

CITY COUNCIL PROCEEDINGS  
PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION

A regular meeting of the Beach City Council was called to order by Mayor Walter Losinski on Tuesday, March 19, 2024 at 7:00 p.m. Present when the meeting was called to order was City Council Nick Hegel, Tom Marman, Lynn Swanson-Puckett, Sarah Ross, Bev Wolff, Andy Zachmann, Public Works Supt. Randy Dietz, City Auditor Kimberly Gaugler, Administrative Assistant Lea Massado, Sheriff Dey Muckle, and guests Gary Howard, Jared Ross, and Manuel Holguin.

The Pledge of Allegiance was recited.

Roll call was taken. All members were present.

Mayor Losinski called for any additions or corrections to the agenda. Gaugler request adding correspondence from ND Insurance Reserve Fund and correspondence from City Attorney Nate Bouray. Zachmann moved to approve the agenda with addition of correspondence, second by Hegel. Motion carried unanimously.

#### **Public Participation**

Mayor Losinski welcomed all guests in attendance. No request for public participation was received.

#### **Minutes**

Minutes of the meeting on March 4, 2024 were presented. Hegel moved to approve the minutes, second by Wolff. Motion carried unanimously.

#### **Sheriff's Report**

Sheriff Dey Muckle reviewed his written report for the month of February which consisted of 39 calls, 1 written citation and 4 warning citations.

#### **Public Works Report**

PWS Dietz reviewed his written report.

#### **Auditor's Report**

Gaugler reviewed her written report. Gaugler reviewed the financial report for the month of February. Zachmann moved to approve the financial report, second by Ross. Motion carried unanimously.

#### **Committee Reports**

**Zoning** – Marman reported the Zoning Board met today. One Application for Building a single family home was submitted last week but review of the application has not yet been completed.

**Park Board** – Zachmann reported the Park Board met on March 12<sup>th</sup>. Preparations are being made for small repair projects at the swimming pool and archway entrance at the park.

### **Unfinished Business**

Correspondence was read from Attorney Nate Bouray clarifying when North Dakota Century Code allows minors to be on premise of an alcoholic beverage establishment.

### **New Business**

Correspondence from the ND State Tax Commissioners Office was read. During the months of November 2023 through February 2024 the city was overpaid \$262,159.45 in city sales tax. City representatives met with the Tax Administration Associate Director on March 18<sup>th</sup>, for clarification on how this error occurred. The city was presented two options for repayment; 1. Pay the balance of \$262,159.45 back by the end of month or 2. Apply future monthly collections to the balance that was overpaid. City share to be paid back is \$209,779.19. Park Board share to be paid back is \$52,380.28. Marman moved to pay back the full amount of \$262,159.45 by month end, second by Ross. Hegel-yes, Marman-yes, Ross-yes, Wolff-yes, Zachmann-yes, Swanson-Puckett-no. Motion carried.

Zachmann moved to approve the Second and Final Reading of Ordinance 395 an Ordinance Renewing a Franchise to Midstate Communications d/b/a RTC Networks, second by Ross. Motion carried unanimously.

### **ORDINANCE NO. 395**

AN ORDINANCE RENEWING A FRANCHISE TO MIDSTATE COMMUNICATIONS, d/b/a RTC NETWORKS GENERAL COMMUNICATION, ITS SUCCESSORS AND ASSIGNS, ARE HEREBY GRANTED THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE CITY OF BEACH, FOR A TERM OF TEN (10) YEARS FROM THE EFFECTIVE DATE HERETO, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A GENERAL TELECOMMUNICATION SYSTEM WITHIN SAID CITY.

Be it ordained by City Council of the city of Beach, North Dakota.

1. **Definitions.** For the purpose of this article, the following terms, phrases, words and their derivations 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 plural number. The word "shall" is always mandatory and not merely directory.
  - a. "City" is the City of Beach, ND.
  - b. "Company" is Midstate Communications d.b.a. RTC Networks the grantee of rights under this franchise.
  - c. "Governing body" is the City Council of the City of Beach, ND.
  - d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
2. **Grant.** There is hereby granted by the City to the Company the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the

streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes and fixtures necessary for the maintenance and operation in the City of Beach. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the city reserves the right to grant a similar use of said streets, alleys, public ways, and places, to any person at any time during the period of this franchise.

3. **Compliance with Applicable Laws and Ordinances.** The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.
4. **Company Liability - Indemnification.** The Company shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of said system. Specifically, the Company shall indemnify and hold the City harmless for any and all lawsuits, claims or actions brought by any entity, against either the City, the Company, or both, that relate, in any way, to the granting of this franchise. The Company shall carry and at all times keep in force, a public liability policy of insurance, insuring the Company and naming the City as an additional insured, against:
  - a. Any and all liability of not less than one million dollars (\$1,000,000.00) per occurrence property damage, one million dollars (\$1,000,000.00) per occurrence of personal injury or death, and two million dollars (\$2,000,000.00) general aggregate.
  - b. Two million dollar (\$2,000,000.00) umbrella liability policy.
  - c. Automobile general liability coverage of not less than one million dollars (\$1,000,000.00) with an umbrella policy of not less than one million dollars (\$1,000,000.00).

Such policies of insurance shall be issued by a company licensed to do business in the State of North Dakota and certificates evidencing such insurance shall be filed with the City prior to the commencement of such use. The above insurance limits may be met through a self-insurance program or by a combination of primary and excess insurance coverages. The Company, upon receipt of due notice in writing from the City, shall defend at its own expense any action or proceeding against the City in which it is claimed that injury or damages arose from the Company's activities in the operation of its utility.

5. **Conditions of Street Occupancy.**
  - a. **Use.** All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located 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 or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Distribution lines for new developments and other services constructed and providing service to customers in new developments shall be buried underground. Replacement of existing sections of Company's distribution system of a contiguous block or more, including customer service lines, shall be buried underground where reasonable and economically practical.

- b. **Restoration.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced and shall maintain the restoration in an approved condition for a period of one (1) year.
  - c. **Relocation.** In event that at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
  - d. **Placement of Fixtures.** The Company shall not place poles or other fixtures where the same will interfere with any utility fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways; provided the company will place its poles or fixtures underground when other utility services are so located unless permitted to do otherwise by the city engineer where extreme hardship would result or an underground installation is not workable.
  - e. **Temporary Removal of Wire for Building Move.** The Company shall, on 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 buildings. The expense of such temporary removed, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
  - f. **Tree Trimming.** The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the City and at the expense of the Company.
6. **Prohibited - Discriminatory Practices.** The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.
7. **Transfer - Approval Required.** The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this franchise to another without governing board approval. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

8. **City Rights in Franchise.** The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of North Dakota.

The City shall have the right to supervise all construction or installation work performed subject to the provisions of this article and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

Upon the revocation of this franchise by the governing body, or at the end of the term of this franchise the City shall have the right to determine whether the Company shall continue to operate and maintain its system pending the decision of the City as to the future maintenance and operation of such system.

9. **Records and Reports.** The City shall have access at all reasonable hours to all of the Company's plans, engineering and service records relating to Beach, ND. The following records and reports shall be filed with the City Auditor and the local office of the Company.

Company Rules and Regulations. Copies of such rules, regulations, terms, and conditions adopted by the Company for the conduct of its business.

10. **Terms of Franchise.** The franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the company with the City Auditor, and shall continue in force and effect for a term of ten (10) years after the effective date of this franchise. Provided acceptance is filed within thirty (30) days.

11. **Modifications to Franchise.**

- a. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.
- b. Should either party hereto determine that based on a change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, and then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Company agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance amending this franchise agreement by the City in accordance with the City Charter and acceptance of the amendment by Company.

12. **Work by Company and Others.**

- a. The City reserves the right to lay, and/or permit to be laid, storm sewer, sanitary sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements

and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to construct or change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, or any other City owned or operated property.

- b. The Company shall relocate its facilities at its expense, except to the extent such relocation may be eligible for reimbursement through funding from the United States, to permit the construction, widening, straightening, or any change whatsoever of a street, including, but not limited to the addition of any acceleration, deceleration, center or side turn lanes, sidewalks, alleys, and like property, provided that the City shall provide Company with reasonable notice and shall specify a new location for such facilities along the Public Rights-of-Way.
  - c. If the City requires the Company to adapt or conform its facilities, or in any manner to alter, relocate, or change its property to enable any other entity that is not a part of the City or the consolidated corporate structure of the Company to use, or use with greater convenience, said Public Right-of-Way, the Company shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's property or facilities.
  - d. Upon request the Company and the City will provide the other with an annual capital improvements and/or non-routine maintenance plans to assist each entity with planning operations. The plans shall be submitted in a timely manner as to provide City with at least thirty (30) days notice for any planned new construction projects and major maintenance projects and shall specify a location for such facilities along the Public Rights-of-Way.
13. **Maps.** Upon request, the Company shall provide, when available, a map showing the location of its facilities in the city limits to the City subject to the City providing the Company with an agreement protecting the confidentiality of such information. Any such map or other information furnished to the City pursuant to this Ordinance shall remain the Company's proprietary information for all purposes. The maps will be delivered in electronic form that is agreed upon by both parties.
14. **Easements.** The Company agrees to the following language being added to final plats needing City approval:
- "The undersigned Utility Company hereby approves of all public and private easements as shown/delineated for recordation by the City of Beach, ND."

The Company agrees to give the City authority to sign on said plats on its behalf. The City will give the Company an opportunity to review and comment of the proposed easements when it receives requests for new plats.

APPROVED: CITY OF BEACH

ATTEST:

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Walter Losinski,  
Mayor, City of Beach, North Dakota

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Kimberly Gaugler, City Auditor  
First Reading - March 4, 2024  
Second Reading – March 19, 2024  
Final Reading – March 19, 2024

Correspondence from ND Insurance Reserve Fund was read regarding the Annual Meeting on May 9<sup>th</sup> in Bismarck.

The 2023 Healthy, Vibrant Community Award received from Governor Burgum and ND Department of Commerce was presented to the City Council. Mayor Losinski and City Auditor Gaugler shared comments from the event held at the Governor's residence on Monday evening.

There being no other business, Swanson-Puckett moved to adjourn, second by Wolff. Meeting adjourned at 8:15 p.m.

ATTEST:

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Walter Losinski, Mayor

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Kimberly Gaugler, City Auditor