

Bottineau Municipal Code Revised

Chapter Fourteen

Franchise

ARTICLE 1 – Grant of Franchises

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FRANCHISES

- Turtle Mountain Communication, Inc.
- Otter Tail Power company
- North Central Electric Cooperative, Inc.
- Midcontinent Communications, Inc.

Chapter Fourteen
Franchise

ARTICLE 1 – Grant of Franchises

14.0101 Power to Grant

The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article.

14.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation, as the City shall be resolution or ordinance provide.

14.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

14.0104 Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars (\$250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars (\$500,000.00) for any one accident resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota.

Franchises

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF BOTTINEAU, NORTH DAKOTA GRANTING A NON-EXCLUSIVE FRANCHISE TO TURTLE MOUNTAIN COMMUNICATIONS, INC. FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A COMMUNICATIONS SYSTEM WITHIN THE CITY LIMITS PROVIDED FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bottineau is authorized to grant non-exclusive franchise operations of communications systems within the City rights-of-way; and

WHEREAS, Turtle Mountain Communications, Inc. has applied for a franchise to construct, operate, and maintain communications services within the boundaries of Bottineau; and

WHEREAS, the terms, conditions, and obligations provided herein are needed to protect the safety and welfare of the citizens of Bottineau, and provide for the communications services needs of the community;

NOW, THEREFORE, THE CITY OF BOTTINEAU, NORTH DAKOTA, HEREBY ORDAINS AS FOLLOWS:

Section 1: Purpose.

This Ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the city of Bottineau (hereinafter the "City") and Turtle Mountain Communications, Inc. (hereinafter the "Operator"). The Operator agrees to construct, maintain and operate a communications services system for the distribution of telephone service, digital subscriber lines, broadband services, and DSL video pursuant to the terms of the Franchise. The City agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supercede all existing franchises previously granted by the City of Bottineau to Operator, or any of its predecessors, subsidiaries, or affiliated companies.

Section 2: Length of Franchise.

The length of this Franchise shall be for a term of Twenty (20) years from June 4, 2007 through midnight of June 4, 2027.

Section 3: Service Area.

The Operator's service area shall be the entire incorporated area of the City of Bottineau, in its present incorporated form or in any later reorganized, or enlarged, or re-incorporated form.

Section 4: Liability and Indemnification.

Grantee shall, at all times, keep in effect the following types of insurance coverage:

- (a) Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Bottineau, North Dakota.

(b) Property damage liability insurance to the extent of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars as to each occurrence and Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars aggregate, and personal injury insurance to the extent of Five Hundred Thousand and No/100 (\$500,000.00) Dollars as to each occurrence and Five Hundred Thousand and No/100 (\$500,000.00) Dollars aggregate. Excess bodily injury and property damage of One Million and No/100 (\$1,000,000.00) each occurrence and One Million and No/100 (\$1,000,000.00) Dollars aggregate. Automobile, bodily injury and property damage liability combined on One Million and No/100 (\$1,000,000.00) Dollars each occurrence.

Operator shall indemnify, protect and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons for property within the City, or by any act of Operator, its agents or employees.

Section 5: Technical Standards.

Grantee shall be governed by technical standards established by the Federal Communications Commission.

Section 6: Operation and Maintenance of System.

(a) The Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by notice and shall occur during periods of minimum use of the system, if possible.

(b) All service requests and complaints should be responded to within forty-eight (48) hours of receipt.

Section 7: Emergency Use of Facilities.

In the case of an emergency or disaster, the Operator shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster.

Section 8: Successors or Assigns.

This Franchise shall be binding upon the Operator, its successors and assigns.

Section 9: Acceptance.

This grant of Franchise and its terms and provisions shall be accepted by Operator by the submission of a written instrument, executed and sworn by a corporate office of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise.

Section 10: Effective Date.

This Ordinance shall take effect five (5) days from the date of publication and adoption by the City. The Franchise granted by this Ordinance shall not be effective until the Operator files written acceptance thereof.

Section 11: Severability.

Each section, subsection or portion of this Ordinance shall be severable if any section, subsection or portion shall be found to be invalid.

Section 12: Notice.

Written notices shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified U.S. mail to the last business address known to the party who gives notice. All notices and requests shall be address to the City of Bottineau, as follows:

CITY:

City Auditor
City of Bottineau
115 W 6th Street
Bottineau, ND 58318-1316

OPERATOR:

Turtle Mountain Communications, Inc.
411 – 7th Avenue
Langdon, ND 58249

Section 13: Rates.

Operator shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for all communications services.

During the term hereof, the City may regulate rates only if authorized to do so by the Federal Communications Commission regulations and then such regulations shall only be in accordance with the provision of such regulations.

In the event that the City has the authority to regulate the rates, the following procedure shall be used:

(a) Before making any changes in the rates and charges to subscribers for the Operator's communications services, Operator shall file in writing with the City a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate change shall become effective upon the expiration of the thirty (30) days notice.

(b) If the City wishes to hold a hearing on the proposed rate change, the hearing shall be held within forty-five (45) days of the filing of the proposed rate change by Operator. Following the hearing, the City shall take final action on the proposed rate change within thirty (30) days.

Section 14: Payment to City.

During the term of the rights granted hereunder, and so long as the Grantee operates said system, the Grantee shall pay, as compensation to the City a sum equal to three percent (3%) of the annual total gross receipts of the communication service system. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers residing within the corporate limits of the City for communication service system for the distribution of telephone service. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repair or modifications of any installation, or State and Federal Taxes relating thereto.

The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on a monthly basis.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

First Reading : May 7, 2007
Second Reading : June 4, 2007
Adopted : June 4, 2007
Effective Date : June 4, 2007

CITY OF BOTTINEAU, NORTH DAKOTA

Doug Marsden
By: Doug Marsden
Its President

ATTEST/AUTHENTICATED:

Penny J. Nordmark
By: *Penny J. Nordmark*, Auditor
City Auditor

ACCEPTANCE

Lorne Field, President of Turtle Mountain Communications, Inc. does hereby accept the terms and conditions of the above Franchise.

Dated this the 27th day of June, 2007

TURTLE MOUNTAIN COMMUNICATIONS, INC.

Lorne Field
By: Lorne Field
Its President:

Subscribed and sworn to before me this the 27th day of June, 2007

Perry Oster
Notary Public
Gavler County, North Dakota
My Commission Expires: _____

PERRY OSTER
Notary Public, State of North Dakota
My Commission Expires September 14, 2011

ORDINANCE NO. 25

AN ORDINANCE GRANTING TO THE OTTER TAIL POWER COMPANY, A MINNESOTA COMPANY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT, CONSTRUCT, INSTALL AND MAINTAIN WITHIN THE CITY OF BOTTINEAU, AN ELECTRIC LIGHT AND POWER SYSTEM AND TRANSMISSION LINES AND TO OPERATE THE SAME AND TO INSTALL CONDUITS, POLES, WIRES, PIPES AND OTHER FIXTURES IN, UPON AND UNDER THE STREETS, ALLEYS, BRIDGES AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF FURNISHING ELECTRIC LIGHT, HEAT AND POWER TO SAID CITY AND THE INHABITANTS THEREOF.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF Bottineau, North Dakota, hereinafter called the City:

SECTION 1

There is hereby granted to Otter Tail Power Company, a Minnesota Company, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission lines and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereafter set forth.

SECTION 2

Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenue, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any sidewalk, street, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

SECTION 3

All conduits, poles, wires and pipes shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor under the supervision of the City council of said City.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

SECTION 4

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interest of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

SECTION 5

Whenever the said Grantee is erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on any of the avenues, streets and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and

in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

SECTION 6

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said city so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign any person, firm or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights by accepting such assignment shall be come subject to the terms and conditions of this Ordinance.

SECTION 7

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

SECTION 8

The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

SECTION 9

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

SECTION 10

The City reserves the right during the term hereof to enact and assess a franchise fee as it deems necessary, upon reasonable advance notice to Grantee of not less than thirty (30) days.

SECTION 11

In the event the City should sell or transfer real property which is subject to Grantee's franchise and should it become necessary to remove conduits, poles, wires, or pipes installed by virtue of this ordinance the removal shall be done at the expense of the Grantee upon the request of the City.

SECTION 12

This Ordinance shall take effect and be in full force from and after its passage and approval by the City council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

1st reading: July 6, 2015

2nd & final reading: August 3, 2015

OUTDOOR LIGHTING MAINTENANCE & ENERGY AGREEMENT BETWEEN OTTER TAIL POWER COMPANY AND CITY OF BOTTINEAU, ND

This is an Outdoor Lighting Maintenance and Energy Agreement (the "Agreement") by and between Otter Tail Power Company, a customer service center of Otter Tail Corporation, 215 South Cascade Street, Fergus Falls, Minnesota 56537 ("OTP"), and the City of Bottineau, ND (The City). The Effective Date of this Agreement is August 6, 2007.

BACKGROUND

WHEREAS, The City is the owner of certain outdoor lighting equipment ("Equipment") located on property within the jurisdiction of the City. These lights were installed in 2006 and are located along ND Hwy. 5 in Bottineau, ND.

WHEREAS, OTP is in the business of, among other things providing maintenance services for certain outdoor lighting equipment.

WHEREAS, The parties agree OTP shall provide services to maintain, preserve, and keep the Equipment in good repair, working order and condition on behalf of the City according to terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises hereinafter contained, the parties hereby agree as follows:

1. Warranty and Repair Services

1.1 OTP hereby agrees to keep the Equipment installed in good repair, working order and condition pursuant to the following conditions:

1.2 OTP's maintenance responsibilities include all scheduled and emergency lamp replacements.

A. OTP's maintenance responsibilities shall include the timely and accurate locating of underground wiring as needed or notified by the ND-One Call locate system. OTP will be responsible for damages to the system due to failure in providing proper and accurate locating under section 1.2A.

1.3 The City will be responsible for all maintenance not specifically listed above, including: painting any replacement of pole bases for any reason; repair/replacement of fixtures, poles, wiring and other related components due to accident, vandalism, and other potential acts of God. However;

1.4 Should the City wish for OTP to perform any repair/replacement services that OTP has not specifically agreed to in Paragraphs 1.1, 1.2 and 1.2A above, OTP will agree to provide such services pursuant to the attached current schedule of prices and terms for such repair services.

1.5 OTP agrees to respond to system outages and repair calls with a maintenance crew onsite within 72 hours of receiving the call from the City.

2. Term

2.1 This Agreement shall become effective on the official start date of the year 2007 Maintenance Year as described in Paragraph 3.2 and shall have a primary term of one (1) year.

2.2 Upon the expiration of the primary term, the agreement shall rollover on a year-to-year basis unless either party receives written notice of cancellation at least ninety (90) day prior to the completion of the one-year agreement.

3. Service Rates and Billing Schedules

3.1 The fee to be paid by the City to OTP for maintenance of the lighting equipment shall be the amount associated with the Term as identified in Appendix A, paid semi-annually.

3.2 The first day of the maintenance year and the initiation of the maintenance services described in Paragraph 1.1 will begin on the date the City executes the completion and acceptance certificate for the equipment installed.

3.3 The monthly maintenance invoice will include all costs associated with services performed under Paragraph 1.1 of the Agreement. Additional services performed by OTP in accordance with Paragraphs 1.2 and 1.3 will be invoiced to the City upon completion of the work order request.

3.4 All work performed by OTP under Paragraphs 1.2 and 1.3 must be pre-approved by the City pursuant to the rates shown on the attached rate schedule which OTP will update on a semi-annual basis.

4. Indemnification and Hold Harmless

4.1 The City to Indemnify OTP. The City shall indemnify, defend, and save harmless OTP from any liability, loss, or expense arising from or growing out of injury to persons, including death or property damages incurred by persons other than the parties, which may occur as a result of OTP's work under this Agreement, unless such loss is solely due to the negligence of OTP.

4.2 OTP to Indemnify the City. OTP shall indemnify, defend, and save harmless the City from any liability, loss, or expense arising from or growing out of injury to persons, including death, or property damages for persons other than

the parties, which may occur of OTP's work under this Agreement, unless such loss is solely due to the negligence of the City.

4.3 Damages in Proportion of Negligence. If such loss or injury is not due to the negligence of either party or is due to the negligence of both parties, any damages recovered therefore shall be borne by the parties in proportion to its negligence. If either party is required to satisfy any claim or judgment recovered for such damages, such party shall have the right of contribution against the other party.

4.4 Each Party Responsible for Actions. It is the intent of this Section 4 that each party be responsible for its own acts and omissions.

5. Miscellaneous

5.1 Entire Agreement and Modification. All previous communications between the parties hereto, either verbal or written, with reference to the subject matter of the Agreement are hereby abrogated. No amendment, modification or waiver of, or consent with respect to any provision of this Agreement shall be effective unless the same shall be in writing and signed by both parties and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

5.2 Savings Clause. If any provision of this Agreement shall be found invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then such provision shall be deemed to be modified or restricted to the extent and in a manner necessary to render the same valid and enforceable, or if that is not possible, such provision shall be stricken and deleted from this Agreement, as the case may require, and this Agreement shall then be construed and enforced to the maximum extent permitted by law and with the purpose to achieve the fundamental intent of the parties.

5.3 Waiver. Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall be in writing and shall not be deemed a waiver with respect to any subsequent default or other matter.

5.4 Choice of Laws. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota and excluding any choice of law rules which may direct the application of laws of another jurisdiction.

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph.

OTTER TAIL POWER COMPANY

Bruce Gleason
Area Manager

Title:

9-19-07
Date:

CITY OF BATH

J. Marsden
Mayor of City Bath

Title:

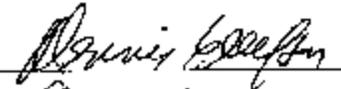
8-6-2007
Date:

Appendix A

Main fixture pricing for outdoor lighting systems installed in Bottineau, ND. Rates are listed on a monthly, per fixture basis.

Qty	Type	Lamp Maintenance
47	250-Watt HPS	\$1.47
35	100-Watt I-PS	\$1.46

OTFCR TAIL POWER COMPANY



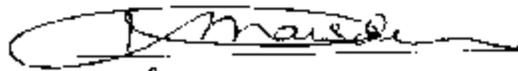
Area Manager

Title:

9-19-07

Date:

CITY OF BOTTINEAU



Mayor

Title:

8-6-2007

Date:

Rates Effective 1/1/07 - 12/31/07

Work performed under provision 1.3 of the Maintenance and Energy Agreement will be billed at the following rates. OTP reserves the right to review and update these rates on a semi-annual basis. These rates will be effective through 12/31/07.

A written estimate will be provided prior to commencing any repair work under this provision.

Time and Materials Rates/per hour:

Labor rate (Service Rep)	\$81/hour
Labor Rate (Lineman)	\$82/hour
Trencher Rate	\$60/hour
Bucket Truck	\$50/hour
Mileage Charges	\$0.50/Mile

Material Charges:

All material will be billed at cost-plus.

ORDINANCE NO.

AN ORDINANCE GRANTING TO THE NORTH CENTRAL ELECTRIC COOPERATIVE, INC., A NORTH DAKOTA AND ASSIGNS, PERMISSION TO ERECT, CONSTRUCT, INSTALL AND MAINTAIN WITHIN THE CITY OF BOTTINEAU, AN ELECTRIC LIGHT AND POWER SYSTEM AND TRANSMISSION LINE AND TO OPERATE THE SAME AND TO INSTALL CONDUITS, POLES, WIRES, PIPES AND OTHER FIXTURES IN, UPON AND UNDER THE STREETS, ALLEYS, BRIDGES AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF FURNISHING ELECTRIC LIGHT, HEAT AND POWER TO SAID CITY AND THE INHABITANTS THEREOF.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF Bottineau, North Dakota, hereinafter called the City:

SECTION 1

There is hereby granted to North Central Electric Cooperative, Inc., a North Dakota Corporation assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereafter set forth. The franchise granted herein is to provide electric service in the following described property located in the City of Bottineau described as:

Plat E and Block 1 of the North Central Electric Cooperative Addition

SECTION 2

Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenue, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any sidewalk,

street, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

SECTION 3

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor under the supervision of the City council of said City.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water there from which has been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removal.

SECTION 4

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interest of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

SECTION 5

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the payments, sidewalks, crossings or curbs

on any of the avenues, streets and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

SECTION 6

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said city so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this Ordinance, provide, that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this Ordinance.

SECTION 7

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

SECTION 8

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws.

SECTION 9

This Ordinance shall take effect and be in full force from and after its passage and approval by the City council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no

event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Approved this 7th day of April, 2008

First Reading:	March 3, 2008
Second and Final Passage:	April 7, 2008

ORDINANCE NO.

AN AMENDED ORDINANCE OF THE CITY OF BOTTINEAU, NORTH DAKOTA GRANTING A NON-EXCLUSIVE FRANCHISE TO MIDCONTINENT COMMUNICATIONS, INC. FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A COMMUNICATIONS SYSTEM WITHIN THE CITY LIMITS PROVIDED FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bottineau is authorized to grant non-exclusive franchise operations of communications systems within the City rights-of-way, and

WHEREAS, Midcontinent Communications, Inc. has applied for a franchise to construct, operate, and maintain communications services within the boundaries of Bottineau, and

WHEREAS, the terms, conditions, and obligations provided herein are needed to protect the safety and welfare of the citizens of Bottineau, and provide for the communications services needs of the community,

NOW, THEREFORE, THE CITY OF BOTTINEAU, NORTH DAKOTA, HEREBY ORDAINS AS FOLLOWS:

Section 1: Purpose.

This Ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the city of Bottineau (hereinafter the "City") and Midcontinent Communications, Inc. (hereinafter the "Operator"). The Operator agrees to construct, maintain and operate a communications services system for the distribution of telephone service, digital subscriber lines, broadband services, and DSL video pursuant to the terms of the Franchise. The City agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supercede all existing franchises previously granted by the City of Bottineau to Operator, or any of its predecessors, subsidiaries, or affiliated companies.

Section 2: Length of Franchise.

The length of this Franchise shall be in effect for a period of up to sixteen (16) years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.

Section 3: Service Area.

The Operator's service area shall be the entire incorporated area of the City of Bottineau, in its present incorporated form or in any later reorganized, or enlarged, or re-incorporated form.

Section 4: Liability and Indemnification.

Grantee shall, at all times, keep in effect the following types of insurance coverage:

- (a) Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Bottineau, North Dakota.
- (b) Property damage liability insurance to the extent of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars as to each occurrence and Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars aggregate, and personal injury insurance to the extent of Five Hundred Thousand and No/100 (\$500,000.00) Dollars as to each occurrence and Five Hundred Thousand and No/100 (\$500,000.00) Dollars aggregate. Excess bodily insurance and property damage of One Million and No/100 (\$1,000,000.00) each occurrence and One Million and No/100 (\$1,000,000.00) Dollars aggregate, Automobile, bodily injury and property damage liability combined on One Million and No/100 (\$1,000,000.00) Dollars each occurrence.

Operator shall indemnify, protect and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons for property within the City, or by any act of Operator, its agents or employees.

Section 5: Technical Standards.

Grantee shall be governed by technical standards established by the Federal Communications Commission.

Section 6: Operation and Maintenance of Systems.

- (a) The Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by notice and shall occur during periods of minimum use of the system, if possible.
- (b) All service requests and complaints should be responded to within forty-eight (48) hours of receipt.

Section 7: Emergency Use of Facilities.

In the case of an emergency or disaster, the Operator shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster.

Section 8: Successors or Assigns.

This Franchise shall be binding upon the Operator, its successors and assigns.

Section 9: Acceptance.

This grant of Franchise and its terms and provisions shall be accepted by Operator by the submission of a written instrument, executed and sworn by a corporate office of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise

Section 10: Effective Date.

This Ordinance shall take effect five (5) days from the date of publication and adoption by the City. The Franchise granted by this Ordinance shall not be effective until the Operator files written acceptance thereof.

Section 11: Severability.

Each section, subsection or portion of this Ordinance shall be severable if any section, subsection or portion shall be found invalid.

Section 12: Notice

Written notices shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified U.S. mail to this last business address known to the party who gives notice. All notices and requests shall be address to the City of Bottineau as follows:

CITY
City Auditor
City of Bottineau
115 W 8th Street
Bottineau, ND 58318-1316

OPERATOR:
Midcontinent Communications, Inc.
717 20th Ave SE
Minot, ND 58701

Section 13: Rates.

Operator shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for all communications services.

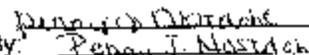
During the term hereof, the City may regulate rates only if authorized to do so by the Federal Communications Commission regulations and then such regulations shall only be in accordance with the provision of such regulations

First Reading : Feb 7, 2011
Second Reading : March 7, 2011
Adopted : March 7, 2011
Effective Date : March 12, 2011

CITY OF BOTTINEAU, NORTH DAKOTA


By: Doug Marsden
Its President

ATTEST/AUTHENTICATED:

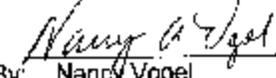

By: Penny J. NASTACH
City Auditor

ACCEPTANCE

Nancy Vogel, Director of Revenue Assurance of Midcontinent Communications, Inc. does hereby accept the terms and conditions of the above Franchise.

Dated this the 29 day of Nov, 2011

Midcontinent Communications


By: Nancy Vogel
Director of Revenue Assurance