any right-of-way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way or other public properties of every type and description.

#### **Sec. 7-1503. Franchise Term.**

The term of the Franchise granted hereunder shall be for the period commencing upon the effective date of this ordinance through and extending for fifteen (15) years therefrom.

#### **Sec. 7-1504. Fees or Taxes.**

As a material term of this Franchise agreement, and in consideration of the right granted to Utility to occupy City rights-of-way for the purpose of operating a gas utility within the City, Utility agrees:

- (a) To timely pay all fees or taxes currently adopted, or as hereinafter may be adopted by the City pertaining to the Utility's operations within the City.
- (b) Proceeds of any fee or tax shall be distributed to the City in accordance with the terms of any adopting document or, if not specified in such document, no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).
- (c) Should the Utility be prevented by judicial or legislative action from collecting a fee or tax adopted by the City or any portions thereof, then the Utility shall be excused from the collection and distribution of that portion of the fee or tax.

#### **Sec. 7-1505. City Ordinances and Regulations.**

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any facilities of Utility located within the City right-of-way. Utility shall promptly conform with all such regulations, unless compliance would cause Utility to violate other requirements of law.

#### **Sec. 7-1506. Right-of-Way Management.**

- (a) Excavation.
  - (1) During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the right-of-way so

as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. Utility shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the City ordinances or traffic control plans approved by the City consistent with state law and MPWS Section 01570 as modified by the City.

- (2) Whenever Utility excavates in any right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so in compliance with the ordinances and regulations of the City requiring permits to operate in the right-of-way. In no case shall any such work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, Utility shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accordance with subsection (i) herein.
- (b) Abandonment of Utility's Facilities. Facilities laid, installed, constructed, or maintained in the right-of-way by Utility may be abandoned in place after notification of such intent is provided to the City. The City may require removal of abandoned facilities in conjunction with the process described in subsection (h), Relocation. All necessary permits must be obtained prior to commencing removal.
- (c) Restoration after Construction.
  - (1) Utility shall, after any installation, construction, relocation, maintenance, or repair of facilities within the Franchise area, restore the right-of-way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair as determined by the City Engineer or designee. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. Utility agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.
  - (2) If it is determined that Utility has failed to restore the right-of-way in accordance with this section, the City shall provide Utility with written notice including a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, the City, or its authorized agent, may restore the right-of-way. Upon request from the Utility, the City may agree to an extension to the time provided to restore the right-of-way as long as doing so does not endanger the public. Utility is responsible for all costs and expenses incurred by the City in restoring the right-of-way in accordance with this Section. The rights reserved to the City under this paragraph shall be in addition to those otherwise provided by this Franchise.
- (d) Bonding Requirement. Utility must comply with the City's standard bonding requirement for working in the City's right-of-way.
- (e) Emergency Work, Permit Waiver. In the event of any emergency where any facilities located in the right-of-way are broken or damaged, or if Utility's construction area for

their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, Utility shall immediately take any necessary emergency measures to repair or remove its facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve Utility from later obtaining any necessary permits for the emergency work. Utility shall apply for the required permits the next business day following the emergency work or as soon as practical given the nature and duration of the emergency.

(f) Safety.

- (1) The Utility, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.
- (2) All of Utility's facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.

(g) Dangerous Conditions, Authority for City to Abate.

- (1) Whenever Facilities or the operations of the Utility cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining right-of-way, public or private property, the Director may direct the Utility, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.
- (2) In the event the Utility fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and the Utility shall be responsible to reimburse the City for its costs.

(h) Relocation of System Facilities.

- (1) Utility agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities without cost to the City, when so required by the City to facilitate the completion of or as a result of a public project, provided that Utility shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way and upon approval by the City, any facilities required to be temporarily disconnected or removed. As used in this Section, the term "public project" is a project included in any City adopted Capital Improvement Program.
- (2) All Facilities utilized for providing gas distribution service within Utility's service area and within the right-of-way shall be considered owned, operated and maintained by Utility.
- (3) If the City determines that a public project necessitates the relocation of Utility's existing facilities, the City shall utilize the following process unless otherwise agreed:
  - a. As soon as possible, but not less than sixty (60) days prior to the commencement of such project, provide Utility with written notice

- requiring such relocation; and
    - b. Provide Utility with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for Utility's facilities.
    - c. After receipt of such notice and such plans and specifications, Utility shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project, unless otherwise agreed.
  - (4) Utility may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Utility in writing if any of the alternatives are suitable to accommodate the work that necessitates the relocation of the facilities. If so requested by the City, Utility shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Utility full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Utility shall relocate its facilities as provided in this Section.
  - (5) The provisions of subsection (h) herein shall not preclude the Utility from seeking reimbursement for relocation expenses from state or federal resources as long as doing so does not impair the interests of the City.
  - (6) The provisions of subsection (h) herein shall in no manner preclude or restrict Utility from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City owned, operated or maintained, provided that such arrangements do not unduly delay or increase the cost of a planned City construction project.
- (i) Utility's Maps and Records
- (1) As a condition of this Franchise, and without charge to the City, Utility agrees to provide the City with record plans, maps, and records that show the vertical and horizontal location of its facilities within the right-of-way using a minimum scale of one inch equals one hundred feet (1"=100'). This information is to be provided in digital format that can be readily imported into the City's Geographic Information System (GIS), and, upon request, in hard copy plan form used by Utility. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated by the Utility utilizing information in their possession upon reasonable request by the City.
  - (2) The City will keep the information provided by the Utility confidential to the extent allowed by law. If the City gets a records request demanding disclosure of Utility system information previously provided to the City by the Utility, then the City will provide the Utility notice of such request and provide the Utility the opportunity to seek to prevent the disclosure of said information through appropriate legal action.

**Sec. 7-1507. Planning Coordination.**

- (a) System Information. Utility shall submit information related to the general location, proposed location, and size of all existing and proposed Facilities within the City as requested by the Director within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.
  - (1) Utility will update information provided to the City under this Section whenever there are major changes in Utility's system plans for Billings.
  - (2) The City will provide information relevant to the Utility's operations within a reasonable period of written request to assist the Utility in the development or update of its System Plan. Provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.
- (b) System Development Information. Utility will assign a representative whose responsibility shall be to coordinate with the City on planning for Capital Improvement Program projects. At a minimum, such coordination shall include the following:
  - (1) By October 31st of each year, Utility shall provide the Director with a schedule of its planned capital improvements for the following calendar year, which may affect the right-of-way for that year;
  - (2) Utility shall meet with the City, other franchisees and users of the right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and
  - (3) All construction locations, activities, and schedules shall be coordinated, as required by the Director to minimize public inconvenience, disruption, or damages.
- (c) Emergency Operations. The City and Utility agree to cooperate in the planning and implementation of emergency operations response procedures.

**Sec. 7-1508. Indemnification.**

- (a) Utility hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards, attorney's fees, or liability to any person, including claims by Utility's own employees to which Utility might otherwise be immune, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of Utility, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the acts or omissions of Utility, its agents, servants, officers or employees except for claims for injuries and damages caused by the sole negligence of the City. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, Utility shall satisfy and pay the judgment. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.
- (b) Inspection or acceptance by the City of any work performed by Utility at the time of

completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. These indemnification obligations of Utility in Section 8.1 shall extend to and include any and all claims that have not yet resulted in a suit and any asserted or submitted claims that may be settled prior to the culmination of any litigation or the institution of any litigation.

- (c) In the event Utility refuses to undertake the defense of any filed suit or any claim asserted against the City, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and Utility's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Utility, then Utility shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.
- (d) In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Utility and the City, its officers, employees and agents, Utility's liability hereunder shall be only to the extent of Utility's comparative negligence. This waiver has been mutually negotiated by the parties.
- (e) The City hereby releases and agrees to indemnify, defend and hold harmless the Utility, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from Utility's compliance with Section 7-1504.

**Sec. 7-1509. Insurance.**

- (a) Utility shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Utility, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by Utility. Utility shall provide to the City an insurance certificate and proof of self-insurance, if applicable, evidencing the required insurance, for City's inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such insurance shall evidence the following required insurance:
  - (1) Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$2,000,000 Combined Single Limit per accident for bodily injury and property damage; and
  - (2) Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$750,000 dollars per claim and 1.5 million dollars per occurrence or \$500,000 dollars combined single limit together with a one million dollars (\$1,000,000) excess or umbrella policy. The City shall be named as a primary, additional insured. The Utility's policy shall be endorsed to be primary and noncontributory. Utility shall also maintain a policy of Professional Liability insurance in an insurable amount not less than \$750,000 dollars per claim and 1.5 million dollars per occurrence. Utility shall demonstrate written proof of these

mandatory minimum coverages and noncontributory endorsement by providing a Certificate of Insurance to the City evidencing such prior to execution of this contract for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance excluding liability arising from explosion, collapse or underground property damage. Since the Utility is self-insured for claims up to \$500,000, Utility will provide security in the amount of \$500,000 in the form of a bond or other instrument acceptable to the City and such instrument will remain in continuous effect for the term of this Franchise.

- (3) Excess Liability in an amount of \$5,000,000 each occurrence and \$5,000,000 aggregate limit. The City shall be named as an additional insured on the Excess Liability insurance policy.
- (a) Payment of deductible or self-insured retention shall be the sole responsibility of Utility.
- (b) The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Utility's insurance shall be primary. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of Utility's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.
- (c) Utility shall require all its subcontractors to carry insurance consistent with this section and shall provide evidence of such insurance to the City upon request.

**Sec. 7-1510. Enforcement.**

- (a) In addition to all other rights and powers retained by the City under this Franchise, the City reserves the right to revoke and terminate this Franchise and all rights and privileges of the Utility in the event of a substantial violation or breach of its terms and conditions.
- (b) A substantial violation or breach by a Utility shall include, but shall not be limited to, the following:
  - (1) An uncured violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;
  - (2) An intentional evasion or knowing attempt to evade any material provision of this Franchise or practice of any fraud or deceit upon the system customers or upon the City;
  - (3) Failure to provide the services specified in the Franchise;
  - (4) Misrepresentation of material fact during negotiations relating to this Franchise or the implementation thereof;
  - (5) A continuous and willful pattern of grossly inadequate service;
  - (6) An uncured failure to pay fees associated with this Franchise;

- (c) No violation or breach shall occur which is without fault of the Utility or the City, or which is as a result of circumstances beyond the Utility's or the City's reasonable control. Neither the Utility, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond a Utility's or the City's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. A Utility, or the City, shall bear the burden of proof in establishing the existence of such conditions.
- (d) Except in the case of termination pursuant to subsection (b)(4) above, prior to any termination or revocation, the City, or the Utility, shall provide the other with detailed written notice of any substantial violation or material breach upon which it proposes to take action. The party who is allegedly in breach shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the City or the Utility reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default, which declaration must be in writing. Within 20 days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, a hearing before a "hearing examiner" as provided by the City's development regulations. The hearing examiner's decision may be appealed to any court of competent jurisdiction.
- (e). The City may, in its discretion, provide an additional opportunity for the Utility to remedy any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.
- (f) Any violation existing for a period greater than 30 days may be remedied by the City at the Utility's expense.

#### **Sec. 7-1511. Survival.**

All of the provisions, conditions and requirements of Section 7-1506(a) Excavation, Section 7-1506(b) Abandonment Of Utility's Facilities, Section 7-1506(c) Restoration After Construction, Section 7-1506(g) Dangerous Conditions, Authority For City To Abate, Section 7-1506(h) Relocation of System Facilities, and Section 7-1508 Indemnification, of this Franchise shall be in addition to any and all other obligations and liabilities Utility may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Utility for the use of the areas mentioned in Section 7-1502 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Utility and all privileges, as well as all obligations and liabilities of Utility shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Utility is named herein.

**Sec. 7-1512. Assignment.**

This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City. This paragraph shall not act to require City approval of any Utility action to mortgage or otherwise encumber its facilities, or other action related to corporate financing, financial reorganization, or refinancing activity.

**Sec. 7-1513. Notice.**

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

Region Manager  
Montana-Dakota Utilities Co.  
P.O. Box 2546  
Billings, MT. 59112-2546  
Phone: (406) 896-4221  
Fax: (406) 896-4272

City Administrator  
City of Billings  
P.O. Box 1178  
Billings, MT 59103  
Phone: (406) 657-8433  
Fax: (406) 657-8390

**Sec. 7-1514. Non-Waiver.**

The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subs

**Sec. 7-1515. Alternate Dispute Resolution.**

If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

**Sec. 7-1516. Entire Agreement.** This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

**Sec. 7-1517. Directions to City Clerk.**

The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the Utility set forth in this ordinance. The Utility shall have sixty (60) days from receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the Utility in this ordinance.

*Section 2. EFFECTIVE DATE.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 3. REPEALER.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 4. SEVERABILITY.* If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality. To this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 25th day of April, 2005.

PASSED, ADOPTED and APPROVED on second reading this 9th day of May, 2005.

CITY OF BILLINGS

By \_\_\_\_\_  
Charles F. Tooley Mayor

ATTEST:

By \_\_\_\_\_  
Marita Herold, CMC/AAE City Clerk