

ORDINANCE NO. 539

An ordinance to create a Telecommunications Utility for the City of Coldwater; to provide for the operation and administration of such Telecommunications Utility; to appoint the City of Coldwater Board of Public Utilities to manage such Telecommunications Utility on behalf of the City Council and the City Manager pursuant to the City Charter.

The City of Coldwater Ordains:

Section 1. It is deemed necessary for the public health, safety and welfare of the City of Coldwater (the "City") to acquire, construct, install and operate a hybrid fiber optic-coaxial cable communications network for the City (the "Utility"), so as to improve the operation and efficiency of the City's water, sewage and electrical utilities and to provide additional communication capabilities for City services.

Section 2. The City of Coldwater Board of Public Utilities (the "Board") has proposed the acquisition, construction and installation of the Utility, and the City has the power to acquire and operate the Utility pursuant to Sections 2.1(a), 2.2(4)(4), 2.2(5)(b), and 14.1 of its City Charter and pursuant to general Michigan law.

Section 3. There is hereby created a separate Utility under the City Charter consisting of a hybrid fiber optic-coaxial cable communications network, together with all appurtenances and attachments thereto, which shall be known as the City of Coldwater Telecommunications Utility (the "Utility").

Section 4. The City Council hereby appoints the Board to operate and manage the Utility on behalf of the City Council and the City Manager, pursuant to Section 14.2 of the Charter. By his signature appearing below, the City Manager approves the appointment of the Board as the operator and manager of the Utility under the terms and for the length of years set forth below.

Section 5. The Board shall operate and manage the Utility at the Board's sole expense in the same manner in which the Board operates the water, electric and sewage utilities. The Board shall provide monthly reports as to the activities, income statements, asset statements and development of the Utility. The City has or will enter into an installment purchase agreement in the amount of \$1,000,000.00 to finance a portion of the cost of the Utility. The obligations of the City under said installment purchase agreement shall be paid by the Board as and when the same become due as a normal operating expense of the Board and the Utilities otherwise operated by the Board.

Section 6. In exchange for the Board's operation and management of the Utility on behalf of the City Council and the City Manager, the Board shall retain all income, if any, derived from the operation of said Utility, except for 6 ½ % of the gross revenues of the Utility, which shall be remitted to the City pursuant to Section 15.9 of the City Charter at the same time and in the same manner as the other payments to the City by the Board pursuant to said Section 15.9.

Section 7. The Board shall operate and manage the Utility on behalf of the City Council and the City Manager for an initial period of 10 years from the effective date of this ordinance (the "Initial Term"). The Initial Term shall be automatically extended for an additional term of 20 years, unless the City shall have repealed this ordinance prior to the end of the Initial Term. If the City shall not have repealed this ordinance prior to the end of the Initial Term, this ordinance shall be in effect for an additional 20 years, expiring 30 years from the effective date hereof. Provided, however, that in the event there are debt obligations outstanding which pledge assets or revenues of the Utility, then no such repeal shall be effective until all such debt obligations have been retired or for which payment is provided.

Section 8. This ordinance shall take effect 20 days after its publication.

Approved: October 14, 1996

William R. Stewart City Manager

Gerald M. Boguth Clerk/Assessor