

UNAPPROVED MINUTES OF THE REGULAR MEETING OF THE ELK POINT CITY COUNCIL

The Elk Point City Council met in regular session on Monday, September 8, 2014 at 7:00pm in the council chamber of City Hall located at 106 W. Pleasant Street with Mayor Trobaugh presiding and these members present: Honomichl, McCreary, Verros, Leitru and Buum. Zevenbergen was absent. Also present were: City Attorney Thompson, City Engineer McLaury, City Administrator Nelsen, Police Chief Fleek, Public Works Director Buum and Finance Officer Hammitt.

Motion made by McCreary, seconded by Honomichl to approve the agenda. All in favor.

Honomichl moved and Buum seconded a motion to approve the minutes from the August 4, 2014 council meeting. Unanimous.

Motion and second, Verros/Honomichl to approve the following salaries and bills and to instruct the Finance Officer for payment of the same. All in favor. Salaries: General Fund: \$48,431.39; Enterprise Fund: \$24,471.25; Fringe Benefits: General Fund: \$10,504.64; Enterprise Fund: \$5,888.36; Bills: 3D Specialties, Inc.-Safe Routes to School: \$1,497.37; Altec Industries, Inc.-supplies: \$12.36; Analytical & Consulting-sewer testing: \$726.50; Antonson, Mike-uniforms: \$99.99; Barkley Asphalt, Inc.-street repairs: \$879.48; Batteries & Bulbs-supplies: \$215.88; Bomgaars-uniforms: \$57.44; Border States-supplies: \$6,379.01; California Contractors Supplies-supplies: \$107.64; Campbell Supply-supplies: \$371.90; Cardmember Services-supplies: \$1,852.30; City of Vermillion-tipping fees: \$4,388.80; Class C Solutions Group-repairs: \$559.13; Colonial Research Chemical Corp.-supplies: \$527.02; Competitive Edge Software, Inc.-computer software: \$900.00; Craig K. Thompson, Atty.-professional fees: \$1,617.50; Crop Production Services, Inc.-supplies: \$184.25; Dakota Pump, Inc.-repairs: \$3,851.95; D-P Tools, Inc.-supplies: \$448.26; Echo Group, Inc.-repairs: \$85.10; Gates, Todd-uniforms: \$109.99; GCR Tire Center-repairs: \$538.37; GovConnection, Inc.-office expense: \$137.79; Grainger-repairs: \$107.90; Hanson, Mark-utilities: \$20.00; Hawkins, Inc.-supplies: \$3,321.07; Hydraulic Sales & Service-repairs: \$403.00; Ingram Library Services-library books: \$239.28; Jack's Uniform & Equipment-training: \$252.49; Jeff's Lawn Care, Inc.-repairs: \$66.30; Jones' Food Center-supplies: \$111.80; Kollbaum Construction-repairs: \$1,377.00; Leader-Courier-publishing: \$463.75; Lyle Signs, Inc.-supplies: \$497.32; MC&R Pools, Inc.-machinery & equipment: \$567.15; Matheson Tri-Gas, Inc.-repairs: \$151.06; McKinney Olson Insurance-insurance: \$12,367.50; McLaury Engineering, Inc.-professional services: \$937.00; Menards-supplies: \$93.44; Midwest Alarm Company, Inc.-monitoring services: \$64.50; Midwest Ready Mix-supplies: \$345.84; MSC Industrial Supply Co.-supplies: \$254.87; NCS, Inc.-professional services: \$177.38; Nygren's True Value-supplies: \$420.94; Office Systems, Co.-office expense: \$29.07; O'Reilly Auto Parts-repairs: \$198.52; Pedersen Machine, Inc.-repairs: \$459.07; Per Mar Security Systems-professional services: \$288.00; Perkins Office Solutions-supplies: \$155.47; Pioneer Drug-office expense: \$1.39; Sanford Health Plan-insurance3: \$11,784.76; SD State Historical Society-supplies: \$57.60; Sewer-Matic-professional services: \$5,476.56; Sheehan Mack Sales & Equipment-repairs: \$41.40; Sioux City Ford-repairs: \$2,117.00; South Dakota Municipal League-conference: \$100.00; South Dakota One Call-locate tickets: \$31.50; Southeast Farmer Elevator Coop.-auto expense:

\$2,534.51; Standard Battery-repairs: \$103.90; Staples Credit Plan-office expense: \$79.96; State of Industrial Products-supplies: \$502.43; Sturdevant's Auto Parts-repairs: \$891.97; Taser International-equipment: \$142.11; Team Laboratory Chemical Corp.-street repairs: \$1,059.00; Thompson Electric Company-repairs: \$447.94; Thomson Reuters-West-subscriptions: \$295.75; Union County Electric Coop.-utilities: \$2,245.25; US Bank Equipment Finance-copier lease: \$162.47; USA Blue Book-supplies: \$62.29; VanRoekel, Troy-utilities: \$20.00; Verizon Wireless-utilities: \$270.39; Vermillion Ace Hardware-repairs: \$88.93; Welch, Jason-utilities: \$20.00

A public hearing was held at 7:00pm for Brad Chicoine for a 2 ½ foot side yard variance on each side yard to build a home at 1705 Arnold Palmer Ln. Elk Point, South Dakota. The applicant's plans do not comply with the side yard requirements in the Elk Point Zoning Regulations Ordinance. The public hearing was closed. Motion made by Leitru, seconded by Verros to approve the variance as requested. Voting in favor: Leitru, Verros, Buum and Honomichl. Voting against: McCreary. Motion carried.

A public hearing was held at 7:05pm for Dollar General, Lot B of Dailey Tract 1 in Lot 3 of Lot C in the SW Quarter of the SE Quarter (SW ¼ SE ¼) of S 19, T 91 N., R 49, W. of the 5th P.M., Elk Point, South Dakota. (1201 E. Main St.) for a Retail On and Off Sale Malt Beverage License and a Retail On and Off Sale Wine License. Public hearing closed. McCreary moved and Honomichl seconded a motion to approve the licenses. Unanimous.

Brian Oedekoven attended the meeting to discuss the current Country Estates property located at 110 W. Rose St, Elk Point, South Dakota. Mr. Oedekoven informed the council of his plans to move his auto repair business from Jefferson to the current Country Estates location. He also expressed concerns regarding the council expectations with the property and asked if a fence would be allowed on the property. Council agreed that a fence would be allowable.

Tim Dailey was not in attendance to discuss the drainage issue near his property located at 101 N. Green Street.

Second Reading was given to the following Ordinance:

ORDINANCE NO. 370

AN ORDINANCE GRANTING UNTO KNOLOGY OF THE PLAINS (d/b/a WOW! INTERNET, CABLE AND PHONE), ITS SUCCESSORS AND ASSIGNS, THE RIGHT, FRANCHISE AND AUTHORITY FOR THE PERIOD OF FIFTEEN (15) YEARS, TO ACQUIRE, CONSTRUCT AND OPERATE A BROADBAND TELECOMMUNICATIONS NETWORK AND TO SELL AND SUPPLY TO INDIVIDUALS, FIRMS AND CORPORATIONS, PUBLIC OR PRIVATE, AT ANY AND ALL PLACES, WITHIN THE CORPORATE LIMITS OF THE CITY OF ELK POINT, SOUTH DAKOTA, AS SAID LIMITS NOW ARE OR HEREAFTER MAY BE ESTABLISHED, CABLE TELEVISION SERVICES; PRESCRIBING THE TERMS AND CONDITIONS THEREOF; AND PROVIDING FOR THE IMPOSITION AND COLLECTION OF A FRANCHISE FEE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELK POINT, SOUTH DAKOTA:

Section 1: DEFINITIONS

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

- a. "City" is the City of Elk Point, South Dakota.
- b. "Cable Television System", hereinafter referred to also as "Cable System" or "system", means a system of coaxial cables, fiber optic, or other electrical conductors and transmission equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them and other related services to subscribers for various fees.
- c. "Company" shall be Knology of the Plains (d/b/a Wow! Internet, Cable and Phone), its successors and assigns.
- d. "Person" is any individual, firm, partnership, association, corporation, company or organization of any kind.
- e. "Franchise" is the Franchise Agreement.

Section 2. TERM OF GRANT OF FRANCHISE

A non-exclusive franchise is hereby granted pursuant to SDCL 9-35-16 through 9-35-27, inclusive, unto the Company, its successors and assigns, for a term of fifteen (15) years commencing with the date this ordinance becomes effective, to acquire, construct, and operate a broadband telecommunications network over, under and upon the public streets and alleys of the City of Elk Point, South Dakota, and to sell and supply to individuals, firms and corporations, public or private, at any and all places, within the corporate limits of the City, as said limits now are or hereafter may be established, audio and video communications services, subject to the conditions and restrictions as hereinafter provided and subject to this Ordinance, as amended from time to time. Either the Company or the City may, not less than ninety (90) days nor more than one hundred eighty (180) days prior to the fifth and tenth anniversary of the effective date of this Ordinance, provide written notice to the other party of its desire to amend the franchise. The parties shall negotiate any amendment to the franchise in good faith for a period of up to ninety (90) days following receipt of notice. If, at the conclusion of negotiation period, an amendment acceptable to the parties is not reached and the City determines in good faith that the franchise, if continued without amendment, will have a material or significant adverse impact on the City or the Company's customers located within the corporate limits of the City, either party

may terminate the franchise provided such termination notice is provided to the other party within ninety (90) days of the conclusion of the negotiation period.

Section 3. AGREEMENT AND WAIVER

Company agrees to abide by all provisions of this Franchise and all other applicable ordinances of the City, as they may hereafter be amended by the City. Company further agrees to comply with all laws, statutes, codes, ordinances, rules and regulations of the United States and the State of South Dakota and to any of the agencies of each.

Section 4. APPLICABLE AREA AND RECONSTRUCTION

All broadband communication facilities shall be constructed, if applicable, and reconstructed in conformance with the applicable rules and regulations imposed upon the Franchise or ordered by the Federal or State government and the applicable ordinances of the City in effect at the time of said construction or reconstruction. Further, this Ordinance shall apply to the present territorial limits at the City and to any area henceforth added thereto during the period of this Franchise. Nothing herein contained is intended to preclude the Company from extending its cables and equipment to other portions of the City or outside the City for the purpose of servicing other areas, provided the Company is legally authorized to service the other areas.

Section 5. INSURANCE, LIABILITY, INDEMNIFICATION, BONDS AND CONSTRUCTION PROVISIONS

A. Insurance Requirements. The Company shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000.00 combined single limit for bodily injury and property damage. The Company shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be non-cancelable except upon 30 days prior written notice to the City.

B. Indemnification. The Company agrees to indemnify, save and hold harmless, and defend the City, its council members, officials, agents and employees, from and against any liability for damages and for liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Company's construction, operation or maintenance of its System, including, but not limited to, reasonable attorney's fees and costs, provided that the City shall give the Company written notice of its obligation to indemnify within 30 days of receipt of a claim or action pursuant to this section. If-necessary, the City determines for it to employ separate counsel, the costs of such separate counsel shall be the responsibility of the City.

Section 6. SERVICE STANDARDS AND REQUIREMENTS

A. Whenever it shall be necessary to shut off or interrupt service for the purpose of making repairs, adjustments, or installations, the Company shall do so at such times as will cause the least amount of inconvenience to its subscribers if reasonably practical.

In the event of any interruption of service whether planned or unforeseen, the Company shall proceed with due diligence and restore service as quickly as possible under the circumstances.

C. Required Extensions of Service. Whenever the Company shall receive a request for service from at least 7 residents within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its System to such Subscribers at no cost to said subscribers for system extension, other than the usual connections fees for all Subscribers; provided that such extension is technically feasible.

D. Subscribers Charges for Extension of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate their cable drop underground, existence of more than 150 feet of distance from distribution cable to connection of service to Subscribers, or a density of less than 7 residences per 1320 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 easement. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Company and Subscribers in the area in which service may be expanded, the Company will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equal 7 residences. Subscribers, who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The Company may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

E. Service to Public Buildings. The Company shall, upon request, provide without charge, one outlet of Basic Service to those Company Authority offices, fire station(s), police station(s), and public school building(s) that are passed by its System. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Company 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.

F. Emergency Use. In the case of an emergency or disaster, the Company shall, upon request of the City, make available its facilities for the City to provide emergency information and instruction during the emergency or disaster period. The City shall hold the Company, its employees, officers, and assigns, harmless from any claim arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

G. PEG CHANNEL. Company shall dedicate one (1) channel for public, educational and governmental ("PEG") programming. Every Subscriber receiving cable service over the Company's System shall receive the PEG channel at no additional charge. The PEG channel shall be provided as part of the Basic Cable Service and shall not be moved without the City's written approval which shall not be unreasonably withheld. The Company shall cablecast all PEG programming produced or created by the City, or its designee, including any live programming. The City may use the PEG channel for any lawful purpose

including to cablecast programming by the City, local educational institutions or other public institutions, or members of the public.

- (a) The City shall have sole responsibility for managing and controlling the PEG channel. The City shall establish rules for the programming, operations and administration of the PEG Channel, which shall be subject to the Company's review and approval. The Company shall have no responsibility whatsoever for the programming, operation or administration of the PEG channel.
- (b) The Company shall within ninety (90) days of the acceptance of this agreement, provide all equipment necessary to perform good quality playback of prerecorded programming. The Company shall also provide and maintain at a mutually agreed to site (s), a keyboard/character scroll generator for the purpose of programming community bulletin board and community calendar information.
- (c) The Company shall be responsible for insuring, maintaining, repairing, fixing and adjusting all equipment so purchased. All such equipment shall be replaced when needed by the grantee.

Section 7. SAFETY REQUIREMENTS

- A. The Company shall at all time employ reasonable care in conducting its operations and shall install and use generally accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. The Company shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the applicable requirements of the National Safety Code and local ordinances
- C. The Company shall maintain at all times its structures, lines, equipment, and connections in, over, under or upon the streets, sidewalks, alleys, and public ways or places of the City wherever situated or located, in a safe, suitable, substantial condition, and in good order and repair.

Section 8. NEW DEVELOPMENTS

It is contemplated the City will consider amending this Ordinance, upon application of the Company and/or upon the City's initiative including but not limited to taking advantage of any developments in the field of transmission of television signals and related services which will afford the Company an opportunity to more effectively, efficiently, or economically to serve its customers. The City may amend this ordinance, when necessary and in the best interests of the City residents. The City may also amend this Ordinance to enable the Company to respond to changes in Federal Communications Commission regulations, or other applicable governmental rules or requirements; such amendments are contemplated to be made by the City

within one year from the date of any such changes in each rules, regulations, or requirements, or at the time of franchise renewal.

Section 9. CONDITIONS ON STREET OCCUPANCY

A. All transmission and distribution structures, lines and equipment erected by the Company within the city shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose land may adjoin any of the said streets, alleys, or other public ways and places.

B. In case disturbance of any street, sidewalk, alley, public way or paved area is caused by the Company's construction or operations the Company shall, at its own cost and expense and in a manner approved by the city's appropriate authority, replace and restore such street, sidewalk, alley, public way, or paved area to a condition as good as its condition before the work causing such disturbance was performed.

C. The Company shall have the right, under the supervision at the City's appropriate authority, to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the city so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company or otherwise interfering with the operations of the Company.

D. The Company shall, at the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of the building. The expense of such temporary removal, raising, or lowering of wires, shall be paid by the person requesting the same, and the Company shall have authority to require such payment in advance. The Company shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire change.

E. If at any time during the term of this Franchise, the City shall elect to install or change the location of all or part of its water or sewage system or change or alter the grade of any street, avenue, public ground or highway, or add to existing street grades, curb and gutters, sidewalks, or storm sewers in such manner that the Company's cables or wires interfere therewith, the Company will upon being so directed by the governing body of the City, relocate its cables or wires in accordance therewith, the cost of such relocation to be assumed by the Company, its successors or assigns.

Section 10. FRANCHISE FEE

A. There is hereby imposed upon the Company, and by its acceptance of this Franchise, it agrees to pay to the City a fee equal to three percent (3%) of the gross revenues from all sources of operations of the system within the City including, but not limited to, basic service monthly fees, pay cable service fees, rental income, installation and re-connection fees, and local advertising revenues derived from sales made to consumers within the corporate limits of the City during the terms of this franchise, in order to compensate the City for the Company's use of

the streets, alleys and public ways for its poles, overhead wires, underground conduits and other broadband communication network facilities. The term gross revenues does not include any sales, excise or other taxes collected by Company on behalf of the state, city or other governmental unit. Under no circumstances will the Company be required to pay two franchise fees to provide the same service. Such fee shall be payable annually within ninety (90) days after the end of the Company's fiscal year and shall be accompanied by a report showing the total number of subscribers and the total income received from the sale of the Company's basic service to such subscribers.

B. Renewal of Franchise. The City and the Company's agree that any proceedings undertaken by the City that relate to the renewal of the Company's Franchise shall be governed by and comply with the provisions of Section 626 of 47 USC 546 (hereinafter the "Cable Act"), as amended, unless the procedures and substantive protection set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the City agrees to notify the Company of all of its assessments regarding the identity of future-related community needs and interests, as well as, the past performance of the Company under the then current Franchise term. The City further agrees that such preliminary assessments shall be provided to the Company promptly so that the Company has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Company and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and the Company may agree to undertake and finalize informal negotiations regarding the renewal of the then current Franchise and the City may grant a renewal thereof. The Company and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

C. Conditions of Sale. If a renewal or extension of the Company's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully terminated, and the City either lawfully acquires ownership of the System or by its actions lawfully effects a transfer of ownership of the System to any other party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Company and the City agree that in the case of a final determination of a lawful revocation of the Franchise, at the Company's request, which shall be made in its sole discretion, the Company shall be given a reasonable opportunity to effectuate a transfer of its System to a qualified third party. The City further agrees that during such a period of time, it shall authorize the Company to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, the Company is unsuccessful in producing a qualified transferee or assignee of its System which is reasonably acceptable to the City, the Company and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Company's continued operation of its System during

the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Company.

D. Transfer of Franchise. The Company's right, title or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled or by under common control with the Company, without the prior consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Company in the Franchise or System in order to secure indebtedness. Within 30 days of receiving the request for transfer, the City shall, in accordance with FCC rules and regulations, notify the Company in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Company's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given.

E. Books and Record. The Company agrees that the City upon reasonable notice to the Company may review such of its books and records at the Company's business office, during normal business hours and on a non disruptive basis, as is reasonably necessary to ensure compliance with the terms thereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Company pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Company as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Company shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

Section 11. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance shall be held invalid or unconstitutional or in conflict with the rules and regulations of any federal or state regulatory agency, including the Federal Communications Commission, the remaining provisions shall remain in full force and effect unless any such change resulting there from would, in the opinion of the City materially alter the terms of this Ordinance. In the event the City finds that such change materially alters the terms of this Ordinance, the City shall notify the Company of its finding and shall set the matter for hearing and upon such hearing may vary the terms of this Franchise to the extent possible to counter the effects of such holding.

Section 12. SYSTEM SECURITY-TAMPERING WITH CABLE TELEVISION EQUIPMENT

The Company shall have the right at all times to take such legal action as it deems necessary to preserve the security of its cable television system and to assure only authorized use thereof by its subscribers or other persons. Any person who willfully or maliciously uses or damages, or causes to be damaged, any wire, cable, conduit, apparatus or equipment of the Company with intent to obtain a signal or impulse there from without authorization of the

company shall be liable to the Company in the amount of \$200.00 per occurrence or actual damage to the equipment or value of use of service whichever is greater.

Section 13. ASSIGNMENT OF FRANCHISE

This Franchise shall apply to, inure to and bind the parties hereto and their successors and assigns, provided that any assignment by the Company shall also be subject to the approval of the City Council by resolution, which approval shall not be unreasonably withheld.

Section 14. ACCEPTANCE BY THE COMPANY

Within ten (10) days from and after the passage and publication of this Ordinance, the Company shall file with the City Clerk its acceptance of the provisions of this Ordinance and its terms and conditions and said Ordinance with acceptance shall become and be a binding contract between the City and the Company.

Adopted this 8th day of September 2014.

Isabel Trobaugh, Mayor

ATTEST:

Erika Hammitt, Finance Officer

ACCEPTANCE OF A FRANCHISE FOR A
CABLE TELEVISION SYSTEM IN THE
CITY OF ELK POINT, SOUTH DAKOTA

WHEREAS, the City of Elk Point, a South Dakota municipal corporation (hereinafter the "City") has determined that Knology of the Plains (d/b/a WOW!, Internet, Cable, and Phone), ("Company"), was qualified to operate and maintain a cable communications system in the City and approving the Company's request to obtain a cable communications franchise; and

WHEREAS on August 4, 2014, the City, by actions of its governing body, introduced for first reading Ordinance No. 370 FRANCHISE AGREEMENT (the "Franchise") awarding to Knology of the Plains (d/b/a WOW!, Internet, Cable and Phone, a Cable Communications Franchise in the City; and

WHEREAS, on September 8, 2014, the City, by action of its governing body adopted the Franchise; and

WHEREAS, the Franchise requires that the Company accept the Franchise in form and substance acceptable to the City.

NOW, THEREFORE, pursuant to the terms and requirements of the Franchise, and in

consideration of the grant of the Franchise by the City, the Company accepts the Franchise, and makes the following representations and warranties to the City:

1. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of South Dakota, is authorized to do business in the State of South Dakota and has the full power, authority, and legal capacity to execute, deliver, and perform this Acceptance and perform the terms and conditions of the Franchise.
2. All actions necessary to authorize the execution and delivery of this Acceptance and the performance of the Franchise have been duly authorized by all necessary and required proceedings.
3. The execution and delivery of the Acceptance and the performance of the Franchise does not and will not conflict with or result in the breach or termination of, or constitute a default under, any indenture or instrument with respect to the borrowing of money, or any material contract, lease or agreement or order, judgment or decree or any law, rule or regulation to which the Company is a party or by which it or any of its property is bound or affected.
4. The Company has carefully read the terms and conditions of the Franchise, and accepts the rights, duties, and obligations created there under, subject to its rights under applicable state and federal law.
5. Neither the Company or any of its representatives or agents have committed any illegal acts or engaged in any wrongful conduct contrary to, or in violations of, any federal, state, or local law or regulation in connection with the obtaining of the Franchise

Dated: September 8, 2014.

Motion and second, McCreary/Buum to approve the Ordinance with the amendment of the option to opt out every five years. All in favor.

Motion made by Leitru, seconded by Honomichl to hire Donna Welch as a librarian (\$9.00/hour) as recommended by City Librarian Wilkinson and City Administrator Nelsen. Unanimous.

Verros moved and Leitru seconded a motion to hire Jeremy Rouse as an on-call police officer (\$14.00/hour) as recommended by Police Chief Fleek and City Administrator Nelsen. All in favor.

Motion and second, Verros/Leitru to hire James Christensen as an on-call police officer (\$14.00/hour) as recommended by Police Chief Fleek and City Administrator Nelsen. Unanimous.

Council reviewed the East River Systems Survey completed by Public Works Director Buum. Motion made by Verros, seconded by McCreary to approve the survey and submit it to East River. All in favor.

Verros moved and Buum seconded a motion to approve a permanent waiver of landfill fees for code enforcement efforts and allow homeowners to bring demolished homes out to the landfill. Shingles and asbestos cannot be accepted. Unanimous.

Motion and second, McCreary/Leitru to write off the following uncollectable utility accounts. All in favor.

1. Account #00002111-04-1: \$70.34
2. Account #00001454-00-6: \$107.04

Discussion was held on the Ordinance No. 369, 2015 Annual Appropriation Budget. Items discussed were possibly selling the city's storage building to the Union County Food Pantry, decreasing the swimming pool sandblasting and painting project to \$10,000.00 by having city staff complete it and removing the hike and bike trail asphalt replacement project of \$6,000.00 out of the budget. Also discussed were adding additional revenue by adopting a property front footage assessment for use in capital improvements and adding five percent to the water, sewer, electric and garbage utility rates.

Brian Coyle addressed the council to discuss the Economic Development Corporation and the Industrial Park infrastructure. Coyle feels that this property can be an investment and has the ability to generate revenue for the city. Council was given the engineering study layout and probable cost to complete the project. Coyle asked that \$50,000.00 be kept in the 2015 budget as a reserve for future infrastructure construction at the Industrial Park.

City Engineer McLaury proposed the idea of splitting the engineering fees for the Rose Street design 50% next year and 50% in 2016 to help balance the general fund budget.

First Reading was given to Ordinance No. 369, an Ordinance Providing for the Annual Appropriations for the City of Elk Point, South Dakota and Levying for the Year 2015.

A special meeting was scheduled for Monday, September 22, 2014 at 6:00pm to give Second Reading to the 2015 Annual Appropriations Budget.

Discussion was held on the Union County mowing bill that was amended by the Union County Commissioners at their August 19, 2014 meeting. The Commissioners made a motion amending the City of Elk Point's bill for mowing from \$898.52 to \$98.52 as the \$200.00 per mowing event was in excess of the actual mowing cost. City Attorney Thompson would like to review the ordinance and correspondence before council acts on it. Discussion was tabled.

Honomichl moved and McCreary seconded a motion to go into executive session to discuss personnel per SDCL #1-25-2.1 and consult legal counsel per SDCL #1-25-2.3 at 8:13pm. Unanimous.

Mayor Trobaugh declared the council out of executive session at 8:39pm

Motion to adjourn, Verros/Leitru. All in favor.

Attest: Erika Hammitt
Finance Officer

Isabel Trobaugh
Mayor

Publish: September 18, 2014

